



NEW SOUTH WALES INDEPENDENT CASINO COMMISSION

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

**PUBLIC HEARING
DAY 19**

WEDNESDAY, 22 MAY 2024

INQUIRY BEFORE MR ADAM BELL SC

MR C. CONDE WITH MR D. HABASHY

**MR I. AHMED SC WITH MR P. HOLMES, MR D. WONG, MR H. ATKIN
AND MS E. FORSYTH FOR THE STAR PTY LTD AND THE STAR
ENTERTAINMENT GROUP LIMITED**

DR J. RENWICK SC FOR WITNESS ROBERT COOKE

MR L. GYLES SC FOR WITNESS NICHOLAS WEEKS

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<THE HEARING IN PUBLIC SESSION RESUMED AT 10.00 AM

MR BELL SC: Yes, Mr Conde.

5 **MR CONDE:** Mr Bell, in accordance with paragraph 7 of your Procedural
Direction, dated 2 May 2024, I will make some closing submissions in reply in
public session with Mr Habashy with whom I appear today. I do so on the basis of
replying to some specific points that have been made by The Star entities and
10 other parties. If I do not traverse a party's submissions today, that does not mean
they are accepted. We continue to rely on our closing submissions that were made
on 13 May 2024, both in writing and orally.

15 Before turning to the submissions in reply, there are some documents from The
Star entities, from Ms Townsend and from Mr Cooke that we have been asked to
tender. These are documents that have already been referred to in submissions but
in the main, were not produced when evidence was being given to the Inquiry or,
in some cases, they were not produced until after my closing submissions had been
made.

20 Obviously, however, this is an Inquiry, not a case. So what we propose to do is to
tender all the documents but on the basis that they come in subject to weight and,
in particular, if there is - or if there are documents which a party relies on for
a proposition that ought, in fairness, to have been explored with a witness or
witnesses, and were not, then you would attach little, if any, weight to those
25 documents.

I understand that, as a practical matter, we don't yet have all of those further
documents marshalled and ready to be tendered now. So what I will do, for present
30 purposes, is foreshadow the tender of all of those documents that I've been asked
to tender and on the basis just mentioned and I understand that the Solicitors
Assisting will inform the parties once that has occurred and it's in the Hearing
Book.

35 **MR BELL SC:** Yes, thank you.

MR CONDE: In terms, then, of submissions in reply, if I can reply, first of all, to
the submissions from The Star and Star Entertainment. On the question of present
suitability, The Star entities have submitted to you that they are presently suitable,
albeit with a qualification that they should have a Sydney licence with conditions
40 as proposed to the NICC on 12 April 2024 or, alternatively, that they should
continue to have a manager appointed.

We have three submissions in reply to that. The first is that a person is either
45 suitable or unsuitable. A person cannot be unsuitable but rendered suitable by
licence conditions or the appointment of a manager. So by way of a worked
example, if a casino operator were to cease to be suitable, then that would be

a ground for disciplinary action under section 23(1) of the Act and the disciplinary action could include suspension of the licence, allowing the appointment of a manager per sections 23 and 28 of the Act, and/or alternatively the disciplinary action could involve the amendment of the terms or conditions of the operator's licence per section 23.

So a lack of suitability in that instance is the relevant premise of the conditions or the involvement of a manager. It cannot be right, in our submission, that with those conditions or involvement of the manager, the entity is rendered suitable.

The second submission in reply is that The Star entities' contention that they are suitable with licence conditions and/or the manager contrasts with the unqualified acceptance by every director of Star Entertainment that Star Entertainment is presently unsuitable. We have given the references for that evidence from Ms Ward, Mr Foster, Ms Page, Mr Issenberg, Mr Hodgson and Ms Thornton in paragraph 353 of our written submissions dated 13 May 2024. The Star entities acknowledged that evidence in paragraphs 4 and 6 of their public submissions and elsewhere in that document.

Plainly enough, the views of Star Entertainment's directors are not controlling of your own decision-making, Mr Bell, but they are relevant for your consideration, in our submission, because they come from the directing mind and will of The Star entities and it was also unchallenged evidence, in the sense that nobody sought to ask the directors afterward if their views on present unsuitability were qualified in any way, in particular, by reference to an extant proposal regarding licence conditions.

The third submission in reply on this idea of suitability subject to licence conditions or continuation of the manager's role, is that the Inquiry does not know whether the conditions proposed by Star Entertainment are, or are likely to be, acceptable to the NICC. Licence conditions are either imposed by the Act or a matter for the NICC in accordance, for example, with sections 18, 22 or 23 of the Act.

They cannot be determined by this Inquiry. So it would be a hypothetical exercise for you to try to consider whether certain conditions are sufficient, what would they mean, how would they alleviate the relevant issues, and concerns that have been identified in this Inquiry and so on. And there is no evidence on any of that to assist you even if you were inclined to undertake the hypothetical exercise.

This is borne out, in our submission, by paragraph 13 of The Star entity's written submissions. That paragraph identified what were called various means by which an outcome of ensuring appropriate external monitoring and management might be achieved. The short point in reply is to say that those options are matters for the NICC. You have not been asked to look at licence conditions but you have been asked to look at the entities that would be subject to them.

So, in terms of present suitability, our submission remains that you would conclude that The Star and Star Entertainment are not presently suitable regardless of any proposal in relation to licence conditions or the manager.

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On the question, then, of potential future suitability, this leads to section 4B and the submissions that were made in respect of that. We do say that there is an apparent contradiction in The Star entities's contentions regarding licence conditions on the one hand and section 4B of the Act on the other. The Star entities invite you to consider suitability by reference to hypothetical licence conditions that are a matter for the NICC, but at the same time they say that if you were to bring a test of clear and convincing evidence from section 4B of the Act into your consideration of suitability and, indeed, the onus referred to in that section, then you would be committing error.

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The first and most important submission on that is that it is not determinative of any of the submissions that we have made in these public hearings. In our written submissions, the language of clear and convincing evidence was only used in one substantive context in paragraph 361 and even then, it was used in an additional or parenthetical context that can just as easily be removed. The relevant submission began:

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"There is no basis in the evidence - and, in particular, no basis to the standard of clear and convincing evidence as required by section 4B of the Act - to discern."

Now, that language between the hyphens can come out. The submission is still the same and I will repeat it now because we do make it notwithstanding the submissions that you have received from The Star entities and other parties. So we say that there is no basis in the evidence to discern a future time by which the Inquiry can be satisfied that The Star and Star Entertainment will or are likely to become suitable, although as has been submitted, there has been a reorientation of the group and barriers to suitability have been removed and although there are now also the opportunities of the kind described by Dr Lagan and Ms Arzadon, there is no adequate evidentiary basis for identifying with specificity a discernible future time by which the Inquiry could conclude that The Star and Star Entertainment will or are likely become suitable.

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The other paragraphs in our written submissions, in public, where section 4 was mentioned were just to note its language and history, namely, paragraphs 13, 14, 15 and 19. Those were all part of the introductory framework section (b) of that written document. So it's just not something that arise in a determinative way.

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MR BELL SC: Mr Conde, in the 2022 report, I said the more serious the finding or the consequences of the finding the more cogent and persuasive must be the evidence to support it. Do you make any submission about that?

MR CONDE: We submit that that test would continue, or that would be an approach that you would adopt irrespective of submissions in relation to section 4B.

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MR BELL SC: Yes, thank you.

MR CONDE: Our second submission in reply on the section 4B issue arises from an acknowledgement that Mr Walker made, that the NICC could find itself, at some future time, with your report in one hand and applying the clear and convincing evidence test itself at a later time. That being so, if, and to the extent, you were to see fit to express an opinion in relation to whether the clear and convincing evidence test has been met in respect of suitability, you would not, in our submission, be committing an error.

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What you would be doing is providing your views following this Inquiry, which views the NICC could accept or reject as they see fit. It can readily be accepted, as Mr Walker submitted, that you must not, as it were, pretend to be the NICC but if you were to say, in effect, I've conducted an inquiry and here are my conclusions and among them is a conclusion that the test has or has not been met, you would not be pretending to be the NICC. In fact, you may be assisting the NICC with future deliberations.

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A third submission which, strictly speaking, is unnecessary in light of my first and second submissions, but we make for completeness, is that we do say the better view is that section 4B applies because of section 12 and some matters canvassed in your report from August 2022.

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If we can bring up, please, INQ.5002.0002.0001, this should be volume 1 of your 2022 report. And if we can go, please, to page 0137. This is numbered page 114 of the volume and page 0137 of the PDF. On this page, in paragraph 4, you noted the views of Mr McClellan in the context of a section 31 review, that section 12 applies not just in an initial assessment of suitability, but also when conducting a subsequent review and then, in paragraph 8, on the same page, you will see that - if paragraph 8 can be enlarged please, instead of 4. Yes, thank you.

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Ms Bergin adopted the same test drawn from section 12 in a suitability review undertaken by her in respect of Crown Resorts that was not a section 31 review. Our submission is that the section 12 criteria have an ongoing relevance and application, and on that basis, and in particular, once an inquiry has commenced in accordance with sections 30 and 141 of the Act, the NICC is required to be satisfied of ongoing suitability or at the very least to form an opinion about it, such that the language in the chapeau to section 4B subsection (1) of the Act is engaged.

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Then, irrespective of section 4B, the NICC can later take such disciplinary action, if any, as it sees fit, if it's satisfied of any of the grounds for disciplinary action defined in section 23 of the Act.

5 One last point of reply on section 4B, Mr Walker referred you to the High Court's judgment in the Wu Shan Liang case, in particular, the reasons of Brennan CJ, Toohey, McHugh and Gummow JJ, in 185 CLR 259 at 282 to 283, regarding the difference between an inquiry and civil litigation. We don't gainsay those general matters of principle. But the fact is that section 4B on its face provides for an onus
10 in a particular context of public decision-making by the NICC. It should be given its plain English meaning, and if that has the result that as legislation of the New South Wales Parliament comes over the top of the common law in a particular context, then so be it.

15 **MR BELL SC:** How should I construe the word "onus" in section 4B(2). In common parlance, it could mean either burden or duty or responsibility. How should I construe it?

MR CONDE: You would give it the plain English meaning, in my submission.

20 **MR BELL SC:** Yes, thank you.

MR CONDE: But, as I have submitted, in light of the first submission in reply, it's not, in our respectful submission, determinative in any event.

25 **MR BELL SC:** Yes.

MR CONDE: In terms of the reset of the remediation plan, in paragraph 177 of The Star entities' written submissions, it is said that The Star entities are currently resetting the plan and it is accepted that any evidence about the reset is necessarily
30 general as it is still being developed.

There is then some detail in paragraph 178 of The Star entities' written submissions about the priorities of the review which will presumably guide the reset and paragraph 179 refers to PwC being engaged. There is also reference in
35 paragraph 182 of The Star entities' written submissions to Mr Weeks being involved and providing some early views. None of that, however, in our submission, qualifies or undermines our earlier submission to you that the reset remains somewhat amorphous.

40 In terms of ECDD, The Star entities have accepted in paragraphs 328 and 329 of their written submissions that Ms Townsend's 30 September 2023 letter was unsatisfactory in different respects and undesirable. But they also say, effectively, in mitigation, that Mr Saunders was right, in that there were some communications
45 which would provide context. Our reply to that is that ICM 3 was, and is, in clear terms - and on any view - neither a Source of Wealth check nor transaction

analysis of the kind required by the ICM took place, for the reasons that we have already submitted in section D7 of our written submissions. In relation to the communications and contextual evidence, Mr Saunders, as we noted in paragraph 108 of the written document, never said that the manager or anyone from the regulator had indicated to him that a bulk approach would comply with ICM 3.

Now, in paragraph 325 of The Star entities' written submissions, they say that's not to the point because of relevant contextual matters but we say it is to the point, with respect, because at the end of the day it is the ICM which must be complied with and breach of which is a breach of the licence and it is important that there is no evidence of either the manager or the regulator saying that some kind of different plan or work-around would comply with ICM 3.

If we can bring up, please, INQ.5001.0001.0188. This is the NICC's letter dated 28 September 2023 and the fourth and fifth paragraphs of this letter could not have been clearer, in our submission, first, that the NICC held concerns that the manager was not promptly and properly consulted in respect of the changes. Secondly, that the NICC had reserved its position for further consideration in relation to the changes; and thirdly, as per the fifth paragraph, that the NICC:

"Reiterates that compliance with all regulatory requirements including all internal controls is critical for The Star's current remediation efforts and the consideration of future suitability to hold a casino licence."

So these matters were not approved and, indeed, as we noted in paragraph 93 of our written submissions, there were ongoing discussions in the middle of which came Ms Townsend's 30 September 2023 letter and, in that regard, if we can bring up, please, MGR.0001.0001.0103. This is the manager's memorandum dated 29 November 2023 about ECDD, and if we can go please to page 0105, and in particular, paragraphs 21 and 22, if those could be enlarged for Mr Bell, please.

So the chronology that I've just mentioned is reflected in these paragraphs. You see the references in paragraph 21 to the 8 and 15 September communications. Then there's a meeting in October, as referred to in paragraph 22, and our point in reply is that this stands very much against the suggestion from The Star entities and, indeed, from Ms Townsend, that the 15 September 2023 response was some kind of curing disclosure or similar. The point is there was ongoing back and forth and, in light of the NICC's letter to which I took you a moment ago, it could hardly be said that The Star's approach had been approved or otherwise acquiesced by the NICC by the time of Ms Townsend's letter on 30 September.

Our submissions, therefore, on ECDD, can be reduced to three basic propositions. One, the ICM had requirements in plain English, two, those requirements were not met and, three, an unqualified and wrong statement that they had been met was made to the Liquor and Gaming on 30 September 2023. So, as we submitted in paragraphs 97 and 105 of our written submissions, we say that ICM 3 was

breached and the Inquiry would also conclude that Star Entertainment misled Liquor and Gaming with its letter dated 30 September 2023.

5 Moving to the Guest Support Officer issue, The Star entities accepted, we would say appropriately, that ICM 13 was breached, as per paragraph 348 of their written public submissions. The Star entities said in paragraph 334 of their written document that there are three issues that have arisen in relation to time play management, namely, misconduct, a question of resources and a question around the timing of interventions. We would add to that the issue of training and, indeed, 10 Star's submissions referred later to training being improved in paragraph 359 of their written submissions.

In terms of the TICO fraud issue, The Star entities have accepted in paragraph 368 of their written submissions that there was a breach of ICM 11. They have also 15 accepted in paragraph 371 of their written submissions that ICM 12 was breached as well. We would say that those are appropriate concessions, with respect.

If I can turn now to The Star entities' submissions in relation to Mr Foster and Mr Cooke's private messages and their response to the manager's reports. In 20 paragraph 395 of the Star entities' written submissions, there are a number of submissions that we would say are correct and appropriate, with respect. The Star entities submitted that Mr Foster and Mr Cooke's messages were inappropriate, suggested a perception of the NICC and Mr Weeks as adversaries who were attacking or assaulting Star, showed a desire to find angles of fighting back, 25 revealed a mindset of being suspicious, fearful and possibly defiant, adopted a foolish and counterproductive manner by which to articulate and address any concerns and infected the approach taken in Star's response to the manager's reports in January 2024 which had ended up being:

30 "Unduly defensive and combative in tone and was not conducive to the continuation of constructive and respectful dialogue with the NICC and Mr Weeks about areas of disagreement."

MR BELL SC: Mr Conde, Dr Renwick took me by close analysis of the 35 contemporaneous documents to attempt to show that the response to the manager's reports shouldn't be seen as a response led by Mr Foster and Mr Cooke but should be seen as a whole of board response. Do you make any submission about that?

MR CONDE: Yes, I do, Mr Bell. What I say - I was proposing to come back to 40 that but what I'd say is that you were taken to various documents. I would say that they will speak for themselves, first of all. To the extent, if any of them are coming in late, they will be subject to weight.

MR BELL SC: Yes. 45

MR CONDE: And, in that regard, I would note that, although Ms Ward was taken to some documents after her examination, none of Ms Page, Mr Issenberg, Mr Hodgson, or Ms Thornton were shown any documents. And so, again, that may feature in an assessment of those submissions. But those submissions would be acknowledged and, as I said, the documents would speak for themselves.

MR BELL SC: Yes. Yes, thank you.

MR CONDE: You might also recall, Mr Bell, that Senior Counsel for The Star entities, Mr Walker, described Mr Foster's and Mr Cooke's conduct including the response to the manager's reports, as deplorable and we respectfully agree. Those submissions from The Star entities may have, of course, be contrasted with the submissions from Mr Foster and Mr Cooke on Monday. I've referred briefly to submissions made on behalf of Mr Cooke.

But, in short, in terms of the text messages, you would, in my submission, prefer to the submissions of The Star entities and, indeed, from us, on the messages over the submissions from Mr Foster and Mr Cooke. There was some references in the oral submissions both from The Star entities and Mr Cooke's Senior Counsel to Mr Cooke being like a war-time president, picking up on that analogy, the problem is that Mr Cooke regarded the NICC as an enemy.

At paragraph 400 of The Star entities' written submissions there is a specific matter to which I need to reply. You may recall that I showed Mr Weeks a message where Mr Foster had described the response to the manager's reports in January 2024 as a catalyst to get rid of Weeks and I asked Mr Weeks if he had any comment on that and he said it was concerning that this was a point of focus, some four months out from a licence decision, and I then asked him, as quoted in paragraph 400 of The Star's written submissions, about whether, in January 2024, Mr Weeks considered Star's attitude was one of working cooperatively with him as per the ASX announcements to that effect.

Mr Weeks said yes. That was his understanding and he recalled statements from Star Entertainment representatives of a strong working relationship. Which is quoted in paragraph 400 of the Star entities' written submissions. The Star entities cite that exchange in support of a wider submission that Mr Weeks considered that The Star had acted in a manner consistent with its public statements of commitment to cooperation with him.

In my submission, the quote does not support that wide a submission. It was evidence in relation to Mr Weeks' understanding of Star's attitude as stated to him, not actions and as quoted in paragraph 400 of the Star entities' written submissions Mr Weeks said that they had never suggested to him that they wanted to get rid of him. Hence the contrast with what Mr Foster had written.

In footnote 545 of The Star entities' written submissions there are two additional transcript references in support of the submission made at paragraph 400. The first is to Mr Weeks' evidence about Mr Humphreys doing a good job holding down the fort and the second is to some:

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"..fairly productive discussion recently"

10 That Mr Weeks referred to in relation to the reset of the remediation plan. That evidence may be noted but, again, it does not go so far, in my respectful submission, as to establish that Mr Weeks considered The Star to have acted in a manner consistently with its public statements of commitment to cooperation. A simple example of the manager having a different view of that, is ECDD which Mr Weeks had been critical of in November 2023.

15 In terms of Star Entertainment's response to the manager's reports, obviously as we've discussed a moment ago, Mr Bell, you were taken on Monday by Senior Counsel for Mr Cooke through various documents and I've made some submissions about that. You would also note, in my submission, the details in The Star entities' written submissions from paragraphs 413 to 434 regarding the tone and content of the response to the manager's reports, including the suggested omission of some suggested language from King & Wood Mallesons, which is identified in paragraphs 422, 433 and 434 of The Star entities' written submissions.

25 The upshot of that detail is that The Star entities do contend that much of the responsibility for the tone of the responses lies with Mr Cooke, in paragraph 436. More generally however, The Star entities have accepted that the tone, the ultimate tone of the response to the manager's reports was entirely inappropriate, unduly combative and not conducive to the continuation of constructive communication with the NICC or with Mr Weeks.

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Those are all submissions that you would accept in our submission.

35 These matters also, in our submission, only arose from the fact that Mr Cooke was entrusted with principal responsibility for Star Entertainment's response. He was seemingly at liberty to draft, as he saw fit, including on Star's submissions, ignoring the considered views of board members and the company's legal advisers in KWM. If that is right, that would be in our submission, a very good example of why it was a mistake for Star Entertainment not to have moved Mr Cooke on in December 2023 and after the NICC's loss of confidence earlier that month and we make that submission in reply to what is said at paragraph 469 of The Star entities' written submissions where they say it was not a mistake to keep Mr Cooke on from that time. We have addressed that in our submissions of 13 May 2024 at paragraphs 140 to 144.

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Finally in reply to The Star entities' submissions, there is the dispute between the accounts of Mr Cooke and Ms Ivanoff. The Star entities ultimately agreed with our submissions about preferring Ms Ivanoff's account. That's at paragraphs 507 to 510 of The Star entities' written submissions. It is consistent with paragraph 290
5 of our written submissions dated 13 May 2024.

Moving on to other submissions, other parties' submissions. The Inquiry received written submissions from Ms Ivanoff, Ms Katsibouba and Mr Rizzo. I don't have any specific submissions in reply to those documents.
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If I can turn then to Ms Townsend's submissions. I've already addressed in reply on ECDD and those submissions made earlier apply equally in respect of Ms Townsend's submissions. In paragraph 2 of Ms Townsend's written submissions, she submitted that she:
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"Had a reasonable basis to rely on the advice she was provided by the subject matter experts in the company that the activity had been properly completed."

Now, that wasn't her evidence, with respect. Ms Townsend accepted that she signed what was put in front of her. We give the reference for that in paragraph 98 of our written submissions, in footnote 174. In paragraph 3 of Ms Townsend's written submissions, Ms Townsend submitted that the 30 September 2023 letter was:
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"Not misleading or at least not to the level that would justify public criticism."
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But Ms Townsend confirmed in her evidence that Source of Wealth checks had not been conducted for 22 to 25,000 customers, yet she had told Liquor & Gaming writing that such checks had been completed, for all of them, as part of the wider cohort of some 32,000 customers. Ms Townsend also knew at the time of her letter that transaction analysis had not been conducted for all 32,000 customers but, again, she said in the letter that it was completed for all of them.
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We have given the references for that evidence in paragraphs 101 and 102 of our written submissions and as we noted in paragraph 104, when asked whether the 30 September 2023 letter misled the regulator, Ms Townsend said it was not her intention to do that but she accepted it could be looked at in that way. Ms Townsend's Senior Counsel invited you to reject Ms Townsend's own evidence in paragraph 31 of the written submissions. You would not do that, in our respectful submission. The concession was correct. As I submitted earlier, there is no evidence that either the NICC or Mr Weeks had acquiesced in a relaxation of the ICM whether to accord with the 15 September 2023 letter or in some other way, and in any event, regardless of whether Ms Townsend accepts it or not, the letter was misleading in our submission.
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MR BELL SC: Mr Conde, Ms Townsend's counsel was correct, though, was he not, in drawing attention to the fact that that letter should not be seen in isolation but as part of a broader set of communications that occurred over a particular period. Would it be right to consider that the most important issues here are firstly
5 whether there was a breach of the ICM and, secondly, whether the approach that The Star entities took had not been approved by the regulator or the manager and that steps had not been taken to seek that approval before implementing the process?

10 **MR CONDE:** If I can address the first question. Of course the 30 September 2023 letter should be viewed in context. However, some of that - at least some of that context to which you were taken was from further documents which will have a weight issue attached to them and, in fairness, from recollection at least some of those ought to have been put to perhaps Mr Saunders and/or Mr Weeks, and/or Ms
15 Townsend herself.

MR BELL SC: Yes.

20 **MR CONDE:** So I would accept that context of course should be considered, but there are those additional matters.

MR BELL SC: Yes.

25 **MR CONDE:** In terms of the second question, Mr Bell and the sort of two limbs to that, yes, the breach of the ICM would be the most important point, I would agree, with respect. And then, yes, whether it had been agreed or not can be considered as well.

30 **MR BELL SC:** Yes, thank you.

MR CONDE: In paragraph 33 of Ms Townsend's written submissions, it says there's no evidence that anyone was misled by the 30 September 2023 letter. We would say two things in reply to that. The first is that the Inquiry does not need evidence of someone at Liquor & Gaming being misled, it's a suitability inquiry
35 and sending a letter like that to the regulator counts against suitability for the reasons we have submitted.

Secondly, there does appear to be some evidence in that, in November 2023 Mr Weeks prepared the detailed memorandum that I've taken you to explaining
40 why the letter was wrong and/or misleading. That memorandum is referred to in paragraph 90 of our written submissions.

45 May I turn now to Mr Foster. His Senior Counsel made what I'd call some rather ambitious submissions. We have already addressed the incorrect heat of the moment suggestion and the text messages generally in paragraphs 41 to 46, and 167 to 182 of our written submissions. But Mr Foster has doubled down and

submitted that the messages were taken out of context and that there'd been a selective quoting out of context of isolated words and phrases and he otherwise complained about what if anything can be revealed from private text messages.

5 In our submission, the Inquiry would prefer the evidence of Mr Foster's fellow directors. You will recall that Ms Ward said she was surprised and disappointed by both Mr Foster's and Mr Cooke's messages, that they caused her to reflect on their respective judgments, that the messages suggested the wrong leadership at Star Entertainment and that the messages would have likely damaged people's trust in what Star Entertainment said publicly. We have given the references for that evidence in paragraph 179 of our written document and as we also noted in paragraph 181, similar evidence was given by each of Ms Page, Mr Issenberg, Mr Hodgson and Ms Thornton.

15 The text messages between Mr Foster and Mr Cooke featured in the board's decision for Mr Foster to cease as chairman. And the references for that evidence are in paragraphs 293 and 294 of our written submissions. So the text messages were clearly taken very seriously and that conduct of the board of removing Mr Foster suggests, consistently with our submission, that he was indeed seen by his colleagues as a barrier to suitability.

That idea of a barrier is hardly some kind of technical label or to use the words of Mr Foster's Senior Counsel, well beyond the purview of this Inquiry and a beguiling but misleading simplicity. A barrier is something that stands in the way. If Mr Foster was still the Chairman and was otherwise likely to remain indefinitely it would, for example, be necessary for this Inquiry to reach a view about whether he acted without authority in relation to the separation deed, consistently with his fellow directors' evidence to that effect. The only reason that we have submitted in paragraph 280 of our written submissions that the Inquiry does not need to decide that question, is because Mr Foster is no longer Chairman and there is evidence he will be departing relatively soon.

That fact, as we have said, which was brought about by the board reflects positively on Star Entertainment. I should say the latest evidence regarding the expected timing of Mr Foster's departure is given on page 6, in footnote 6 of the Star entities' written submissions. There's a degree of - I won't be reading that aloud.

Still on Mr Foster, you may recall that you asked his Senior Counsel about the language that Mr Foster had used to introduce the class action idea in one of his text messages as being another angle and the question was, well what was the first angle. None was given. The answer is that there were a couple of earlier angles. The first was the war idea which was explored in messages on 31 January 2024. Then the next day on 1 February 2024, Mr Foster had researched the manager's deed of appointment and quoted from the exception to the manager's indemnity in clause 4.5 and then on 2 February 2024 there was Mr Foster's message, another

angle is establishing grounds if possible for a class action from shareholders against NW and/or NICC.

5 The references for all of that evidence are given in paragraphs 168 to 173 of our written submissions. Our submission remains that these private messages between Star Entertainment's two most senior leaders at the time just cannot be reconciled with the company's public statements.

10 Finally, in relation to Mr Foster's submissions, his Senior Counsel used an analogy of two barristers who whinge about a judge in private but maintain professional respect for the Court and show candour and the like publicly. I wish to take up that analogy because if the two barristers in question became aware of the judge's private meeting with certain people, and they knew it was not a meeting involving them, and they proceeded to research the identities and jobs of those attendees, 15 and speculate about the judge's motives in having the meeting, and the barristers - against their solicitors' advice - decide that in fact the judge is declaring war against them, so therefore they will prepare for war against the judge, and they involve lawyers to that end, and a day or so later they are researching the judge's judicial immunity and then they discuss, as another angle, the possibility of a class 20 action against the judge which has no merits whatsoever, and then they later want to use a submission - perhaps to an appellate court - as a means of getting rid of the judge, and indeed there's a stated desire by one of the barristers to abolish the court on which the judge sits - well yes, in those circumstances, one would condemn the behaviour of the two barristers. It would be deplorable, to use Mr 25 Walker's word, and so too was the conduct of Mr Foster and Mr Cooke.

In terms of Mr Cooke's submissions, I've already replied to a number of them and only wish to reply to one further specific point which relates to Mr Cooke's exit statement. This was said by Mr Cooke's Senior Counsel to have been an entirely 30 appropriate and factual document. The weight of the evidence is against those propositions with respect. In particular, the continuing directors and the culture experts Dr Lagan Ms Arzadon, all gave evidence with very negative comments about the exit statement document as recorded in paragraphs 251 to 262 of our written submissions.

35 Paragraph 70 of Mr Cooke's written submissions, his counsel wrote that Mr Cooke's exit statement did not say he was being pushed out by the regulator and that Counsel Assisting's submission to the effect that such a statement was false is with all respect a straw man. Now it can be accepted that Mr Cooke's exit 40 statement did not expressly say he was being pushed out by the regulator but seven witnesses, namely: Ms Ward, Ms Page, Mr Issenberg, Mr Hodgson, Ms Thornton, Dr Lagan and Ms Arzadon, all gave evidence that in their opinion the exit statement presented a risk of sending a message to some 8,000 or so staff that Mr Cooke was being pushed out by the regulator. That evidence is recorded in 45 paragraphs 251(e), 252 and 253 of our written submissions. It is also contradicted by the face of the exit statement in my submission. That document expressly

referred to the NICC Chief Commissioner. You would comfortably reject any contention that this did not imply that the NICC and the Chief Commissioner in particular was responsible for Mr Cooke accepting that it was time to go.

5 There was a straw man argument in paragraph 177 of Mr Cooke's written
submissions where it was said that Mr Cooke did not accept that the only way to
respectfully engage with the regulator or manager or administrator was to agree
with everything they asserted without question. Nobody said that. We otherwise
address Mr Cooke's exit statement in section D15 of our written submissions.
10
Mr Bell, those are our public submissions in reply. We otherwise rely on our
submissions in chief.

MR BELL SC: Yes. Thank you, Mr Conde, that concludes these public hearings.
15 I will now adjourn until 11.15 in private hearing mode to hear submissions on
financial suitability.

MR AHMED SC: Sorry, Mr Bell. Could I raise one matter very briefly. I think
you left three questions with us to come back to you on. I was going to say in
20 relation to the first which was in relation to Mr Foster's position, it's as Mr Conde
has indicated and I think he drew your attention particularly to footnote 6 of our
submissions. That's the timeframe that's in play there. I think that's also consistent
with what Mr Livingston might have said yesterday. In relation to the two other
questions in relation to finance, I understand that an RFI has been issued in
25 relation to those matters, so we propose to respond to those question by way of
those RFI responses if that is suitable?

MR BELL SC: Yes, thank you, Mr Ahmed, it is indeed suitable. That concludes
these public hearings and I will now adjourn until 11.15.
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<THE HEARING IN PUBLIC SESSION ADJOURNED AT 10.47 AM