



**NEW SOUTH WALES INDEPENDENT CASINO COMMISSION**

**THE INQUIRY INTO THE STAR PTY LTD & THE STAR  
ENTERTAINMENT GROUP LIMITED**

**PUBLIC HEARING  
DAY 16**

**WEDNESDAY, 15 MAY 2024**

**INQUIRY BEFORE MR ADAM BELL SC**

**COUNSEL ASSISTING:**

**MR C. CONDE WITH MR D. HABASHY**

**MR B. WALKER SC WITH MR I. AHMED SC, MR P. HOLMES, MR D.  
WONG, MR H. ATKIN AND MS E. FORSYTH FOR THE STAR PTY LTD  
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**DR J. RENWICK SC FOR WITNESS ROBERT COOKE**

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<THE HEARING IN PUBLIC SESSION RESUMED AT 11.49 AM

**MR BELL SC:** Yes, Mr Walker.

5 **MR WALKER SC:** Thank you, Mr Bell. I am going to address more or less in  
the order of matters that you will have seen in the organisation of our written  
submissions. My learned friend, Mr Ahmed, will follow in relation to matters of  
culture, which comes more or less at the end of the sequence of the topics that I'll  
be addressing.

10

But at the outset and in light of the written submissions of Counsel Assisting, both  
sets, as well as their addresses, I need to address questions about the nature of your  
Inquiry and, in particular, the form and substance of your report concerning, in  
particular, the matter of so-called clear and convincing evidence, upon which so  
15 much emphasis has been placed.

In a nutshell, you will commit an error, a serious error, of approach by accepting  
those arguments across the board.

20 Can I start with the functions of NICC which, of course, provide the foundation  
for the assistance that you have been required to provide. They are perhaps  
ponderously provided in a number of places, and if I can take you to the Casino  
Control Act. Redundantly, paragraph 136(1)(a) stipulates that NICC has functions  
conferred by the Act and, for that matter, under paragraphs (b) and (c), by other  
25 legislation. Unnecessary in any case to have stipulated, obviously.

137 can be noted to be passed over. This is not a case of delegation of function.

I then need to take you, in particular, to section 140 and section 141, which  
30 provide an example of 136(1)(a). First, in 140, the objects include the maintenance  
and administration of systems for the supervision and control of a casino. And that  
description of general function has, in the objects provision, stipulation as well of  
the purpose that is then set out in the five items - so the four items as they now are,  
that follow in section 140. In particular, we would draw to attention, obviously  
35 enough, paragraph (d) of section 140, given the breadth of the notion of harm to  
the public interest and the question of a potential.

Under section 141, generality is reintroduced of a kind that is familiar in such  
statutes, the necessary or convenient category of functions in order to achieve  
40 objects. And then with respect to specific functions, can I draw to attention that  
there is a separate reference in paragraph 141(2)(b) to the consideration and  
determination of applications for licences other than those which preceded the  
grant of a licence to our client under paragraph (a). So the licensing, by way of  
consideration and determination of applications for them, are the first two  
45 functions specified.

Paragraph (c) is obviously germane to what's happening here; that is, the function  
of keeping under constant review all matters connected, et cetera, et cetera. That

could not be sensibly, usually, done in ignorance of the possibility of the function under paragraph (e), advising the Minister.

5 And against that background, one then moves to section 143, which in sub-section (1) bestows power to arrange for the holding of inquiries such as yours, because they are for the purpose of the exercise of functions.

10 Of course, the critical feature of the Inquiry is that it is to be conducted in accordance with the statute, which obviously includes the Terms of Reference which are, of course, permitted to be devised according to the power of the NICC to arrange for the holding of the Inquiry.

15 You are, of course, very conscious of the dispensation in sub-section (3) of section 143 of not being bound by the rules or practice of evidence and having the capacity to inform yourself on any matter in such manner as you consider appropriate.

20 The function with which your duties culminate is to report to the NICC on the results of the Inquiry, the Terms of Reference, of course, being a form of the control and direction of NICC with respect to the matters that are to be the subject of inquiry. Similarly, procedures and the time for reporting. As I say, this is not a function of NICC delegated to you, but rather, assistance to NICC by you pursuant to section 143.

25 The Terms of Reference in this case are, of course, very familiar to you, and at the heart of the question is the fact that, as we speak, there is an actual licence suspended and what I'm going to call a deemed licence by reason of the appointment of Mr Weeks as manager.

30 The words of the Terms of Reference are a combination of some of the phrases that you'll find in the statute - in particular use to which I'll come in a moment. And paragraph 1 of your Terms of Reference uses the expression "suitability" by reference to being concerned in or associated with the management and operation of The Star Casino. That, of course, refers to a state of affairs since your first  
35 report and doesn't go back to the day of an application having been successful.

In paragraph 2 of your Terms of Reference, there is the explicit requirement to refer and use as a point of departure your first report. I'll come back to that later.

40 Paragraph 3 then refers to matters which concern the period since your first report and which, to a degree, and in ways which are relatively obvious, involve some questions of the future, that is, prospective assessments. And that is true, most obviously, with respect to the financial matters upon which you have just heard an address, but as you'll appreciate, consideration of each of the four matters  
45 specified in paragraph 3 of your Terms of Reference will obviously involve consideration of the past, including the near past, as well as the future, including that which might be regarded as imminent on the one hand, or what might be regarded as more distant or remote on the other.

Now, against that background, one comes to the text of the Act by which it has been pressed upon you that you are bound to proceed in a way that will decline to make or reach conclusions, except on the basis of clear and convincing evidence.

5 That does not appear from the statute at all, and it is, in our submission, a bad misreading of the statute for this to have been introduced as a distraction. If you were to follow it and direct yourself accordingly and shape your report on that basis, you will commit an error as to lawful procedure.

10 Let me explain. We know that the statutory text upon the basis of which these distracting arguments have been put to you is sub-section (2) of section 4B, which imposes an onus, which is language familiar from, of course, adversarial litigation of which this Inquiry is absolutely not an example. But the onus is imposed  
15 nonetheless in this Inquiry by 4B(2) to give clear and convincing evidence of the relevant person's suitability - that word again - in relation to the assessment to be made by the NICC, which I'll come back to in a moment.

The assessment is one, of course, that has to do with the occasion upon which, in terms of sub-section (1) of section 4B:

20

".. the NICC is required to be satisfied of or form an opinion about the suitability of an applicant for a licence, a casino operator, a close associate, a special employee or another person ..."

25 Those are the relevant persons, and in each case the suitability:

"To be concerned in or associated with the management or operation of a casino or to give effect to a casino licence and this Act."

30 At the moment, of course, and before you there is no such occasion. The words are themselves clear as to the description of the occasion for the imposition of the onus with its description of, I'll call it standard in 4B(2), namely:

35

".. if, under this Act the NICC is required to be satisfied of ..."

Et cetera. There is no such occasion that you have been asked to advise on. Obviously enough, there may come to be such occasions, and, indeed, there may well have been such an occasion, properly understood, as a result of your first report leading to the suspension. That is not this Inquiry.

40

Can I, at that point, digress very slightly by way of legal background from the terms of the statute to remind you that it is a commonplace to observe the difference between your approach to fact-finding or consideration of evidence and the making of a report and the decision of adversarial litigation, criminal or civil,  
45 which is, as has been repeatedly pointed out, not an exercise in truth discovery, but, rather, the determination of an issue between parties by reference normally to the allocation of onus and the satisfaction or not of a standard of proof applicable to the case of the party bearing an onus.

There is no analogue of any of that in your Inquiry. Rather, your report should, as we have written, embrace the obviously functionally useful purpose in terms of responding to your Terms of Reference of reporting to NICC - that is, giving them the benefit of your views - with respect to the matters described in the Terms of Reference, none of which, in themselves, constitute an occasion upon which the NICC is required to be satisfied of or form an opinion about suitability, relevantly, of a casino operator.

10 And I stress, there is nothing here that partakes of an occasion where the NICC is required to be satisfied.

15 It's for those reasons, in our submission, that the notion of an allocation of an onus, or the description of the quality of evidence - that may, of course, not be the same as to the description of a standard of proof - by the terms "clear and convincing" are a red herring and will mislead you and will deprive your report of what would otherwise be, in my respectful submission, a most useful assistance to the NICC.

20 **MR BELL SC:** Can I just understand that a little bit better? The origin of section 4B was a recommendation in the Bergin report which was to the effect that, in all suitability assessments, there should be a statutory onus on the entity being assessed to provide clear and convincing evidence. It was actually drawn from Massachusetts legislation. Do you say that the intention of the Bergin report has missed its mark because I'm not the NICC? Or because the - or for what reason  
25 precisely?

30 **MR WALKER SC:** The short answer is "No" to the first part of the question, but I need to elaborate. Properly understood, what the Bergin report produced by way of the response in the drawing of 4B is one which focuses upon the discharge of a function by the NICC, which function is imposed by reference to the NICC's satisfaction of something. I'll call it "suitability", in shorthand. There is nothing wider than that, or beyond that, that one could see recommended by the Bergin report so as to say that 4B has miscarried, either by being narrower or being beside the point.

35 So, no, we are not saying in my argument that 4B has somehow failed to give form to the suggestion in the Bergin report. I know you won't take this the wrong way when I say, as eminent as reporters are in this area, they don't make the law and they certainly don't enact it. So 4B is the test, not what the Bergin report says. But  
40 may I hasten to say, 4B is a faithful, and with great respect to the drafters and the enactors, a sensible way of giving effect to that recommendation. The report, in short, is not mis-served by the reading that we put of 4B.

45 Now, the reading we put is not controversial in this sense. It's not just textually possible to escape the description "the NICC is required to be satisfied" or to note that it is describing an occasion, that is, by the phrase "if under this Act", or to say that this is where section 4B operates, because it starts off with the words:

"This section applies if ..."

5 So, textually, it's inescapable that you need to be able to nominate such an occasion and then one says that with respect to NICC's requirement of being satisfied, there will be an onus on the so-called relevant person to give the NICC clear and convincing evidence.

10 Now, you have not been asked by your Terms of Reference to imagine that there is such an occasion. I'm not saying that there could not be Terms of Reference to that effect. The power under section 143 is a very broad power, but it's constituted, of course, by the Terms of Reference. And you have not been asked by the Terms of Reference to imagine either an application for a licence or for the other possibilities that have occurred - that might occur.

15 Now, that is really significant because of your first report, which resulted, of course, in due course, by a number of steps that we don't need to go into, to suspension. And could I remind you of the significance in this area of the notion of discipline, which is at the heart of the argument concerning the functions of NICC and the degree to which this Inquiry might be regarded, wrongly - wrongly - as  
20 being, as it were, a proto or provisional performance of one of NICC's functions. It is not.

**MR BELL SC:** Just before we leave 4B, I'd be grateful for your help with another aspect of that. Obviously part of the Terms of Reference involve an assessment of  
25 the suitability of Star Entertainment as a close associate. It is an existing close associate.

**MR WALKER SC:** Yes.

30 **MR BELL SC:** Assuming that The Star is not presently a casino operator, how would 4B apply to an assessment of the suitability of Star Entertainment as a close associate?

**MR WALKER SC:** The assumption you've made is really not borne out by the  
35 statute. Could I just flag that I am about to address you in particular on section 25 and 28. Could I ask you to hold that thought. I'm going to come back to your question, but I want to put it in a reading of the disciplinary provisions which undermine the notion that there is no casino operator.

40 And the licence is suspended, as opposed to cancelled, and it exists in the sense that, as lawyers, we understand things in suspension continue to exist, that is, suspension can be lifted. So it's an existence which is special, but there is no magic in the notion of a licence being suspended as opposed to cancelled. It means it has an existence.

45 And so the puzzle that you've asked me about, how can one look to a close associate of a casino operator if there is no casino operator, is not a puzzle. Read contextually and purposefully, it's a sensible request to you by the NICC to

consider the position of both the person who is the holder of the suspended licence, the casino operator - a casino operator is not allowed to operate the casino; I'll come back to that - and then the fact that, obviously, there can be a close associate of such a person.

5

**MR BELL SC:** By all means come back to it when you see fit. Another aspect that I'd be grateful if you'd return to in due course is why section 4B isn't substantially identical to the requirement in the Victorian legislation that the regulator needs to be clearly satisfied of suitability. Please come back to that when you see fit.

10

**MR WALKER SC:** Yes, can I flag, in short, a response to that? It's not, in our submission, an approach to statutory interpretation which is safe to see, for what I'll call political reasons - I mean political in the best sense, government by legislation upon matters of public policy - to see variant forms of enactment. And we have it in so-called national schemes very frequently in this country where something is done by State and Territory legislation in so-called cooperation which is not always perfect, rather than Commonwealth legislation. It's not always useful and usually is, again, distracting to say of differences that they don't matter. If you have to, you will have to make such a difference.

15

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So the fact that the Victorians did it differently really doesn't end up one way or the other, that is, it would be no more logical to say that what we have enacted means the same as what they have enacted, as to put it the other way around.

25

Now, I'm bound to say, nonetheless - and this is not a very frequent occasion - that they probably did things better south of the Murray in this case, that the reference to the degree of satisfaction is probably hitting the target more centrally than the collateral reference to the nature of evidence.

30

Now, they are obviously related, but for reasons I'm about to come to, it would be an arid exercise for you to explore whether they really mean the same thing, and it would be a misleading approach for you to go and say, "I start by saying they mean the same thing; therefore, New South Wales means what I think Victoria means". That is circular and is not useful for you.

35

I'm afraid you have to interpret 4B for yourself, but, as I've been putting to you, it does not, in fact, arise in your Inquiry.

40

I am going to come back to the interpretation of 4B, particularly by reference to what has been written and spoken this morning concerning the common law - or perhaps I should say the equity - of a rectification case, which is probably the source of the near alliteration of "clear and convincing", and it's an unfortunate one.

45

But what I want to draw to attention is that when there is disciplinary action under section 23, as you are aware, the grounds which are exhaustively stipulated include, obviously enough, (d):

"The casino operator is, for specified reasons, considered to be no longer a suitable person."

5 Then that's a phrase that is significant for you to give effect to the licence and the Act. It's significant because that phrase, which is a ground for disciplinary action, is not your remit. It doesn't mean that what you say may not inform the discharge of the function of the NICC to give consideration to the possibility of further disciplinary action, but it is not, either by way of delegation or by way of Terms of Reference, mirroring what the NICC may or may not do. It is not the same. That's the first thing.

15 The next thing is that, obviously enough, there is a straightforward procedural fairness stipulation in section 23 which, to put it mildly - see subsections (2) and (3) in particular. To put it mildly, nowhere assigns an onus to the person against whom disciplinary action is assigned. Rather, in a familiar way, there is a show cause procedure, which some may say allocates an onus, but of course doesn't, in truth; it provides an opportunity for there to be an answer to a suggestion.

20 And in particular, section 23, particularly its subsection (3), does not, as to the submissions that are permitted under it, gel with the notion of so called clear and convincing evidence, which is the subject matter of 4B(2)(a).

25 So if one's talking about disciplinary action, you can see immediately it being at the heart of the retrospective control mechanisms within the functions of the NICC over the conduct of a casino, that 4B simply doesn't have an application there. We then come to the possibilities upon the making out of one or more of those grounds for disciplinary action. And they include, as part of the one item, cancellation or suspension of the licence.

30 Now, that's significant because there is nothing automatic by which somebody who should be considered to be no longer a suitable person to give effect to the licence and this Act, there is no automatic equation of that as a state of affairs which ought produce cancellation. That's why, when one considers the regime as to the original application for a casino licence - to which I'm going to come back - commencing in section 10, there is an application, obviously, of 4B to that occasion, but not with respect to the question that is covered in section 23.

40 Clearly enough, when one comes to the notion of suspension, you are contemplating that there will still be, in this state of suspension, a licence that may come back into full effect by reason of section 25(2). And one sees in section 25(1) a stipulation as to an aspect of the nature or the character of being in suspension.

45 One also knows that apart from suspension as an alternative to cancellation, there can be a rectification order - see section 24 - and that as well contemplates under this statute that a person considered no longer suitable, nonetheless may keep the licence, not even suspended, but subject to an order for rectification.



The same is true, obviously, for pecuniary penalty under section 36, and then, with real teeth on, the introduction by section 26A of enforceable undertakings, a device familiar from other areas of regulatory law with which you are familiar.

5 And those enforceable undertakings are one of those which can follow as disciplinary action under paragraph (c1), of subsection (1) of section 23, upon one or more of the grounds being made out.

So, again, there can be a finding, say, under (d):

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".. considered to be no longer a suitable person to give effect to the licence and this Act."

15 With that being a situation that NICCC, within its discretion and discharging its functions, including disciplinary functions, can meet by the imposition of an enforceable undertaking.

20 Now, going back, then, to those disciplinary actions and the voluntary surrender - see section 27 - namely, those things which affect the status of the licence itself, in section 28 there is a reference to the state of affairs which we have in this case, namely, the appointment of a manager. It is a flexible remedy - see subsection (3) of section 28. And, in particular, it does not impose anything which is beyond the control of the NICCC, see subsection (4).

25 There is then, in line with what is called - what might be termed the deemed licence position, the state of affairs created by the legislative provisions in paragraph (a) of subsection (5) of section 28, which, in particular, involves this notion of assuming full control of and responsibility for the business of the casino operator - so that is an entity that still exists in terms of the statute as being the  
30 "casino operator" in respect of the casino - but as you can see, the combination of paragraph (a) and paragraph (c) and paragraph (d), in particular, one can see - of subsection (5), one can see that it's the manager who, as a matter of ordinary English, is the operator, notwithstanding that there continues to be an entity, not the manager, who is called the casino operator.

35

Now, those are, in our submission, powerful indications that in the present state of affairs, as contemplated by the statute, the casino operator whose licence continues to be suspended is contemplated by the Act as one who is, as the casino operator, not suitable, meaning not currently suitable. Or to pick up the language of the  
40 statute, who has been in the relevant past - perhaps as a result of your first report, for example - considered no longer to be suitable. And I stress, this statute does not say, in that case, that casino operator ceases to be a casino operator automatically.

45 It stands in contrast to the entry into the field of operation so closely regulated with those nuanced and wide-ranging responses to deficiencies of performance that I've just been referring to, stands in stark contrast the entry into all of that pursuant to section 10 and following.

So after a public invitation, which is obviously the public invitation being an aspect of probity, learned perhaps the hard way concerning casinos globally, we then come to the deliberate way in which suitability is at the heart of the  
5 determination of an application for a licence. And one sees immediately conjured up in paragraph (a) of section 11, which refers to the all-important section 12, you find suitability.

10 In other words, the paradigm - I don't say the only - but the paradigm of the occasions referred to in 4B(1), namely, a case where "the NICC is required to be satisfied", et cetera.

Now, under section 12, that is reinforced and spelled out. Subsection (1), must not grant unless satisfied so and so is a suitable person, et cetera. That's what 4B is  
15 directed to. And then under subsection (2), section 12, the mandatory considerations by the NICC in considering that question, that is, suitable person to be concerned in or associated with the management and operation of a casino, calls up in paragraphs (a) to (h) matters that you could probably recite from memory, and which, for example, we finished our written submissions by going  
20 through.

There are suitability provisions, both explicitly and implicitly, contained in a number and perhaps even all of those matters. Can I draw to attention that  
25 suitability is to be found with respect to applicants and persons, close associates - in (h), the reference to "a suitable person" - and then one finds the word "suitable", though not the notion "suitable person", used with respect to financial resources, germane, obviously, to what you've heard about this morning, in paragraph (d) of subsection (2) of section 12.

30 And there the reference is to "both suitable and adequate", and may I just, as briefly as I may, endorse the notion that that is not meant to be, we think (indistinct), that is, really two words really meaning one thing. We think suitable means free of taint, and adequate has to do with the amount of money.

35 Now, that is not to say that there is nothing qualitative, to use my learned friend's contrast with quantitative, but money is money, credit lines are credit lines, all money is good, not all credit lines are so good, so adequacy will always involve consideration of qualitative matters. But, at the end of the day, they are financial  
40 resources we are talking about.

In this case, in this Inquiry, there is, as we understand it, particularly with the unqualified answer by my learned friend to your question, no question of taint. And so we really are talking about adequacy. I stress, of course, that involves  
45 qualitative questions, not really quantitative questions.

Financial resources under 12(2)(d), one of the mandatory considerations with respect to an application for casino licence is obviously future directed because it's a person without a licence applying for a licence, and the financial resources as to

their adequacy are to be considered with respect to that strong word "ensuring" - that looks to the future - "the financial viability" - that looks to a journey, that is, into the future - "of the proposed" - that means future - "casino". So the whole of that exercise is future directed.

5

With respect, that is a very different state of affairs, that is, whether you will let somebody into this very privileged, quasi-monopolistic area of enterprise, that is a very different question from what obtains later with respect to disciplinary action after somebody has got a licence which potentially, if not cancelled or

10

surrendered, may be suspended or may be accompanied by enforceable undertaking or rectification directions.

That is enough to indicate that 2B is not, with respect, engaged - or 4B, I should say, is not engaged with respect to your Inquiry.

15

Now, as we have been at some pains to point out in our written submissions, that doesn't mean that we are inviting you to be less than rigorous in any sense in your assessment of the material that has been assembled by everyone involved from whom you have heard or received assistance concerning the matters which are required to be reported on by you to NICC by reason of your Terms of Reference.

20

I hope it is true that there is nothing to that effect in our written submission. There won't be anything to that effect in the next part of that written submission, and I don't intend anything that I or my learned friend Mr Ahmed will speak to you, is to be interpreted in that fashion. But it is, in our submission, a distraction which could mislead you to be referring to onuses and clear and convincing evidence with respect to matters which are inherently the subject of contestable evaluations on scales of optimism and pessimism about something which none but the foolish would regard as certain, namely, the future.

25

30

And in particular, the future of a trading enterprise where nothing can provide anything like certainty as to the conduct of customers, would-be customers, for example, in the future, any more than one can predict how expensive labour will become by reference to industrial conditions in the future.

35

These are, by definition, the risks of business. By definition, the existence of risk is less than certainty, and there is nothing in this statute to suggest that the conduct of a business which requires attracting people to put their money on the table, literally and figuratively - there is nothing to suggest that the Parliament intended that that be risk-free in the sense that you would be guaranteed, for example, certain levels of EBITDA.

40

Rather, you in your report should focus, with respect to the question of financial matters - that is, the resources, financial resources referred to in paragraph 3.2, you should, as your Terms of Reference require you, not determine that in a pseudo-adversarial fashion unless we adduce clear and convincing evidence you give, as it were, a zero or nil response, but, rather, that is simply a "No" - and our

45

friend's argument this morning and in writing comes perilously close to that misleading approach.

5 You are to answer that question by reference to the cogency, as it may vary, as to  
different aspects of it, of the evidence which has been presented to you by  
everybody who has presented evidence to you, including such questions of the  
acceptable degrees of unavoidable business risk, that is, enterprise risk, which is  
palpable from an appreciation of the whole of the Casino Control Act. Nowhere is  
10 there any guarantee or anything like a guarantee concerning profitable trading.

**MR BELL SC:** Could I invite you back, if I may, to section 4B? At the very great  
risk of oversimplification, is your point, in essence, that it doesn't apply because  
The Star is neither an applicant for a licence, nor a casino operator, and because  
The Star Entertainment is not a close associate of an applicant for a licence or a  
15 casino operator?

**MR WALKER SC:** No - the first part, yes, not the second part. I want to make it  
clear that though we are not allowed to operate the casino - or, to put it another  
way, the manager does to our exclusion, in a number of ways too much should not  
20 be made of that - certainly not in our favour.

The first thing is something you've already heard about. We are not here to say,  
"It's not us; it's Mr Weeks." So anything that has gone wrong while on his watch,  
so to speak, we are clean skins. That would be insultingly absurd. We don't put it.  
25 And you've not heard anything from any of us or read anything from any of us to  
that effect, and for obvious reasons. I don't need to elaborate on that.

The second thing is - and we are, within the language of the statute, and with its  
obvious intendment concerning the status of a suspended licence, sensibly  
30 called - in any event, sensibly or otherwise, we are called the casino operator. And  
we are the casino operator because we made an application which succeeded, and  
it hasn't been cancelled, and we haven't surrendered it.

As you would appreciate, if I may say so, with respect, more than anyone, it is of  
35 the highest public importance that a casino operator be held to relevant standards,  
regardless of any discomfort it may feel about having that status. If the discomfort  
becomes sufficiently great, it surrenders. And there is self-interest in being a  
casino operator, as you appreciate. And so if you don't surrender you are, though  
your licence is suspended, still the casino operator.  
40

And that's why it's sensible for you, with the assistance, as it happens, both  
indirectly and directly, of Mr Weeks, to be considering people who are not  
Mr Weeks and are not his staff with respect to the questions you asked in your  
Terms of Reference. And they are sensible questions because we are the casino  
45 operator or, my other client, a close associate of the casino operator under the  
suspended licence.

5 So that's why, no, not the second way you put it at all. The contrary. That's not why I say 4B doesn't apply, because we are a casino operator. What we are saying is that this is - this, your Inquiry - I stress your Inquiry, not what NICC may do with the report. That's different. But this, your Inquiry, is not an occasion of the kind that 4B provides for.

**MR BELL SC:** Because of the manager's appointment?

10 **MR WALKER SC:** No, because you are not NICC, and this is not an occasion when NICC is required to be satisfied or form an opinion about the suitability of - and I'll skip over applicant - the suitability of a casino operator. Contextually, that makes a whole lot of sense, because your first report had a few things to say about what might be called suitability.

15 **MR BELL SC:** I'm just trying to get to the core of it. The core of it is that section 4B(1) doesn't apply because the assessment of suitability that I have been asked to conduct is not an assessment by the NICC itself?

20 **MR WALKER SC:** No, and, in particular, it's not one where the NICC is required to be satisfied of anything. The NICC is not here. I'm not addressing a delegate of the NICC.

25 **MR BELL SC:** I see. So the words, for example, "or another person" at the end of 4B(1) are not significant in your analysis either?

**MR WALKER SC:** None at all, no.

30 **MR BELL SC:** Because it's whether I'm exercising the functions of the NICC or not.

**MR WALKER SC:** Suitability is of one, two, three, four, five classes of personage: Applicant for a licence; a casino operator - that's somebody who has succeeded in a previous application, obviously, even if suspended; a close associate - they continue to be a close associate even if the casino operator is in a state of suspension; a special employee; or another person.

35 So those are the personages with respect to whom suitability is posited as being an issue that the NICC is required to be satisfied as to suitability.

40 **MR BELL SC:** And -

**MR WALKER SC:** That's not this Inquiry.

45 **MR BELL SC:** So you say that The Star and Star Entertainment don't even fall within the words "or another person"? Or is it more a matter that I'm not exercising the NICC's functions?

**MR WALKER SC:** Not the first. Yes, the second.

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

5 **MR WALKER SC:** And you should not take on this special provision with respect to the NICC in giving your report, responding to Terms of Reference, which, in our submission - Terms of Reference which speak for themselves as to who is inquiring - it's you, not NICC - and it doesn't actually require you to be satisfied of anything.

10 Now, required to be satisfied, that's a prerequisite or condition of a power. So there is no power to grant - and I'm sorry if I'm labouring this, but there is no power to grant a licence upon an application unless NICC is satisfied. But you're not granting a licence, and your satisfaction is not a prerequisite to anything. Your state of satisfaction, confident satisfaction, vehement satisfaction, not so much  
15 satisfaction, real doubts, the whole gamut - the whole gamut - all of that, all of it is appropriately to be reported by you.

Indeed, and with great respect, the subtleties of that range are precisely why your report after this Inquiry could be of such value to the NICC in it considering the  
20 possibilities - not certainties - the possibilities of what it may or may not do in discharging its functions. I stress, you are not a delegate of NICC. This is not an occasion where you are required to be satisfied of anything. This is not adversarial. I'm sorry you've only got barristers before you, but the truth is, we do things other than adversarial, as you are living demonstration.

25 And the fact is this is distinctly not adversarial. One is reminded of the warning - and I'm sorry I haven't given this to you, but it's apropos this morning - in the case that I'm going to call Wu Shan Liang, 185 CLR 259, with respect to administrative decision making, at page 282, Brennan CJ and Toohey, McHugh and Gummow JJ said, as following - it's a short passage; I'll read it. Their  
30 Honours said:

"We should mention one further matter. Submissions were made at the hearing of the appeal ..."

35 This is an appeal from a judicial review with respect to some administrative decision-making:

40 "... as to the correct decision-making process which it would have been permissible for the delegates to adopt the submissions were misguided. They draw too closely upon analogies in the conduct and determination of civil litigation. Where facts are in dispute in civil litigation conducted under common law procedures, the court has to decide where, on the balance of probabilities, the truth lies as between the evidence the parties to the litigation  
45 have thought it in their respective interests to adduce at the trial. Administrative decision-making is of a different nature."

Can I interpolate, I'll come back to point out you are not, in fact, an administrative decision-making; you're an inquirer and reporter to administrative decision-makers. Their Honours then continue:

5 "A whole range of possible approaches to decision-making in the particular  
circumstances of the case may be correct, in the sense that their adoption by a  
delegate would not be an error of law. The 'term balance of probabilities'  
played a major part in those submissions, presumably as a result of the Full  
10 Court's decision which has been corrected. As with the term 'evidence' as  
used to describe the material before the delegates, it seems to be borrowed  
from the universal discourse which has civil litigation as its subject. The  
present context of administrative decision-making is very different and the  
use of such terms provides little assistance."

15 Here I'm not criticising the use of the word "evidence" or "onus" in 4B. That  
would be impertinent on my part and useless. And I don't have to because, for the  
reasons I've pointed out, 4B doesn't govern any of this and it neither requires nor  
permits you to proceed in accordance with its strictures.

20 What you are doing, however, is considering matters which will be grist to the mill  
of the NICC's extremely broad supervisory functions which may or may not  
involve, for example, the giving of directions, rectification after show cause, et  
cetera, et cetera. In particular, it may involve - and this is relevant for our  
purposes. It may involve questions of conditions.

25 You will remember that under section 22, conditions of a licence can be imposed  
by amendment, that is, by process of so-called substitution, variation, revocation  
or addition, and that an amendment under subsection (3) of section 22 can be  
proposed by the casino operator. And as you know, that's happened in this case.  
30 We are the casino operator, notwithstanding in suspension.

And that is a matter upon which, obviously, your report could be most valuable to  
the NICC, who certainly doesn't need to have clear and convincing evidence that a  
condition will be observed in order, say, to think it would be a good idea to impose  
35 it.

**MR BELL SC:** Counsel Assisting put to me that my role is this time, as it was  
last time, to form an assessment of suitability and that, thereafter, that assessment  
may or may not inform any decisions that the NICC might make about the licence,  
40 its continuation or its conditions. Do you accept -

**MR WALKER SC:** That's common ground. That's common ground. That is, with  
great respect, a formulation we wouldn't seek to qualify or improve.

45 **MR BELL SC:** So any subsequent consideration by the NICC, which may or may  
not take any account of my report, which might inform its decision on suitability  
would attract section 4B, even though your submission is that mine does not?

**MR WALKER SC:** It could well. It could well, yes. And I hope I made that clear when I introduced this disposition on the statute. Yes, there is a future in which NICC will be in a position contemplated by the opening words of section 4B(1). Yes. But you must not anticipate that. You must not, as it were, pretend to be the  
5 NICC.

**MR BELL SC:** Yes, thank you. You've made your position clear. I understand your submission, thank you.

10 **MR WALKER SC:** Now, there is only one other thing. There is a reference to Briginshaw in the argument against us this morning, and in the writing. Could I put that - put all of that in this context. For the reasons I've just made clear, we are not talking about an issue upon which there is anything in the nature of a party before you, let alone two adversarial parties, let alone with an issue that is to be  
15 made out or not, that is, a binary outcome, tick or cross.

All of that is wrong and will mislead you and deprive your report of the usefulness one hopes it will have. That's the first thing.

20 The second thing is, therefore, it's really not to the point and will conduce to error to observe, as is no doubt fairly observed, that the expression "clear and convincing" at least finds coincidence - perhaps is explained as a source for the drafter of 4B. And as you know, it's suggested that the source comes from the notion of and the formidable task faced by a plaintiff seeking the equity of  
25 rectification.

It is difficult to propose something more fancifully remote from what you are doing or, for that matter, what section 4B contemplates than that. And one can and should put it altogether out of question. Even worse, the notion of enlisting what  
30 the Americans have done in the area of contempt jurisdiction is not only of no assistance, but is an utter distraction.

I'm afraid the written argument to you cites *Witham v Holloway*, 183 CLR 525 in a way which will not assist you and which we seek to correct. No one has less  
35 respect and admiration for the former McHugh J than I, but he does not and never did constitute the High Court - as is suggested, by implication, in the expression of the written submissions to you.

40 There is a passage in his Honour's reasons concurring in the result, and not really different in much of the reasoning, at page 547, which reads as follows, and which is the subject of commentary by our learned friends in their written submissions. It is as follows. His Honour said:

45 "It's difficult to determine whether the clear and convincing proof standard formulated in an American authority is the United States equivalent of proof in accordance with *Briginshaw*. However, since it ..."

That is the standard formulated in the United States authority:



".. is a standard that lies between the ordinary civil standard and the criminal standard of proof, it would appear most unlikely that it is."

5 Now, his Honour says that for obvious reasons. It's heresy in this country to suggest that Briginshaw increases the standard of proof - Rejtek v McElroy. It simply doesn't. It requires attention in accordance with the classical Dixonian mysteries to the nature of the evidence, but it doesn't raise the standard of proof.

10 That's why McHugh J said that, in the United States, it's somewhere between civil and criminal. Briginshaw is absolutely not that; Briginshaw is civil. Section 140 is civil. And his Honour simply says briskly at that point:

15 "It would be undesirable to adopt the United States test for civil contempt introduce a third standard of proof into Australian jurisprudence."

So if I may say so, it is not correct and will mislead you, were you to follow the invitation which is hinted at in the paragraph 12 of the written submissions spoken to this morning:

20

"In other words, clear and convincing evidence requires at least the level of proof that would be required under the Briginshaw standard."

25 That phrase "at least" is absolutely misleading. There's no suggestion -

**MR BELL SC:** I think one finds that the source of section 4B, from a close reading of the Bergin report, is actually casino legislation in Massachusetts, rather than our equity jurisprudence or rectification or the law of contempt

30 **MR WALKER SC:** That's right. I mean, "clear and convincing", if you look at Wigmore, you'll find it in a number of different areas, and the phrase or cognate phrases are found before there was, as it were, the simple duality between "balance of probabilities" and "beyond reasonable doubt", civil and criminal, and you will recall the niceties that applied in the ecclesiastical jurisdiction for divorce and  
35 related matters like bastardry and the like.

40 So there is, in our submission, fascination, for those inclined that way, in the legal history, but absolutely no utility for you. 4B simply doesn't apply, and you should not regard those persons appearing before you in their interests - we have all got things to persuade you of, no doubt, although Counsel Assisting is simply that, Counsel Assisting. There are no onuses, let alone to be discharged only by things called "clear and convincing evidence". There are simply matters upon which you are to report which focus on how the Terms of Reference describe the matter of suitability.

45

Now, I'm sorry about that being such a long, so to speak, preamble, but you will appreciate that it is fundamental to how we say you should proceed in your

consideration of the material, and, most particularly, how you should express your report in order to comply with the law.

5 Now, against that background can I then touch, by way of matters of emphasis only, on the following aspects of the argument that we've presented, if only partially, to date in our written submissions.

10 I would propose to do so by referring to that document and its paragraph numbers, so as to key what I'm saying to the topics covered there. Could I start with respect to the matter, picking up what I've just argued, paragraph 25, where the phrase from Counsel Assisting of "a discernible future time", we, I hope with appropriate gentleness, point out that you should be wary of thinking that you could have, or anyone in your position, could have a crystal ball with a calendar.

15 Obviously, what you are asked about when you are asked about suitability is not artificially or unrealistically to be regarded as a snapshot. It would be useless for NICC to get from you your thoughts on suitability with whatever subtleties or gradations you thought appropriate as if it were addressed as at a particular day some time in a month or so. And we don't - that's not our point.

20 Obviously, there is something very largely and, from a matter of public policy, almost entirely prospective in what you are doing. It doesn't mean that you are not using hindsight, that is, that you are not looking to what has happened in the past. Of course you are, and there is no contest between the parties. But to travesty the usual warnings on financial advice advertisements that the past is, or is not, a good  
25 guide to the future.

30 Obviously, when one is examining matters of suitability, which is a state or character which only has meaning because it lasts beyond a legal instant, there is some presumption of continuance, although expectation of either improvement or decay as well as being possible. Obviously, you have to consider things in prospect, and obviously you won't commit the linguistic error of thinking that you can predict the future, let alone three years from now, with anything like certainty.

35 Now, it may be that there is a slide that you will perceive in the argument against us particularly this morning and the submission to which that argument was directed, a slide between 4B's reference to "clear and convincing evidence" and the notion of you having sufficient certainty of matters to a degree that, as it were,  
40 eliminates what might be regarded as the ordinary vicissitudes, the inherent risks of trading in a business where you don't control your customers, et cetera, etcetera, or your costs, et cetera.

45 It is for those reasons that we submit that the suitability assessment that your report will address is one which understands that there is, at any given time, a range of possibilities that might be called from the optimistic to the pessimistic, taking the point of view of the capitalist in question.

Now, it is for those reasons, in our submission, that suitability is not what might be called an absolute state of affairs. It's relative. It involves, of course, matters which I will call matters of robustness, if you like, margins. It certainly involves the propriety of assessments by reference to experience as well as assessments by reference to those risks which simply cannot be eliminated from the conduct of any business.

That's why it is important that you withstand a temptation, say, by reference to the evidence to pick some time during calendar 2027 as a point to which, as it were, all things must converge, for obvious reasons, not least in the evidence that we have presented and the argument that we will address tomorrow. Obviously, that is of real significance in terms of the financial planning that we have been carrying out and that Barrenjoey has been assisting us with. And we accept that that will be a very important part of your report in that regard.

It would be misleading, however, to see matters of suitability and adequacy with respect to financial resources as being something that you do by the application of a calendar and the use of modelling - the algorithms that underline modelling. That would not be a judgment which is consistent with the public policy of a regulated business, in nonetheless a business environment, and a kind of enterprise which will always be subject to risks.

The next matter I wanted to go to is to remind you that we start - this is paragraphs 38 and following - many following. We start with, as the Terms of Reference require, seeking to consolidate and present in an ordered way, in two parts, the responses to your recommendations following your first Inquiry.

I don't intend to address in any detail on any of those itemised matters, except to note that we trust you will take into account in favour of suitability what, in our submission, is an objective presentation of both the good and the not so good, and sometimes the bad, with respect to those responses.

Perfection is not the only way in which one can demonstrate suitability, or for that matter, adequacy, and imperfection is something which gives rise to consideration of one of the most important aspects of suitability in an operated or regulated industry, namely, how do you deal with mishaps or slips, as has been said, of course, with respect to the culture matters upon which my friend, Mr Ahmed, will follow.

I'm reminded of the time, Mr Bell.

**MR BELL SC:** Yes, I'll adjourn now until 2 pm.

**MR WALKER SC:** Thanks.

**<THE HEARING ADJOURNED AT 1.00 PM.**

**<THE HEARING RESUMED AT 2.01 PM.**

**MR BELL SC:** Yes, Mr Walker.

5 **MR WALKER SC:** Thank you, Mr Bell. Could I just start by saying less is more, by which I mean when I said "less" I meant "more". No one is more respectful of McHugh J than I am, not the other way, but I apparently got it wrong. I apologise to Mr McHugh, in particular.

10 Could I just complete what I wanted to say about the following up of your recommendations from the first report, and this is now apropos the argument we put in paragraphs 108 and following concerning recommendation 30, the Compliance Committee for The Star with appropriate composition and lines.

15 Can I simply point out that that exemplifies what, in our submission, should conduce to a guardedly favourable answer to the question concerning suitability in respect of the iterative, experience-informed, that is, empirical, and, to a degree, the feedback process by which such matters proceed. The fact that it takes more than one go to reach a satisfactory position should not, in itself, be regarded as adverse and, indeed, probably indicates an appropriately empirical approach which  
20 is necessary for procedures that will have to adapt to changing conditions in any event.

I then come to the argument about the remediation plan which starts in paragraph 115 and continues for a considerable period thereafter. You are, of course, very  
25 familiar with the significance, and one might say the ambition, of the remediation plan. It's a classic example, in our submission, of an area where you would not fail The Star, for example, by the fact that the first attempt either occurred when it did or has required revisiting in terms of - in light of experience such as the assurance component.

30 In relation to timing, in particular, without rehearsing the detail which we have set out, it's clear that it would be inappropriate to suggest that there was anything in terms of a reprehensible, let alone a tell-tale for the future, delay in devising a remediation plan.

35 You've already been pressed sufficiently often by evidence on our side, of course, concerning the character of the remediation plan, which is one which, if accomplished, should bring about a state of affairs solidly in the public interest concerning the suitability of our clients.

40 In particular, in relation to that aspect, the argument that commences in paragraph 188 is one which is summarised in those three paragraphs. Apologies for the hint of a long-distant election campaign about heading in the right direction in paragraph 190, but that is what you are looking for, among other things. And, in  
45 our submission, the passages not only from our directors but also from Mr Weeks, the manager, to which we have drawn particular attention in this part of our submission makes it quite clear that the remediation plan is a solid basis for a

consideration by you for your report, then to be considered by the NICC, which is, in the main, solidly favourable to the prospects of suitability.

5 Can I next turn to the particular aspect that we have called management and reporting lines. It's section F that starts in paragraph 191.

10 Now, there is an element of Icelandic saga about all of this as various warriors are carried from the field, none of which is intended to trivialise what, on any view of it, personally and in business history, are really significant matters. As you know from the repeated references to the departure of the CEO and the Chairman in our written submission, while recognising the happy and unsatisfactory situations that, in part, brought those departures about and, in part, are comprised by those departures, ought to be seen, in the language of Ms Lagan, as in the nature of opportunity, about which, as you have observed during the hearing, one has heard 15 a bit, but, in our submission, also, obviously enough, the occasion to replace persons who, for reasons I'm about to come to, had outlived their usefulness.

20 Now, that is to assert, as you have seen in our written submission, that both gentlemen had plainly performed not only hard and diligent work, particularly in the case of the Chief Executive, but also that there had been real progress from the nadir of the position after your first report to where we are now or, indeed, where we were in January past.

25 But, in our submission, though those occurrences have all the regrettable qualities to their history and some of their implications that we have recognised explicitly in our written submission, looking to the current state of possible suitability - that is, the journey to suitability - particularly by reference to remediation, you would, in our submission, not regard those as death knells to any sensible prospect. To the contrary, though, painful, they are, in our submission, convulsions in the corporate 30 history which promise real improvement.

35 With respect to the board, that also has to be seen as an organ, a critical organ of the company, that is, The Star - this is picking up the questions that we have dealt with in paragraphs 207 and following - with which you are well familiar, bearing in mind that this relates as well to one of the recommendations of your first report.

40 I need to draw to attention that, in relation to the number of independent directors, we have addressed what might be called a Melbourne experience in paragraphs 222 and following, and for the reasons we have put there, without excessively personalising it, there is nothing analogous to the - what I'll call the Packer overhang in Melbourne for the Sydney position. And you may well - and we would urge that you should - consider that to be a reason in principle to support the approach that we have urged in the paragraphs leading up to that paragraph by which we seek to get the best of both worlds, namely, the independent and 45 separate operating board for The Star Sydney, but with the organic links by some shared personnel with the group.

5 Could I briefly note something which is in train, rather than accomplished, concerning a group CEO. We deal with it in paragraphs 226 and following. This is not something where we can point to an appointment, but, in our submission, it would be unrealistic for you to proceed on the basis, and report on the basis, and that there is no reason to believe that we will be able to obtain an appropriate appointee.

10 Senior positions - indeed, the most senior positions - in business enterprises do change from time to time, or, to put it another way, the persons who are available at any particular time are not to be regarded as desirably permanent or long-term. It depends upon too many other circumstances.

15 In the casino control area, there is the specific requirement, both for probity and suitability, of approvals and that, in our submission, is something that you will bear in mind, that is, that the system will operate properly with respect to anybody who is chosen for the permanent group CEO. Or, to put it another way, there is nothing adverse to be gathered from the not unusual circumstance of needing to replace significant office holders.

20 We have briefly, then, made similar observations with respect to the Group Leadership Team in our paragraphs 235 and following, and the comments I've just made can be read with appropriate changes for them.

25 I draw to particular attention, as I say, the Compliance Committee of The Star in our paragraphs 243 and following, which returns to the matter that we had dealt with concerning responses to your first report, recommendation 30 in particular.

30 I wanted to flag that the dealings with the manager that we commence in paragraph 248 and continue are dealings which, put together with the workings of the board in this regard, would satisfy you that we are now in a position to reflect, we hope, the substance and intent of your recommendation.

35 Now, we then come to section G, which we have called, perhaps blandly, Compliance With Relevant Controls. You are very familiar with these episodes, if you like. We have dealt with them in this order. Starting in 264 is the (inaudible) about the way in which the so-called remediation Enhanced Customer Due Diligence process was carried out. We have, in some detail - bearing in mind the controversy about it, we have in some detail laid out chapter and verse as to the dealings between the various regulator officers and manager officers and corporate officers in relation to that process.

45 The bottom line, which we urge on you, is that it would be quite wrong to propose that the frankly inappropriate letter of 30 September be regarded as in any way suggesting an intent to mislead, although had it been taken in isolation objectively, it would have had that tendency.

Rather, it can't be taken in isolation because there had been the antecedent dealings, perhaps the high point of which you will see set out in our paragraph

293, that is, the letter of 15 September, which contained a deal of detail and in the commentary concerning Source of Wealth, that is, the measure five - this is what we have captured, including its references, in our paragraph 293(e) and, in particular, (e)(2) - you will see that their attention was drawn to the way in which, that being included as necessary and reasonable context, the startling notion of 32,205 having been completed is not misleading, but, rather, a reference to the application of processes, including discrimination between different classes, to which our 293(e) relates.

10 The next of those episodes I wanted to go to - I don't need to spend much time on - is the deplorable discovery concerning time-play management and, more to the point, its honest supervision. There is no varnishing of the most undesirable state of affairs, correctly castigated as such by our directors who were called before you. We very squarely place this as a matter which will particularly be relevant for your appreciation of the capacity of our clients to deal with something untoward that needs to be arrested and corrected.

20 In our submission, on balance, you would be satisfied that, deplorable as the conduct of officers was, the response, upon being apprised of the possibility by the state regulator, was appropriately deep and broad and has resulted in staff misconduct being dealt with, not only as to the termination of individual employment, but, more to the point, by corrective and responsive recruitment and training.

25 We need to make it clear that it doesn't constitute anything in terms of an excuse that there has been a difficulty of resourcing. That doesn't mean financial resources. What that means is the difficulty of recruitment for these special, different and demanding posts, about which the evidence went all one way.

30 Could I then turn to the other of these episodes that we suggest you should consider in terms of the capacity of the business to respond to untoward events. There is no doubt - and we don't qualify this at all in our written submission - that it took longer than it should have for the so-called TICO fraud to be discovered. So far as the material available for this Inquiry is concerned, it appears that the fraud is the fraud of what I will call customers, outsiders.

40 The principal shortcoming - you might well think we would not resist this - is that the anomalies produced by the double-dip were not the subject of sufficiently early detection and response by what I'm going to call our financial control systems. There is little doubt about that. But, analysed, we start with the proposition that you would scarcely hold it against us that the software was defective. It may well be there is some truth to the fact that all software is defective; it simply is a question of whether it hurts you or not.

45 But it certainly did hurt us, this software defect. The focus ought to be, as correctly Counsel Assisting noted, ought to be on the response of our organisation, which as I say, was too late but eventually was, in our submission, entirely appropriate,

including handing certain matters over to those responsible for the enforcement of the criminal law.

5 I can then pass over to an entirely different topic and one which you may very well regard as a regrettable aspect of the corporate conduct. And that is, the matters which we commence dealing with in our paragraph 405 under the heading of The Star's Response to the Manager's Report and Addendum. We don't need to dwell on the detail which is, by now, very well-known to you.

10 A couple of aspects deserve emphasis, though they are all noted in our written submission. The first is that it is, indeed, regrettable - to use an understatement - that there were habits of mind, as it happens demonstrated by use of words, by the two gentlemen in question of a kind not indicative of the most desirable relation with the regulator and the manager. We agree with that. We  
15 have embraced it. And our continuing directors have no doubt about it.

As you will see, or have seen from the chapter and verse we have tried to set out in those pages that follow that paragraph, the genesis of the response was not, shall I say, a model of a fully informed board operating with senior management. And  
20 you could well have formed the impression, on seeing and hearing the evidence of the continuing directors in relation to that, that - and this is an episode which has been - has left some scorch marks and that, if anything, the notion of an excessively domineering CEO and a board is the more confidently to be depreciated as a possibility because of the experience of those continuing directors  
25 in and around January last.

Now, it extended to a period before then, of course, the unhappy lateness with which what I'll call the other directors were apprised of the shock that they heard on 7 December with respect to the critical loss of confidence in the CEO by the  
30 regulator.

All those matters are in the past. They are so striking in their particular facts that they present no inherent likelihood at all of repetition, nor do they show any pattern of conduct which would extend beyond the predilections of the particular  
35 individuals in question who are no longer responsible for executive or governance operations within our clients.

It's for those reasons that the responses to the manager's reports, but also what I'll call the private and inappropriate posturing, ought to be regarded as deplorable but  
40 not material in weighing adversely against the suitability into the future of the persons in question, our clients.

Could we touch, really briefly, on what I'll call the disagreements both among witnesses as to facts and we think between the persons represented before you,  
45 including Counsel Assisting, in their role of assisting you, about what's euphemistically called the departure of a number of executives.



This is in danger of, in our submission, attracting a weight of legal analysis that is really not appropriate for the task confronting you. We do say, as we've written, that nothing should be made at all of the very familiar method of dealing with somebody's willing or acquiescent departure from a senior position by an agreement between the employer and employee as to the mode of termination. And, relevantly, where the employment terms include a right on both sides - and that includes the employer - to terminate without cause, which normally involves, of course, payments in compensation, then the fact that it is agreed may, except with respect to certain financial consequences, be indistinguishable, certainly to the lay mind, and certainly to an auditor's mind and probably to most lawyers in most contexts that would arise, from a resignation.

Now, obviously, there is a difference. A resignation is a unilateral act on the part of the employee; an agreed termination is obviously not unilateral. But there is nothing, with respect, sinister in the variety of diction concerning these events found in private, semi-private and public documents, and nothing in particular that sensibly casts any adverse light upon suitability.

One of the aspects of the Chief Executive's departure was the farewell at Fontainebleau which has been regretted by everyone - except him, presumably - and, once again, as tempting as it is in hindsight to say we really should have sought to dissuade him, you would have no confidence that we would have succeeded.

And it's for those reasons that the exit statement really is a matter about which you ought not - given the serious and weighty matters that you are considering, that you ought not consider as having any material role at all to play in the answer to the questions that you have been given or the Terms of Reference.

**MR BELL SC:** Except, perhaps, to this extent, Mr Walker. All of the directors seem to agree, as did the culture experts, that this exit statement has had a deleterious impact on the culture and morale of the staff.

**MR WALKER SC:** Yes.

**MR BELL SC:** And it's reinforced a new shadow value of us versus them. So, to that extent, it's a matter that I need to consider seriously, don't I?

**MR WALKER SC:** Yes, yes, absolutely. What I'm saying is that you would not see it, particularly bearing in mind the response to it up to date - at least up till now, you would not see that as likely to be an enduring or dominating influence in that all-important cultural question. The way you've described it, with respect, is exactly correct. The reason why it was regrettable or deplorable is, from the corporation's point of view, precisely the effects that you have just noted.

What I'm saying is that there is every reason for you to believe that that will not be dominant and ought not be enduring, not least because of the criticism that it has publicly received. And the culture experts, about which - the subject matter of

which will be the subject of Mr Ahmed following, they make it pretty clear that it's not a rapid and smooth path to transformation. To the contrary. And there may well be two steps forward, one step back and maybe three steps sideways in a fair few of these matters.

5

The exit statement was one episode - spectacular, perhaps - but, for the reasons we have put, not one which, after your serious and appropriate consideration of it, you would regard as weighing significantly against the prospects of suitability.

10 That completes what I wanted to say by way of emphasis to those parts of the written submissions, that is, the first instalment that you have so far. And my friend will follow on the questions of culture that are also contained in that same instalment of the written submissions.

15 **MR BELL SC:** Just before you depart, Mr Walker, in paragraph 4 of your written submissions, you say that:

"The Star does not contend that it's currently suitable to hold a licence to operate The Star Casino in its own right."

20

Then at paragraph 12, you say that:

"It's ultimately The Star entities' submission that the Inquiry should find that they are suitable, subject to the continuation of arrangements that allow for external monitoring or management."

25

Then you say at 13 -

**MR WALKER SC:** That's correct. It finishes:

30

".. and other steps to achieve suitability."

**MR BELL SC:** Yes. And then at 13, you say:

35

"There are various means by which that outcome might be achieved. One would be the continuing existing appointment of Mr Weeks as manager. Another would be the imposition of certain licence conditions."

And then at paragraph - your final paragraph 644, you say that:

40

"The Star is presently suitable to be concerned in and associated with the management and operation of The Star Casino if The Star is subject to a licence subject to conditions or, alternatively, in circumstances where a manager remains appointed."

45

Now, you've told me this morning that I'm not the NICC and that it will be for the NICC to decide if a licence should be reinstated, cancelled, remains suspended or subject to conditions. If I were to make the kind of findings which you seek,

would I not be falling into the very trap which you've said I should avoid, which would be to equate myself with the NICC and to determine what conditions the licence should be subject to?

5 **MR WALKER SC:** No, not at all, because suitability is obviously relative to the challenges and the circumstances and the resources, human and financial and every other way. And conditions are inherent or integral to licences, and just as conditions may refer to the kind and number of employees, so they may refer to something sitting on top of that pyramid, namely, a manager or a monitor.

10

And so you would not be affecting to determine a disciplinary action. You would not be affecting to determine an amendment of conditions by the addition of a condition. You would be reporting on suitability in a context in which it operates in the Act.

15

As I tried to point out at the outset, the Act proceeds by recognising that there is an initial gateway determination of suitability to which section 4B applies.

20 Thereafter, there are, at no longer than five-year intervals, section 31 reviews. And this is not a section 31 review. In between, or continuously, there is vulnerability to disciplinary action upon grounds including 24(2)(d) being made out, that is, the ground concerning suitability, which was one of the grounds following your report.

25 Those are matters that show that the licence may continue, that is, without being suspended. It may continue in the sense it continues to exist during a suspension, and it may be the subject, as section 22 permits and as we've sought - it may be the subject of the addition of a condition.

30 Those are matters which show how relative suitability is, that is, though you are not suitable by reason of an adverse finding of a ground for disciplinary action, in the circumstances, either because of an enforceable undertaking with respect to certain employees or a requirement by direction to have a certain kind of employee, an audit team or a compliance team, or the imposition of a condition for some external monitoring or management, there will be a state of affairs which permits, for example, an extant suspension to be terminated.

35 All of this is relevant. These are matters which play among - factors which play among themselves, and it's for those reasons that there would be no usurping by you of the decision or role of NICC by making a report in terms, such as the state of suitability with perhaps some problematic aspects is such that the NICC should consider seriously the condition which has been sought by way of addition on the part of The Star entities, by way of an example. A report by you in those terms usurps nothing and responds to the question of suitability, which is always contextual and always relative.

40

45 **MR BELL SC:** So your submission is that The Star is suitable to hold a licence which is suspended, or alternatively subject to conditions, and I should form a

judgment about whether the licence should be suspended or subject to those conditions in making an assessment of suitability?

5 **MR WALKER SC:** No, that's a matter for NICC to consider. If they were to take one or other of those routes, your report concerning the matters of suitability and what they suggest concerning monitoring or management are matters of substance that the NICC can take into account.

10 But it would not be for you, and it would be only to complicate your mission, to, say, choose between the form of condition or the form of contingent management, just to take an example. That's not a matter that you've been asked about and it would not be, how shall I say, the best use of your time and skills to anticipate the NICC on that.

15 **MR BELL SC:** Yes, thank you, Mr Walker.

**MR AHMED SC:** Mr Bell, hopefully you can - that's better.

20 **MR BELL SC:** I can see you now.

**MR AHMED SC:** Excellent, thank you. Mr Bell, as my learned friend Mr Walker mentioned, what I propose to address you on was the issue of culture. I propose to address it in much the same way Mr Walker has, principally by reference to our written submissions and by emphasising particular things in those written  
25 submissions. The section of our submissions which deals with culture is dealt with in section I, and that commences at paragraph 523.

Now, culture is obviously an important matter, not least of which because paragraph 3.1 of the Terms of Reference that you've been asked to address  
30 requires you to have regard to the issue of culture, including in respect of risk culture.

Culture itself is a concept that is difficult to define, but we say it is nonetheless an important concept. And the reason why we say it's important is that it provides a  
35 way by which one can understand how an organisation either has or may react to particular matters.

What we say is that one can't lose sight in a matter like this, and, in particular in the context of a large organisation, that it's made up of its people. So that  
40 necessarily, in our submission, means that, in large part, the people within an organisation are going to make up its culture.

But we recognise it is more complex than that, so one needs to look beyond merely the people within an organisation. What one needs to look at are how the  
45 systems shape how people behave within that organisation and also how people interact and react to one another. That's borne out by Dr Lagan's analysis where she indicates what's meant by the term "culture" in the passage we set out at paragraph 526 of our submissions.

And what you'll be able to see there is she said:

5 "So culture is typically described as the reasons why people do what they do in organisations. It focuses on the relationships between people and the relationships between the organisational structure and the systems and how it impacts on people's behaviour."

10 To that end, we say in considering culture, it's necessary to focus on two main things. Firstly, the attitude of the people within The Star, and, for reasons I'll come to, that will, in large part, depend on people in leadership positions. But again, one can't lose sight of - and it's vitally important, in our submission, not to lose sight of the people at the coalface, because, in a real sense, they are the way in which culture within an organisation is expressed.

15 The second matter we say is necessary to focus on are the systems that are in place within an organisation and which shape culture.

20 So that then begins the question of how has the culture at Star progressed since your first report? And what does that say about the capacity for further cultural change at Star?

25 The critical matter is that question, in our submission, of the capacity for further cultural change, because that will drive the issue of whether Star itself is capable of reaching suitability. And that's what I propose to principally address during these submissions.

30 Before embarking on the question of looking at how culture has changed within Star, it's worth addressing just the issue of timing. Now, it has to be accepted that the rate of cultural change at The Star hasn't been as fast as it could have been. It also hasn't been as fast as it should have been. More should have been done and more should have been done more quickly in relation to cultural change. We accept that immediately.

35 But accepting that fact, in our submission, it's not particularly instructive to focus on the amount of time that's been lost. One could quantify that in any number of months, but, in our submission, it tells you very little about what the capacity for cultural change within Star is. That's because it focuses on what's happened in the past, but it doesn't necessarily look at the state of Star presently or in the future.  
40 And when looking at the past in that way, one isn't necessarily looking at present suitability or the capacity to become suitable.

45 Now, we immediately accept that the past may be relevant in making that assessment, but the past isn't necessarily a reflection of the future, particularly where one is in a situation of transformational change. The point of that change is to ensure that the future doesn't look like the past. So, in our submission, the better approach is to ask, "Why was there a delay in cultural change at The Star? What

stopped it from occurring and what caused that delay? And are those factors that delayed the cultural change still there and can they be removed or changed?"

5 By focusing on those blocking factors, what we say is that will tell you far more about the capacity for change at The Star because it tells you if The Star is capable of making the cultural changes that are necessary and capable of reaching the ultimate state that would mean it was suitable.

10 The other matter that's necessary to address in terms of this question of timing is the time taken to effect cultural change, and by that I mean how long does it take to actually change culture within an organisation?

15 Now, all of the witnesses who gave evidence before you agreed that cultural change is a long-term prospect. The typical timeframes that were used by Ms Arzadon were three to five years, and in paragraph 610 of our submissions, we have given you references to both where Ms Arzadon and Dr Lagan gave evidence to that effect.

20 We have also given reference in that submission to a report from Professor Cugin, who I'll come back to in a little moment. She was a person who was brought in by The Star to provide some advice as to cultural matters, and her evidence was to similar effect to that of Ms Arzadon and Dr Lagan.

25 Now, it's important to remember that that three to five-year timeframe that they spoke about is a timeframe that's taken into effect a cultural transformation within an organisation, is to embed that cultural change and it's to instil a culture that's transformational and which, to use their words, is self-sustaining.

30 In that context, we say that there is a difference between cultural changes that are necessary to reach that state of transformation and those that are needed to reach suitability. And that was a point which was recognised by Ms Arzadon in paragraph 560 - sorry, in the quote set out at paragraph 560 of our submissions.

35 There she referred to the difference between Crown and Star and, in particular, she talked about the need to put in place a foundation for cultural transformation within an organisation and that taking a longer time period. So what she said in relation to Crown was that they were successful in establishing those foundations with an expectation that, over the next several years, that would then lead to embedded change.

40 Now, this idea that there is a difference between transformational change and suitability has also been picked up by the Victorian Gambling and Casino Control Commission recently in the suitability decision, and you'll see the quote we have extracted there in paragraph 561, in particular, in the bolded parts.

45 They refer to the fact that transformation is a much higher test than suitability, and they also say that although these foundational elements have been successfully established - in that case in relation to Crown - it will take time for Crown to

demonstrate reform outcomes and embedded cultural change throughout the organisation.

5 Now, the effect of that is that the time taken to make the most immediate cultural changes is shorter than that three to five-year period that Ms Arzadon and Dr Lagan talked about.

10 What the evidence seems to establish is that the process to bring about significant cultural change within an organisation is about six months, and that's recognised first by Dr Lagan in the quote that we set out at paragraph 230 of our submissions. And in particular there, she was referring in the context there to Crown. What she said is:

15 "So if we just got the right person as the top CEO, we could bring about change in six months."

To similar effect, at paragraph 532 of our submissions, we have referred to Ms Arzadon's evidence, where she said that:

20 "It generally takes less than six months to remove the primary cause of problem behaviour."

25 Now, in the case of Star, it can be accepted that that six-month period of making that transformational - sorry, of making that significant initial primary change hasn't really begun to tick. To use Dr Lagan's words, there hasn't been a burning platform. But it's a guide to what can be achieved.

30 And of course, you will remember that in the quote we set out at paragraph 560 from Ms Arzadon, she says that:

"There wasn't much difference in terms of the starting point for Crown and Star in terms of cultural change. So that experience, at least, is a guide as to what can be achieved in a relatively short timeframe in the right conditions."

35 Now, that then brings us to what's occurred since the first Bell report, and that's addressed in section I(1) of our submissions, which starts at paragraph 526. The starting point for that is that the cultural position that existed at the conclusion of the Bell Inquiry was far different from that which now exists.

40 Mr Bell, you said aptly when Ms Ward gave evidence that it would be hard to imagine more serious conduct in a casino than that which was disclosed in the first Bell Inquiry, and Ms Ward agreed with that proposition. That was at transcript page 694. The culture that led to that misconduct was one that was in need of serious reform, so the cultural state of The Star after that Inquiry could aptly be  
45 described as a low base from which reform had to be made.

Beginning at paragraph 533 of our submissions, we track through some of the steps that have been taken to diagnose the cultural problems that existed at The Star and to try and identify solutions to them.

5 I don't intend to work through those in detail, but they are numerous. In summary, Deloitte was engaged in December 2022 to prepare a root cause analysis. That involved reviewing thousands of documents and conducting 51 interviews. At paragraph 537, we've set out that Dr Lagan was engaged in January 2023. In paragraph 541, we set out that there was a cultural review that was conducted by  
10 The Ethics Centre which was received in June of 2023 and associated debriefing sessions.

In paragraph 543, we set out the ICMs were created and uplifts conducted in relation to the standard operating procedures. In paragraph 544, we refer to a suite  
15 of cultural documents that were rolled out, and they included the Culture Strategy and Culture Management Framework. There was also a cultural narrative which included the PVP framework in Star's The North Star. In paragraph 547, we refer to engagement of Ms Arzadon, and in paragraph 551 we refer to the engagement of Professor Julie Cugin, and that occurred in January 2024.

20 Now, it can't be gainsaid that there has been a lot of work that has been done in an attempt to tackle the cultural problems at The Star, but the real question is what one takes from all of that work and what that says about Star's culture now, and about its capacity to change. And there are both good and bad things that emerge  
25 from that narrative.

Firstly, what we say emerges from that work is that there is a desire to tackle cultural issues at The Star. It's obvious from the amount of work that's been done that cultural issues are being taken seriously and that there is a real desire to effect  
30 cultural change at The Star.

The second matter that we say is that there is a real devotion of resources to this issue. Numerous external consultants have been retained, and that's required significant financial commitment. The level of resources devoted to that issue is a  
35 measure of the seriousness with which the issue is being taken.

The third point we make is that a lot of the work has been done, but not all of it, has been to diagnosing issues rather than actually implementing changes. And that explains some of the delays in making cultural changes. A lot of time has been  
40 spent just in identifying what needs to be done. And this comes back to Ms Arzadon's evidence. At transcript page 850, when she was asked what the differences between Star and Crown were in terms of cultural change, her answer was that Crown had recognised the task in front of it earlier than Star and had been able to progress down the path to change much earlier.

45 Now, that's an explanation for the delay, but it's one that's in the past. The diagnostic task itself has been performed and, in our submission, we are now in



the implementation stage. And that's made good by the fact that the necessary cultural changes required are contained within the remediation plan itself.

5 And remember that Ms Arzadon's description for the remediation plan which we've set out at paragraph 124(b) of our submissions is that:

"The TSEG cultural transformation program includes everything that I would expect to see over a reasonable five-year transformation period. However, it's been condensed into a two-year remediation timeframe."

10

And that was also reflected in her evidence. So what we say emerges from that is that there has been a delay that's occurred, but in the future, these matters won't delay further cultural change at The Star.

15 The fourth matter that we say one takes from the work that's been done is that there has been a heavy reliance on external consultants, and this harkens back to some evidence given by Dr Lagan at transcript page 244. What she said there was that:

20 "There was so much money spent on external consultants. They had Deloitte, PwC, all these different consultants, and I was always saying build the organisational capacity. That's the only thing that will give you a sustainable organisation. Otherwise, once those consultants leave, you are left with the same staff that don't have the skills to do this. But that wasn't acted on."

25

Now, in that context, she was particularly talking about the role of an organisational development specialist, and you will remember that that's a matter which we have addressed in our written submissions at paragraphs 240 to 242 and was also addressed in the evidence.

30

Star accepts that there needs to be an organisational development specialist and that person will have a special responsibility for overseeing the efficacy of cultural change within The Star. Paragraph 241 of our submissions refers to Ms Ward's evidence that Ms Arzadon has been retained to provide that expertise in the immediate term. Now, it can immediately be accepted that she is acting in the role as a consultant, but she is not a consultant in the same way that Deloitte or PwC might be. Ms Ward's evidence was that she was part of the GLT and that it was proposed that she should become involved in recruiting other GLT members.

35

40 It's also proposed that a permanent organisational development officer will be hired and will sit as part of the GLT. And in addition, there's been other moves to develop internal capacity in this regard. At paragraph 562, in particular, we set out observations by Dr Lagan in relation to the capacity of other people within the organisation where she reflects on their ability to act as, to use her words, change agents.

45

What we say is that that demonstrates that the failure to develop internal capacity in relation to cultural change is being addressed and won't present the same impediment going forward.

5 What we ultimately say about all of those matters is that there certainly has been slower progress in relation to the work that's been done on culture than should have been the case, but there are reasons why - but the reasons for those delays have now been identified and are either in the process of being addressed or have been addressed.

10 Now, the next topic that I wanted to touch upon was the notion of risk culture, and that's a matter on which you've been specifically asked to address as part of the assessment of culture.

15 We deal with that from paragraph 569 of our submissions. At paragraph 570, we begin by addressing the risk management resources that are available, and, in particular, we have highlighted the experience and expertise of Mr Saunders and Ms Vuong in relation to those issues.

20 Mr Saunders has held significant risk positions in a number of large major companies, including Westpac, Macquarie and National Australia Bank. Ms Vuong similarly held significant positions in organisations like Westpac, Macquarie and Deutsche Bank. We say that their expertise and capability of performing a risk role is one that's well established.

25 In terms of the issue of resources that are available, we particularly point to Mr Saunders' evidence which is extracted at paragraph 575, where he gave evidence that:

30 "So we have substantially increased the risk resources in the organisation. It's a bit difficult for me to know when I started how many there were because there are so many contingent workers, but, on my estimate, we have come from about 25 to 125 in the Risk team over the course of the calendar 2023. I have never once had pushback from Mr Cooke or our People and  
35 Performance team or the board on the resourcing that I thought we needed, whether that be the number of resources or the level of resources. We are able to get approval to recruit as we need."

40 At paragraph 576, just as an independent cross-check in relation to the resources that are available, we have also referred to Dr Lagan's evidence as to her impression of Mr Saunders and his Risk team, and hopefully I'm not doing her too much injustice by saying that she is complimentary of them.

45 Now, in terms of the attitude of people within Star to this issue of risk, we set out various pieces of evidence in relation to how the people of Star dealt with risk. I don't propose to go through that, but it's set out from paragraph 578 through to paragraph 584.

What we say is that there has been a real cultural change within Star in relation to the approach that's been adopted to risk issues, and, in particular, there's the change that Mr Saunders spoke about at transcript pages 393 to 394. At those pages, he spoke about Star having changed from an entertainment company, where the customer was seen as always right, to a regular highly-regulated company that recognised that the customer wasn't always right and that sometimes the customer might not know what was best for them and the company needed to step in.

Now, we say that that's an answer that stands to the credit of Mr Saunders, and we say stands as an important marker from a leader in respect of the risk function as to the appropriate way in which to address risk culture.

What I hope to touch on now was the topic of leadership change, and that's an important topic because it helps to explain some of the reasons why cultural change at The Star hasn't occurred as quickly as it should have, but also the reasons why these matters have been recognised and are in the process of being addressed.

In that sense, it's a matter that reflects both on present suitability of Star, and also its capability of becoming suitable. This is in particular addressed from paragraph 586 onwards in our submissions. In that paragraph, we address the idea of tone from the top, and we set out Dr Lagan's and Ms Arzadon's evidence as to what that means. And we say that's particularly important.

Now, here it's worth saying something about the former CEO of the company. At an operational level, he was the most senior person within the company, and Mr Cooke had many good qualities that benefited Star to a great degree. The evidence that you heard is replete with people saying how hardworking he was and the value that he brought to the company in some areas, and in some cases, the evidence was that he saved the company.

But just like you can have a war-time president who has many fine skills in a particular scenario, you can also have a CEO who brings great value in some areas while not addressing other areas. And that seems to be the case in respect of Mr Cooke. As was reflected in the evidence, there was undoubtedly a narrative that emerged in the latter half of 2023 of it being "us and them" in relation to the regulator. And that's evidenced most starkly through the text messages and emails between Mr Cooke and Mr Foster, but it's also reflected in the public statements like Mr Cooke's exit statement.

Now, that's coupled with the fact that Mr Cooke appears to have had a management style that resulted in the siloing of information within the company, and we say that those are all matters that are likely to have impeded the cultural reform within the company itself.

In a sense, this was a playing out of tone from the top. Now, that's part of the explanation why cultural reform was slowed.

The next thing we say is necessary to focus on in that connection is, is there still a problem in this regard? In our submission, there is reason to think that there is not. There is obviously an awareness of a need to obtain a new CEO, and that's a matter that's being progressed as a matter of priority. Moreover, it's a process that's  
5 also being advanced with an awareness to the problems of the past, and that's addressed in our submissions at paragraphs 226 and following.

What's also important to appreciate in this context is the transformative effect that the right CEO might have on the organisation. And two effects were dealt with in  
10 the evidence in this regard, and they were identified by Ms Arzadon.

At the extract we set out at paragraph 232 of our submissions, she points out that merely the fact of changing a CEO in itself could be seen as a symbolic effort by the board to set a different tone within the organisation. She also then points to the  
15 fact that the right CEO could set the right tone for the organisation. And that's consistent with the evidence of Dr Lagan that I've already taken you to.

In terms of this issue of tone from the top, the next position that requires examination is in relation to the Sydney CEO. In terms of matters that have  
20 already come to fruition, this is one of the matters that is referred to in our written submissions, and it's the fact that Ms Campbell has received interim approval now to act as CEO for the Sydney property.

Now, in our submission, she is a new strong voice that can set a tone from the top directly in respect of the Sydney casino. That's her responsibility, so it's an area in  
25 which she can be expected to have particular effect.

In paragraph 198 of our submissions, we deal with Ms Campbell's particular qualities. In particular, at paragraph 198, we have extracted part of an assessment  
30 that was done of Ms Campbell as part of her recruitment to the organisation and to just extract parts of that, that reflects an assessment that:

"Janelle is recognised for leading teams through transformational changes. She possesses a unique ability to inspire her team to engage in broader  
35 business solutions, enabling them to work outside traditional minds in a collaborative and innovative way. Her leadership style is marked by effective communication, collaboration, inclusivity and a focus on developing versatile skills within her teams."

40 And possibly most importantly in this context:

".. most key strength is her expertise in navigating the regulated casino environment vital for the role at The Star Sydney. Adeptly manages  
45 relationships with auditors, legal teams and regulatory authorities, emphasising her strong communication skills and commitment to transparency and compliance."

At paragraph 199, we set out Dr Lagan's assessment of her, recorded in an email that Dr Lagan sent to Mr Weeks, where she notes that - her reflections of a colleague she works with on Ms Campbell's qualities, and particularly notes that:

5 "I asked if she thought Janelle could stand up to Robbie, and she said that she was confident she would be able to push back on any suggestion she did not agree with. She says Janelle knows a lot about casino requirements. Whether that will help in addressing the new regulatory landscape and public health demands remains to be seen."

10

We say what that reflects is an honest and unvarnished appreciation of the skills that Ms Campbell brings to the position.

15 **MR BELL SC:** The particular focus of this Inquiry, of course, is The Star Casino in Sydney. And in assessing the culture of The Star in Sydney, what weight should I give to past conduct, compared to the weight that I should give to future possibilities and opportunities?

20 **MR AHMED SC:** Yes. The Star Sydney raises that question acutely, in part because the organisational development in relation to The Star Sydney up until now has not been as developed as it should have been, but is in the process of significant change. So it falls within that category of there being a transformational change that is being effected such that the past isn't necessarily a good guide to the future. And for that reason, what we say is the best guide as to  
25 suitability is - are the steps that are being taken now, and your assessment of what that means for the future.

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

30 **MR AHMED SC:** Now, in terms of this issue of tone from the top, the other body we point to is, of course, the board itself. Mr Bell, you have had the opportunity to see each of the members of the board now give evidence. They were each questioned about the missteps of the past, and each of them recognised and indicated they were committed to those missteps not occurring in the future. I don't  
35 need to dwell on that evidence, because, to be honest, you are in the best position to assess it.

40 But, in our submission, one can take comfort from the steps that one - one can take comfort that the steps that will be made by the board are ones that they are committed to take and ones that will effect a cultural change within the organisation.

45 In particular, the steps they have committed to take are set out at paragraph 599 of our submissions and following. In particular, one matter that I should address, particularly in light of your question to my learned friend Mr Walker in relation to Mr Cooke's exit statement, is that I should draw attention to the statement that's set out at paragraph 601 of our submissions.

And what you'll see there is that what's extracted there is the fact that Ms Ward has sent a communication to all staff at The Star and the communication includes the following statements:

5 "A key priority of the board is to repair and rebuild a strong transparent working relationship with our regulators and the special manager. To get our business fit for purpose, we need them to walk alongside us, and last week we started that journey with some very constructive conversations."

10 I don't need to read the rest of it out, but what you will see there is there is a very strong message being sent to all the employees of The Star that seeks to emphasise to them the importance of the relationship with the regulator and the need to repair that in light of the matters that have come to light in this Inquiry.

15 Now, the final matter I wanted to address just in relation to the issue of people, is that once one descends below the top level of the organisation, one needs to look at the capacity to change this narrative with the employees at the coalface. Again, we say that there is true capability of change there.

20 We say that the consistent theme was that the people working within Star were loyal, hardworking, committed to reforming the organisation. Paragraph 594 sets out Dr Lagan's evidence in relation to that. Paragraph 596 sets out Mr Hughes. And at paragraph 598 - and I'll just dwell on this a little - we set out an extract from Ms Arzadon's report where she says that:

25 "In addition, there is also a common view that the program's ultimate success ..."

And that's the reform program:

30 "... is assisted by the existence of a proud and loyal workforce who operate from a place of fundamental decency, as highlighted by The Ethics Centre report. This means that the task of cultural transformation doesn't involve replacing or rewiring thousands of inherently miscreant employees, but a more realistic task of designing an environment that supports the broader  
35 organisation to behave in alignment with its own aspirations for good conduct."

40 And we say that's a good assessment of the circumstances and one that we say is particularly indicative of the ability to effect cultural change.

Mr Bell, those are the matters that I wanted to address in relation to cultural change, unless there is anything else that I can assist with.

45 **MR BELL SC:** No, thank you, Mr Ahmed. I will now adjourn to private hearing mode at 10 am tomorrow. Thank you.

**<THE HEARING IN PUBLIC SESSION ADJOURNED AT 3.10 PM**