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

MONDAY, 27 JUNE 2022
AT 10:00 AM

DAY 46

MS N. SHARP SC appears with MR C. CONDE, MS P. ABDIEL and MR N. CONDYLIS as counsel assisting the Review
MS K. RICHARDSON SC appears as counsel for The Star Pty Ltd
MR M. HENRY SC appears as counsel for the Non-Executive Directors of Star Entertainment Group Ltd

<THE HEARING RESUMED AT 10:00 AM

MR BELL SC: Yes, Ms Sharp.

MS SHARP SC: Good morning, Mr Bell. As you know, counsel assisting made detailed closing submissions over a number of days by reference to a large amount of documentary and oral evidence. We have provided the Review and interested parties with some further written submissions on discrete points.

In turn, The Star, Star Entertainment Group and other interested parties have made responsive submissions to you orally over a number of days, and also by way of written submission, and on the 21st of this month, you received around 1000 pages of written submissions.

The reply submissions that we will be making today do not constitute an exhaustive reply to all of the submissions that have been made by Star, Star Entertainment Group and the other interested parties. Clearly enough, that would not be possible in the time available. That is all to say at the outset that simply because a specific point made by one of the interested parties is not addressed by us in reply today, it should not be taken to mean that we agree with that particular point.

That is also to say that these oral submissions today should be regarded as being in the nature of a general joinder of issue, Mr Bell.

Now, can I outline the order in which I propose to address on topics today. First of all, we would like to make some general submissions about the principles that should govern the fact-finding process in this case. Secondly, we will turn to make some submissions in relation to China UnionPay.

Thirdly, we will address you on Suncity and Salon 95. Fourthly, we will address you on the KPMG reports in May of 2018 and their aftermath. Next, we will make some submissions on the position of in-house counsel, and that will lead into some submissions in relation to claims of legal professional privilege.

Next, we will make some submissions about the interim payment arrangement which involved junket promoter Kuan Koi. Then we will make some submissions about EEIS and, in particular, the EEIS loans. Then we will address you on what might be described in shorthand as the false letters that were sent, or provided, to the Bank of China in Macau. Then we will make some submissions on allegations relating to the underpayment of duty.

Then we will turn to make some submissions about the non-executive directors. And, finally, we will address you on some submissions that The Star and Star Entertainment Group have made to you about the present suitability of The Star and Star Entertainment Group.

Mr Bell, if I can turn to the first topic. That relates to principles that we submit should govern the fact-finding process that you will embark upon. A number of parties have, in their oral and written submissions, invoked a variety of principles that apply in curial and adversarial proceedings and have suggested that they apply to you in your fact-finding exercise. For this reason, it's convenient for us to commence this reply by noting a number of principles which we submit do apply to your fact-finding exercise in the course of this Review.

Mr Bell, our first point is that this is in the nature of an inquisitorial matter. It is not curial and it is not an adversarial proceeding. So it's quite a different exercise to that. This matter is not defined by pleadings, and counsel assisting have no case to put to you. The terms of reference give notice of matters that are in issue before you in the course of your inquiry.

Notice is also given by letters requesting information that have been provided by the solicitors assisting this Review to the solicitors for The Star and Star Entertainment. Further notice has been provided in the written statements - I beg your pardon, in the written requests for statements. You will be aware, Mr Bell, that section 143(1) of the Casino Control Act confers the authority with the power to hold inquiries and, in turn, the authority has appointed you to conduct that inquiry.

It is of note that section 143(2) provides that you are not bound by the rules or practice of evidence, and may inform yourself on any manner in such a way as you consider to be appropriate. We also observe, Mr Bell, that an inquiry is an inherently iterative process and by that we mean that matters are discovered over time and are not always known at the commencement of public hearings of the inquiry.

To take one example of this, Mr Bell, you will recall evidence first emerged during Mr Bekier's oral evidence that the employment of the president of the international VIP team, Mr John Chong, had, in fact, been terminated. I made that observation in way of reply in response to some submissions, written submissions by those acting for Mr Bekier where, at paragraphs 43 and 44, it was submitted that it was not appropriate to make findings about Mr Bekier's supervision of the VIP team insofar as it related to Mr Chong because certain documents had not been put to him.

The response to that, Mr Bell, is that it was for the first time on day 28 at page T3144 that it was disclosed to this Review by Mr Bekier that Mr Chong's employment had been terminated. And it was following that disclosure of information that a call was made by me for documents on day 28, at page T3145, for documents relating to the termination of Mr Chong's employment. And it was only on 5 May 2022 that those documents were provided to this inquiry, which was at a point after the time that Mr Bekier had given evidence.

Moving to the next relevant principle, that is the rule in *Browne v Dunn*, Mr Bell. As was acknowledged by senior counsel for The Star and Star Entertainment Group at day 4 at page T356, the rule in *Browne v Dunn* does not apply in this forum. That has been confirmed by the High Court of Australia in the context of the Refugee Review Tribunal, another inquisitorial forum, in *Minister for Immigration; Ex Parte Applicant* S154/2002, and the citation for that is [2003] 77 ALJR 1909.

While the rule in *Browne v Dunn* does not apply, there are procedural guidelines that do apply in this matter, Mr Bell, as well as rules of procedural fairness. And just to remind you, Mr Bell, of the relevant procedural guidelines, they are to be found in paragraphs 24 and 25, and they provide, and I quote:

> "If Mr Bell of senior counsel is to be invited to disbelieve a witness, the material grounds upon which it is said that the evidence should be disbelieved should be put to the witness so the witness may have an opportunity to offer an explanation. Where it is to be contended that deliberately false evidence has been given or that there has been a mistake on the part of the witness on a significant issue, the grounds of such a contention must be put to the witness."

Insofar as procedural fairness is concerned, it was recognized by the High Court in *Annetts v McCann* [1990] 170 CLR 596, and specifically at pages T608 and 609, that:

> "Personal reputation has now been established as an interest which should not be damaged by an official finding after a statutory inquiry unless the person whose reputation is likely to be affected has had a full and fair opportunity to show why the finding should not be made."

Now, this is a statement as to when the obligation to afford procedural fairness is attracted. There is, of course, a second question that must be answered and that is what the content of the obligation to afford procedural fairness is in the circumstances. And in that regard, Brennan J stated in *Australian Broadcasting tribunal v Bond* [1990] 170 CLR 321, at paragraph 114 and I quote:

> "As has often been said, the precise content of the obligation of the statutory tribunal to act judicially or to observe the requirements of natural justice or procedural fairness may vary according to the statutory framework of the particular proceedings and the circumstances of the individual case: 'The nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with and so forth.' That being so, the content of the obligation is not susceptible of precise definition otherwise than in the particular circumstances of the case."

And we would also make reference, Mr Bell, to the case of *Duncan v Independent Commission Against Corruption*, which in the medium neutral citation is [2016] NSWCA 143. The content of the obligation of procedural fairness is informed by the fact that this inquiry is inquisitorial in nature. The content of the obligation is driven by the need to ensure practical fairness in the circumstances.

Mr Bell, you will of course give careful consideration to each interest party's submissions about whether they were given a fair opportunity to answer matters in all of the circumstances. We do wish to point to what some of those circumstances are, Mr Bell. They include the terms of reference which make it clear the general topics into which you have been requested to inquire, as well as written requests made by the solicitors assisting this Review to the solicitors for The Star and Star Entertainment requesting particular information, as well as requesting particular statements be provided in relation to particular matters.

Of course, the oral evidence has also afforded an opportunity to answer matters in part because of the questions that counsel assisting asked, but also because there has been a full opportunity for counsel for The Star and Star Entertainment to ask questions of each of the witnesses and lead evidence from those witnesses. And we do note here that in many cases that opportunity was not availed of, Mr Bell.

There has also been the opportunity to request that this Review call other witnesses and the opportunity to request that counsel assisting tender particular documents. Further opportunity has been provided via the exchange of closing submissions. These are all matters that you would consider when reflecting upon the issue of whether particular witnesses have had fair opportunity to answer in relation to particular issues.

The next principle we wish to alert you to, Mr Bell - and, of course, you will already be aware of this - is that it is appropriate to apply the approach that enlivens the *Briginshaw* principle as you come to your fact-finding task. And certainly in recent times you will be aware that Commissioner Hayne adopted that same approach in the Financial Services Royal Commission.

The next principle we wish to refer to, Mr Bell, relates to the question of adverse credit findings, and we submit that you should not make adverse credit findings unless it is necessary to do so to resolve particular factual issues when they are in context, that is to say, we submit that you should not make adverse credit findings that are untethered to factual findings.

It is the case that from time to time you will need to make findings about whether particular witnesses conducted themselves in ways which were dishonest or unethical. That, for example, may be relevant to factual matters before you, such as whether there was transparency with regulators or, for example, in relation to questions of organisational culture.

A further principle, Mr Bell, relates to the question of whether criminal offences may have been committed or whether there are contraventions of civil penalty proceedings. It is inappropriate, in our respectful submission, for you to make any findings to the effect that a particular criminal offence has been committed or that a particular civil penalty provision has been contravened. That said, as you would appreciate, Mr Bell, there are a number of factual elements that go to make up any crime or any civil penalty contravention. And simply because it would not be appropriate for you to make a finding that a crime has been committed does not mean that you cannot make findings about discrete factual matters that may ultimately be elements that go to make up a criminal contravention.

In other words, the fact that something may be a crime does not mean that any constituent facts are immunised from your consideration for the purpose of this Review.

The next matter we wish to address you about, Mr Bell, is the question of what approach should be taken to admissions or concessions that are made by The Star and Star Entertainment. And as Mr Wood pointed out on behalf of Ms Martin, it is apparent that one aspect of the strategy now adopted by Star and Star Entertainment is to make concessions and admissions to disclose to you that those corporations have an appropriate level of insight in relation to past behaviour.

However, we submit that you would not treat concessions or admissions made by The Star and Star Entertainment as binding on particular individuals whose reputations may be affected, and it's a matter, we submit, that you would need to find for yourself, Mr Bell.

Can I then address you on what Mr Wood described to you as a big idea for your consideration in his oral submissions. And that was really two related points, Mr Bell. First, Mr Wood submitted that you are only empowered to consider The Star and Star Entertainment's suitability and the suitability of close associates up to the time of the commencement of your Review, which was in September of last year. And, secondly, since this is a case of what was described as admitted suitability at that time, that is, at the commencement of the Review, you can stop there and don't need to inquire any further.

Now, it would appear that this submission is largely driven by paragraph 9 of the amended terms of reference. Now, paragraph 9 is entitled Scope of Review. I apprehend you have the document with you, Mr Bell. If I can take you to paragraph 9, it says, items 1 to 8, the period following the release of the report of the review of Star in 2016 by Dr Horton, up to the commencement of the review of The Star in 2021 under sections 30 and 143 of the Act.

Now, we say that there are several answers to this idea for your consideration. The starting point is that you should not construe the terms of reference as though they were terms of a statute, and as a corollary to that, you must construe the statute to

correctly understand the limits of your inquiry. The purpose, we submit, of term of reference 9 was to focus your attention on conduct occurring during a particular period of time in order to assist you in forming a view about suitability.

However, we submit that term of reference 9 ought be read in the context of term of reference 1, which is the lead provision and which you will note, Mr Bell, is expressed in the present tense, that is, it provides the suitability of The Star and each close associate of it as nominated by the authority from time to time as being concerned in, or associated with, the management and operation of The Star Casino. So there's nothing in term of reference 1 about limiting your inquiry as to suitability to September 2021.

The next point we say, Mr Bell, is that you have been appointed under section 143 of the Casino Control Act to hold an inquiry for the purpose of an investigation under section 30. In turn, section 30 empowers the authority to investigate a casino from time to time. It is a power in the broadest of terms, and there is certainly no arbitrary time limit on the question of suitability there.

We submit that section 30 should also be understood against the broader statutory context which includes section 31, which clearly enough indicates that the authority should always be concerned with the question of suitability or, to put it another way, to be concerned with the question that the casino operator and its close associates remain suitable.

In the context of section 31, which makes provision for periodic suitability reviews, you will note, Mr Bell, that the question is whether the casino operator is suitable to continue. Further, Mr Bell, the submission made on behalf of Ms Martin would be particularly problematic for The Star and Star Entertainment in this matter, because they would not have the opportunity to make the submission that while they say they were unsuitable as at the commencement of this Review, they are presently suitable for you.

Another approach to this, what has been described as the big idea, would be to consider the absurdity of the results to which it would give rise, and one example there, Mr Bell, is how you would treat a situation if numerous staff members of the casino operator gave evidence to you which you found to be dishonest and they remained employed by the casino operator. The logical implication of Mr Wood's submission is that you would not be able to consider that matter in forming a view about suitability because you have to stop at the point of September 2021.

We further submit, Mr Bell, that you cannot rely merely on the fact that The Star and Star Entertainment have now accepted the conclusion that they were not suitable at the time of the commencement of this Review. That is a conclusion with which you may or may not agree. But, in any event, the reasons for which

you may accept that conclusion may be quite different from the reasons that are put forward by The Star and Star Entertainment.

In addition to that, Mr Bell, in order for you to address submissions that are made about present suitability, it will be necessary for you to consider the reasons why The Star may have been unsuitable and Star Entertainment may have been unsuitable at the time this Review commenced.

We will now turn to address you on the next topic, which is China UnionPay. As you will have seen from the written submissions of The Star and Star Entertainment, 11 important concessions were made about the use of CUP cards at The Star, which you will see at paragraph D12, and in the following parts of that written submission, further discrete concessions were made at various points about aspects in dealing with the CUP cards.

There are a few matters where we wish to specifically reply, Mr Bell, and the first of those relates to the UnionPay International operating regulations which have sometimes been described as the scheme rules. And here we observe that The Star and Star Entertainment noted at paragraphs D37 to D38 of the written submissions that a number of witnesses shared the view that CUP cards could not be used to effect the direct purchase of gaming chips.

And we submit that this is not very surprising at all, in light of what the NAB communicated to various officers of The Star. And there are two examples we will take you to, Mr Bell. The first one is exhibit B93. I don't need to take you to the actual document. I will just refer to it. This is an email from Ms Waterson to Ms Martin, Mr White and Mr Power, passing on some communications that had been had with Mr Williams of NAB, and the email relevantly stated that Mr Williams had asked:

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

So that was the rule that was communicated by NAB to The Star. The second document that we refer you to, Mr Bell, is exhibit B254, which is a 30 March 2017 email from Mr Bowen of NAB to Mr Theodore. And I see the operator has brought that document up. You will see that Mr Bowen states that:

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

And it then goes on:

> "As Star Entertainment Group's acquiring bank, NAB are committed to protecting our customers' reputation. NAB would like to ensure that all

> transactions through Star Entertainment Group merchant facilities restrict gambling. Gambling applies a separate merchant category code to what is currently applied to The Star Entertainment Group's Astral VIP merchant terminal. Thereby we must ensure that no proceeds or deposits for gambling are placed through this terminal. Please ensure strict controls are in place to avoid any gambling credits being placed through the terminals."

So NAB was quite clear with Star employees about what the rules were, and in that context, it's hardly surprising that The Star Entertainment and Star employees worked on the assumption that the UnionPay scheme rules did, in fact, prohibit the purchase of gaming chips.

We also draw your attention, Mr Bell, to the warning letter from UnionPay dated 28 February 2020, which was exhibit B2269. And there, NAB was requested to take immediate action on certain aspects of the matter, including, and I quote:

> "Assigning prohibited merchant category codes to prohibited business as per the requirements of UnionPay International operating regulations."

Now, given that all of these witnesses assumed that the China UnionPay cards could not be used to purchase gaming chips, in one sense, Mr Bell, it doesn't matter whether the scheme rules, in fact, prohibited this, because that was the understanding that staff members relevantly held, and the conduct they engaged in is to be understood in light of that understanding.

That said, we do note that there was also evidence before the Finkelstein Royal Commission that, like NAB, the CBA also took the view that the CUP card could not be used to purchase gaming chips. And there may we refer you to chapter 13 of Commissioner Finkelstein's report at paragraphs 28 and 32.

Mr Bell, there is one argument we wish to put about the scheme rules, which is not strictly a reply point. So I want to be up-front and telegraph that. Could I take you to the scheme rules, or what are more strictly called the “Operating Regulations” at exhibit B333. And pardon me, Mr Bell, I will just have to obtain the document. Could I take you to pinpoint 4229, and you will see a heading at the top of the page “Chapter 1 Issuing Rules”. And then could I take your attention to section 1.2, “General Requirements”. And I will just have to take you to pinpoint 4229.

I'm not sure the - yes. And then, Mr Bell, you can see there's a paragraph commencing:

> "The following contents must be included in an issuer's cardholder agreement."

And the first dot point is:

> "A UnionPay card must not be used for any purpose prohibited by local laws applicable in the cardholder's jurisdiction."

Now, there's a question about what the cardholder's jurisdiction is. We say that the cardholder's jurisdiction is the jurisdiction in which the card is issued. And we submit that this will be China, the People's Republic of China, for the bulk of patrons transacting at The Star with the China UnionPay card. And in that regard, you will recall an email from Brett Houldin dated 13 February 2013, which is exhibit B23, which stated at pinpoint 0318:

> "The UnionPay debit card is a convenient low-cost way for PRC residents to get money out of China."

And, Mr Bell, certainly in the case of Mr Phillip Dong Fang Lee, who was the largest user of the China UnionPay card, his cards were all issued out of banks in China, and he gave that evidence at transcript page 573.

Now, there is some evidence before you about gambling laws in China, and in particular in exhibit R2, there is an advice provided to HWL Ebsworth from a Chinese law firm, Jade & fountain dated 25 August 2021. And I don't need to take you to that document, Mr Bell, but it advised that Chinese law does penalise the act of gambling by imposing administrative sanctions upon the gambler, and that is any person who participates in a gambling activity.

And at pinpoint 0002, it was stated that:

> "Any person participating in gambling activity shall be detained for up to five days and fined a particular amount of money."

So, from that, we submit that it appears that participating in gambling is not a criminal offence. It's one that merely attracts the sanction of being detained. But we say that clause 1.2.1 is not limited merely to offences attracting a criminal liability and it can extend to an administrative sanction like the one referred to in that advice.

So that's another approach to construing the operating regulations, but I do draw to your attention it's not a point that strictly arises in reply, Mr Bell.

Can I then turn to the submissions that were made about the documents that were described as information-only hotel documents. And there, we press the submission that those documents were sham documents. They are documents which referred to room numbers and the duration of the stay, and which were on the letterhead of the hotels at which the cards were swiped. And taking those matters together, those documents convey a distinct impression that charges recorded as being levied in those documents were levied in association with a stay at the hotel.

That, of course, was not the intent of the CUP swipes at the hotel cards, and that is why we say that documentation is a sham. Of course, there is evidence that these documents were passed off by The Star as invoices. That is how they were described in emails from The Star to NAB where it made - where NAB made inquiries about the purposes of the transactions.

We also note, Mr Bell, that while The Star and Star Entertainment had ample opportunity to do so, no explanation has been offered as to what the legitimate purpose of these for-information hotel documents might be.

I now turn to make some points on the temporary cheque cashing facility that was established in association with the China UnionPay process. There is an important point of distinction between the counter cheques which The Star ordinarily raises and those counter cheques that were raised in relation to the temporary cheque cashing facility associated with CUP.

And this distinction is not one that is dealt with in The Star and Star Entertainment's written submissions, nor was it dealt with orally. Ordinarily, a counter cheque is only issued when a patron has first provided The Star with a personal cheque. Mr Aloi gave evidence to you at transcript pages 848 to 849 that, for domestic purposes, The Star just held a photocopy of the cheque that was provided, but for patrons with overseas bank accounts, a personal cheque was held on file.

This ordinary practice is also recorded in the Cheque Cashing and Deposit Facility Standard Operating Procedure effective as at 26 August 2016, and that's exhibit D3. I don't need to take you to it, but at pinpoint 0059, it provides that patrons with cheque cashing facilities had the option of providing a personal cheque or using a counter cheque, but it was then stated, and I will quote:

> "It is The Star's policy to bank the first cheque drawn on a new cheque cashing facility so a banking history may be established. Once a cheque has been banked and paid, then we can hold patron cheques as per the current legislative requirements."

This same SOP at the same pinpoint reference, also states that:

> "A patron with an overseas bank account must provide a personal cheque because overseas banks do not honour The Star-generated counter cheques."

So that is a point of distinction in the process that shows that the counter cheque is different in the case of the temporary CCF.

Mr Bell, otherwise in the time available, we are not in a position to respond to The Star's fairly lengthy written arguments which run from paragraph D184 for the

next 15 pages of the submissions, addressing the questions of whether the counter cheque associated with the temporary CCF is a valid cheque under the Cheque Act with the consequence that section 74 is not breached. They're arguments in writing that were not indicated orally.

It would seem, Mr Bell, that the crux of those written submissions, which may be found at paragraph D222, is that there's a valid cheque even if the drawee institution is under no obligation whatsoever to honour the cheque. And, Mr Bell, it's suggested at paragraph D23(a) that the cheque writer need not even have a bank account with the putative drawee bank. So they're the propositions, and the cases that sit behind them, that you will need to consider in reaching a view about whether the cheque cashing facility provided for in section 75 was satisfied in the circumstances of this case.

Can we next turn to make some submissions about the money laundering and terrorism financing risks associated with the CUP process at The Star. Star's position as expressed at paragraph D139 of the written submissions are that - is that the use of the China UnionPay card did not present a significantly elevated risk from a money laundering and counter-terrorism financing perspective.

We submit that that submission is somewhat difficult to reconcile with the apparent concession that no source of funds checks were conducted, and that was conceded in particular in relation to Mr Phillip Dong Fang Lee at paragraphs D154 and D155. It's also difficult to reconcile that submission with the evidence as to the way in which Mr Lee, as The Star's largest user of the CUP card, did use that card at The Star.

He swiped the card, and chips were provided to him. The evidence establishes that, on occasions, his level of play was not commensurate with the level of swipes, and what would happen is that The Star would issue a cheque to Mr Lee. And the effect of that process, Mr Bell, is that the cheque gave the appearance that Mr Lee had obtained his money from the casino when, in fact, the source of funds was a bank account in China, being the one linked to the CUP card.

So one may conclude that that is indicia of layering, that is to say, if it was associated with money laundering, and you are not in a position to make that finding with respect to Mr Lee in particular.

The other AML risk that is worth reflecting on, we submit, Mr Bell, is the obfuscation associated with the process, because regulators and law enforcement authorities looking from the outside at these transactions and looking at them from the perspective of the patron's bank accounts will be led to understand that the patron is expending funds on a hotel and will not understand that, in fact, those funds were being used to purchase chips at a casino.

So there is that level of obfuscation involved in that process. And, of course, the fact remains that The Star and Star Entertainment were aware from the earliest times that the CUP payment channel represented a means of avoiding the strict controls on currency flight from mainland China.

Would you pardon me for one moment, Mr Bell. The final submission we wish to make about the AML implications of the CUP process is that it does not appear that any further AML risk assessment was conducted following the initial institution of the CUP process at The Star in 2013. And that initial risk assessment - which is very high level, we would say - it may be found at STA.3401.0007.1049.

May I - I don't need - operator, you can take down that document, thank you. Can I then address you, Mr Bell, on some particular submissions that were made by counsel for Ms Scopel in closing. We don't otherwise have anything to add to the submissions we made in-chief about The Star's dealings with NAB. However, it is necessary to make some response to the submissions put by Ms Scopel.

It was put in Ms Scopel's written submissions at paragraphs 3, 4, 7 and 10 that Ms Scopel had a purely liaison role in respect to the responses provided to NAB, and that she did not have a role in drafting those responses. We respond that it's not plausible to suggest that Ms Scopel had so little operational knowledge of the CUP process that she could not have understood that the responses to NAB were misleading.

In that regard, she gave evidence that she knew by August 2019 that the CUP cards had been used for gaming, and that UnionPay was very interested in that very question. And that was at pages T116 to 117. And she further gave evidence at page T118 that by late November of 2019, she knew that the CUP cards had been used for gambling and she personally held concerns that the statements being made to NAB were not transparent.

In fact, the evidence, we say, establishes that Ms Scopel had a high level of involvement in the dealings with NAB, because firstly, she was provided with draft emails for her review and input. And Mr White gave that evidence at pages T1717 to 1718. And, secondly, she was supervising Ms Dudek directly at all times and requested to speak to Ms Dudek before responses were sent to NAB. And we see that in an email that Ms Scopel sent to Ms Dudek dated 25 October 2019 at exhibit B1773.

Thirdly, in evidence at page T123, Ms Scopel accepted that by November 2019, she was directly involved in the responses to NAB. And, fourthly, the evidence shows that Ms Scopel specifically drafted some of the correspondence to NAB; although, Ms Scopel says that, to the extent that she did draft an email, that was because that email was dictated by others. And, in that regard, we refer to the

email from Ms Scopel to Mr Theodore and Mr White dated 7 November 2019, which is exhibit B1834.

We also note that Ms Scopel agreed in evidence at pages T126 to 127 that the contents of an email to NAB that she drafted was false and misleading. Counsel for Ms Scopel invited you to find, Mr Bell, that Ms Arthur gave false evidence to this Review. We submit that the case theory propounded by Ms Scopel's counsel was simply not plausible, that is, that while Ms Arthur was apparently told the truth about the transactions by Ms Scopel, she elected to give a false account to her colleagues at NAB.

There really is no rational basis as to why such serious misconduct would be engaged in by Ms Arthur in the circumstances, and that points to its implausibility.

In summary, we submit that, overwhelmingly, the evidence indicates - and we note that The Star and Star Entertainment do accept this - that they knew that The Star was responding to inquiries from NAB in a way that was liable to mislead NAB, as well as UnionPay International.

Mr Bell, I will now turn to address you on Suncity and Salon 95. You will see from the written submissions of Star and Star Entertainment that extensive concessions were made in relation to Salon 95 and Suncity; 17 such concessions were identified at paragraph C2 of the written submissions.

However, the timing of these concessions should be noted. They came only after full investigation and exposure by this Review. The statements before you, Mr Bell, either individually or collectively, do not reveal anywhere near the extent of what has been uncovered during the public hearings of this review. This is relevant because it goes to the claim that a transparent approach has been adopted by The Star and Star Entertainment towards this Review.

None of the events in Salon 95 were disclosed to the regulator in 2018 and 2019. In fact, a misleading response was provided to the regulator upon its inquiries in 2019. And I will deal further with that point in a moment. Mr Hawkins misled Commissioner Bergin in his evidence in 2020. Important context here, Mr Bell, is that what's become known as the Buchanan chronology was prepared for the very purpose of preparing, or The Star preparing for the Bergin Inquiry, and Mr Buchanan gave this evidence at page T469, as did Mr Power at pages T1900 to 1901 and also T1935.

So the point is, Mr Bell, that events in Suncity, Salon 95 were not far from the mind of Mr Hawkins at the time he gave evidence, or the collective mind of Star. Star contends that Ms Arnott did correct the misleading impression that would otherwise have been given by Mr Hawkins' evidence to Commissioner Bergin, and that submission is made at paragraph C166.

However, what Ms Arnott said to Commissioner Bergin should not be overstated. Can I take you to the transcript of Ms Arnott's evidence before Commissioner Bergin and, in fact, that's conveniently reproduced in The Star's written submissions. If I could take you to those written submissions. Operator, is it possible to bring up The Star's written submissions?

MR BELL SC: I have a hard copy in front of me.

MS SHARP SC: Thank you, Mr Bell. There's no need, in that event. Can I go to page 62. And you will see at paragraph - in fact, it starts at page T61. If I could take you to paragraph C158. And I should interpolate there were two separate days on which Ms Arnott gave evidence before Commissioner Bergin. If you look at paragraph 158, Ms Arnott was asked, or Ms Arnott said:

> "My understanding is that there were some instances of that occurring, and we took steps to make sure that didn't occur because we thought it was inconsistent with the way that should be operating."

And over on to page T62, I questioned Ms Arnott about when that occurred and asked:

> "On how many occasions did these incidents occur?"

And Ms Arnott said:

> "I'm unaware of the exact number?"

And then I asked:

> "And what steps did you say were taken in relation to those incidents?"

And Ms Arnott said:

> "So we spoke with Suncity and we developed a protocol for them to follow."

Now, that would all rather suggest that the incidents came to an end once that protocol had been developed. In any event, Ms Arnott gave evidence for a second day on 6 August, and the transcript is relevantly produced at paragraph C159, and you will see I asked Ms Arnott:

> "Now, it's correct that at some point after operations commenced, it became known within Star that transactions were occurring at the Suncity desk which involved cash deposits being made and people were provided chips."

And Ms Arnott said:

"Yes, when that was raised to us as a concern, we changed our policy in relation to it."

So again, a suggestion that the events happened before the policy change occurred. Then if I can go over the page to page 63 of the submissions, Mr Bell. Sorry. At the very bottom of page 62, I asked:

"And was it brought to your attention on one occasion or more than one occasion?"

And Ms Arnott said:

"It was brought to our attention. I think there were a few transactions that occurred and that's why it came up to us."

So that is the first response, "a few transactions", but Ms Arnott was then questioned in further detail, and you will see mid-way down that page I asked:

"And over that 90-day period that you were able to review, are you able to say on how many occasions such transactions were observed?"

And Ms Arnott said:

"There were a number of them. I genuinely can't remember."

And then I asked further questions, and asked "10?" And Ms Arnott said:

"Yes, I would say that that is - and, unfortunately, it is just my recollection that that would be - it would be in the tens type of number."

So that was the evidence that was given by Ms Arnott. It certainly differs from Mr Hawkins' evidence, although it perhaps doesn't convey the degree of concern that one sees in the contemporaneous documents being expressed by Mr Willett, Mr Tomkins and Mr Power. But, in any event, the reality of what happened is that Commissioner Bergin was left with two inconsistent accounts from Star about what had occurred within Salon 95. And it must have been apparent to people at The Star that Mr Hawkins' evidence was simply not correct.

And in that regard, there is evidence before you which shows that Mr Power in particular was following the evidence of the Bergin Inquiry closely and was periodically reporting that evidence to other members at The Star. That is not to say that no steps were taken by The Star to correct the misleading account that Mr Hawkins gave to Commissioner Bergin.

Then, of course, in terms of transparency, those assisting you, Mr Bell, wrote to the solicitors for The Star and Star Entertainment asking for them to disclose

matters of concern, and some matters were disclosed in the 8 November 2021 response, but no mention at all was made of any of the events in Salon 95, despite their objective seriousness.

We should note that Star and Star Entertainment do accept that they should have disclosed the Salon 95 issues in the 8 November 2021 response, but they submit that it was not part of a deliberate pattern of concealment, and it should be inferred that the response was based upon instructions from management. And that's at paragraph C164 to C165.

We submit it's open to you to find that the failure to disclose these very important events was, in fact, part of a deliberate pattern of concealment on the part of previous management who gave those instructions. So these matters that I've taken you to, Mr Bell, are all ones that point to a systemic lack of transparency in relation to Salon 95. And what you see now, Mr Bell, is an eleventh hour acknowledgement that there were very serious problems occurring with respect to Salon 95.

Mr Bell, we need to correct something that was said in relation to Ms Arnott in relation to an email that she sent to NAB. This was in a context where there had been a meeting of senior management of The Star and Star Entertainment and NAB to discuss a range of money laundering issues, and it's apparent from the documents that Suncity was discussed.

In our closing submissions in chief, we were critical of Ms Arnott in relation to an email that she sent to Ms Arthur at NAB on 31 October 2019, where she provided some information about Suncity. And this email is referred to at paragraph C185 of Star's submissions. In fact, as is pointed out by Star, the text of the email was provided by Mr White, with input from Mr Stevens and Mr Power. For that reason, we withdraw the criticism made against Ms Arnott and submit instead that that criticism lies at the feet of Mr Stevens, Mr Power and Mr White.

While on the topic of Mr Power, we maintain the position that, in all likelihood, Mr Power was provided with a copy of the Hong Kong Jockey Club report, or, alternatively was made aware of its contents. We submit that, in all the circumstances, it was inherently implausible that he was not provided with a copy of that document or at least briefed on its contents when he worked very closely with both Mr Buchanan and Mr Houlihan over a period in excess of one year to prepare a due diligence assessment of Mr Chau.

We note that it was repeatedly put to him that he did possess a copy of that document, and we submit that his evidence to the contrary should not be accepted by you. While we accept that Mr Buchanan's cover email of 12 July 2019 said:

> "It would be appreciated if the report was not distributed beyond the group."

And that is beyond the group of Ms Martin, Mr Houlihan, and Mr White, it was distributed past the group because a copy of it was provided to Ms Arnott, which she confirmed in her evidence.

MR BELL SC: Would you say that it is established to the *Briginshaw* standard that Mr Power was aware of the contents of the Hong Kong Jockey Club report?

MS SHARP SC: We say yes, that it is, because of the inherent implausibility of him not being made aware of it in the circumstances, particularly when he gave evidence that he was concerned to ensure that Mr Buchanan had all relevant information for the purpose of preparing an assessment. It needs to be recalled, Mr Bell, that Mr Buchanan was the author of this report, and Mr Buchanan held opinions about Mr Chau and Suncity based on his involvement in this report.

It was known to Mr Power that Mr Buchanan had previously worked for the Hong Kong Jockey Club. There was media attention about the Hong Kong Jockey Club report about Suncity in July of 2019. Mr Power reported to Ms Martin, who had a copy of the report. Mr Power worked closely with Mr White, who had a copy of the report. And Mr Power worked particularly closely with Mr Houlihan in relation to the due diligence conducted on Mr Chau, and that included two face-to-face meetings between Mr Buchanan, Mr Houlihan and Mr Power.

We say, in all of these circumstances, it is simply not plausible that not one of those people at any time during that lengthy process made this document known to him.

MR BELL SC: I think Mr Power frankly conceded that he was aware of the existence of the document because it was referred to in Mr Buchanan's chronology, did he not?

MS SHARP SC: The document was not referred to in Mr Buchanan's chronology, Mr Bell.

MR BELL SC: Yes.

MS SHARP SC: I then move to Mr Power's submission to, or response to ILGA in relation - sorry, New South Wales Liquor and Gaming in response to its queries in light of the allegations in the media about Crown and certain junkets it dealt with, including Suncity. Now, we say this is a particularly important matter for this suitability review because Mr Power's response is an example of The Star misleading the regulator. And we put this as high as misleading the regulator.

In contrast, at paragraph C2, subparagraph (n), The Star and Star Entertainment say that the letter of Mr Power involved a narrow and technical reading, and that submission is developed from paragraph C112 onwards. To mislead means to lead into error. As I will develop, it was quite obvious that New South Wales Liquor

and Gaming's key concern was whether the junkets with which Star was dealing, who had been identified in the media allegations, were suitable.

And we submit a fair reading of the letter submitted by Andrew Power naturally leads to the conclusion that there were no suitability concerns in relation to Suncity, and that is why we submit it was misleading. This was a proposition that was squarely put to Mr Power at transcript page T1932.

In The Star's written submissions to you, at paragraph C112, The Star refers only to the 8 August 2019 letter of request from Liquor and Gaming New South Wales, in the context of analysing Mr Power's response. But we submit that does not tell the full story, as it fails to refer to the first letter of request that Liquor and Gaming sent to Damian Quayle on 29 July 2019.

And I will take you to that document, Mr Bell. That letter appears as an annexure to the board paper that was provided on 15 August 2019. This is exhibit B1538, if I could call that up, please. Could I ask the operator to go to pinpoint 2250. And you will see this is the 29 July letter to Mr Quayle. Can I take your attention, Mr Bell, to the very first paragraph. It refers to the media reports and then states:

> "In particular, the media reports raised allegations relating to the suspicious junket arrangements in China and Australia and questioned the suitability and conduct of some junket operators and their representatives. As you are aware, there are materially significant risks associated with the junket operations."

Then could I take you to the fourth paragraph:

> "I am writing to request that The Star undertakes a risk assessment of its practices and procedures which mitigate against the types of issues raised in the media reports. Specifically, I request that The Star details what steps it takes to ensure that only suitable operators and representatives operate junkets in its casinos."

It couldn't have been clearer, Mr Bell, that New South Wales Liquor and Gaming was concerned with the question of whether the junkets adversely named in the media allegations were suitable. And it's against that first letter that Mr Power's response must be assessed, together with the second letter. And I will take you to the second letter now, which was dated 8 August 2019, and that appears in this document at pinpoint 2251.

Now, you will see there that reference is made, first of all, to the 29 July letter, Mr Bell, and to Mr Power's email response of 31 July 2019. And, there, an offer to meet was declined and the author continues:

"While I agree that the ongoing general discussion should occur on The Star's overarching AML procedures, as a more immediate action, I seek your response ..."

And that's a reference to the response to the last letter, Mr Bell, that is, the 29 July response:

"I seek your response, particularly in relation to those specific individuals and entities that have been named in the recent media reports."

And then the next paragraph is:

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

Now, the general concern of Liquor and Gaming could not have been clearer, Mr Bell. In the context of that general concern to which a response was requested, a reference was made specifically:

"I request that The Star ..."

And then a series of dot point questions are asked. And what Mr Power did in his reply is only respond to those very specific questions and omit any reference whatsoever to any of the suitability concerns held with respect to Mr Chau and Suncity. And that is why we submit that Mr Power's response can fairly be characterised as misleading rather than simply technical and narrow.

One other matter we wish to raise goes to the question of the information trail that was left in the new TrackVia platform in relation to Mr Chau. At paragraph C129 of Star and Star Entertainment's submissions, it was conceded that Mr Buchanan's recommendations about dealing with Alvin Chau which were attached to a 16 August 2021 memo were misleading. No reference was made in those submissions to what then happened in TrackVia, and we wish to draw that to your attention.

TrackVia is supposed to be the new one-stop shop for understanding AML and CTF information about customers, and the relevant entries in relation to Mr Chau refer back to the 16 August 2021 memo and its recommendations. So that misleading impression in the August 2021 memo is carried over to the TrackVia records.

If we may now address you on Project Congo, little is known about the origins of Project Congo, Mr Bell. It wasn't a matter that any witness dealt with in their witness statement, and evidence - oral evidence of Project Congo emerged for the first time in the course of Mr Buchanan's oral examination. What remains clear is

why Project Congo commenced at all, given that in September 2020, Star Entertainment announced that it would cease dealing with junkets.

From the board paper dated 21 September 2021, which is exhibit B3110, it seems that the persons of interest before the Bergin Inquiry were the subject of review in Project Congo. But, again, it's not clear why they were the subject of review at that time given that a decision had been made to suspend dealings with junkets.

Another matter in reply is to raise for your consideration why the wrong approach was taken by The Star and Star Entertainment to the question of good repute. Suncity is a good example of The Star failing to apply the good repute test correctly, and The Star agrees in its submissions, at paragraph C13, that The Star approached the matter incorrectly by asking whether it had been clearly proven that a person of interest was of bad character, rather than asking the question the other way around: can we be satisfied that the person of interest is of good character.

The point we wish to make, Mr Bell, is to submit that it's difficult to understand why this error was made, and it was a fundamental error which went to the core of the way the international rebate business operated, particularly when viewed against the statutory objectives in section 4A of the Casino Control Act, which, of course, one of those objectives is to prevent the infiltration of organised crime, and particularly when viewed against the fact that, in the international rebate business, that was the area where money laundering risks were at their most acute.

Section 12(2)(g) of the Casino Control Act is fairly clear about what needs to be taken into account in determining whether The Star is suitable to operate a casino, and one of those factors that is presently relevant is that in subparagraph (g) which is whether any of The Star's business associates are not of good repute, having regard to character, honesty and integrity.

And our submission is that it should have been readily apparent on the face of section 12(2)(g), when read in light of the objects in section 4A of the Act, that it was necessary to rule people in rather than rule them out, if I can put it that way: That the obligation was on The Star to satisfy itself that the business associates it was dealing with were of good repute.

And no explanation has been provided to you as to why this fundamental error was made in approaching the question of whether The Star should be dealing with particular persons of interest. I am mindful of the time, Mr Bell. Would that be convenient to take the morning adjournment?

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

<THE HEARING ADJOURNED AT 11:31 AM

<THE HEARING RESUMED AT 11:48 AM

MR BELL SC: Yes, Ms Sharp.

MS SHARP SC: Before the mid-morning adjournment, I was making the point that you haven't received any explanation as to why such an important test was so fundamentally misconceived by The Star and Star Entertainment. Just to round out that point, a few other matters of chronology are relevant and, in particular, the fact that the Bergin Inquiry, which was conducted during 2020, was clear in both the evidence that Star was following, and in the report that was published in February 2021, that the approach to suitability was one that required - or, sorry, not suitability, the approach to good repute was one that required the casino operator to be satisfied that the business associate was of good repute rather than taking the approach that it was necessary to prove that the business associate was of bad repute.

So there seems to be quite a delay in Star coming to the realisation that it had made an error as to a fairly fundamental matter when it came to dealing with these business associates. And that is important when we look at Project Congo and the fact that these recommendations were made by Mr Buchanan in August of 2021. Now, that was six months after Commissioner Bergin reported and was very clear in her report as to the correct approach to the question of how one assesses the good repute of business associates.

MR BELL SC: I think it's fair to say that some of the witnesses told me that it wasn't until the Bergin Inquiry that they first appreciated the need to establish good repute affirmatively or at least that was emphasised to them at that time.

MS SHARP SC: Yes, and that, with respect, is a fair characterisation of the evidence of many of the witnesses. But the evidence where that was considered in the Bergin Inquiry was in July of 2020, and Commissioner Bergin's report was published in February 2021. In contrast, that Project Congo was making recommendations six months later in August of 2021.

We make this point because we say it underscores the point that the process of reflection that Star is engaging in is far from complete. Still on the topic of Salon 95, the next submission in reply we make is that it gave rise to very acute money laundering risks. Suncity, by this time, was the largest junket with which The Star was dealing and was responsible for the largest component of the revenue stream from the IRB.

It's also to be noted, Commissioner Bell, that the problems were emerging at the very time that KPMG advised the board that the approach to AML and CTF at The Star was far from ideal. And while it is certainly the case that The Star from around August 2018 embarked upon a program of significant reform of its AML/CTF program and adjunct documents, what doesn't seem to have happened

at that same time was an emphasis on the culture of compliance with those anti-money laundering norms.

Now, I next turn to the question of whether there were any statutory breaches associated with the operation of Salon 95 and the idea of the casino operating within a casino. In particular, Mr Bell, you raised a question of my learned friend Ms Richardson at transcript page T4237 as to whether the casino within a casino could give rise to a contravention of section 4 of the Casino Control Act. We submit that, no, it could not, but we do wish to draw your attention to some provisions in the Unlawful Gambling Act of 1988 in New South Wales.

So if I could just develop these points for a few moments. The starting point is section 4 of the Casino Control Act. Do you have a copy of the Casino Control Act handy, Mr Bell?

MR BELL SC: Yes, I do.

MS SHARP SC: Could I take you to section 4, please. You will see that section 4(1) provides that the conduct of, I will just say, gaming is lawful when certain requirements are satisfied. And those requirements include that there's the playing of a game and the use of gaming equipment, and that the gaming equipment is provided by the casino and by or on behalf of the casino operator.

Now, that doesn't, by itself, make anything unlawful. What it operates to do is make something lawful. So unlawfulness must be considered elsewhere, and we say it would be considered with the Unlawful Gambling Act of 1998. But just before --

MR BELL SC: But the shorthand language of contravention of section 4 was imprecise and the more precise question is whether section 4 operates to make legal something which is otherwise illegal?

MS SHARP SC: Yes, I adopt that, with respect. Just while we're here in section 4(1), Mr Bell, you will see that there is a reference to gaming equipment. That term is defined in section 3, if I could just take you quickly to that.

MR BELL SC: Yes.

MS SHARP SC: You will see that gaming equipment includes chips. So chips. So it's a thing, including chips, capable of being used for or in connection with gambling. Now, in terms of unlawfulness, could I now take you to the Unlawful Gambling Act. Do you have a copy of that Act available?

MR BELL SC: Yes, I do.

MS SHARP SC: Can I take you, please, to section 12 of that provision.

MR BELL SC: Yes.

MS SHARP SC: And you will see that section 12(1) provides:

> "A person must not (a) organise or conduct, or assist in organising or conducting, an unlawful game."

So that's the provision which creates unlawfulness, Mr Bell. And, in particular, we draw your attention to the words "assist in organising" and this is where we say the provision may have some work to do in the present case. Now, unlawful gambling is defined - sorry, an unlawful game is defined in the definitions section. If I can take you to section 5, you will see that it includes (a) baccarat. Now, we know baccarat was the game played in Salon 95. And (b):

> "Any game of chance that is played at a table or with gaming equipment."

Now, we submit that it's open to find that it was unlawful by dint of section 12(1)(a) to assist in organising an unlawful game, and we say the game is unlawful because that is the game in Salon 95, is baccarat, because the promotion of the game was not by the casino operator in those circumstances.

So that's one way of approaching the matter. A further way of - and I should say that when Suncity staff were accepting or handling or providing chips to patrons at the service desk in Salon 95, they were assisting in the conduct and the organisation of the game, and The Star, in providing the premises, was assisting in the organisation of the game.

So that's one way of looking at it, Mr Bell. Another way of looking at it is if I could take you to section 31 of the Unlawful Gambling Act.

MR BELL SC: Yes.

MS SHARP SC: And there you see it provides that:

> "A person who is the owner or occupier of any premises must not knowingly allow the premises to be used as gambling premises."

So that provides another statutory rule of prohibition. There is a third point of relevance, so far as the casino within a casino may be found to have contravened statutory provisions, and that pathway takes, as its starting point, section 124 of the Casino Control Act. Could I take you to that provision, please.

MR BELL SC: Just before we leave the Unlawful Gambling Act, would I also need to consider section 32?

MS SHARP SC: Just pardon me for one moment, Mr Bell. You could consider section 32 in addition, Mr Bell, in addition to section 31, not in conjunction with.

MR BELL SC: Well, The Star was not only the owner and occupier of the premises, it was also the operator of the premises, was it not?

MS SHARP SC: That is so. So that's an additional point to section 31.

MR BELL SC: Yes.

MS SHARP SC: In any event, if I could return now, please, to section 121 of the Casino Control Act. This is the provision pursuant to which internal controls, or sometimes called internal control manuals, are approved by --

MR BELL SC: Section 124?

MS SHARP SC: Yes, 124. Now, I need to note that there has been a change to section 124, and that amendment occurred on 21 December 2018. We submit that the amendment does not make any difference to the argument we make, and I should indicate that we do propose to commit this argument to writing because it is one where it's necessary to drill into the detail of some internal control manuals. So in that written document which will be circulated today, the differences between section 124 prior to 21 December 2018 and after that time will be noted.

If I can now go to the current version of those provisions, you will see that subsection (1) imposes a condition on the casino licence, and that condition of the licence is that a casino operator conduct the casino operations in accordance with the internal controls that are approved by the authority. And then, Mr Bell, you will see subsection (4) provides that:

> "A casino operator must not contravene a requirement of an internal control that is approved."

And it's our submission that in permitting Salon 95 to operate with a pseudo cage in it - and that's what we say the service desk was, because it allowed the exchange of cash for chips and vice versa - Star breached provisions of internal control manuals. And, in particular, we rely upon internal control manual 5 and its replacement, which was internal control manual 11.

And I can make good this point, if I can take you to internal control manual 5. If I could call up, operator, STA.3412.0019.7695. And if we could just go to the first page of that document, please, operator, you will see this is the internal control for casino cage operations. It has since been replaced by internal control manual 11, but this will suffice for present purposes.

Could I take you, firstly, to pinpoint 7696, Mr Bell, to look at the process objectives. And you will see that number 2 is:

> "... to ensure that all cage transactions are conducted and recorded in an authorised, accurate and structured manner to ensure proper accountability of cash and cash equivalents."

So that's the overriding objective of the particular controls that there follow. But if I can put the submission at a general level first, the problem of the way that the service desk operated in Salon 95 is that the casino operator could not assure or ensure that all cage transactions were operated and recorded in an authorised structured manner. Now, you will see at the bottom of that page there's --

MR BELL SC: Sorry, before you move away, process objective 3 seems to be specifically focused on chips.

MS SHARP SC: Yes, that is so. I'm drawing your attention to paragraph 2, but paragraph 3 is also relevant insofar as it applies specifically to chips, as one of the overriding objectives of this set of internal controls.

Then the internal controls themselves are found, itemised from the bottom of this page. You will see the heading Internal Controls and there are a large number of internal controls then specified. I might take you, as an example, to internal control number 24, which appears at pinpoint 7703. And you will see that that provides that:

> "Cage personnel are to undertake approved training and be certified for competency. Training is to include the security features of genuine currency and cash equivalents and the detection of counterfeit currency and cash equivalents."

This is one of the many controls that cage personnel had to comply with, which we say was not complied to the extent that Suncity staff were operating a cage. This is, as I've indicated, is a submission that does descend into some degree of detail, looking at the various internal controls specified within that document, which is why we are committing it to writing and will circulate it later today, Mr Bell.

MR BELL SC: Yes.

MS SHARP SC: So they're some pathways by which it can be said that The Star has contravened statutory provisions in permitting a pseudo cage to be operated not by it in Salon 95.

They're the submissions that we wish to make about Salon 95 and Suncity. I will next turn to the topic of the KPMG reports. And the first point we wish to develop is that these reports were provided to members of senior management prior to the

audit committee meeting on 23 May - and, operator, could I take that document down now.

So senior counsel for The Star and Star Entertainment submitted, at page T4238, that the final versions of the KPMG reports were provided to members of senior management on or shortly before the meeting of the audit committee on 23 May 2018, and that point is repeated at paragraph E22 of the submissions. However, we respond by submitting that these reports were provided to at least some members of senior management and, in particular, the chief risk officer, Mr McWilliams, by about 16 May 2018, which was more than a week before the audit committee's meeting.

However, many important steps occurred before that time, and they are firstly these: That on 3 May 2018, an advanced draft of those reports had been provided to Mr McWilliams; Mr Brodie, who was the general manager compliance and responsible gambling; and Ms Arnott, in order for them to confirm the factual accuracy and obtain management actions. And that's referred to in KPMG's letter of 6 August 2018 at exhibit B1027 at pinpoint 1780.

Also before that time, on 14 May 2018, KPMG representatives have met with Mr McWilliams, Mr Brodie and Ms Arnott where the findings in both reports were validated for factual accuracy and agreed. And that same 6 August letter of KPMG expressly records that no issues were raised at that meeting as to the factual accuracy of the reports.

Now, the audit committee minutes of 23 May 2018 expressly referred to "Specific queries of committee members raised prior to the meeting". That's at exhibit B811 at pinpoint 0818. So that in itself means that at least some members of the audit committee had received the KPMG reports prior to the meeting and, obviously enough, had reviewed them, since they had some specific queries about that.

MR BELL SC: Just pausing there, I thought the evidence from some of the audit committee members was that their only recollection was seeing an executive summary or a summary of the KPMG report and, furthermore, that that had only occurred very shortly prior to the meeting. And that was part of their concern.

MS SHARP SC: That's right. That was the evidence given. But what I'm drawing your attention to now, Mr Bell, is what is recorded in the minutes themselves.

MR BELL SC: Yes.

MS SHARP SC: And one may assume that the minutes accurately recorded this. So that some members had raised factual accuracy of the reports. So one would take from that, that some members of the audit committee had the reports prior to that and had considered them prior to that.

However, let it be the case that Mr Bekier and other senior members, such as Ms Martin, had not received the reports until very shortly before the 23 May meeting. Mr McWilliams explained in evidence, at page T346 - and he wasn't challenged on this - that that would have been entirely acceptable given the need for the independence of the audit function. And this, of course, was the third line of defence, which is supposed to be the independent audit function.

And what Mr McWilliams said at page T346 was:

> "The internal audit is meant to have an independent line of reporting directly to the audit committee. It is meant to be able to report on a without fear or favour basis and without interference from management, otherwise it loses its independence and effectiveness."

Now, even if it be - well, although it is the case that Mr Bekier and Ms Martin and perhaps others did not have the audit report until very close to the audit meeting, we submit that does not excuse Mr Bekier's conduct in subsequent meetings with KPMG where, according to Mr Graham's unchallenged evidence, Mr Bekier sat down, turned the pages of the report and essentially berated KPMG for the entire time of that meeting. And he said that at page T401.

Senior counsel for The Star and Star Entertainment submitted that they had received comfort in relation to its AML and CTF program prior to the KPMG report, and this forms part of the context in explaining the surprise that Mr Bekier and others felt at the criticisms that were levelled in the KPMG report.

Now, the previous AML part A review is in evidence. That was a report prepared by a Mr Brown, and I will take you to that in a moment. The submission we wish to make is that Mr Brown certainly did not give The Star the all clear in terms of its AML and CTF program in his report. In fact, Mr McWilliams gave unchallenged evidence to you that - and here I will refer to his evidence at pages T325 and 326. My recollection is that on the front page of his report, he said that the program complied with AML law but that, on page 2 or page 3, it was caveated in a very heavy way that he said his conclusions were very much predicated on the assumption that his recommendations on remediation were implemented.

And then Mr McWilliams said:

> "My read of that report was that he actually found it was a non-compliant program and we needed to put in place the remedial actions."

Now, of course, Mr McWilliams was the chief risk officer at that time. Mr Brown's report is in evidence at exhibit Q9. It wasn't shown to Mr McWilliams by The Star when Mr McWilliams was examined, and his evidence was not otherwise contradicted or challenged. Consistently with Mr McWilliams'

recollection, Mr Brown's report - and if I can call it up, please, at exhibit Q9, and that's STA.3008.0019.0037. And what you will see, Mr Bell, under the heading Opinion is that:

> "Subject to the implementation of the key recommended actions and to the qualifications and assumptions set out below, it is my opinion the program is effective."

And so on. So this caveat is why we say that this report did not, in fact, give the all-clear and needs to be read with those qualifications in mind. When you look, Mr Bell, at - if we can go to pinpoint 0039 - that is 0039, please, operator - you will see that there is a heading "Key Recommended Actions" and there are a series of recommendations for the improvement of the AML/CTF program. Mr Brown recommended a formal review of the money laundering and terrorism financing risk assessment.

He also recommended that implementation of specific AML training be brought forward; that enhanced customer due diligence be improved by reference to certain matters; and that the politically exposed person processes also be improved.

MR BELL SC: Was Mr Brown's report put to Mr Bekier and the other members of the audit committee who gave evidence?

MS SHARP SC: No, it wasn't, because it wasn't in evidence at that time. It was produced late by one of the parties with a request that it be put into evidence. I will have to get some instructions about that sequence of events, though, Mr Bell.

MR BELL SC: Yes.

MS SHARP SC: Now, moving on to the fact that the KPMG report was not provided to AUSTRAC for a significant period of time, at transcript page T4244, senior counsel for The Star and Star Entertainment submitted that AUSTRAC was well aware of the existence of the KPMG report and the recommendations for improvement, and rejected the suggestion that Star Entertainment's privilege claim had the effect that The Star set out to rectify problems with its program in the absence of scrutiny of AUSTRAC.

Now, this submission appears to be a reference to a letter from Star Entertainment dated 5 October 2018 to AUSTRAC, which is exhibit B1102. I don't need to take you to that letter, but it responded to AUSTRAC's first request dated 14 September 2018 to be provided with a copy of the part A report where Star had refused, claiming legal professional privilege, but, instead, provided a copy of their management action plan. And that can be seen at pinpoint 0076.

We say that Star Entertainment and Star's submission amounts to a refusal to acknowledge without qualification that by doing the wrong thing in claiming legal professional privilege, that had consequences in terms of the regulator's inability to properly scrutinise Star Entertainment's conduct. The fact that AUSTRAC was well aware of the existence of the KPMG report does not really take the matter anywhere, given that AUSTRAC was not aware of the contents of that report.

And, similarly, the fact that AUSTRAC received management's self-identified tasks in the form of the management action plan doesn't take the matter further either, because the management tasks don't equate to revealing the contents of the KPMG report.

I now turn to some evidence that Ms Martin gave about the privilege claim. Senior counsel for The Star and Star Entertainment submitted that Ms Martin now accepts that the claim that the KPMG reports were subject to privilege was erroneous and that's at transcript 4245. Ms Martin also submitted, in paragraphs 23, 26 and 44 of her written submissions, that she made a number of appropriate concessions in her evidence, and provides an example that after further consideration, the making of the claim for legal professional privilege was an error.

Now, we submit that The Star's submission was an appropriate concession; however, we submit that Ms Martin's evidence was a lot more equivocal and was not a clear concession. At page T2097, Ms Martin did accept that it was wrong to have formed the view that the dominant purpose of the KPMG reports was for Star Entertainment to receive legal advice.

However, Ms Martin expressly rejected the suggestion that she lacked a proper basis for claiming the privilege at the time. And that's at transcript 2078. She also said, at page T2096 that, in her view, it was not totally inappropriate to have claimed the privilege. In Ms Martin's written submissions, at paragraph 78, she pointed to the fact that a small part of KPMG's review would involve working with Star Entertainment Group's in-house lawyers.

The citation Ms Martin gives for that is exhibit B488, and that shows that the involvement of in-house counsel only involved KPMG meeting with them to confirm which overseas agents were considered to be permanent establishments. That is all to say that the concession is not as clear as Ms Martin suggests.

The point is that there is no suggestion of a purpose for which legal advice was being obtained, let alone a dominant purpose, and you are left without any evidence to support a claim that Ms Martin could have rightly considered that the dominant purpose for which this report was brought into existence was to provide legal advice.

We also note that Ms Martin goes so far in her submissions at paragraph 125 to say that she did satisfy herself that there was a proper basis for claiming the

privilege, even if it's wrong. Our response is that there could never have been a dominant purpose of providing legal advice, and nowhere has Ms Martin ever identified what that dominant purpose was.

MR BELL SC: Well, she does say in her witness statement at paragraph 120 that she formed the view that the documents were privileged:

> "... at around the time of the audit committee meeting because they related to The Star Entertainment's compliance with statutory obligations, and I anticipated that the legal team would be required to provide advice."

She says:

> "Upon reflection, I accept that was an error."

MS SHARP SC: Well, that is in rather vague terms, Mr Bell. When Ms Martin - and I will need one of my learned juniors to pull up the evidence - when Ms Martin was asked to articulate a dominant purpose, that could not be done.

MR BELL SC: Yes, okay.

MS SHARP SC: Now, moving to another subtopic within the KPMG broader topic, this relates to disclosure of the KPMG report to the authority. In this regard, senior counsel for The Star and Star Entertainment submitted that:

> "While there does not appear to have been any positive obligation to disclose the KPMG reports to the authority and the authority did not make a specific request, it is accepted that in the interests of transparency those reports should have been provided."

And that was at page T4246. We submit that this is an appropriate concession, but it's a concession that should be made not just in the interests of transparency, but because one of the primary objects of the Casino Control Act is to ensure that the management and operation of the casino remain free from criminal influence and exploitation.

That same language appears in section 140(a), which provides that:

> "The objects of the authority are to maintain and administer systems for licensing, supervision and control of the casino for the purpose of ensuring that the management and operation of the casino remain free from criminal influence and exploitation."

So we say it's consistent with the objects of the Act, and when the authority exercises its functions under the Act for the authority to receive important reports which are relevant to whether there is a risk of criminal influence or exploitation

within the casino. In other words, this report was very much within the remit of the authority, not just within the remit of AUSTRAC.

I said in my outline that I would make some remarks about the position of in-house counsel in this reply, and the reason that we do so is because three senior lawyers within Star Entertainment have, we submit, acted in some inappropriate and non-transparent ways, and in some misleading ways which I have particularised elsewhere, and we say this is completely inconsistent with the second line of defence within risk management principles.

And this is one of the key reasons why we say that the risk management framework failed so spectacularly at The Star. And we wish only to observe that the authorities are clear that in-house counsel should have some measure of independence from the business, notwithstanding that they are employed by the business. And that independence is something that is relied upon when it comes to the second line of defence.

If we could just refer you to the High Court's decision in *Waterford v Commonwealth* [1987] 163 CLR 54. At page 62, Mason and Wilson JJ said that:

> "Whether in any particular case the relationship is such as to give rise to privilege will be a question of fact. It must be a professional relationship which secures to the advice and independent character notwithstanding the employment."

And Brennan J made similar observations at page 70 when he said:

> "The legal advisor must be competent and independent. Competent, in order that the legal advice be sound and the conduct of litigation be efficient; independent, in order that the personal loyalties, duties or interests of the advisor should not influence the legal advice which he or she gives or the fairness of his or her conduct of litigation on behalf of the client."

The other point, of course, is that legal practitioners have particular ethical obligations, Mr Bell, above and beyond those obligations which attach to senior management. And they go above and beyond those because the ethical obligations are attached not just by reason of the Star Entertainment code of conduct, but because of their duties as solicitors holding practising certificates.

MR BELL SC: It would be one thing to find that, from time to time, The Star's legal department took a mistaken approach to claims for privilege. It would be a far more serious matter to find that they had acted inappropriately in the sense of unethically. I would need, would I not, very cogent evidence --

MS SHARP SC: Yes.

MR BELL SC: -- against particular lawyers to make that latter finding.

MS SHARP SC: Yes, and particularly in relation to *Briginshaw* and, as we submitted at the outset, one should not make findings of - adverse credit findings or findings of dishonesty or unethical conduct which are untethered from the particular facts of the case, Mr Bell. So, in terms of tethering that conduct, you would consider, for example, the conduct of Mr Power and Ms Martin in writing the September 2019 letter to New South Wales Liquor and Gaming in answering its inquiries about junket operators. That would be an area where you would tether any finding about taking a misleading approach to the facts at hand.

Equally, in the case of the 15 August 2019 paper to the board where Ms Martin was a co-author and where The Star submitted that the paper was distinctly misleading, you would tether that finding of taking a misleading approach with the facts of the case at hand.

Mr White made some submissions which go to the culture in which he operated and the fact that, at various points, he clearly did call out risks with matters such as the Suncity cash desk and in relation - the Suncity cash desk and in relation to certain matters to do with CUP and, in particular, the temporary cheque cashing facility.

Equally, you would note that Mr Power called out some important risks at times. For example, in relation to Salon 95, Mr Power wrote to Mr Hawkins, and that was passed on to Mr Bekier, calling out an unacceptable risk. While there may be something to be said for the very delinquent culture in which these lawyers operated, this, we say, cannot excuse certain specific ethical failings that have been identified in the course of evidence.

And taking Mr White as an example, the fact remains that he drafted and settled emails to NAB in relation to the CUP cards which were patently misleading, and he ought be criticised to that extent, notwithstanding his submission that he operated within a delinquent culture.

May I also address some submissions that have been made in relation to inappropriate claims of legal professional privilege. We submit that, looking at documents together, you would form the view that privilege was being used to cloak documents from production to regulators. And we submit that a very good example of that occurring plays out in the context of Salon 95, where you will see that early in the process of Salon 95, Mr White requested, in his email to investigators, that they put questions to him by prefacing them with a statement that they requested his advice. And then you will see that the investigators take the step of marking their own documents as being subject to legal professional privilege. And you will see that in the investigation notes prepared, for example, by Mr McGregor.

Now, if I can turn to submissions that have been made by the interested parties in relation to Kuan Koi. You will see that The Star and Star Entertainment accept that the Kuan Koi arrangement lacked transparency because it appeared as though money was - money being transferred to The Star came from Kuan Koi himself rather than from other patrons, and Star says this arrangement was undesirable from an AML/CTF perspective. And you will see that at paragraph J11.

The Star and Star Entertainment also accept at paragraph 11(d) that the risk calculus changed when the arrangement expanded to include front money payments in addition to cheque cashing facility redemptions. The Star - the more prudent course would have been not to pursue the arrangement at all. Nevertheless, The Star and Star Entertainment maintain that Kuan Koi was, in effect, acting as a remitter, but he was not required to be licensed, and The Star did make reasonably genuine efforts to control risks associated with his role.

We answer that by submitting that the Kuan Koi arrangement was inappropriate from the outset, even before it morphed into an arrangement where third-party remitters became involved. In the area of the business where money laundering and terrorism financing risks were most acute, this was an arrangement that, from the outset, ought not to have been countenanced by anyone.

We note that Ms Arnott frankly accepted during her oral evidence that the AML/CTF risk that she performed for this arrangement was wrong, and she should have assessed the risk as something other than low, and she made that concession at 1504.

Her risk assessment relied on the fact that customer due diligence for cheque cashing facility holders had already been performed. However, that, of course, did not apply when the arrangement changed such that front money started to be channelled through this payment channel.

MR BELL SC: Before the arrangement transmogrified, I would have to take into account, from the point of view of the board, would I not, that they were told that Ms Arnott had conducted an AML risk assessment, however inadequate it might have been proven to be, and also that there had been legal advice that had been obtained that authorised this arrangement as well?

MS SHARP SC: Yes, you would, Mr Bell. But we submit you would also take into account that this was understood by the directors to be the area of AML - sorry, the area where AML risks were most acute. And you would also take into account that the board were briefed on a tightening regulatory framework overseas and the fact that it was becoming more difficult to transfer money from Macau and Hong Kong into Australia, and, in particular, into bank accounts operated by casinos.

Just returning to the risk assessment for a moment that was conducted by Ms Arnott, the evidence indicates that once the arrangement changed, such that it was extended to accepting front money deposits, there was very little update to the risk assessment, and you will see that in an email from Ms Arnott to Mr Brodie, which is exhibit B625.

Ms Arnott said:

> "Please attached my updated risk assessment. I did not change much from the previous draft."

The Star has relied heavily on the fact that international depositor forms were created where there were supposed to be some know your customer checks done. However, that procedure needs to be understood against the following evidence. First of all, Ms Arnott stopped receiving these international depositor forms very early on during this process. So that was in March or April 2018. And this stopped when she was told by the AML/CTF administrator that Star was getting access to the transaction detail in another way.

She said this at pages T1494 to 1495, but there is no evidence before you as to what that other detail was or how it assisted in discharging know your customer obligations. It may also be noted, Mr Bell, that the international depositor forms required a bare minimum of detail about the customer and said nothing at all about the source of the customer's wealth or the source of the particular funds that were being provided to Kuan Koi to, in turn, be transferred through to The Star. And this is the case despite the fact it was known that Kuan Koi was predominantly receiving these payments in the form of cash.

There is also evidence indicating that the service was used without a corresponding international depositor identification form having been filled out. And this includes instances where relevant Macau staff members, such as Gabriela Soares, were not present at the time the money was provided to Mr Koi. There, Mr Bell, you would note the withdrawal from FOD account approval form for which there was no corresponding international depositor identification form. I don't have the exhibit number, but the document ID is STA.3421.0018.0964.

Further, The Star states that it is aware of no evidence indicating that staff members in Macau were not in attendance when Kuan Koi deposits were made. However, the withdrawal approval forms indicate that there were such occasions, and that evidence can be found in STA.3421.0018.0964. And these show that Gabriela Soares was not present when the patron was signing the form.

Lastly, we would add that Ms Arnott accepted in her oral evidence that she did not actually know and had no way of knowing whether the controls she suggested had been implemented, including the collection of forms and the attendance of staff

members, for the duration of the Kuan Koi arrangement. And Ms Arnott said that at page T1552.

It may also be noted, Mr Bell, that Ms Arnott's risk assessment relied on the fact that IFTIs would be submitted for the transactions, and in her oral evidence, Ms Arnott stated that the lack of transparency in the Kuan Koi transactions was, "Why we reported all of these transactions to AUSTRAC at IFTIs". That was at page T1507.

Star's position now is to the contrary. The position is that it was reasonable and correct for Star to take the approach that IFTIs were not required to be lodged. And The Star makes that submission at paragraph J184. So in the circumstances where the risk assessment conducted by Ms Arnott was premised on the IFTIs, this highlights that it's an unreasonable approach. I wonder whether we might take the adjournment a little early today, Mr Bell.

MR BELL SC: Yes, I will adjourn now until 10 to 2.

<THE HEARING ADJOURNED AT 12:51 PM

<THE HEARING RESUMED AT 1:52 PM

MR BELL SC: Yes, Ms Sharp.

MS SHARP SC: Mr Bell, I should tender some further documents before I go any further. You should have an index in front of you marked exhibit S.

MR BELL SC: Yes.

MS SHARP SC: I tender that document and the index and the documents referred to in it.

MR BELL SC: How many documents are in exhibit S?

MS SHARP SC: Let me just call that up, pardon me. There are 503 documents. This includes some new statements from each of the directors.

MR BELL SC: Yes. Yes, they will be exhibit S1 to exhibit S503.

MS SHARP SC: I should also indicate they include a number of documents that were referred to in the new Gadens' report on allegations relating to the underpayment of duty, and that report was dated 16 June and served after the oral closing submissions occurred.

MR BELL SC: Yes. Thank you.

MS SHARP SC: I was in the middle of making submissions about the Kuan Koi payment channel, and I will pick up from that point. It has been suggested that the risks associated with the Kuan Koi payment channel were ameliorated in part because legal advice was sought. In that regard, HWL Ebsworth was instructed to look at whether the arrangement would make The Star a remitter or a deposit-taking institution. That was the scope of the advice.

That's apparent at exhibit G32 which is an email from Mr Oliver White to Anthony Seyfort at HWL Ebsworth, dated January 2018. HWL Ebsworth was not asked in that correspondence to advise on the risks of the arrangement more broadly. We also note that the advice that was provided was premised on assessing risks and designing measures to control them, and that's apparent from an email from Mr Seyfort to Mr White, dated 31 January 2018, which is exhibit G32.

We submit that the advice was not followed in any event because the risk was wrongly assessed, as Ms Arnott concedes, and controls - important controls, that were suggested in that risk advice assessment were not, in any event, applied, including the IFTIs and the collection of the international depositor forms, and I've already addressed you on that.

If we could now look at the point in the Kuan Koi arrangements where they morphed, where money started to move through the hands of third-party remitters, Star and Star Entertainment have submitted that there is no evidence that remittances were performed through Regal Crown. That is said at paragraph J121. That there are no transactions in the EEIS accounts should not be accepted as evidence that Regal Crown was not ultimately used in some way.

We submit that the evidence indicates that Regal Crown was utilised but that Regal Crown itself used alternative remitters such as Silver Express to remit funds. And that's apparent when regard is had to an email from Adrian Hornsby to Oliver White dated 7 August 2019, which is exhibit G698. In that email from Mr Hornsby, he states that Regal Crown has more recently used Silver Express but has utilised other licensed remitters historically.

Additionally, Mr Bell, you will recall the memorandum from Mr Oliver White dated August 2017 that indicated that patrons utilised Regal Crown but that Regal Crown does not provide services to The Star. The Star employees in Macau were advised not to recommend Regal Crown to patrons but simply to inform patrons that, "We are aware that other patrons have used Regal Crown in similar circumstances." And that memorandum --

MR BELL SC: What was the date of that memorandum? What did you say the date of that memorandum was?

MS SHARP SC: This is the 26 August 2019 memorandum that a number of witnesses were examined on, and it's exhibit B1579. Now, it has been submitted that the way in which the board was briefed on the need for new payment channels in light of the closure of the Bank of China accounts in Macau did not give it reason to think that there would be unmanageable money laundering or counter-terrorism financing risks. And written submissions have been made that the board was not briefed about the modified Kuan Koi arrangement. And, really, that's in two respects.

Firstly, when it changed to permit Kuan Koi to collect front money deposits as well, but also when the morphing occurred, and payments no longer moved through Mr Koi's bank accounts but through the bank accounts of others, including third-party remitters. Now, it is the case that the board were not briefed on the AML risks associated with those arrangements other than to say that they had been looked at, but we do make the submission that this was an area of acute money laundering -- and that --

MR BELL SC: Sorry, I missed about 30 seconds of what you said there. I think your screen froze. If you could - you were just starting to talk about the briefing of the board.

MS SHARP SC: Yes, I'm sorry, Mr Bell. I will put that again. The board - what I said was that this was an area where the money laundering risks were acute, and while the board had been told that the AML advice and risk assessment had taken place, the board was also alive to the fact that these arrangements were being developed in light of a tightening of the framework overseas and, in particular, the closure of the Bank of China accounts where all the cash had previously been accepted for deposit, and were briefed that patrons were concerned about the appearance of funds going through to the casino.

So we submit this was an area where a board demonstrating active stewardship would have been particularly vigilant. Just to give one example of that, a board paper prepared by Mr Bekier and Mr Chong entitled IRB Strategy Update dated 26 September 2017, which is exhibit B435 made particular reference to Operation Chain Break, which was described as being to stop flow of funds into foreign casinos.

Can I now turn to make some submissions in reply about the EEIS loan arrangements. There is a question about whether EEIS acted as the agent of The Star in making these loans, and so triggered the prohibition in section 74 on the casino operators - sorry, the casino operator and its agents providing credit in relation to gaming.

The Star and Star Entertainment have made submissions that there was no relationship of agency, and, in particular, at paragraph J236 say that:

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

We say this is not correct, and the case which is cited in support of that proposition, being *Tonto Home Loans Australia*, medium neutral citation [2011] NSWCA 389, does not, in fact, stand for that proposition. In *Tonto Home Loans*, the court considered whether there was an agency relationship where the purported agent had no authority to bind the purported principal to acceptance of any loan.

And in that context, the court observed, at paragraphs 173 to 174, that:

> "One needs to consider the purpose for which one is asking the question whether A is P's agent. The question that must be addressed here by the factual and legal analysis is whether Tonto Home Loans appointed S Loans to undertake tasks for it, short of creating a binding loan agreement such that knowledge gained or conduct engaged in by S Loans in the performance of such tasks was knowledge to be imputed to Tonto Home Loans or conduct for which Tonto Home Loans was to be held legally responsible for some form of vicarious attribution."

And then I will continue the quote:

> The appellant's first submission was that this could not be so because the expression of the matter in International Harvester was the limit of any relevant concept of agency known to the common law. If S Loans had no capacity to create legal relations between the third party and the principal by binding the lender to a loan, it could not, in law, be an agent. This is too narrow a conception of agency."

And we submit that that's the correct statement of the legal principles. We say that the essential facts of the matter are these, Mr Bell. EEIS did the bidding of The Star. EEIS was subject to The Star's direction and control. The directors of The Star, who were Mr Bekier, Mr Theodore and, for a point, Mr Barton, were also the directors of EEIS. EEIS acted on behalf of The Star in all that it did.

EEIS had no other reason to exist. It had no capital. It only made loans to Star customers. It did not have any corporate interest of its own. The authority conferred by Star upon EEIS was the authority to provide credit to those of The Star's customers whom The Star selected as being eligible for loans. Both EEIS and The Star consented to this arrangement. The manifestation of that consent was the actions of each of EEIS and The Star.

Star wanted credit to be provided to its customers. EEIS did this and provided that credit. EEIS had no funds of its own to provide to Star's patrons. So Star provided

EEIS with funds, and this was done through a $40 million cheque cashing facility from The Star to EEIS.

MR BELL SC: Was it $40 million or $400 million?

MS SHARP SC: I beg your pardon, $400 million.

MR BELL SC: Right.

MS SHARP SC: And we know that the board meeting minutes of 24 May 2018, which are exhibit B822, record that that $400 million cheque cashing facility was approved with the express purpose of EEIS providing loans to the international rebate customers.

Further, so far as the facts are concerned, credits made to the front money accounts of patrons reflected a liability to The Star and that was found by Ms McKern in her supplementary report, which is exhibit H634 at pinpoint 0051. Further, there was no actual movement of cash. Funds were disbursed by ledger entry only. And Mr Theodore gave that evidence at pages T2965 to 2966.

MR BELL SC: Sorry, you're saying that Ms McKern found that the loans made by EEIS to patrons resulted in a liability owed by the patrons to The Star?

MS SHARP SC: That's right. And that's set out in paragraph 6.8.1(a) which is at pinpoint 0051.

MR BELL SC: Would that be a conclusion within Ms McKern's expertise?

MS SHARP SC: Well, that's her - well, yes, because it's her analysis of how the ledger entries were conducted. It's an accounting --

MR BELL SC: I see.

MS SHARP SC: It's an accounting matter. And the point that she was making was there was no actual movement of cash. Everything was done by ledger entry. Mr Theodore also gave evidence that Star personnel were heavily involved in the process of preparing loan documentation and undertaking credit checks, which is at page T2979, and that the credit checks were conducted in the same manner as were credit checks when Star was doing an ordinary cheque cashing facility. That's also demonstrated in the EEIS standard operating procedure which is exhibit B1096 at pinpoint 1086.

The next matter that we wish to address you on is the purpose of the EEIS loan arrangements. In that regard, we continue to press the submission that the dominant purpose of the loans was to assist the patrons in putting distance between their funds transfers and a casino. We say this purpose was clear on the

face of EEIS working and strategy documents, and, in particular, we refer to exhibit B699, which was an EEIS project status report that was presented to the 22 March 2018 board meeting, and the minutes for that are at exhibit B701.

There, it was expressly stated that:

> "... establishing EEIS services as a licensed money lender and licence remittance agent, thus changing the nature of the payments from customers to being repayments of loans in Hong Kong from repayment on gambling debt in Australia."

So that was an express statement as to the purpose of these arrangements. We further submit that the EEIS arrangements were developed in light of the closure of the Bank of China accounts in Macau and the continuing tightening of transferring funds to casinos. This is a link that's made in a number of the EEIS working papers. At the EEIS kick-off meeting, dated 24 January 2018, for example, which is exhibit C30, it was stated at pinpoint 1081 that customers wanted to avoid electronic transfers into a bank account in the name of a casino. And Mr Theodore gave evidence about that matter at page T2962.

Now, it has been put that a reason - and it's always put as a reason, not the reason - that a reason of the loans was to provide different terms of repayment. Mr Bell, you would recall that an international cheque cashing facility must be repaid within 30 days. So must an EEIS loan, according to the standard operating procedure. That standard operating procedure is exhibit B1096. It sets out a 30-day repayment requirement at pinpoint 0511, and it does not make provision for a discretion to extend the time for settlement.

MR BELL SC: But that being said, there was some evidence, was there not, that at least one of the loans to one patron or one junket was longer than 30 days?

MS SHARP SC: I think that's right. I can't think what that evidence was at the moment. I might have one of my juniors turn that up so I can let you know what that is in a moment. Just while I'm waiting for that, it was put to Mr Whytcross, to Mr Theodore and Mr Bekier that the purpose of the EEIS loans was to obscure the nature of the transactions. And you will find those references at pages 1054, 2969, and 3159 of the transcript.

I will come back to you about that reference to the evidence when I can, Mr Bell.

One matter that Star and Star Entertainment have pointed to in their submissions is that there was a presentation to the authority regarding the proposal that EEIS act as a lender and a remitter, and that point is made at paragraph J79. In response, we say that there were limited disclosures in the presentation to the authority dated 27 March 2018, and you will see the notes of that presentation at exhibit M19.

One example is that the presentation said that losing customers would have 30 calendar days from the end of the program, instead of from the day of buy-in, to repay losses, and if the debt was not settled at the time, EEIS would bank the customer's cheque. It wasn't disclosed that there was a requirement for a personal cheque that could be waived or that there were flexible repayment terms that could be entered. And that's at pinpoint 6084.

We also add that there's no evidence here that ILGA turned its mind to any question as to whether or not EEIS was an agent, and the presentation did not direct the authority to that question.

There was an EEIS project team, an EEIS steering committee and an EEIS working group, but there's no indication of who it was in the business who was keeping abreast of the AML and CTF compliance risks that were associated with the business. And the evidence shows that it was only when NAB began raising questions about transactions occurring in the EEIS bank accounts maintained with NAB that some concern was raised internally about transaction monitoring.

And it would appear that until those questions were asked, these transactions were not monitored for AML and CTF purposes. There, we refer to an email from Mr Oliver White to David Procter dated 6 September 2019 at exhibit B1681. In that email Mr White requested a review of transactions which had been raised as queries by NAB, and also requested identification of whether there had been transfers of front money to the EEIS accounts.

The documents in evidence produced by NAB also reveal that NAB was concerned that the AML/CTF questionnaire that had been submitted to NAB by Ms Skye Arnott did not reveal a good understanding of the transactions that were actually taking place in those accounts.

The Star has also relied upon an advice provided by Mr Bret Walker of senior counsel in support of a submission that EEIS was not an agent. That advice may be found at exhibit F1. However, that advice - in that advice, Mr Walker was not briefed to advise on the question of whether EEIS or any other entity within The Star Group would be considered an agent under the Casino Control Act. In fact, the agency question was expressly carved out of that advice.

And we submit that a reasonable reader would understand that a further question must arise in relation to whether a relationship of agency had arisen.

I will now turn to make some submissions in reply about the - what I will call the false letters that were provided to the Bank of China in Macau, some of which went to the source of funds letters. We accept the submissions of The Star that you cannot safely make findings about how many times these false letters were provided to the Bank of China.

Mr Houlihan gave evidence that it was reported to him that it had occurred in only 2 per cent of cases. However, there is no other documentary support for that assertion, and whether the evidence points to it occurring in 2 per cent of all cases in which patrons made deposits or whether it was every day, as was reported to Mr White, it did plainly occur with at least some frequency. And just the evidence that Mr White gave that it was a daily occurrence, or that's what he was told, is at transcript page 1337 to 1339.

MR BELL SC: Apart from what people remembered, is there any documentary evidence as to how frequently it occurred?

MS SHARP SC: The only documentary evidence are notes that Mr White recorded, I think of his interview with Ms Gabriela Soares. I don't have the exhibit number in front of me and I will again ask one of my juniors to turn it up. I'm sorry, I just gave you the wrong transcript page number for Mr White. In fact, the transcript evidence where he was told it happened every day was at page T1801. Mr Whytcross, who was examined about this, said that the conduct occurred repeatedly, and that was at page T1089.

MR BELL SC: Is there any documentary evidence supporting Mr Houlihan's recollection of 2 per cent?

MS SHARP SC: We haven't been able to locate anything that says 2 per cent. This was an area where the - you will recall that I made some submissions in chief about the length of time for which this investigation had been conducted, and we do continue to press the point that the investigation has been too slow in the circumstances.

Just on the point of the length the investigation, the evidence would suggest that the issue came to light in mid-October 2021 in the course of preparing a regulatory response, and this is clear from an email of Mr Whytcross to Ms Soares dated 3 October 2021, which is exhibit B3395. Since the issue first emerged, the evidence suggests that a working group was established to address the issue, and Mr Theodore gave that evidence in his witness statement at paragraph 56A. That's exhibit A1339.

The evidence shows that Mr Houlihan had flown to Hong Kong to interview Jacker Chou and Gabriela Soares twice, and Mr Houlihan said that at page T1329 and 1336, and there is also a file note at exhibit G939. In addition, Mr White interviewed Ms Soares, and he told us that at page T1800 to 1801 of the transcript.

HWL Ebsworth has assisted in the investigation, and has also attended interviews, including one with Jacker Chou, and Mr Houlihan said that at page 1333. At the time of Mr Houlihan's evidence, he said he was still in the process of liaising with Mr Chou and Ms Soares, and that was at page T1330. It might also be noted that while Mr Chou and, more recently, Ms Soares have left the employment of Star,

Mr Whytcross gave evidence that he still maintained contact with Mr Chou, and that was at page T1092.

So as far as the evidence discloses to this tribunal, there's still no outcome of the investigation.

Can I turn now to address some submissions to the question of the underpayment of duty. This is to update you, Mr Bell, on some developments since oral closing submissions of the parties. On around 16 June, Gadens concluded its investigation into a media report made on 9 February 2022. That Gadens report has been provided to this Review and may be found in exhibit S492.

The scope of the Gadens review was to consider an allegation in a media article on 9 February this year about whether there was a practice of encouraging rebate - sorry, I will put that again. Whether there was a practice of encouraging patrons to obtain documentation to make it appear that they resided overseas or interstate even though they lived in New South Wales. And that was said to be part of a scheme to minimise the amount of duty that The Star had to pay to the state government.

Now, what Gadens has found is that they did not identify any material that substantiated the allegation. However, the investigation identified a sustained failure of The Star's operations team to properly and diligently administer approved systems and processes relevant to determining a patron's residency which would have enabled New South Wales residents to participate in rebate game activities.

And Gadens conducted its assessment by looking at 60 identified patrons of interest who were shortlisted as a targeted sample. It's interesting to look at the results of that targeted sampling of the 60 patrons. Gadens found that six patrons were junket operators, or, that is, promoters who did not participate in a rebate program.

There were residency checklists for all but four patrons which contained administrative errors or omitted certain information. So that's all but four out of 60. Of the 60, 12 patrons were likely to have resided in New South Wales in excess of the 183 days which animated the relevant rebate standard operating procedure. I note that The Star's new standard operating procedure from November of last year has moved beyond the 183-day test, but the audit looked at what was happening under that old standard operating procedure.

Gadens also found that of the 60 patrons, 16 did not satisfy the 100-point checklist, and 18 patrons had New South Wales information recorded on Synkros when they had joined a rebate program, and 18 patrons had insufficient information in their records to enable a determination to be made as to residency.

MR BELL SC: So these were 60 patrons who were invited to participate in rebate programs, were they?

MS SHARP SC: Yes, and this was a sample that Gadens looked at.

MR BELL SC: Was it a random sample?

MS SHARP SC: I don't know.

MR BELL SC: Yes.

MS SHARP SC: An allegation was also made which Gadens investigated that employees could maximise their bonuses by encouraging high rollers to change their residential status, and, therefore, gamble more. And what Gadens found was that, until recently, attractive bonuses could be earned by the international and domestic rebate sales team if revenue targets set for rebate gaming business were achieved, as opposed to any measure of The Star's profitability. But conversions to the rebate - the domestic and international rebate businesses helped achieved the revenue targets.

We submit that the findings in the Gadens report are broadly consistent with the findings or the submissions that we put to you in our submissions in chief. Gadens also identified some concerning matters or matters of inappropriate conduct taking place in the past.

For example, Gadens recorded that one interviewee had overheard a conversation between a junket promoter and a sales representative at The Star where the promoter queried why documentation could not be created for the purpose of satisfying the residency checklist, and that incident was not reported to management.

Another example relates to Huang Xiangmo who is a very significant - or was a very, very significant high roller. Gadens found that he had been converted from an international rebate player to a local player in 2017. However, he then began to more heavily patronise Crown Melbourne, where he qualified for a domestic rebate program, and, in response, Star executives and principally Mr Whytcross explored possible alternative commercial offerings that could be put to Mr Xiangmo to encourage him to move to a rebate - back to a rebate play.

And one suggestion that Mr Whytcross made was that Star might entertain the possibility of purchasing a house for him. In any event, there are a few of those observations which, again, cast some concern on the culture of the organisation in terms of the proper payment of rebate duty. I probably don't have any time to say anything more about it but they are the key points.

Could I turn now to make some submissions in reply to the submissions of the non-executive directors. At paragraph 69 of their written submissions, they accepted that the board, as the apex of the organisation, bears the ultimate responsibility or accountability for the failures that have occurred at Star Entertainment Group and, of course, The Star. And that concession and acceptance is rightly made.

The submissions set out a series of principles at paragraphs 5 to 9 with which we respectfully agree. The submissions also address the argument that was put by counsel assisting in chief that, in some respects, the board was too passive or lacked active stewardship. And the submissions in that regard focus very heavily on Salon 95, and that's at paragraphs 24 to 31 of the submissions.

Now, those submissions relate to an entry at page 22 of Mr Bekier's managing director CEO report dated May 2018, which was tabled at the 26 July 2018 meeting. And, Mr Bell, you may recall that note at page 22 of the report that stated under the heading Salon 95 Service Desk and I quote:

> "In May, concerns emerged around certain activities undertaken at the junket service desk in Salon 95."

We respectfully agree with the submission of the non-executive directors that this entry was innocuous and, in terms, would not have alerted the directors that there was a red flag as to operations in Salon 95, particularly since the words "service desk" were used and there was no reference to any kind of cash transaction or cash for chips transactions.

We submit that the non-executive directors should not be criticised for not asking questions about this entry that was buried at page 22 of Mr Bekier's report. Criticism should instead be levelled at Mr Bekier for burying this information in the innocuous terms which he did in this report, and also criticism ought be levelled at Mr Hawkins and Ms Martin who were both present at the directors' meeting where this paper was presented and said nothing.

As noted at paragraph 29 of the submissions of the non-executive directors, each director said they had been misled and should not have been required to dig for hidden information that should have been escalated to the board and brought to their attention immediately. We submit that you should also accept the submissions put by the non-executive directors at paragraph 32 that despite their specific request for information in light of the Crown media allegations in 2019, they were told that what had been occurring at Crown was not happening at The Star.

That said - all that said, Mr Bell, the reality remains that this company was not running a flower shop. It was running casinos. And in casinos, there are well-known risks of criminal infiltration and of money laundering, and as I've said

on a number of occasions now, those risks are most acute in the international rebate business.

This necessarily means, we submit, that vigilance was called for in relation to these parts of the business. And we do maintain the submission that, in certain respects, the approach of the directors has been too passive. And one of those respects, Mr Bell, is in relation to China UnionPay and the report that was provided to the board by Mr Seyfort.

Now, that report was provided to the board in September of 2021, and timing is important here, Mr Bell. This was in light of the evidence that had emerged at the Finkelstein Inquiry, and it was prior to the media allegations that were aired from around 8 October 2021 onwards. We've previously submitted that the Seyfort paper was a somewhat sanitised version of what had, in fact, happened in relation to the CUP process at The Star.

However, that report did call out the possibility that the NAB had been misled by management, and it didn't go so far as disclosing the actual - and it's not apparent that Mr Seyfort had it, I should say - did not go so far as to disclose the actual correspondence that had passed between Star and NAB.

Mr Sheppard gave evidence to you that he concluded from Mr Seyfort's paper that NAB had likely been misled, and he explained that he did not take further steps after the management response was provided to the board in October '21 because he anticipated that the emails would surface in the request for information from this inquiry and that those emails would come to light, and that was at page T3296.

Mr Sheppard did agree, in his evidence, that action could have been taken more quickly but noted that:

> "We felt because of the public inquiry the executives concerned should be given the opportunity to provide evidence and in order to fully cooperate with the inquiry, we should allow all of the executives to provide their evidence."

And that was at page T3296 to 3297.

Mr O'Neill gave evidence at 3889 to similar effect and that the evidence before the Review would determine who was being truthful. We submit that this shows that too passive approach were taken to this important issue. The more appropriate response in light of the very serious information that there was a prospect that Star had misled its bank would have been for the directors, or the board, to cause an investigation to be conducted into this matter instead of waiting for this Review to reveal the extent of the wrongdoing.

Another example of what we submit was a too passive approach on the part of the board of directors was in relation to Project Zurich, which looked primarily at the patron bank accounts in light of the inquiry of Commissioner Bergin. We submit that that project occurred too slowly and for a lengthy period failed to do what needed to be done, which was actually examine the transactions which had moved through the patron bank accounts.

If I can turn now to the ASX releases on 11 and 12 October 2021. The Star has submitted that there should be no findings in relation to Star Entertainment's ASX releases and no finding that they were misleading. The non-executive directors make the same written submission, and Mr O'Neill submits there would be no basis for a finding.

We submit that it is not for this Review to make a finding about whether continuous disclosure rules were contravened here. However, those releases, and more particularly the 11 October release, is relevant to this Review to the extent that it reveals the directors' attitudes at that time to the media allegations and to the principle of transparency.

Now, important context in looking at the 11 October 2021 media release is that, by this time, the directors were not entirely dependent upon management for their understanding of the allegations. This was because 60 Minutes had aired the broadcast on 10 October 2021, and there had been adjunct newspaper articles about these allegations.

The directors, therefore, were on notice as to the breadth of the allegations by this point in time. In addition to that, Mr Bell, by this point in time, the directors had both Mr Seyfort's report on China UnionPay and the management response which was conspicuous in its omission to deal in any way with the proposition that misleading accounts had been put to NAB.

It is with those matters of context that one should evaluate the 11 October 2021 release, and could I call that up, Mr Bell. It's exhibit H473. Now, the first paragraph refers to the recent media reports and in the second paragraph says:

> "The Star is concerned by a number of assertions within the media reports that it considers misleading. There are constraints on publicly discussing specific individuals. We will take appropriate steps to address all allegations with relevant state and federal regulators and authorities."

So we submit that this release is notable both for what it does say and what it does not say. So it does say that The Star is concerned by a number of assertions within the media reports that it considers to be misleading. It does not say, and does not acknowledge, that some of those allegations were correct. And by this time, some of those media allegations involved CUP.

The primary submission of counsel assisting is that both by what was stated and by what was not stated, a reasonable reader was liable to be led into error and be misled. Each director was asked whether they accepted that by focusing on matters they considered to be misleading and by omitting matters which they knew to be correct, what was said to the ASX was itself misleading. So this matter was expressly put. For Mr Sheppard, this was at page T3254 and 3255; for Mr Heap, at page T3422; for Mr Bradley at page T3533 and 3535; for Ms Pitkin at page T3633; Ms Lahey, at page T3690 to 3691; and Mr O'Neill at page T3843.

In the alternative - and at best, we submit - this approach of calling out certain unspecified matters as misleading but remaining silent on the point that some of the allegations were correct was the same sharp and technical approach that Star Entertainment and The Star now tell us that they eschew.

At paragraphs 46 and 48 of the non-executive director submissions, they point to the haste in which the ASX release was released. We submit that the haste is no excuse for a release in these terms, and if there was not a proper basis for the release in those terms, it should not have been released in those terms.

In relation to the second ASX release, which is the 12 October 2021 release, could I call that up for you, Mr Bell. It's exhibit B3176. And you will see in the second paragraph it says:

> "Recent media reports have asserted that reports prepared by KPMG in 2018 were kept secret and not adequately acted on. These assertions are incorrect."

Now, as a matter of fact, we press the submission that the KPMG reports were kept secret for a significant period of time from AUSTRAC. We say that allegation is correct. However, each of the directors gave evidence, either expressly or to that effect, that he or she would not have approved the two - I beg your pardon, the 12 October 2021 ASX release in terms, had he or she known that Star Entertainment had refused to provide KPMG's reports to AUSTRAC for some 18 months and claiming legal professional privilege.

There, I refer to Mr Heap's evidence at page T3448, Mr Bradley's at page T3541, Ms Pitkin's at T3636, Ms Lahey's at T3692, and Mr O'Neill's at T3842. We submit that the directors ought not be criticised for the 12 October ASX release. We submit that they were misled by management. We agree with them that there should be no adverse findings about them with respect to this ASX release.

MR BELL SC: But there is, perhaps - going back to the 11 October release, there is perhaps a more innocent and nuanced conclusion one could draw about it, which is that it simply reflects that the board at that time had not come to grips with the extent of the problems at The Star of which they are now aware.

MS SHARP SC: Certainly, it would be reasonable to conclude that they had not come to grips with all the problems they now acknowledge. But I submitted there were some important points of context here, Mr Bell, and one of those points of context was Mr Seyfort's report that they received in September, which must have alerted them to the fact that there were some very serious conduct issues on the part of senior management. Then there was the management response to that report provided to the board in early October, and then, of course, there were the media allegations themselves which weren't being relayed by management but which the directors had the opportunity to themselves review via the 60 Minutes broadcast and the adjunct reports in the press.

Mr Bell, can I be clear that counsel assisting do not press any submission that the board is responsible for concealing matters relating to Salon 95 and Suncity from the Review. On the contrary, we - or to the contrary, we submit that the board was misled by senior management about those matters.

There is a key issue in this Review about transparency with the regulator, Mr Bell. Mr O'Neill was examined about this at some length and, in particular, he was examined about an email at exhibit H489. If I could bring that up. I'm not sure that's the right - that's it. Could I ask the operator to go to 0066, please.

And if you look towards the bottom of that page there's an 11 October email from Mr O'Neill to Mr Bekier and Mr Sheppard, and he states in the second paragraph:

> "There is a power of overt and covert work underway which I can assure you extreme urgency to achieve the number one objective imperative at the moment of ensuring the Bell Review remains in camera."

And Mr Bekier was examined about that email on day 35 from page T3849.

MR BELL SC: Mr Bekier or Mr O'Neill?

MS SHARP SC: I beg your pardon. Mr O'Neill was examined about this on the basis that it was relevant to the directors' attitudes to and approach of transparency. Since that time and after the closing submissions - the oral closing submissions of the parties, a new document was produced to the Review. And I will take you to this document. It's an 8 October 2021 board paper prepared by Mr Bekier, which is exhibit S349. If I could call that up. The non-executive directors were not examined about this board paper because it was not in the possession of the Review at the time they gave evidence.

It's exhibit S349, if I could call that up. I might just have to check that. I wonder if we could take - this is the wrong document, Mr Bell. I wonder whether we could take the mid-afternoon adjournment now, just so I can find the correct document ID for this document.

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

MS SHARP SC: Thank you.

<THE HEARING ADJOURNED AT 2:59 PM

<THE HEARING RESUMED AT 3:13 PM

MR BELL SC: Yes, Ms Sharp.

MS SHARP SC: Could I call up, please, exhibit S346. Now, Mr Bell, as I indicated, this was only produced to the Review after closing submissions in chief, and if you will note this is a board paper dated 8 October 2021 prepared by Mr Bekier in relation to the media allegations, and you will see under the heading Objective:

> "The primary objectives of the media response plan are to contain the story and avoid the approach to The Star Sydney review underway being altered such that it is conducted by way of public hearing."

This, in a sense, casts new light on the email exchange that Mr O'Neill was examined about, the one with the overt/covert work reference underway. This board paper does raise a question of the directors' attitude and approach towards transparency with the regulator. Therefore, the solicitors assisting you wrote to the non-executive directors' solicitors requesting statements from them in relation to this board paper. And those statements were provided by Mr Heap, Mr Bradley, Mr Sheppard, Ms Pitkin and Ms Lahey on 23 June.

And the responses were similar in effect. So what I might do is take you to the statement of Mr Heap as an example. And can I take you to exhibit S496. Now, Mr Heap sets out at paragraph 1 the matters he was asked to address in his statement, and, in particular, at subparagraph (b) how he considered that the objectives stated by the board - in the board paper, which I've just taken you to - is consistent with Star Entertainment and the board acting transparently with the authority.

And each of the directors said in their statements that they did not consider that a public hearing would be in the best interests of Star Entertainment, and that is why they wished for the Review to be heard in private. And using Mr Heap as an example, you will see at paragraph 3 that he explained that - in the second sentence - he was aware that your report would be made public and that he did not expect a private or alternatively a public hearing to have any impact on the outcome of the Review or make any difference to the level of cooperation that Star Entertainment provided.

However, he thought that private hearings would have less of an impact on Star Entertainment's day-to-day business and operations, and he was concerned that a public hearing would have secondary impacts, for example, requiring Star Entertainment to deal with external stakeholders hurriedly and so on.

So if you then go to paragraph 5 on the next page. Mr Heap says:

> "It was my understanding the other directors shared my view that a public hearing could create significant secondary consequences for Star Entertainment."

And then at paragraph 6 - I beg your pardon, paragraph 7, he explains that he does not consider there is any inconsistency between a desire for the Review to be conducted by way of private hearings and Star Entertainment and the board acting transparently. So we submit that there is no basis for you to conclude that the directors had any wish other than to be transparent.

Now could I move to the final topic, Mr Bell, which is to make some submissions on the question of present suitability. As you are aware, The Star and Star Entertainment have submitted that it is open to you to find that they were not suitable at the time that this Review was commenced. However, they submit that you would find that they are presently suitable. And we wish, in this last part of our reply submissions, to respond to that proposition.

We start by reflecting on the extraordinary situation that has transpired before this Review. It is one that is characterised by misconduct amongst a broad spread of senior management. It is a situation where members of senior management actively concealed important matters from the board, and repeatedly breached the trust that ordinarily exists between the board and senior management.

As Mr Sheppard said in his oral evidence at page T3743:

> "The whole system is ordinarily reinforced by trust between the board and management."

The situation is also an extraordinary one because members of senior management repeatedly misled the casino regulator. We submit that in these extraordinary circumstances, you would need to be persuaded by very compelling evidence that The Star and Star Entertainment are presently suitable. And we submit that evidence does not exist.

What the evidence does establish is that there has been a delinquent culture among the ranks of senior management. That's number one. Number two, there has been a very serious failure of the risk management framework and a very serious failure of the second line of defence. And, three, there has been an absence of a culture of

compliance in terms of money laundering and counter-terrorism financing obligations.

And this culture of compliance is very important, we submit, Mr Bell, because it mediates between two competing objectives or interests. And one of those competing interests or objectives is the ordinary commercial imperative to make as much money as possible. And the other objective is to appropriately identify and manage risks of money laundering and terrorism financing. And, of their nature, these two objectives will from time to time come into conflict.

The way in which that conflict of interest is ordinarily managed is through a culture of compliance, that is, culture that puts the need to comply with money laundering and terrorism financing obligations ahead of commercial imperatives. And that culture of compliance has been absent in numerous respects, as demonstrated in the significant failings ventilated in this Review.

You may ask, in terms of determining whether The Star and Star Entertainment are presently suitable, what has changed since the commencement of this Review where The Star and Star Entertainment say it is open to find that they were not suitable. And some things have changed. Firstly, there have been a significant number of resignations. Many of those resignations are drawn from members of senior management. In addition, the chairman, Mr O'Neill, has resigned, and all of the non-executive directors, save for Mr Heap, have indicated their intention to cease as directors in the nearish future.

Secondly, there have been suspensions or an end to areas where misconduct has occurred. So the CUP payment channel was closed down in March of 2020. In September 2020, it was announced that junket operations would be suspended, and on 9 May 2022, it was announced that all domestic and international rebate programs would be suspended.

In addition to that, the EEIS bank accounts have been closed, and steps are being taken to deregister EEIS. Additionally, a number of patrons of concern have been excluded. Additionally, the overseas offices have been shut down. So on 29 June 2021, the offices in Singapore and Hong Kong - sorry, I think I've got that wrong. I will say between 29 June 2021 and January 2022, the offices in Macau, Hong Kong and Singapore were shut down.

Many overseas-based members of staff have been made redundant or have resigned or have been returned to Australia. Next, some investigations have recently been completed, and principally amongst those is the Gadens report. However, given the time at which it was completed, it has not been possible to investigate the - or interrogate the findings in that review and the processes that have been followed.

And next and finally, there have been a number of important concessions and admissions made as to past misconduct. And this is said to show current insight on behalf of the board and the corporate organisations. But, Mr Bell, in the main, these concessions have come at the point of closing submissions and not earlier than that. And a number of the concessions have been caveated in important respects.

We point to the following matters as indicating that Star and Star Entertainment are not presently in a state of suitability. Firstly, insight has, by and large, come very late in the piece. There has been a distinct change of course part-way through the public hearings of this Review and distinct change of tone. And one may observe that tone if one has regard to Mr O'Neill's statement prepared in February this year before the public hearings commenced, and contrast that with the far more limited concessions that have been made in closing submissions.

To date, very little has been said about why these problems have happened and why this misconduct occurred. Very little has been said about why the culture was dysfunctional to the extent that it was and why the second line of defence under the risk management framework failed so fundamentally.

So we submit there is still the need for a further period of reflection and investigation to understand how this could have gone so wrong. It is correct that there has been a significant uplift in the AML and CTF framework, but that is not something that has changed since this Review commenced. That uplift commenced from around August of 2018, but - and in light of findings and recommendations made by KPMG in mid-2018.

But, Mr Bell, one of the problems here has not been with stipulations in the program or in the adjunct documents, but with the culture and with the absence of a culture of compliance. And we submit that you would reject the submission made by senior counsel for The Star and Star Entertainment at page T4158 that there is already a strong foundation for a proper and sound approach to risk and compliance in relation to AML and CTF, because what you have - or we submit what The Star and Star Entertainment have not addressed is what has gone wrong with the culture of compliance, nor how those problems can be remedied.

The next point we make is there is still much uncertainty. There are a number of matters that are not presently known to you, which means that they cannot feed into any assessment about present suitability. We do not know who senior management will be. We know that many board members are intending to depart, but we know very little about who will replace them.

Some longstanding investigations remain outstanding, for example, the fake letters given to the Bank of China. Some inquiries and audits have recently been initiated to get to the bottom of areas where there is potential misconduct. For example, there is evidence that, in very recent times, KPMG has been retained to audit

certain matters in relation to the payment of duty under the auspices of Project - I think it's Ravenscourt.

Next, there are various statements in evidence that Star Entertainment and The Star will consider matters, but that is as far as it goes. There is no certainty. And, lastly, the uplift program or, as it's sometimes described, the renewal program is still in a fairly embryonic state. It is also worth noting that a number of documents were sought to be tendered by The Star and Star Entertainment after oral closing submissions had been made by counsel assisting and at a point in time where it was not possible to test those documents.

And that was a forensic choice that was made where those documents were in existence prior to the close of the evidence. And that is a matter that does reflect on transparency, we submit.

Those are the matters we say that you would consider in assessing whether Star and Star Entertainment are suitable to be the casino operator and close associate respectively, and those are our submissions, unless I can assist in any further way.

MR BELL SC: Yes. Thank you, Ms Sharp. Ms Richardson, it seems to me there are two respects in which Ms Sharp's submissions today went beyond the pure reply and which you should have an opportunity to respond. The first of those is clause 1.2.1 of the CUP scheme rules and the issue of that - whether that prohibited card has been used for gambling.

And the second is the question of whether there were breaches by Star in respect of Salon 95 under the Unlawful Gambling Act and under section 124 of the Casino Control Act. And if you choose to do so, I would give The Star and Star Entertainment leave to put on written submissions on those two matters by 5 pm this Thursday, 30 June.

MS RICHARDSON SC: We would appreciate that opportunity. Thank you.

MR BELL SC: All right. Is there anything else that either you, Ms Richardson, or you, Ms Sharp, wish to say or Mr Henry?

MR HENRY SC: No, thank you.

MS SHARP SC: No, thank you, Mr Bell.

MR BELL SC: Yes. Well, in those circumstances, that is expected to conclude these public hearings, and I will now adjourn.

<THE HEARING ADJOURNED AT 3:38 PM