INDEPENDENT LIQUOR AND GAMING AUTHORITY OF NSW

INQUIRY UNDER SECTION 143 OF THE CASINO CONTROL ACT 1992 (NSW)

THE HONOURABLE PA BERGIN SC
COMMISSIONER

PUBLIC HEARING
SYDNEY

TUESDAY, 17 NOVEMBER 2020
AT 10.00 AM

Continued from 16.11.20

DAY 57

MR A. BELL SC, MS N. SHARP SC, MR S. ASPINALL and MR N. CONDYLIS appear as counsel assisting the Inquiry
MR N. YOUNG QC appears with MR P. HERZFELD SC, MR H.C. WHITWELL and MR K. LOXLEY for Crown Resorts Limited and Crown Sydney Gaming Proprietary Limited
MR T. O'BRIEN appears for CPH Crown Holdings Proprietary Limited
MS N. CASE appears for Melco Resorts & Entertainment Limited
MS K. RICHARDSON SC appears for Star Entertainment Group Limited an Star Pty Ltd

COMMISSIONER: Yes, thank you, Mr Condylis. Yes, Mr Young.

MR YOUNG: Good morning, Commissioner.

COMMISSIONER: Good morning, Mr Young.

MR YOUNG: Commissioner, at the very end of yesterday I had been addressing remedial steps taken in the aftermath of the China arrests.

COMMISSIONER: Yes.

MR YOUNG: I hadn't quite completed that exercise. The further submission in that regard is that commencing in 2017 and continuing thereafter, the board implemented new processes relating to the review of junket relationships. All of the existing junket relationships were reviewed. Many of them were terminated. Further due diligence measures were put in place. A new approval and review process was established, and that new process operated throughout 2017 and 2018 and ongoing. It covered both new relationships and review of existing relationships.

Mr Herzfeld is going to address those matters in greater detail, but those changes were indirectly triggered by the fairly extensive review of overseas operations that Crown undertook in the immediate aftermath of the Chinese arrests. One matter of relevance in relation to the new processes concerns the Macau regulatory scene. Mr Herzfeld will address that matter. Very substantial changes and upgrading in the DICJ processes were implemented during that period.

COMMISSIONER: Have they been – somebody told me during the evidence, Mr Young, that they weren't sure of the status of those changes - - -

MR YOUNG: That was Mr Burrows.

COMMISSIONER: - - - with the DICJ.

MR YOUNG: Yes, that was Mr Burrows. He was unable to give any assistance about what the changes were. He gave evidence - - -

COMMISSIONER: Who is Mr Burrows?

MR YOUNG: I think it's Mr Burrows.

COMMISSIONER: Do you mean Mr Barton?

MR YOUNG: No, I'm sorry, I mean Mr Bromberg.

COMMISSIONER: Mr Bromberg. Yes, yes.

MR YOUNG: Yes, it's my fault.

COMMISSIONER: No, it was more recent than that, I think. It was more recent than that. I think that there is some ambiguity about where DICJ got up to with their amendments.

MR YOUNG: Yes. Well, that is one of the matters we will endeavour to provide both clarity and precision about, Commissioner.

COMMISSIONER: Thank you.

MR YOUNG: There is another matter which I want to mention. It concerns a submission that Mr Bell made in his written submissions at paragraph 133. He put an assumption to a number of directors that there had been a failure by management to check the soundness of the factual assumptions upon which the WilmerHale firm based its advice, paragraph 133C of those submissions. Now, that was a submission – that was an assumption that was put to some directors. It was not a matter taken up with Mr O'Connor who had direct knowledge about the China situation, moreover the proposition is inconsistent with the affidavit evidence of Mr Chen in the Federal Court. Mr Chen's affidavit - - -

COMMISSIONER: Just pause. Just before you go on.

MR YOUNG: Yes.

COMMISSIONER: I'm looking at 133C.

MR YOUNG: Yes.

COMMISSIONER: 133C is a contention that the management failed to consult with the internal lawyers of Crown about the soundness of the assumptions upon which WilmerHale was basing their advice.

MR YOUNG: Yes.

COMMISSIONER: Is that the one that you're attending to?

MR YOUNG: Yes. I am, but that's built on an assumption by Mr Bell that internal management had not addressed the factual assumptions upon which WilmerHale based its advice.

COMMISSIONER: Is it? Isn't it the fact that they didn't ask Ms Williamson or the other lawyers about the soundness of the factual assumptions upon which WilmerHale based their advice? That's how I read that submission.

MR YOUNG: Yes. Well, I – we took it as embracing what seemed to be the premise for it, that there was some frailty about the WilmerHale advice because the soundness of factual assumptions had not been addressed.

COMMISSIONER: All right. You proceed, Mr Young.

MR YOUNG: At all events, Commissioner, I wanted to draw your attention to one matter in that regard.

COMMISSIONER: Yes, of course.

MR YOUNG: It's this: Mr Chen's affidavit – or statement, in the Federal Court – it's a witness statement – in the Federal Court, in paragraph 51 and 52 provides evidence that he did ask WilmerHale whether a remuneration or incentive structure that provided a bonus to staff would constitute a commission within the Chinese criminal law and the advice was that it would not qualify as a commission for the purposes of Chinese law. That's paragraph 52.

COMMISSIONER: Yes, I see that.

MR YOUNG: And might I say more broadly that the premise of quite a lot of Mr Bell's questioning was an assumption that a bonus paid to sales staff was at risk of being regarded as a kickback or referral fee within the meaning of the Supreme Court's interpretation. Now, we submit that that long bow really has no solid foundations at all.

COMMISSIONER: Is that the only evidence that you propound is in relation to this bonus matter?

MR YOUNG: Yes.

COMMISSIONER: The 51 and 52.

MR YOUNG: That's the only direct evidence about that, yes. There's more general evidence as to - - -

COMMISSIONER: The - - -

MR YOUNG: I'm sorry.

COMMISSIONER: Yes. No, you go ahead. There's more general - - -

MR YOUNG: There's more general evidence defining precisely the bonus structure made available to staff members and how it was calculated.

COMMISSIONER: Yes.

MR YOUNG: There's the evidence, of course, that appears in numerous Chen and WilmerHale advices to the effect that no commissions are being paid.

COMMISSIONER: Yes, of course.

MR YOUNG: And on any view of things, the bonus part of the salary package would not constitute, on any fair approach, a kickback or referral fee or a commission. They are entirely different species of things, and that was effectively the WilmerHale advice.

COMMISSIONER: Yes, all right.

MR YOUNG: Now, Commissioner, the next step in my submissions concerning China is to the move to the question whether there is any valid connection between the matters I've been addressing about what occurred in China and an assessment of current suitability in relation to Crown and the holding of the Barangaroo restricted gaming facility licence.

Counsel assisting submitted that there was a connection. In our submission, that connection, on examination, is found to be non-existent. The grounds relied upon by counsel assisting, if I briefly summarise them, were these: first, they submitted that the conduct of management and directors – and I'm not sure why they include all directors – in relation to the China arrests provides evidence of Crown's lack of risk management structures and functions and a lack of proper governance. Now, as I have already submitted, the failures in respect of the management of staff and operations in China were a failure to engage the risk management structures or to engage board consideration. There were no failures of the structures themselves. There were no failures of board oversight, because the relevant matters were not brought to the attention of the board as an organ. So it can't be said as - - -

COMMISSIONER: I suppose, if you have the capacity in a structure to flip past it, as it were, it also goes to the integrity of the structure. If it's merely, as you – I know you haven't said "merely" – but if it's only that people failed to engage in it, that's one thing, but if you can have, as have happened for a period of time, that there was this capacity not to inform it – you see, one of the questions that came up in the risk management setting was the curiosity of the directors to ask questions, and so that's within the structure. And it's inside the structure as to whether there was an engagement on either side, either the reporter or those to whom it was reportable. And the question as to after, for instance, the Korean arrests, the risk management committee saying, "Well, perhaps we should put this on the agenda." The process of

just saying that the failure to engage was the problem as opposed to the structure, I think, has some little difficulty to it, Mr Young.

MR YOUNG: Commissioner, can I try and respond to that as follows.

COMMISSIONER: Yes. Yes.

MR YOUNG: There was a failure of management to appreciate that they needed to utilise the risk management structures. And I addressed that as a failure relating to the culture within that small group that Ms Siegers designed and overhauled a process to specifically address, that is, to contain explicit instructions to management that they were not to make that kind of judgment themselves, but their obligation, whatever their personal views and judgments, was that if there were matters that were capable of being regarded as significant events and significantly affecting the risk, whatever their personal judgment, they needed to bring it to the attention of the relevant processes.

Now, I accept – to that extent, Commissioner, I accept that what you say is that there was an attitude towards the risk management structures that needed to be addressed, but it has been addressed. But, secondly, the – that doesn't mean there's any systemic failures of the structures themselves for which the board was responsible. A board is entitled to expect management to bring forward all significant events, particularly those affecting risk, where the risk appetite and the assessment needs to be made objectively by the board. But the board is a decision-making organ. Its role is strategic and overall directional. It really is, in our submission, a misconception to suggest that, somehow, the board has to get into the lower levels, get into even the highest levels of management and dig into things. They were receiving regular reports about operations in China. A lot of it was financial information, as you've seen, but they did receive reports and they made strategic decisions about the approach to be adopted in China in relation to, for instance, the platform junket strategy.

So they weren't turning their eyes away from China. Directors of an organisation like this and any major ASX listed company, have a multitude of things on their plate, many large decisions. You only have to look at the board packs for the meetings here. There are literally hundreds of pages and scores of issues – major issues of major financial significance – at every meeting. So the board is entitled to rely on management to bring forward the relevant issues and identify the relevant risks. Now, that was the nature of the - - -

COMMISSIONER: Yes. They fell into the trap of putting one of its directors into management, and I understand what you've said about that. Mr Johnston was, as you've said, digging into things with them, but that's now going to stop, I see.

MR YOUNG: Yes. Can I just respond to that very briefly.

COMMISSIONER: Yes.

MR YOUNG: The problem with that was – I will start again, Commissioner.

COMMISSIONER: Yes.

MR YOUNG: The evidence indicates that, from time to time, significant projects arose. An example was given of the tax case - - -

COMMISSIONER: Yes.

MR YOUNG: - - - or a major refinancing or a major transaction overseas, and so on, where CPH executives would act as, effectively, project managers in relation to that particular project. Those matters were outside the ordinary course of day-to-day managerial activities or week-to-week managerial activities. They were effectively special projects where the assistance of the CPH executives was very valuable. The problem that arose was that – and this is no criticism of Mr Johnston – he was requested to assist the VIP working group and he was requested to assist with the visa assessment – sorry, the junket assessment process. Now, that involved him in day-to-day managerial activities, and, in hindsight, that has associated problems with it and, to that extent, we agree with your observation, Commissioner.

COMMISSIONER: Yes. And I think that – I appreciate what you've said about a board's role, which is a very important aspect of what has to be looked into, and the overlay of a board also having a licence. So it's the structure of a company, as complex as it may be, and the board's entitlement to depend upon management with an expectation that management will inform it. Once it starts to conscript its board members to become in the managerial, there was always going to be a problem, but, as I understand it, the protocol and the services agreement has been terminated as of the 20th of October.

MR YOUNG: Yes, that's correct.

COMMISSIONER: Yes, I understand.

MR YOUNG: The point I was making, though, was responding to counsel assisting's proposition - - -

COMMISSIONER: Of course.

MR YOUNG: - - - that there were systemic failures in risk management structures and, in our submission, that's a false characterisation and it's also wrong for the proposition to be advanced that the board was responsible for that lack of management engaging with the relevant processes. Now, can I turn to the second main way in which counsel assisting tries to connect these past events with current suitability.

COMMISSIONER: Yes.

MR YOUNG: The second submission was the broad one: it was that the evidence in relation to the China arrests provides an indication of how Crown Resorts may respond to dynamic and changing circumstances in the future. Now, their response, in our submission, was entirely reasonable and appropriate. The arrests came as a surprise to the board. They took immediate action. All operations in China were ceased. And they took the other steps that I've listed. So that indicates that they addressed things seriously and responsibly. I will come to this separately, but there was an attempt to use the publication of the advertisements to somehow make relevant in 2019 a defence of allegations that they had knowingly breached Chinese criminal law. As I said, I will turn to that separately, but that proposition doesn't stand up. There's nothing about China that shows anything deleterious about the way in which Crown Resorts may respond to difficulties or crises that are identified that is in any way negative.

The third proposition that was advanced was that the evidence about China indicated a culture within Crown whereby Crown was prepared to expose itself and its staff to risk by failing to respond adequately in the face of escalating risk. Now, that's wrapped up in a submission about Crown. It's not a submission that should be directed at the board. The board did not consciously set about to expose its staff to risk in China. The board did not adopt a strategy that ran that risk. The failures I have identified which were a failure within the top levels of management making their own judgment that things could be addressed operationally are based heavily on the advice that was given by China experts.

Now, again, those matters don't demonstrate anything about current unsuitability. Now, there are further weaknesses in those propositions. They include the following: first, counsel assisting made submissions about unsuitability without taking any account at all of the changes that followed the events in China, or any of the recent changes relating to personnel and procedures that have occurred. They make an allegation of unsuitability at the current time based narrowly on those historical events. They don't take account of any of the remedial steps that have been implemented.

The second aspect is that what happened in China, they assert, is some kind of a proxy for what might occur in Sydney. In our submission, there is no realistic or logical connection between those matters at all, and in saying all these things I hark back to, without repeating, what we say is the right framework, the right statutory framework for examining these questions of unsuitability. And not only must a sound and balanced assessment of current suitability take account of all of the reforms and remediations that have been put in place, it must also take into account the prospect and the opportunity of further improvements, including via consultation with the relevant regulator.

I know, Commissioner, you're aware of that because you've specifically asked us to address further steps that might be taken, but that's not something that is brought to bear in counsel assisting's assertions about unsuitability, and that this is not a two-stage process. Suitability is to be assessed holistically, according to the current

position and what the position will be that obtains in relation to the operation of the Sydney casino. Now, can I turn to the attempt to use the advertisement as some kind of time machine to carry forward past criticisms and to say that they're relevant to current positions.

I will deal with the advertisement more generally, but right now I just want to focus upon the section relating to the refutation of the allegations about China. The advertisement is in many places, Commissioner. It's in exhibit CD13. The reference is CRL.501.025.6932.

COMMISSIONER: Thank you.

MR YOUNG: There's a section of the advertisement headed Detentions in China in 2016.

COMMISSIONER: Yes.

MR YOUNG: The advertisement is directed towards the false allegation that Crown knowingly breached the law in China, that is, it deliberately flouted the law. Extreme statements were made in the media allegations, including that Crown had lied about the position, and lied when it denied knowingly breaching the law. Counsel assisting have accepted that there is no basis for such an allegation, and it follows that it was rightly refuted in the advertisement. It was a most serious allegation of deliberate criminality and the board was fully entitled to take the position that this allegation of deliberate criminality needed to be responded to quickly and strongly refuted.

Counsel assisting went on to argue that Crown was remiss in relation to the advertisement in focusing its advertisement on a refutation of the allegation of knowing criminality and deciding not to deal with the failures by management to properly engage risk management processes and escalate matters to the board. That omits any reference to the relevant context in which this ad was created. First, as I've said, it was fully entitled to focus on the egregious allegation that was made but, secondly, there was a class action on foot. Those allegations of risks that were known and not addressed properly by management were the very same issues and the same territory as covered by the class action. Crown was exposed to a very substantial claim in that action.

It would have been, in our respectful submission, irresponsible, and potentially damaging for the shareholders of Crown for Crown to make public statements about matters that were the subject of the extant court action. What they did, sensibly, was to focus on refuting the deliberately false allegation that Crown had knowingly breached the law. Now, the only other observation that was raised was the observation about the junior employee. I will deal with that very briefly. You have heard the reflections of directors about that, Commissioner, and you will appreciate that different directors took different views at the time, and some of those differences remain.

Mr Jalland explained why he thought it was important to refute the allegation. Ms Coonan, in hindsight, said that if she were making the decision again, she would not include this. But the allegation in the 60 Minutes program was very serious and it was false, and that's the only evidence before the Commission, and that's in fact the unchallenged evidence. The serious allegation was that Crown tried to buy the silence of the employee and she rejected that attempt. Now, they are not the facts, for the reasons explained by Mr Jalland in his affidavit about which he was not questioned.

COMMISSIONER: I think it's a little different. I think it's that – what they did was to attack a young woman, who had been detained for a period, to suggest that she wasn't objective. Now, you can understand if you had spent time in a jail in China that you might have some difficulty with some objectivity, and then to mention – I mean, once you read it, it is almost incomprehensible to think that directors would have endorsed that paragraph. It's really quite shocking, Mr Young.

MR YOUNG: Can I say two things, Commissioner.

COMMISSIONER: If you must.

MR YOUNG: The allegation that it was directed to was the allegation that Crown had tried to buy the silence of the employee, and they were not the true facts. Now, that's a serious allegation to make against the company, and it was an unfounded allegation. Secondly, I accept that what you say is that looking back on this - - -

COMMISSIONER: Looking at it immediately – you don't have to look back. It's bleedingly obvious. You know that, Mr Young. Ms Coonan accepted that it shouldn't have been in there.

MR YOUNG: Yes, I - - -

COMMISSIONER: It's just – and the thing that is relevant is that the board just last year puts this out.

MR YOUNG: Commissioner - - -

COMMISSIONER: And I understand the difficulties with which you're struggling.

MR YOUNG: I'm not trying to walk away from what Ms Coonan and Ms Halton said about that section of the advertisement. I'm acknowledging it. That's a reasonable view and this was not a necessary or even, in their eyes, appropriate piece of content for the advertisement. But what I'm saying is that's not the only available view and the fact that you may think - - -

COMMISSIONER: Well, if it's a view of the board, Mr Young, it's difficult because if you've got a licensee of a casino who goes on the attack of its former

employee who has been jailed to suggest she lacks objectivity then, really, isn't it the case that it should never have been published in that form? It's as simple as that.

MR YOUNG: That – can I say this. That is a reasonable and available view. All I ask you to do, Commissioner, is to understand that other members of the board felt very aggrieved by the falsity of the allegation that was advanced. That component of the advertisement, in our respectful submission, is not an element that should weigh in any significant way in the balance in assessing current suitability.

COMMISSIONER: Well, it's a blot on the board as I see it. A very bad blot. See, they refer to her "50 times her annual salary" as though it's gold digging. I mean, she was on $28,000. I mean, really, and she ends up in jail. And for those directors that couldn't see it as a blot, it's difficult to understand their judgment. That's all I can say to you, Mr Young.

MR YOUNG: Yes.

COMMISSIONER: We should move on, I think.

MR YOUNG: Yes. Yes, Commissioner. Can I deal – counsel assisting's arguments about unsuitability also came back to draw in the proposition that CPH was unduly influential in decision-making processes.

COMMISSIONER: Yes.

MR YOUNG: I've made submissions that that is not a valid or available view when one carefully assesses all of the evidence, but that's another way in which this is sought to be made relevant to suitability that we say is unsound. The next matter is this: in counsel assisting's written submission, another matter of suitability is raised that was never put to any board member, and it was entirely new. It saw the light of day for the first time in the written submissions. This is a reference to the written submissions relating to China at paragraph 346.

COMMISSIONER: Which is the bit that you're referring to?

MR YOUNG: Paragraph 346, Commissioner.

COMMISSIONER: Yes. And you say this is something new, is it?

MR YOUNG: Yes, entirely new.

COMMISSIONER: Right.

MR YOUNG: The board's response that they had relied upon the legal advice it had obtained, this was not the case. All the board members acknowledged that they were not aware of the advice sought and obtained.

COMMISSIONER: Yes.

MR YOUNG: The proposition isn't a logical one. The evidence was not all of the board members were aware of the advice. The couple of board members who were aware of the advice, that is to say Mr Craigie and Mr Johnston, relied directly upon the advice. Moreover, the organisation, Crown, through its senior management, relied on the advice. All members of senior management gave evidence that they placed heavy reliance upon the legal advice, and their reliance, the reliance of senior management, was the reliance of Crown. So it's rather extraordinary to see a proposition that it was not the case that Crown Resorts had relied upon all of the legal advice, and that's asserted to be false based on the proposition that all of the board members acknowledged that they were not aware of the advice. It really is a proposition not previously raised that, quite frankly, does not make any sense.

COMMISSIONER: Well, I think each of the board members, as is transcribed there – I withdraw that – as is footnoted there, I'm sorry, Mr Young, in footnote 628 - - -

MR YOUNG: Yes.

COMMISSIONER: - - - refers to each of the directors being asked about it, but I understand your proposition.

MR YOUNG: Yes. There's another aspect to it, Commissioner, which connects to a submission advanced by counsel assisting at paragraph 352. Could I ask you to turn to that for a moment.

COMMISSIONER: Yes.

MR YOUNG: The last sentence in particular goes to the point I'm about to make:

> *The evidence before the Inquiry indicates that if the risk management functions of Crown Resorts had been engaged and properly appraised of the risks which existed in 2015 and 2016 different steps would have been taken to respond to that risk.*

And some evidence is cited. The evidence went further and it was to the effect that had the board been informed of the matters they would have put in place strategies to avoid the China arrests, including withdrawing all staff from China, and we will give evidence – we will give the references. But the very proposition advanced that the board have failed to have regard to warning signs is belied by the proposition that had the board been informed of the matters that management knew it would have properly addressed matters, put in place strategies to avoid the China arrests, including potentially withdrawing all staff from China.

So the foregoing parts of the submission in paragraph 352 about the board's responsibility are belied by the evidence referred to at the end of paragraph 352. Now, the attempt, in our submission, to suggest that the matters in China indicate

unsuitability of Crown by virtue of board failings is unsupported, in our submission. Can I turn, then, to a few short submissions about particular witnesses in relation to China. Now, much of this I think I've said, but there's one specific matter I need to deal with. There was no challenge to the honesty or integrity of Mr O'Connor, Mr Craigie or Mr Felstead. They were forthright, frank and honest witnesses, in our submission. They acknowledged the mistakes they made. They didn't have to be pressed to do that. They had reflected on those matters and immediately acknowledged their errors. It was not put to any of them that they acted dishonesty or in bad faith or for improper purposes. Their motives are clear. They were trying to make the best assessment they could of the risks and deal with it in the way that they felt best protected the staff in China, and that was also plainly on the evidence, in our submission, Mr Chen's motivation and objective. Nor did any of them consciously adopt the business model that put staff in China at material risk. They took the steps they believed were necessary on advice to protect staff at every step.

The particular matter concerning Mr Felstead is a submission that he acted without justifiable reason and acted without due care. In our submission, that's not supported by the evidence. No allegation about those matters were put to him in connection with the events that preceded the China arrests – and may I say, even though I think it's already been addressed, that, likewise, Mr Johnston attempted faithfully to carry out his duties in relation to the events in China.

COMMISSIONER: I think, with Mr Felstead, he obviated the need for some of that, Mr Young, because he said immediately, "That was my fault," when he was asked about things.

MR YOUNG: Yes, he did.

COMMISSIONER: And so it goes with it to say, Well, there's no need to say well you were lacking in care." He accepted immediately that it was his fault. Now, whether that's right or not is another matter. But he said, "I should have reported it and I did not. And that was my fault," I think he said.

MR YOUNG: Yes. Well, people in management – people anywhere make mistakes and misjudgments. But the evidence as a whole here showed that Mr Felstead was acting in good faith for proper purposes and he believed he was acting in the best interests of Crown. He was making business judgments about those matters and, in our respectful submission, it can't be said that there's any basis to contend that he acted in breach of his duties. Now, unless, in relation to China, Madam Commissioner, you have some questions for me, that brings me to the end of the China section of the submissions.

COMMISSIONER: Thank you, Mr Young. And I understand that Mr Herzfeld will address me now on junkets, but then you will return to the next segment, is it; is that right?

MR YOUNG: Depending on timing, yes, Commissioner, the next segment may be Melco and CPH related issues.

COMMISSIONER: Yes, yes.

MR YOUNG: It will depend a little bit on timing.

COMMISSIONER: Well, we've only got three days, so I just wanted to have a timetable discussion, if I may. You have highlighted, as the sixth item on your list, the current position of remediation immediately after the Melco transaction.

MR YOUNG: Yes.

COMMISSIONER: But there was, in between junkets and Melco, the anti-money laundering topic.

MR YOUNG: Yes, yes.

COMMISSIONER: And I wondered whether that fitted in or where it came.

MR YOUNG: Money laundering will either immediately follow Mr Herzfeld's submissions about junkets.

COMMISSIONER: Yes.

MR YOUNG: Or depending on matters of timing and availability issues - - -

COMMISSIONER: I see.

MR YOUNG: - - - Melco might be inserted before we get to AML.

COMMISSIONER: Are you doing the AML one?

MR YOUNG: AML is either – I beg your pardon?

COMMISSIONER: Are you making the submissions on the money laundering?

MR YOUNG: No, Mr Craig will, Mr Robert Craig.

COMMISSIONER: Thank you very much. Yes. Thank you, Mr Young.

MR YOUNG: I'm sorry about the uncertainty about the order, Commissioner, but - - -

COMMISSIONER: That's all right. That's all right. And then – yes, that's all right. And so I will - - -

MR YOUNG: And then – then I come back - - -

COMMISSIONER: Yes.

MR YOUNG: - - - to wrap up suitability and deal with the current state of remediation. And I will address your further request about what steps might be taken – what further steps might be taken.

COMMISSIONER: Yes. Yes. Mr Young, I'm remiss, I should have dealt with your tender of the documents.

MR YOUNG: Yes.

COMMISSIONER: What I will do is I won't admit Ms Lewis other than the matters that I've suggested to you in 2.4. The other documents I will mark as exhibit AS1, which is the board pack.

EXHIBIT #AS1 BOARD PACK

COMMISSIONER: AS2, the two statements of Ms Pan and Mr Chen will be marked as exhibits. They are late. They are without notice. And, of course, Mr Chen didn't give evidence, so it's really a matter of weight, but I understand the parts you rely upon.

EXHIBIT #AS2 STATEMENT OF MS JANE PAN

EXHIBIT #AS3 STATEMENT OF MR MICHAEL CHEN

COMMISSIONER: Then there's the article, that will be AS4.

EXHIBIT #AS4 ARTICLE

COMMISSIONER: Then there's the other article by Mr Smith.

EXHIBIT #AS5 ARTICLE BY MR SMITH

COMMISSIONER: And I think then the – we move to the email chain, which will be the first one of 10 October will be AS6.

EXHIBIT #AS6 EMAIL CHAIN DATED 10 OCTOBER

COMMISSIONER: And the spreadsheet attached will be AS7.

EXHIBIT #AS7 SPREADSHEET ATTACHED TO EMAIL CHAIN OF 10 OCTOBER

COMMISSIONER: Thank you, Mr Young.

MR YOUNG: Thank you, Commissioner. I'm grateful for that. And you've reminded me there was one matter you've asked me about that I hadn't addressed.

COMMISSIONER: Yes, yes.

MR YOUNG: I referred to the fact that, when I come to address issues of suitability and further steps that might be taken - - -

COMMISSIONER: Yes.

MR YOUNG: - - - we were intending to refer to and rely upon a number of expert reports. You asked me, Commissioner, to identify them.

COMMISSIONER: Yes.

MR YOUNG: I was going to do that now.

COMMISSIONER: Yes. All right.

MR YOUNG: The first relates to the regulatory regime in Australia, particularly New South Wales.

COMMISSIONER: Yes.

MR YOUNG: And you have that, or at least the Inquiry has that, Commissioner, it's Mr Paul Newson, N-e-w-s-o-n.

COMMISSIONER: Yes, yes. I will mark that as exhibit AS8.

EXHIBIT #AS8 EXPERT REPORT OF PAUL NEWSON RELATING TO REGULATORY REGIME IN AUSTRALIA, PARTICULARLY NEW SOUTH WALES

MR YOUNG: Thank you. Now, the next group relate to overseas jurisdictions. In relation to Nevada, it's a report by Mr Scott Scherer.

COMMISSIONER: I'm not sure that I have that.

MR YOUNG: In relation to Macau – I beg your pardon?

COMMISSIONER: I don't have that, Mr Young.

MR YOUNG: No, no - - -

COMMISSIONER: I see.

MR YOUNG: - - - it's almost finalised, and that's the position as I understand it. I will say something generally about – after I list them, if I may.

COMMISSIONER: Of course.

MR YOUNG: In relation to Macau, it's Mr Pedro Branco. In relation to Massachusetts, it's Mr David Apfel. And in relation to Singapore, it's Mr Lau Kok Keng. In relation to New Jersey, it's Mr Agnellini, A-g-n-e-l-l-i-n-i. We first identified the need for that regulatory material when we were anticipating a round of regulatory hearings, Commissioner.

COMMISSIONER: That was in February that we – that those witnesses - - -

MR YOUNG: Beg your pardon?

COMMISSIONER: They were the witnesses that were called – some of the witness that is were called in February 2020. That was in the regulatory regime.

MR YOUNG: Yes. I understand that. But in February 2020, the material that was provided was, when we assessed it, incomplete. And we took the view that you would be assisted by full and accurate information about the relevant features of the regimes in those jurisdictions.

COMMISSIONER: Yes. Thank you.

MR YOUNG: We believe that observations in those reports are relevant to the assessment of suitability, and they're relevant also to your question to Crown to address what future steps might be taken.

COMMISSIONER: I see.

MR YOUNG: Which is why we're referring to them here. It may have relevance to some other topics, for instance, the – some of that material identifies what the up-to-date state of regulation is in Macau which has a bearing on junkets.

COMMISSIONER: Of course.

MR YOUNG: And I think Mr Herzfeld will refer to aspects of that. But that, I hope, answers the matters you asked me to provide - - -

COMMISSIONER: Thank you, Mr Young.

MR YOUNG: - - - following my initial reference yesterday morning.

COMMISSIONER: Yes. Thank you. Yes. Thank you, Mr Young.

MR YOUNG: Thank you.

COMMISSIONER: Yes. Now, we will – I'm sorry.

MR YOUNG: We will cut to scene left, I think.

COMMISSIONER: Thank you, Mr Young. Yes, Mr Herzfeld.

MR HERZFELD: Thank you, Commissioner. Could I seek – yes – that doesn't sound very good.

COMMISSIONER: That's all right.

MR HERZFELD: Could I seek a brief adjournment until 11.45, just to deal with a matter. In any event, I will still come - - -

COMMISSIONER: Yes. Is there anything – you will still complete - - -

MR HERZFELD: I'll still complete my submissions today.

COMMISSIONER: All right then. If there's nothing that you can deal with before 11.45, as I understand it; is that right, Mr Herzfeld?

MR HERZFELD: Yes. It would be convenient to deal with the submissions all in one go.

COMMISSIONER: All right then. Anything from any of the other counsel, at this stage, Mr O'Brien, Ms Richardson or – who is there?

MR O'BRIEN: No. Thank you, Madam Commissioner.

MS CASE: No. It's Ms Case for Melco, Commissioner. Nothing for me.

COMMISSIONER: Yes. Thank you, Ms Case. And, Ms Richardson, nothing? Yes. All right then. Mr Herzfeld, I will adjourn until 11.45. Thank you.

MR HERZFELD: Thank you.

ADJOURNED **[10.53 am]**

RESUMED **[11.47 am]**

COMMISSIONER: Yes, thank you. Yes, Mr Herzfeld.

MR HERZFELD: Thank you for the time, Commissioner.

COMMISSIONER: That's all right, Mr Herzfeld.

MR HERZFELD: I propose to cover six topics in oral submissions. The first is the present position concerning junkets. Second, the statutory and factual context in which decisions were made concerning junkets. Thirdly, two points briefly arising from the background matters relating to junkets in the written submissions of counsel assisting. Fourthly, Crown's due diligence processes with respect to junkets. Fifth, the media allegations concerning junkets, and I don't propose orally to address all matters about each junket; our written submissions will do so comprehensively. But orally, I propose to go to three examples to draw out some key points. And then finally some suitability questions which counsel assisting submit arise in relation to junkets.

COMMISSIONER: Thank you.

MR HERZFELD: So firstly, the present position, and the reason I go to that first is that the ultimate question for the Inquiry is, of course, whether Crown is presently an unsuitable person to be concerned in the operation of the Barangaroo restricted gaming facility and that being so, it's important to approach counsel assisting's submissions concerning junkets with an understanding of the present position and there are five matters of particular significance that we would seek to emphasise: first, you will recall, Commissioner, that as Ms Coonan made clear in her evidence, the period of the suspension of junket relationships has in part been to allow a decision to be made whether Crown wishes to continue dealing with junkets at all, and only if the answer is in the affirmative to determine how best to structure Crown's future due diligence approval and review processes.

That decision has now been made. As has been announced to the ASX a short time ago, the board has determined that Crown will permanently cease dealing with all junket operators subject to consultation with gaming regulators in Victoria, Western Australia and New South Wales. The release also says that Crown will only recommence dealing with a junket operator if that junket operator is licensed or otherwise approved or sanctioned by all gaming regulators in the States in which Crown operates. Now, a copy of that release should have been provided to the

Inquiry a short time ago. If convenient, I suggest its tender be dealt with collectively with other documents at a suitable time in a bundle that we will prepare.

COMMISSIONER: I can mark it separately as AS9 right now, Mr Herzfeld. No problem.

MR HERZFELD: At your convenience, Commissioner.

COMMISSIONER: Yes, thank you.

MR HERZFELD: Now, that is obviously a very significant development in the Inquiry's consideration of Crown's present suitability arising from the junkets topic. The second point we would make about the present circumstances are that - - -

COMMISSIONER: Just pardon me. Sorry, Mr Herzfeld. I should identify that for the transcript. The ASX media release, 17 November 2020, entitled Future Junket Relationships Update will become exhibit AS9.

EXHIBIT #AS9 ASX MEDIA RELEASE ENTITLED FUTURE JUNKET RELATIONSHIPS UPDATE DATED 17/11/2020

COMMISSIONER: Thank you. Yes. I'm sorry, Mr Herzfeld.

MR HERZFELD: Not at all. The second point about the present circumstances to which we would draw attention is that, as accepted by counsel assisting, Crown's due diligence processes with respect to junkets have evolved and improved over time, and for the reasons we will develop, in our submission, the Inquiry should not make all of the findings about those processes or particular junket operators or other persons which are sought by counsel assisting. However, Crown accepts that there have been shortcomings in its junket due diligence processes.

Crown also accepts that, in their most recent form, those processes do not eliminate all risks associated with junkets, and one reason that is so is because a casino operator can never have full information and usually will have significantly less information than that which is available to regulators and law enforcement agencies. And consequently, there is a question whether Crown or other casino operators should continue to deal with junkets in the future, absent licensing approval or sanction by – of junkets by regulators, and of course the recent board's decision reflects Crown's consideration of that question.

The third point to which we would draw attention in relation to the present circumstances is that in August 2020 Crown decided to suspend all of its junket relationships until June 2021 to allow a comprehensive review of those relationships. Now, in fact, since 29 March all travellers arriving in Australia from overseas have been required to isolate in mandatory quarantine for 14 days from their arrival,

subject to limited exceptions. And in the same month Crown closed all its gaming activities and a significant part of its non-gaming operations at Crown Melbourne and Crown Perth. So in practice it has been impossible since March 2020 for junkets to operate at Crown Melbourne or Crown Perth, and in that context, as you heard, Commissioner, the junket operators were not immediately notified of that suspension.

Now, counsel assisting seek to use the force of these matters to deny the genuineness of Crown's suspension, and in our submission the contrary is the case. These facts mean that in practice junkets ceased at Crown's Australian casinos many months ago and in circumstances where junkets were unable to travel to Australia in any event it is unsurprising that the junket operators were not immediately notified. In any event, they were notified at the end of September, and of course so far as the suspension was to allow consideration of whether, as Ms Coonan said, Crown wishes to continue dealing with junkets at all, the period of the suspension has self-evidently allowed that to occur.

The fourth point to which we would draw attention concerning the present circumstances is that, in parallel with the suspension, Crown has been undertaking a thorough consideration of how to improve its junket due diligence and persons of interest processes. The Deloitte review that Crown commissioned has identified a series of matters which Crown accepts have been shortcomings in those processes. It recommended a series of improvements to those processes. The board resolved to implement the recommendations at its meeting on 18 August 2020. A work plan was put before the board for its meeting on 10 September, which the board endorsed. Now, we propose to provide the Inquiry with an update as to the status of the implementation of the recommendations at the same time as our written submissions. Of course, the implementation of those steps is impacted by the recent decision to cease dealing with junkets, subject to regulator licensing approval or sanction, and the shape of any junket due diligence by Crown in future will depend on the working out of that decision in conjunction with regulators, but the Deloitte work is in no sense wasted, because, at the very least, it will inform those discussions with regulators, and the improvements recommended to the junket due diligence processes may have a role to play in any future dealings with junkets subject to whatever comes out of those discussions with regulators.

The fifth point concerning the present circumstances to which we would draw attention is that a decision was taken that the ultimate decision as to whether Crown would begin or continue a junket operator relationship would be made by the new head of compliance and financial crimes, and in the new organisational structure to be implemented by Crown that position will have a direct reporting line to the board. Again, we propose to update the Inquiry as to the status of the recruitment to fill that position at the same time as our written submissions. But, equally, so far as that person has a role with respect to junkets, that might also be affected by the recent decision. So, for instance, if there's no dealing with junkets, the issue of the ultimate decision-maker doesn't arise.

Now, in our submission, any assessment of Crown's present suitability in light of the matters identified by counsel assisting with respect to junkets, has to take into account Crown's recognition of shortcomings in its junket due diligence processes and the steps I have identified. And, in our submission, even before the recent decision of the board, those steps are not fairly described as too little too late or largely tokenistic, which was the language used in paragraph 290 of counsel assisting's submissions – of course, before the recent board decision was announced – and, certainly, in our submission, that's not a fair characterisation following the announcement of that decision. So that's the first topic that I wanted to address. The second broad topic is the statutory and factual context in which decisions were made concerning junkets. So can I first address the statutory context.

COMMISSIONER: Yes.

MR HERZFELD: Crown agrees that, at all material times, a statutory objective in casino regulation in New South Wales and Victoria has been to ensure that the management and operation of a casino remains free from criminal influence or exploitation; that's set out in provisions with which I'm sure you're well familiar, Commissioner. But that object is, of course, pursued in a number of more particular ways and, in New South Wales, one of those is section 13A of the Casino Control Act. And we would seek to make three broad submissions about this provision. And so could I ask you, Commissioner, to take up section 13A if it isn't already emblazoned on your memory.

COMMISSIONER: Yes, I have it.

MR HERZFELD: Thank you. You will see what section 13A subsection (1) provides and you will see subsection (2) commences "For that purpose the authority is to consider whether", and there then follow a number of specified matters and, relevantly, for my purposes there's the matter specified in paragraph (g).

COMMISSIONER: Yes.

MR HERZFELD: So it follows that, in determining whether Crown Sydney was a suitable person within the meaning of section 13A at the time of the grant of the restricted gaming licence, it was necessary for ILGA to consider, among other things, whether Crown or Crown Sydney had any business association with any person who, in ILGAs opinion, first, was not of good repute, having regard to character, honesty and integrity and, second, had undesirable or unsatisfactory financial sources.

The fact that Crown or Crown Sydney had such an association may or may not have rendered Crown Sydney unsuitable depending on the circumstances. Those circumstances might have included, for instance, the nature and significance of the association; what knowledge Crown or Crown Sydney had of the person's repute, having regard to character, honesty or integrity; and what knowledge Crown or Crown Sydney had of their financial sources; and what actions Crown or Crown Sydney took upon acquiring such knowledge, and each of those matters would have

fallen to be assessed in light of contemporaneous regulatory expectations and industry standards.

The same applies in determining, for the purposes of section 23, whether Crown Sydney is considered to be no longer a suitable person to give effect to the licence. That is, it is relevant to consider whether Crown or Crown Sydney has any business association of the kind in para (g), but whether the existence of such an association leads to a conclusion that Crown Sydney is no longer a suitable person depends on the circumstances of the kind that I've mentioned. And the need to focus on the circumstances, including the contemporaneous regulatory expectations and industry standards, is all the more acute when considering a past business association.

And so it follows that we contest the proposition, at paragraph 44 of counsel assisting's written submissions, that there is an absolute obligation on a casino operator such as Crown to ensure that it only has business relationships with persons of good repute. Such an absolute obligation would be breached if, in fact, the person with whom Crown has a business relationship is not of good repute, even if it's entirely reasonable that Crown did not know this, and that's not a fact that would reflect on Crown's character, honesty or integrity. The fact of such a relationship is a matter to consider, but that consideration must take into account all of the circumstances. So that's the first broad point that we wish to make about section 13A.

The second broad point is one that's already been touched on by Mr Hutley and Mr Young. It's that although the provision uses the language of "good repute", it doesn't do so in the usual way of referring to reputation. It directs attention to:

> *...good repute, having regard to character, honesty and integrity.*

So the focus is not on reputation per se, but rather on repute in light of a business associate's actual character, honesty and integrity. And that's important because, in this way, ILGA might conclude, for instance, that a business associate who has a spotless reputation is in fact not of good repute because of their actual character, which might not be generally known and, conversely, ILGA may conclude that a business associate's poor reputation is baseless in light of evidence about their actual character, honesty and integrity. And that kind of focus is necessary to avoid the kind of vice which Sir Laurence Street identified in his 1991 report. I will just give you, Commissioner, the reference rather than taking time to bring it up. At paragraph 7.1.5, in exhibit A44, Sir Laurence Street said that:

> *Public perceptions of matters relating to criminal activities in casinos are likely to be more potent than the reality. Rumours and suspicions linger and are difficult to dispel. All companies are forever condemned on the activities of one officer, one event.*

Now, Sir Laurence was speaking about the casino operator itself, but the same kind of point applies to business associates. If one had an approach based on reputation,

in the sense of fame or public perception, one might forever disqualify a potential business associate who is, in fact, of sound character but who is, through no fault of their own, the subject of unfounded rumours and allegations which they can't disprove.

So in this light, in our submission, the Inquiry should not proceed on the basis that at all times a casino operator in Victoria or New South Wales has had an obligation not to deal with any person who has a poor reputation. To the contrary, the legislative scheme requires that regulators and, by implication, a casino operator, must assess a business associate's repute by reference to their actual character, honesty and integrity, and that's a task requiring an evaluative judgment.

The way in which rumour, allegation and reports are to be balanced may be contestable, and the appropriate balancing will be guided by contemporary regulatory expectations and industry standards. And those two broad points lead to the third point we would seek to make about the statutory scheme. It's that in considering whether the matters identified by counsel assisting render Crown an unsuitable person presently, it's necessary to consider those matters in their proper context and, among other things, it's important not to apply retrospectively an exceptional standard to Crown which is substantially higher than the standard contemporaneously applied by regulators and the industry generally.

In our submission, Crown ought not to be regarded as presently unsuitable on the basis that it had a relationship with a person who is now identified as not being of good repute in the statutory sense in circumstances where Crown acted at the time consistently with regulatory and industry standards. Now, it's of course open to this Inquiry to recommend that higher standards be applied prospectively, but it would be fundamentally unjust, in our submission, to apply such a new standard as the yardstick by which Crown's past conduct should be measured as an indicator of present suitability.

So in light of those submissions about the statutory scheme, can I come then on to the regulatory and industry context, and we submit there's five matters of context which should be taken into account. The first is that until 1 July 2004 in Victoria and 5 June 2010 in Western Australia the relevant regulator took responsibility for approving junket operators. In Victoria, the criteria included that the applicant was of good repute having regard to character, honesty and integrity, and you will find that, Commissioner, in regulation 9(1) – that's 9, subsection (1) of the Casino Control (Junkets and Premium Players) Regulations 1999 as they stood at the relevant time.

In Western Australia, the criteria included that the applicant was of good character, and you will see that in regulation 11, sub-regulation (1) of the Casino Control Regulations 1999 in Western Australia as they stood at the relevant time. Prior to these dates it was entirely reasonable for Crown to assume that if a junket operator was approved by the regulator, little or no further due diligence as to the junket operator's probity was required to be undertaken by Crown. And even after these

dates it was reasonable for Crown to assume that junket operators who had been approved by these regulators were likely suitable to continue doing business with at least unless material new adverse information was to emerge. And among others, into that category fall two of the individuals the subject of submissions by counsel assisting, namely Roy Moo and Lin Cheuk Chiu who is associated with Neptune.

The second point we make about the regulatory context is that even after the Victorian regulator stopped approving junket operators, the systems that Crown had in place for making decisions whether to enter into a commercial relationship with a junket operator or to continue such a relationship were at all times available to be scrutinised by that regulator. By way of example, Commissioner, could you look at exhibit BA46 which is the present internal control statement. I have the document ID if that's necessary. I'm not sure what we're working with now, whether it's exhibit numbers or doc IDs.

COMMISSIONER: It's both, I think, Mr Herzfeld, but I think you have provided, have you, the document? Perhaps not.

MR HERZFELD: The document ID – yes, the document ID - - -

COMMISSIONER: Perhaps if you just provide the document ID and we will bring it up on the screen.

MR HERZFELD: Yes, I will seek to do both going forward.

COMMISSIONER: Thank you.

MR HERZFELD: It's CRL.523.001.0918.

COMMISSIONER: Thank you.

MR HERZFELD: That's exhibit - - -

COMMISSIONER: That's exhibit BA46.

MR HERZFELD: Yes, Commissioner.

COMMISSIONER: Yes, I have that now. Thank you.

MR HERZFELD: At pinpoint .0922, Commissioner, you will see that clause 2.4.2 requires Crown to produce on request reports and/or data to support the minimum standards and controls.

COMMISSIONER: Yes.

MR HERZFELD: And one of those minimum standards and controls is specified in clause 2.5.1 which is on that same page.

COMMISSIONER: Yes.

MR HERZFELD: I might just observe that that minimum standard was introduced for the first time in this version of the internal control. It wasn't present in the previous Victorian internal control in place prior to 2015.

COMMISSIONER: Thank you.

MR HERZFELD: Now, it may be accepted that this internal control does not specify a great deal of detail as to what Crown must do in terms of its audit and probity processes, but significantly the Victorian regulator was content with that approach. The regulator in both its Fifth Review of Crown Melbourne and its Sixth Review of Crown Melbourne – they're in 2013 and 2018 respectively – referred specifically to matters relating to junkets and identified particular matters of concern relating to Crown's processes but did not make any adverse comments about Crown's due diligence processes for junkets generally.

Staying with Victoria, Crown was also at all times required to notify the Victorian regulator of all new non-resident junket operators and the regulator at all times had the power to object to Crown commencing a new relationship, or to direct Crown to cease its relationship with a particular junket operator, and you can see that, Commissioner, in that internal control as well as other places in clauses 2.4.1 and 2.5.2, and at no time did the Victorian regulator direct Crown to cease its relationship with any of the junket operators the subject of this Inquiry.

The third point about the regulatory context concerns New South Wales, and it's significant that the regulatory focus here has long been upon actual criminality rather than some lesser standard of allegations of criminality. And Mr Hutley, I think, touched on this point. If you could turn, Commissioner, to the Casino Control Regulation 2009 immediately before 21 December 2018, if you have that available.

COMMISSIONER: I do.

MR HERZFELD: And I should say I've finished with the internal control statement if it's convenient to be taken down from the screen.

COMMISSIONER: Yes. Yes, thank you. Yes.

MR HERZFELD: And so in that regulation prior to 21 December 2018, regulation 17 sub-reg (1) required:

> *a casino operator who becomes aware that a junket operator, referred to in these regulations as a promoter, or a representative has been convicted of an offence or subject of a finding of guilt must notify ILGA.*

Can we note that sub-regulation (3) excluded, among other things, spent convictions, and that would comprehend, it seems, Macanese conventions – I keep saying

conventions – Macanese convictions expunged after 10 years if that is, indeed, the position in Macau as submitted by counsel assisting. But significantly, regulation 17 did not require notification of allegations of criminality or other matters which might bear upon the character of a junket operator or representative. Now, that provision was repealed with effect from 21 December 2018, but that focus on actual criminality was carried over into the internal control structure, and you heard some evidence about this, Commissioner, in relation to The Star who Ms Webb gave some evidence about concerning its control statement, and clause 10 of that internal control statement sets a general standard for notification at actual criminality, not some lower standard.

The evidence, in fact, of Mr Sidoti was consistent with this. It feels like a long time ago, but he gave evidence that, following allegations made in the 2014 Four Corners broadcast High Rollers – High Risk? concerning Suncity and Neptune, the New South Wales regulator, which he chaired at the time, investigated those junkets and, according to his evidence, those investigations included making inquiries of the Hong Kong Police and consultants that ILGA had previously used in Hong Kong and Macau and, based on those investigations, the regulator determined that the individuals concerned in the allegations had not been conclusively linked to Neptune and Suncity and that the allegations made against them had not been conclusively established.

That's significant, because the Four Corners broadcast is one of the matters relied upon by counsel assisting to impugn Crown's due diligence and decision-making in relation to Suncity and Neptune. And you'll see that in counsel assisting's written submissions at paragraphs 115, 149 and 159. And so, by way of example, paragraph 159 refers to the fact that, following the broadcast, an internal report prepared by Crown into one of the people mentioned, Cheung Chi Tai, identified him as the alleged leader of a triad society in Hong Kong, a casino VIP room operator in Macau and, the submission continues, no steps were taken to cancel arrangements with him at that time. So we draw attention to the fact that, in so acting, Crown really proceeded in the same manner that ILGA did at the time. Also, in relation to New South Wales, it doesn't look here that - - -

COMMISSIONER: Well, just pause there. When you say that Crown proceeded in the same manner that ILGA did, at that stage – that was 2014, I think, was it, that Mr Sidoti's evidence related to?

MR HERZFELD: It was.

COMMISSIONER: And what was the burden of responsibility on ILGA at that stage in respect of junkets?

MR HERZFELD: It was no longer – well, the power that it had with respect to The Star, I would, apprehend is the same as that with respect to Crown, which is it could have directed The Star to stop dealing with certain junkets and, so far as we're aware, that didn't occur. And we apprehend that was the purpose of the - - -

COMMISSIONER: That's a different question. What I'm trying to understand – you told me that, in Victoria and Western Australia, respectively, 1 July 2004 and 5 June two thousand and – I think it's 10. I'm not sure – or five, Victoria and Western Australia had to approve the junkets. I'm just wanting to see what the landscape was in New South Wales, because I think, albeit that Mr Sidoti and ILGA, at that time, had no approval regime at that time, I think, it took upon itself to have a look at it and, no doubt, Crown in conjunction – so that internal report that Crown found that there was a triad connection – what date was that again, Mr Herzfeld?

MR HERZFELD: I don't have that to hand, I'm afraid, Commissioner.

COMMISSIONER: That's all right. I think there's a slightly different situation here where a casino operator has found that there is a public statement of a triad connection. And if you want to say that the standard against which it should be measured in New South Wales – although it didn't operate in New South Wales – the standard against which it should be measured is criminal conviction, it would be very difficult, would it not, to put out of one's mind the fact that the – a casino operator may know that it has within its operations a triad-connected operator?

MR HERZFELD: Commissioner, I think there are a few issues there. Can I try to respond them in the order in which I think they were raised. I think, Commissioner, your description of the regulatory landscape in New South Wales at the time of ILGAs investigation was correct, which was that ILGA did not have an approval function at that time. It did have, as I say, I think, an ability, one way or another, to direct a casino operator to stop dealing with a particular junket operator, and so that's how any conclusions of the investigation might have found expression, but what you, Commissioner, said about it not having an approval function at this time, I think, is correct.

I think you asked me about the date of the internal report. I think, if it is the one that I'm thinking of, it is exhibit BA49, and I think the date of that is 18 September 2016, but I may have the wrong report and, regrettably, I am in splendid isolation in Sydney with no juniors and no solicitors to assist me and so, no doubt, someone will correct me if I've given you the wrong information.

The third point, I think, that you raised, Commissioner, was the substantive one, which is the different functions at the time of the New South Wales regulator and a casino operator. And all we seek to draw from the point that I'm making now is that if one is looking back at the way in which Crown dealt with these allegations and pieces of information at the time, it's important to do so having regard to the way in which regulators, we infer, were dealing with the same information and the way in which regulators expected a casino to deal with these matters. And it is relevant to that to see that the New South Wales regulator investigated the same allegations, applied what appears to be a standard of whether things could be conclusively established – I think they were Mr Sidoti's words – and then did not, off the back of those matters, direct The Star to cease dealing with the people mentioned. And they are highly relevant matters in determining, looking back, whether there was

inappropriate exercise of the evaluative decision that I've already addressed you on, Commissioner, as being required by the legislative scheme. And I will seek, again, to address this when I come to the example of Suncity, which is one of the examples that I would seek to deal with expressly in oral submissions.

COMMISSIONER: I think the point that I raised with you was whether a casino operator who knows that it has within its operations a triad-connected operator, it wouldn't do something about it irrespective of what it thought the regulator might be interested in. It is that cultural approach, knowing that you've got a triad-connected operator in your operations, more probably than not. But I fully understand your landscape of what was in place at the time. And I don't think that anyone has suggested to me that's one of the reasons they didn't stop dealing with the alleged triad-connected operator was because there was this acceptance that it had to be a criminal conviction. In any event, certainly, the measure is appropriate, Mr Herzfeld. I understand that.

MR HERZFELD: Yes. And can I just note, Commissioner, that I think the first question you just asked me concerned the circumstance where a casino operator knows that they have a triad-connected junket operator. That's different again to the circumstance where one is more probably than not connected, which I think was something that you raised, and then that's different again to a circumstance where there are suspicions or allegations, and it's important – and I will seek to draw this out in the examples that I address – to identify with some precision what the state of knowledge of Crown was at various times, but I understand the burden, Commissioner, of the point you've put to me and I will seek to deal with it through the specific examples.

COMMISSIONER: Thank you, Mr Herzfeld.

MR HERZFELD: Can I just conclude on the New South Wales landscape with two final points.

COMMISSIONER: Yes.

MR HERZFELD: The first point is that in addition to the other powers that ILGA had, it has at all times had the powers in sections 36 and 37 of the Casino Control Act. Under section 36 the Authority has at all times had a power to declare any class of contracts it considers materially significant to the integrity of the operation of a casino to be a controlled contract, and then pursuant to section 37 a casino operator must not enter into any controlled contract if the Authority objects. Now, Ms Webb was not able to assist in how, if at all, this has been applied in respect of junkets at the Star, but it's capable from its language of being applied to any contract between the Star and the junket operator.

So that was another way in which investigations of the kind that were entered into after the Four Corners broadcast could have found expression. And the final point we would make about New South Wales is that it doesn't appear that any

dissatisfaction about these regulatory settings was expressed by Dr Horton QC in his 2016 assessment of the suitability of the Star to hold a casino licence in New South Wales. The operation of junkets was part of his terms of reference and we should say that there may be further details concerning junket due diligence at the Star in the confidential appendix to his report which we haven't seen, but there's nothing in the open report suggesting any dissatisfaction either with the Star's processes or, more generally, with the regulatory settings in New South Wales at the time.

Again, that's not to suggest that you, Commissioner, must take the same view, or that there shouldn't be recommendations for change, but it is relevant for the reasons that I've already addressed you on, Commissioner. Fourthly, concerning the regulatory landscape, can we make some submissions about the position in Queensland?

COMMISSIONER: Yes, of course.

MR HERZFELD: As has been observed, Commissioner, the Queensland regulator does not licence junkets per se, but may we draw attention to regulation 37 of the Queensland Casino Control Regulation.

COMMISSIONER: Yes.

MR HERZFELD: Do you have that accessible, Commissioner?

COMMISSIONER: Is that – just pardon me. Yes, I have that.

MR HERZFELD: Thank you. If you turn to regulation 37 - - -

COMMISSIONER: Yes.

MR HERZFELD: - - - sub-regulation (1) has at all times required a casino operator to give notice to the chief executive about a new junket operator, again, referred to as a promoter, with whom the casino operator has entered into a junket agreement.

COMMISSIONER: Yes.

MR HERZFELD: That's regulation – sub-regulation (1). If you turn to sub-regulation (4), it says that:

> *The purpose of the notice is to allow the chief executive to assess the suitability of the promoter for involvement in future junket agreements.*

COMMISSIONER: Yes.

MR HERZFELD: And there's equivalent provision – I'm so sorry, Commissioner.

COMMISSIONER: No, I just said yes.

MR HERZFELD: I'm so sorry; I thought I had cut you off.

COMMISSIONER: No, not at all.

MR HERZFELD: Regulation 38 makes equivalent provision for promoters' representatives, so junket representatives, the same structure, notification in sub-reg (1) and the purpose of notification in sub-reg (4). It seems intended that a conclusion that a promoter or representative is not suitable within the meaning of these regulations might enliven other powers under the Queensland Casino Control Act, for instance, section 86 empowers the Minister to give directions to a casino licensee about any aspect of the operations of a casino.

Now, in this light, it is significant that, based on Mr Hawkins' evidence and Crown's records, it appears to us that at least the following junkets or junket operators the subject of the Inquiry have operated at Queensland casinos: Suncity at least as recently as 27 February 2020; Zhou Qiyun, associated with Chinatown at least as recently as 8 January 2016; Chi Hung Wang, associated with Neptune at least as recently as 5 February 2017; Yan To Chan, associated with Neptune at least as recently as 17 January 2016; Zezhai Song at least as recently as 19 August 2019; and Si Xin Qin at least as recently as 26 February 2020.

Now, I should say Crown, of course, does not have perfect visibility on the Star's dealings and it's possible that some of these men attended the Star as individual players rather than junket operators but – when I say the Star I mean the Star in Queensland – but to the extent that they did attend as junket operators, evidently the chief executive either did not assess them for suitability, notwithstanding the regulation, or assessed them as suitable. The fifth point that we would seek to make about the regulatory and industry context is to make some submissions about Australian industry practice.

And the ultimate submission that we make is that the evidence before the Inquiry shows that there's little substantive difference between the scope of Crown's due diligence processes with respect to junkets and the decisions Crown made with respect to particular junkets and the Australian industry standard, and we support that submission by the fact that the Star has had, and in some cases continues to have, dealings with many of the junkets with whom Crown has had dealings which are the focus of this Inquiry.

COMMISSIONER: Do you mean industry practice by that rather than a standard? No, written standard.

MR HERZFELD: No, I do mean industry practice.

COMMISSIONER: Thank you.

MR HERZFELD: So can I give the detail of that submission. Mr Hawkins, you will recall, Commissioner, gave evidence that the Star Sydney had a special room for

Suncity until August 2019, and that the Star continues to have a junket relationship with Suncity and Alvin Chau, though the junket operator is, for reasons that Mr Hawkins couldn't explain, a different person. And the documents available to Crown from its own records suggest that the Suncity junket was approved to operate at the Star Sydney at least as recently as 1 March 2020 and the Star Gold Coast at least as recently as 27 February 2020.

Mr Hawkins also gave evidence that the Star had a junket relationship with the Chinatown junket until 2016. Mr Hawkins' evidence was that he had not heard of Ng Chi Un who was referred to in some of the media as the Hot Pot junket, but documents available to Crown from its records suggest that Ng Chi Un was approved by the Star on 28 September 2010, which to be fair to Mr Hawkins was before he had joined the Star. Mr Hawkins wasn't asked about junkets linked with the Neptune Group, but documents available to Crown from its records suggest that various of the operators associated with that junket have operated at the Star, including at least as recently as February 2019.

Mr Hawkins wasn't asked about the Song junket but, again, Crown's documents suggest that Zezhai Song was approved at the Star Sydney at least as recently as 24 February 2020 and the Star Gold Coast at least as recently as 19 August 2019. And Mr Hawkins wasn't asked about the two additional junket operators identified by counsel assisting who were not the subject of the media allegations; they are Pun Chi Man and Si Xin Qin. However, the documents available to Crown suggest that Pun Chi Man was approved at the Star at least as recently as 5 August 2015 and Si Xin Qin was approved at the Star Sydney at least as recently as 1 March 2020 and the Star Gold Coast at least as recently as 26 February 2020. Now, again, can I repeat the caveat that I mentioned earlier, that Crown doesn't have perfect visibility on the Star's dealings so it is possible that some of the individuals that I've just mentioned may have been approved as premium players rather than junket operators, but at least so far as they were approved - - -

COMMISSIONER: In referring to Crown's records I presume that Crown in dealing with these people as junket operators has information in those records relating to their registration or dealings with other casino operators around the world, I presume. Is that right?

MR HERZFELD: That's so, and I think, Commissioner, you've seen some of those - - -

COMMISSIONER: And Crown has depended upon those individuals to tell them accurate – to tell it accurate information.

MR HERZFELD: I'm not sure if there are other sources of information as well, but certainly it isn't the case that we, for our part, have perfect visibility and so I just wanted to make clear that it is entirely possible that the Star might have better – well, will have better records than we have about the people that I've just mentioned, and I didn't want to overstate the position in case it happens that some of them, for

example, have played at the Star but not been junket operators at the Star on some of the dates that I've mentioned.

COMMISSIONER: But I just want to be sure for the purposes of tracing the evidence, Mr Herzfeld. The submissions that you're making relate to Crown's information and Crown's records, and my question is really the records to which you refer are not itemised as exhibits in the Inquiry, but go to Crown's records in its operations pursuant to which junket operators that it deals with provide information to it about other casino operators with whom it deals. Is that right?

MR HERZFELD: It is.

COMMISSIONER: Thank you.

MR HERZFELD: It is, and most of the documents which underlie the submission I have just made are not yet in evidence and we would propose to tender them as part of a bundle at the same time as providing our written submissions.

COMMISSIONER: And you will give those documents to Star, I'm sure.

MR HERZFELD: I'm confident that that will now occur.

COMMISSIONER: Yes. Thank you, Mr Herzfeld. Yes.

MR HERZFELD: I should say subject – perhaps I shouldn't over-promise and under-deliver. It is possible that there are confidential aspects of those documents depending on their nature in which case any production to the Star might require redaction, so I shouldn't – again, sitting here in my ivory tower of 11 Wentworth, make a promise about that, but I understand why, Commissioner, you put that to us.

COMMISSIONER: I think it's important when you're dealing with information that's not in evidence before the Inquiry that affects another operator that it's at least very fair to provide them with as much detail as possible so that they, if they see fit, can address it in the Inquiry environment. Thank you, Mr Herzfeld.

MR HERZFELD: Thank you, Commissioner. We understand that.

COMMISSIONER: Yes.

MR HERZFELD: And again in relation to these operators, so far as they were, indeed, junket operators, there's no suggestion in Dr Horton QCs assessment of the suitability of the Star that junket operator relationships of the kind to which I've referred rendered it unsuitable, though the operation of junkets was part of his terms of reference. And so in light of each of those matters, it is, in our submission, plain that a system based on the aphorism, when in doubt rule it out, doesn't reflect the previous approach of regulators to which Crown was subject, nor the previous practices of the industry in which it has operated, and that informs the view which

the Inquiry should take of the judgments that the legislative scheme required Crown to make about the junket operators the focus of the Inquiry. Can I then move to the third topic - - -

COMMISSIONER: Yes.

MR HERZFELD: - - - which were some background matters, and they are dealt with in paragraphs 5 to 43 of counsel assisting's written submissions and they're largely background matters that Crown doesn't contest, but may we make two further background points. The first concerns the importance of junkets to VIP revenue. Now, Crown accepts that in the years since 2013 up to immediately preceding the COVID-19 outbreak, the turnover of Crown's VIP international segment had become increasingly dependent on junkets. But that fact must be put in context by reference to exhibit AC29, if that could be brought up. The document ID is INQ.010.004.0546. This was a document about which Mr Poynton gave evidence.

COMMISSIONER: Yes.

MR HERZFELD: Can we make two points about this document. The first is that it shows that the contribution of the VIP segment as a whole to Crown's earnings, that is profit, has always been much lower than its contribution to turnover, that is revenue, and at its peak in 2015 it contributed 29.79 per cent of Crown's turnover, but only 14.76 per cent of Crown's earnings, and that's because it is and was a very low margin business, and each of Mr Felstead, Mr Barton and Mr Johnston gave evidence about that. The second point we would make is simply that the contribution of the VIP segment as a whole, both to Crown's turnover and earnings, has generally been declining.

From the 2015 year to which I've drawn attention, by 2019, as you will see in that document, Commissioner, the contribution to turnover had declined quite substantially and both figures had been even lower in 2017. That document can be taken down now.

COMMISSIONER: Yes, thank you.

MR HERZFELD: That's just important in contextualising the statement that's made in those background submissions about the importance of junkets to the VIP business as a whole. The second matter arising from those background paragraphs is simply to draw attention that, like Dr Horton's more recent review to which I've already drawn attention, reference is made to Mr McClellan QCs 2000 report into the suitability of Star City Pty Ltd and that report was made in light of significant problems in the operation of the private gaming area. You will recall, Commissioner, that there was a finding by Mr McClellan that money laundering had occurred at the Star.

COMMISSIONER: Yes.

MR HERZFELD: And notwithstanding this and many other problems, Mr McClellan QC did not find Star city Proprietary Limited unsuitable. And we would draw two points from this. The first is really the one that I've just made which is that the presence of quite serious problems did not lead to a conclusion that Star City Proprietary Limited was unsuitable, including because of the steps which had been taken to remediate those problems. But the second more particularly relates to junkets. Junkets were present at the time and they're mentioned in Mr McClellan's report. He didn't consider them to be business associates who were not of good repute, although of course this report was many years ago and Mr McClellan would not have had before him as much evidence relating to junkets as presented to you, but two points.

First, shortly afterwards the Star suspended its junkets program, which is similar to the step which was taken by Crown. And also, it is really consistent with what you will find more recently in Dr Horton QCs review which is a relatively benign attitude taken to junkets in Mr McClellan's report, and that's consistent, as I say, with a historical regulatory and industry approach. Can I then move to the next topic and make some more general submissions about Crown's due diligence processes for junkets?

COMMISSIONER: Yes.

MR HERZFELD: And the submission by counsel assisting at paragraph 254 is that at all material times Crown Resorts' procedures for vetting junkets have not been robust. Now, as I noted at the outset of my submissions, Crown accepts that there have been shortcomings in its due diligence processes, and that in its most recent form those processes do not eliminate all risks associated with junkets, but we otherwise submit that the findings sought by counsel assisting should not be made. Before coming to the detail of the due diligence processes can I make three overarching submissions.

The first is that as accepted by counsel assisting, Crown's due diligence processes with respect to junkets have evolved and improved over time. And it is not readily apparent how the structure of Crown's processes quite some time ago, in circumstances where the processes have improved more recently, bears very directly upon a conclusion about Crown's present suitability. In our submission, the principal focus ought to be on Crown's present processes, recognising the improvements that Crown has sought to make over time and is continuing to make.

Secondly, insofar as the submission by counsel assisting is prompted by the content of the 31 July 2019 media release, that release was in terms directed to the processes that Crown had in place at the time, that is, in 2019. The statement did not purport to comment upon Crown's past processes, and the context for the release was highly sensationalised media allegations which I will address shortly. It's therefore hardly surprising to pick up on a matter raised by counsel assisting, that the evidence given by Crown directors to the Inquiry has had a different tone to that of the advertisement.

The Inquiry process has stretched over many months and had the benefit of a quasi-adversarial process. I suspect to some of the witnesses the emphasise was on the adversarial for their experience rather than the quasi. The period of reflection, the amount of material gathered to aid that reflection, and the testing of propositions by counsel assisting could not have been realistically replicated in the short time necessary to respond to the media allegations at the end of July 2019. So a change in tone or differences in tone are hardly surprising.

The third overarching point is that whether systems are robust is necessarily an evaluative judgment. It's a description of the capacity of the system to avoid mistakes and to deliver "correct" outcomes; But no system is fail-proof and what outcomes are correct must be judged having regard to the contemporaneous expectations. There are also limits to the extent to which a casino operator is able to undertake the kind of due diligence which might be expected of a regulator. A regulator can be given statutory powers to insist upon the provision of information. The scheme can empower the regulator to access material of other regulators. The provision of false or incomplete information to the regulator can be criminalised, and none of that, of course, was possible in relation to Crown's junket decision-making.

Of course, for both a casino operator and regulator there are challenges in dealing with junkets. There may often be less visibility over aspects of a junket's operations, including how it enforces debts against players and the investors or financiers who sit behind it than would be ideal, and that's not a difficulty which is unique to Crown. It's a difficulty faced by regulators and casino operators alike when dealing with junkets whose operations include financial dealings with players, and you've heard evidence to that effect from quite a number of witnesses.

Now, one of the ways in which Crown sought to address this issue was to insist that junket operators be individuals. Now, Mr Preston explained that this was a way to address the risk that individuals connected with junkets might hide behind corporate structures. Now, as I will come on to shortly, Crown accepts that its due diligence processes have not sufficiently addressed this risk, but the Inquiry should recognise that it was a risk to which Crown was alive and which it sought to address.

Counsel assisting submit that the suspension of junket relationships in August 2020 should be treated as an admission by Crown. With respect, it's not made very clear what it is said has been, thereby, admitted, but to the extent it's suggested that this is an admission that the previous junket due diligence processes could be characterised as not robust, we submit you should not treat the suspension in that way, Commissioner. The - - -

COMMISSIONER: I think it's to do with – it's a double-edged situation, Mr Herzfeld. On one view of it, suspending it facilitated the object of the Act. When you suspend junkets that have suggested and publicly stated connections to triad gangs, you suspend them from getting into the casino. So that enables the object of keeping the casino free of criminal infiltration. So it's in support of that. So it's an admission, on one view of it, that was needed to stop that, and that, as I say, is

double-edged. But I do understand that it's also an admission that perhaps the processes were such that it couldn't be controlled, because no-one really knew whether they should or shouldn't come in, because they didn't know whether they were or weren't criminals and infiltrating the casino. So there was a lack of visibility. So, in all senses, it was a very good step to suspend them, even though they couldn't get in because of COVID, but – so it has a number of edges, this sword.

MR HERZFELD: Yes. And I think it's not entirely clear to us which particular edge is being pointed at us by the reference to an admission, but so far as it is sought to be deployed in support of counsel assisting's overall submission that the junket due diligence processes were not robust, we submit that you should not treat it as an admission of that proposition.

COMMISSIONER: So do you say that they were robust?

MR HERZFELD: We do not accept that they were not robust. I've put that with too many negatives. I'm sorry, let me try again.

COMMISSIONER: I have no idea what you mean by that.

MR HERZFELD: No.

COMMISSIONER: I'm just asking you, are you saying they were not – they were robust?

MR HERZFELD: Yes, having regard to the - - -

COMMISSIONER: I see.

MR HERZFELD: - - - circumstances at the time, and what I've already put about the characterisation of something as robust as not being a black and white issue, it's an evaluative characterisation of the processes. So we accept that they had shortcomings, but we don't accept the characterisation that they were not robust.

COMMISSIONER: Just let me – if I'm wrong about this, please tell me, Mr Herzfeld, but I have a recollection that the chairman of your client said that she would not use the word "robust" in the advertisement.

MR HERZFELD: And I think – yes. And there were various comments by various directors, some of which - - -

COMMISSIONER: No, I'm just asking about the chairman. I'm just asking about the chairman.

MR HERZFELD: I think – I think her evidence was that she didn't think the process was sufficiently robust.

COMMISSIONER: So, you see, taking from her evidence, which I accept, that seems to me to suggest that I could be satisfied that, as the chairman of Crown has told me that her opinion was that the systems at that time were not robust at the time of the advertisement, that, more probably than not, they were not robust.

MR HERZFELD: Well - - -

COMMISSIONER: Is that unreasonable, Mr Herzfeld?

MR HERZFELD: I'm not sure that, Commissioner, the evidence is quite in the way that you have put it. I think that there is a - - -

COMMISSIONER: Let me put it again. Let me put it again so we're clear: the nuances of your submissions I fully appreciate in respect of character and reputation and what was in place at the time. I'm fully across that. This is a factual matter in respect of which Ms Coonan was asked about in dealing with the advertisement, and what, as at the day Ms Coonan gave evidence, she would accept might need some amendment, effectively. One of the things to which Ms Coonan referred was the word "robust". Now, her comparison was between "robust", I believe, and "extensive".

MR HERZFELD: It was.

COMMISSIONER: But – and so, more probably than not, in paying attention to Ms Coonan's evidence very carefully, it could be concluded that the systems were not robust; is that unreasonable?

MR HERZFELD: We submit that you should not make that finding. I understand what you put to me about Ms Coonan's evidence and, of course, the different directors gave different perspectives. Some were more willing to characterise the processes in one way than others; that's indicative of the fact that the characterisation is not, with respect, simply a factual one, it's an evaluative one. A system is never going to be perfect and a system can be described as robust even though an error has occurred, for instance. Our submission is that which I have put to you, which is that Crown accepts that there were shortcomings. It does not accept the proposition which you put to me, Commissioner, that the system was not robust.

COMMISSIONER: I see. Yes, Mr Herzfeld.

MR HERZFELD: And the submission that I was making was that the suspension shouldn't be treated as an admission of that proposition.

COMMISSIONER: Should not be treated?

MR HERZFELD: Should not be treated as an admission of the proposition that the due diligence processes were not robust. I think there's too many negatives floating around. I will try better.

COMMISSIONER: That's all right. I understand.

MR HERZFELD: And one of the reasons we say that is that the suspension decision occurred, plainly, in the context of this Inquiry, where it was plain that serious allegations were being made by counsel assisting, and it was likely that it would be submitted that a higher standard than that previously applied should now be applied. And a suspension was, of course, a prudent step in order to review all of the junket relationships and consider whether to continue dealing with junkets. Could I then step through the various periods that are identified by counsel assisting in their submissions. Although, I notice the time, Commissioner; that's a shift to another topic. I'm not sure if you want me to start that or - - -

COMMISSIONER: All right. Yes, yes. I could get you to commence that, if you wouldn't mind, at 2 pm, Mr Herzfeld.

MR HERZFELD: Thank you, Commissioner.

COMMISSIONER: Yes. I'll adjourn until 2.

ADJOURNED **[12.58 pm]**

RESUMED **[1.59 pm]**

COMMISSIONER: Yes. Thank you. Yes, Mr Herzfeld.

MR HERZFELD: Thank you, Commissioner. Can I just pick up something concerning the information in Crown's records on which I was relying to make submissions about the Star.

COMMISSIONER: Yes.

MR HERZFELD: That information does not come from the patrons themselves. It's information shared between casinos.

COMMISSIONER: I see.

MR HERZFELD: There are some examples in evidence. I will give you a reference, although it's not necessary to go to it. It's exhibit BJ - - -

COMMISSIONER: I don't need examples; I just need the evidence.

MR HERZFELD: Yes.

COMMISSIONER: Is the evidence in or is it not?

MR HERZFELD: Not all of it, and that's what we will supplement with the tender bundle.

COMMISSIONER: All right. That's fine. You can do at that in your written submission, Mr Herzfeld. Thank you very much.

MR HERZFELD: Yes. Thank you. Can I then just step through the various periods identified by counsel assisting in their submissions relating to the due diligence processes.

COMMISSIONER: Yes, of course.

MR HERZFELD: The first period is that prior to September 2014 and, save for one matter, Crown doesn't challenge the description in paragraphs 257 to 262 of counsel assisting's submissions. The caveat is that, in our submission, the Inquiry should not accept the criticism of Crown's reliance as one due diligence measure on the fact that the junket operator had secured a visa and travelled to Australia. In our submission, there's no circularity in Crown's reliance on this point, as is submitted by counsel assisting, simply because Crown supported, in a way that counsel assisting accepts was proper, the grant of visas to persons.

The Department of Immigration made clear that these kinds of arrangements would not circumvent the legislative requirement for the department to be satisfied that each applicant was a genuine visitor to Australia or the need for officers, where appropriate, to conduct thorough assessments, and you can see that, Commissioner, without going to it, in exhibit S8. So whatever support Crown offered, it was a relevant matter for Crown to take into account that the department with the power to refuse a person a visa on character grounds had not done so. That matter was, and could remain, significant in circumstances where the Commonwealth Government will no doubt have access to sources of information which are inaccessible to a casino operator such as Crown.

And in any event, as counsel assisting accepts, the arrangements were only in place until October 2016. So any circularity, which as I say we resist, could not apply after that date. Can I then move to the period October 2014 to October 2016. That's in paragraphs 263 to 264 of counsel assisting's submissions and, again, save for one matter we don't challenge that description. The one matter is that we do emphasise that the breadth of databases checked was expanded in that period compared to the earlier period. This is acknowledged, but in our submission rather unfairly downplayed in those paragraphs of counsel assisting's submissions.

Can I then move to the next period which is November 2016 to mid-2017, which is addressed at paragraphs 265 to 269 of counsel assisting's submissions. There are some points of detail which we will pick up in writing, but orally can I make one more substantive point. Those submissions do tend to minimise, in our submission, the extent of the review undertaken following the China arrests. That review from November 2016 was an extensive review of junkets which led Crown to cease

dealing with over 100 junket operators, and so that was, in our submission, a very substantial review of Crown's junket arrangements.

Can I then come to the period which, in our submission, is the one of principal relevance, which is the most recent period from mid-2017 to August 2020, and it's that period and only that period which the advertisement described as robust. And in response to counsel assisting's submissions about that period can we make four submissions. The first is that it's evident that from mid-2017 there was a substantial change in the systems that Crown had in place for making decisions whether to enter into a commercial relationship with a junket operator or to continue such a relationship. Three senior Crown officers were tasked with making decisions about those matters and that was based on extensive due diligence material.

Second, it doesn't follow from the fact that annual reviews, that is, not the initial decision but the ongoing annual reviews, were only escalated to Mr Felstead, Mr Johnston and Mr Preston on five occasions since July 2017 that there was, as is submitted, a lack of rigour in those annual reviews. That would be so only if there were more than five occasions in which material new information emerged or a material change had occurred since a junket operator was approved, but the case wasn't escalated to them. And it hasn't been demonstrated that that was routinely the case and that escalation routinely did not occur. That said, one of the shortcomings identified by Deloitte is the need, if this kind of process is to continue, to have clearer defined escalation points and triggers for further investigation, and Crown accepts that.

The third point is that in our submission counsel assisting go too far in criticising reliance upon DICJ licensing of junket operators, which as you know, Commissioner, are referred to in Macau as gaming promoters. They go too far in criticising that as one factor relevant to Crown's due diligence, and that's because the submissions of counsel assisting don't make clear the improvements in the rigour with which the DICJ has conducted licence investigations in more recent times, and that was explained by Mr Bromberg in his evidence. So for example, Mr Bromberg gave evidence at pages 87 and 88 of the transcript, a very long time .....

COMMISSIONER: He's frozen. Just pause there for a moment. Just – you're back now, Mr Herzfeld.

MR HERZFELD: Yes, I think we might have lost each other when I'm sure I was saying something important, so I will go back - - -

COMMISSIONER: You were saying that Mr Bromberg gave evidence a very long time ago at pages 87 and 88, and that's all I heard.

MR HERZFELD: Yes. Yes. And that evidence was about the circumstance in 2013 that, for DICJ licensing, an individual must not have a criminal record, and a Dun & Bradstreet report was conducted on a company. He then went on to explain that while he didn't have intimate knowledge of what had happened after 2013,

things changed substantively from about 2016, and the changes to which he referred at the following pages were requiring an annual audit and real enforcement of rules and regulations, including in relation to existing gaming promoters, and he said that a number of gaming promoters refused to comply with the new requirements and as a result were not relicensed.

Now, in light of those more recent changes it's immaterial that in 2004 existing – then existing licensed – I'm so sorry – then existing junket operators were grandfathered, because in more recent times they've been subject, like everyone else, to annual audits. And likewise paragraphs 276 to 277 of counsel assisting's submissions state that Mr Bromberg agreed with the view expressed in the 2016 article which is there quoted, and Mr Bromberg made clear at page 92 of his evidence that his agreement was at the point in time when that article was written, that is, 2016.

Now, Mr Bromberg's understanding of the more recent situation in Macau will be one of the things that we will seek to supplement by some of the evidence which Mr Young foreshadowed that we will seek to file. And we expect it to show, consistently with Mr Bromberg's evidence, that the number of gaming promoters has declined significantly in Macau as those who could not or would not comply have not been relicensed. Macau has significantly strengthened its anti-money laundering requirements in recent years and, as a consequence, junket operators licensed in Macau are far less likely to be involved in criminal activities than previously. And so we do say that, in the more recent due diligence period, that which is the subject of the advertisement and the subject of principal focus, reliance as a factor on DICJ licensing is of greater significance than counsel assistings' submissions suggest.

The fourth point that we make about this period is to respond to the submission that Mr Felstead and Mr Johnston had vested interests in driving the profitability of Crown, and Mr Hutley already addressed you on this point. May we add briefly that the same point could be made about any Crown officer or employee whenever they're called upon to make a decision which could affect the profitability of the company, but it doesn't follow from that that all decisions should be taken away from people in the operational side of the business. It's a question of judgment whether, because of the circumstances, the final say on certain decisions should be left to others. That said, another of the shortcomings identified by Deloitte, which Crown accepts, if, as I say, these kinds of due diligence processes are needed in the future in respect of junkets, one of those things is the need for greater input from Crown's compliance and AML teams into the due diligence for junkets. Can I then move, Commissioner, to the media allegations concerning junkets. And as Mr Young observed – I'm sorry, Commissioner, you've frozen on my screen, but I'm not sure if that means I've frozen on yours.

COMMISSIONER: Yes. We're sorry, Mr Herzfeld. These things happen. You're just moving to another area. What he is that area to which you're moving?

MR HERZFELD: Yes. I'm moving to the media allegations concerning junkets.

COMMISSIONER: Thank you very much.

MR HERZFELD: Now, as Mr Young observed, because of the Inquiry's Terms of Reference, we understand why the submissions of counsel assisting are structured around the media allegations concerning junkets, but, at least on one view, the veracity or otherwise of the media allegations is a little beside the point. The critical point is what in fact has occurred and the extent to which, if at all, that's relevant to Crown's present suitability. That said, we do - - -

COMMISSIONER: Well, I suppose, Mr Herzfeld, if one were to find that there was nothing in the allegation, it's highly relevant to Crown, and one of the allegations in respect of that category was the allegation relating to the visa – aspects of the visa reference. So there are – the veracity of those allegations had to be looked into by the Inquiry and it is exquisitely relevant to your client's suitability, if true, then, what flows from that.

MR HERZFELD: Yes. So we accept that, that, in other words, whether the things alleged occurred might be centrally relevant, but whether the media was right is not, per se, of particular significance, and the structuring of the submissions around the media allegations tends to distract, in our submission, from what is more centrally relevant to suitability, which are current issues, the present circumstances. And so some of the media allegations concern matters of some time ago and they are of less significance than the matters which occurred more recently. So – but we do emphasise - - -

COMMISSIONER: Well, we wouldn't be here but for them.

MR HERZFELD: I accept that entirely.

COMMISSIONER: All right.

MR HERZFELD: But we do emphasise the following points about those allegations, because they're relevant to the response. First, the language and content of those allegations may fairly be described as sensationalised. And can I take you, Commissioner, to two examples, please?

COMMISSIONER: Yes, of course.

MR HERZFELD: If you could turn, please, to exhibit G3, which is INQ.100.010.0690, which is the Gangsters, gamblers and Crown casino article, which was published on the 27th of July 2019.

COMMISSIONER: Yes.

MR HERZFELD: And if pinpoint .0693 can be brought up, you will see that, in the second paragraph, it's asserted that:

…Crown was prepared to get into bed with junket operators backed by Asian organised crime syndicates … including the most powerful drug trafficking syndicate in the world.

And then in the third paragraph there's an assertion that Crown had:

…helped bring criminals through the nation's borders in a way that raises serious national security concerns.

If you then move to pinpoint .0700, you will see that, in the first paragraph under the picture appears "Moo was licensed by Crown". And then, over the page to .0701, again, in the first paragraph underneath the picture, there's a paragraph asserting the link between the company and the Hot Pot junket, which it said was "promptly licensed by Crown". And at the end of that paragraph, it asserts that:

Crown was effectively making payments to an organised crime syndicate.

To give another example, if you could bring up the transcript of the 60 Minutes program, Crown Unmasked, that's exhibit F63 which is INQ.100.010.1074. Has that been brought up for you, Commissioner?

COMMISSIONER: It has. Thank you.

MR HERZFELD: And at pinpoint .1075, you will see, Commissioner, item 21. There's item numbering in the transcript, which is helpful. So item 21 is a reference to Crown:

…exposing Australia's national security to grave risks.

At pinpoint .1080, item 133, the last sentence of the first paragraph asserts that Crown:

…hired Macau agents, known as junket operators, to do its dirty business.

Then, on the following page, item 137:

What is the risk that Crown takes on when it gets into bed with junkets?

Then, on the following page, item 156, there's a reference to Crown's "deep underworld connections". The same page, item 165 it says:

This man, Roy Moo, is a licensed junket operator at Crown Casino which pays him to lure Asian VIP gamblers to its high roller rooms.

Then, on the following page, item 179, the last sentence:

…Crown junket after Crown junket with underworld ties –

and there's an assertion that Crown was either wilfully blind or recklessly indifferent. The same page, item 194, is again the language:

Crown has also jumped into bed with a Melbourne brothel boss.

And, then, on page .1085, item 221 appears:

...and need an Aussie visa? Just call Crown.

Now, the imputation conveyed by many of the allegations was knowing involvement by Crown in criminal activity carried out in concert with junket operators, and counsel assisting, of course, does not suggest that such an imputation can be defended. Secondly, as identified in the submissions made by counsel assisting, some of the most serious specific allegations made in the media are unsupportable and, Commissioner, you've already mentioned one concerning visas which is replicated in the extracts to which I've taken you, but another from those extracts is that so far as there are allegations that Crown got into bed with The Company, or paid commission to The Company via the Hot Pot junket, these allegations are not supported by the evidence available to the Inquiry.

In particular, they're not demonstrated by material suggesting that without the knowledge of Crown, Roy Moo laundered money at Crown that was the proceeds of criminal activity by The Company. And the material before the Inquiry doesn't support a link between the Hot Pot junket and The Company, and that's accepted by counsel assisting at paragraph 109 of their submissions. Another significant matter of context that was either obscured or misrepresented in the media allegations was that in a number of cases the allegations concerned matters from years previously, and one example is the quote from the 60 Minutes report:

This man Roy Moo is a licensed junket operator at Crown Casino.

That was wrong in two respects. It was wrong because Roy Moo was never licensed as a junket operator by Crown but was, to the contrary, only ever approved as a junket operator by the Victorian regulator. But it was also wrong because it implied that the circumstances referred to were continuing; it used the language "is a licensed junket operator". In fact, as you know, Commissioner, Crown issued Roy Moo with a withdrawal of licence on the 23rd of March 2013 after he was charged, which Crown has subsequently refused to revoke on two occasions.

Now, it's in the context of media allegations of that kind that the board of Crown thought it was both necessary and appropriate for Crown to respond swiftly and firmly to the media allegations, and in particular this was the context in which the board thought it appropriate to defend the integrity of Crown's due diligence processes. Now, that was, of course, a decision made by the board based on the information then before it. Counsel assisting do not submit that the board's characterisation of the process as robust on the information then before it was unreasonable. As to whether it's now to be regarded as a fair characterisation, as

I've already submitted, it reflected then, and reflects now, an evaluative judgment, recognising that robustness is not a binary characteristic. And that's evidenced by the different views taken by directors in evidence of the description of the process today.

Commissioner, as you identified to me earlier, Ms Coonan said she would have softened the language and replaced "robust" with "extensive". That's at transcript 4436. She also said she didn't think the processes were robust enough at 4491, and she agreed the processes weren't robust but were extensive; that's 4498. But Mr Johnston didn't agree with the proposition that the due diligence procedures at the date of the ad were not robust. That's transcript 3155 to 6 and 3180 - - -

COMMISSIONER: Well, he had the burden of being part of it.

MR HERZFELD: That's true.

COMMISSIONER: He was in management and dealing with the due diligence. That's the problem for Mr Johnston.

MR HERZFELD: All I'm seeking to address is the different views of each of the directors who were asked about this, and I accept what you say, Commissioner, that his position is a little different to some of the others. Not to say that he's incapable of expressing a view on the process now, which is what he was asked, but he wasn't the only director who refused to accept the description "not robust". Mr Alexander - - -

COMMISSIONER: I don't see how this can assist you. You see, this is a suitability process for the purpose of identifying willingness to cooperate, and I just don't see how it can assist you to take me to all the directors' resistance to the suggestion that Ms Coonan came to very promptly. It just doesn't help you, I don't think.

MR HERZFELD: Well, Commissioner, you - - -

COMMISSIONER: You see, on one view of it, what Ms Coonan said is exquisitely appropriate, and if you want to take me to all the other directors resisting it, all right, you can do it, Mr Herzfeld, but look, what you're trying to convey to me is that I should find that Crown is a suitable entity to be a close associate of the licensee, and if we have debate about whether something is robust or not, even in October 2020 when it's clearly the chairman's view that it was less than robust, it's not going to help much, I don't think. You see, what I'm looking for is true commitment. True commitment. In any event, you proceed if you wish, Mr Herzfeld.

MR HERZFELD: Well, Commissioner, obviously, this debate has less relevance given the recent decision to cease dealing with junket operators in any event. In terms of true commitment, to use your words, there could hardly be a more obvious indication of the board of this company considering the position carefully and taking a decision following a process of reflection. But there is a positive finding sought by

counsel assisting that the process was not at any material time robust, and one of the matters you, Commissioner, raised with me earlier in support of that proposition was the perspective expressed on it by Ms Coonan, and I accept that was her view now, looking back on it, and there were other directors who had that view as well.

Professor Horvath accepted the description in the ad was erroneous, and Ms Halton did as well, although she said she believed it was right at the time. But if those directors' perspectives now are deployed as evidence in support of the factual finding which is sought by counsel assisting, in fairness it should be identified that other directors maintained a different view, and that's really reflective of the proposition that I submitted earlier, that this characterisation of the process as robust or otherwise reflects an evaluative judgment. And each of the views expressed by the directors in evidence are reasonably open judgments, in our submission, and therefore we maintain that both at the time and as an objective matter today, it is open to characterise the process as robust, and for that reason you should not make the factual finding sought by counsel assisting that the process for vetting junkets has at all times not been robust.

Now, I accept entirely what you put to me earlier, which is so far as suitability is concerned that factual finding may be of little relevance in light of the more recent developments, but it is a factual finding sought by counsel assisting and it is one which we submit you should not make. Can I then move to one of the other media allegations.

COMMISSIONER: Certainly.

MR HERZFELD: And that's that Crown Resorts partnered with junkets that were backed by organised crime syndicates, and there's two aspects of that allegation. The first is partnering, and the second is that the junkets were backed by organised crime syndicates. In terms of partnering, the submission of counsel assisting is that it should be found Crown Resorts did partner with junkets in the sense that that term was used in the relevant articles, and it's asserted that paragraph 54 of counsel assisting's submissions that that sense was to connote a form of collaboration between Crown Resorts and junket operators for their mutual benefit and a teaming together.

Now, in our submission the focus on the word "partner" and the different meanings that it may have is largely unproductive. Plainly, there's no basis to find that there was a legal partnership between Crown and any of the junkets the subject of the Inquiry, though that, in our submission, is what unqualified references to partnership in media publications would ordinarily convey. Conversely, if partnership is defined simply as collaborating with for mutual benefit it's equally plain that Crown has collaborated for mutual benefit with all of the junket operators who have ever connected a junket program at one of Crown's casinos, and it might equally be said that Crown has collaborated for mutual benefit with every other contractor with whom it's contracted. But the different possible meanings which different people may attribute to the word "partnering" really do depend on the context and whether

there's anything about that context which would qualify the ordinary meaning of the word and that, in our submission, explains why different Crown directors and officers took different views in their evidence about whether it was a fair characterisation of what Crown was doing with junkets and it, likewise, explains the use of that expression in various internal marketing and other documents concerning the platform junket strategy.

But in any event, the media allegations went far further, in our submission, than simply suggesting an anodyne collaboration for mutual benefit. As shown by the extracts to which I've taken you, there were references to getting into bed with or jumping into bed with junket operators; Crown hiring junket operators to do its dirty business; Crown licensing junket operators; and there being what were described as Crown junket operators. And it was statements like this which conveyed the imputation of a joint criminal enterprise between Crown and the junket operators. And it was in this context that one sees what was said in the advertisement issued by Crown. Again, this is probably a document which you're well familiar with, Commissioner. Could I just take you just – would it assist to refresh your memory of it, because there will be other submissions about it – it's exhibit A219.

COMMISSIONER: Yes. And the reference number?

MR HERZFELD: Yes. It's INQ.100.010.0895.

COMMISSIONER: Thank you.

MR HERZFELD: And at pinpoint .0896 you will see, Commissioner, what was said in the first paragraph under the heading Junket Operators.

COMMISSIONER: Yes.

MR HERZFELD: And just, because it will be relevant a little later, can I also remind you, Commissioner, of what was said above that heading at points C and E.

COMMISSIONER: Yes.

MR HERZFELD: Now, returning to the statement under the heading Junket Operators, that statement was both fair and accurate, but also not surprising in the context in which I have taken – the context to which I have taken you. It was a response to the clear imputation of a joint criminal enterprise being engaged in by Crown and junket operators. And nothing in that first paragraph is denied by any aspect of counsel assistings' submissions concerning the platform junket strategy. The identification of large junkets encouraging VIP players with a credit risk Crown was not willing to take on towards platform junkets, an identification within Crown of staff responsible for particular junket relationships. It doesn't deny the fact that junket operators were independent businesses, and so much is evidenced by the fact that one of the platform junkets, Suncity, had a similar kind of exclusive room at one of Crown's key competitors, that is The Star.

In any event, the relevant matter for Crown's suitability is rather not what meaning should be attributed to the allegation of partnering in the media. That issue bears on the meaning conveyed to the public and why Crown made the decision to publish its advertisement, but those matters don't really go to suitability. What matters for Crown's suitability is what in fact occurred in relation to each of the junkets and how, if at all, that bears on the question of suitability. Whether, in a given case, a relationship is capable of being described as a partnership in the manner defined by counsel assisting or otherwise is, in our submission, largely immaterial.

Can I come to the second aspect of this general allegation, namely, that the junkets were backed by or had links to organised crime. The media allegations, of course, weren't cast in terms of alleged links or suggested links. They asserted, in fact, that the junkets referred to were backed by or had links to organised crime. Now, Crown accepts that in the case of a number of the junket operators the subject of the Inquiry, there is material which suggests a link to organised crime, but there's no basis upon the evidence before the Inquiry to describe those links as probable or otherwise to conclude that the media allegations were, in this respect, correct, that is, that there are, in fact, junkets who dealt at crime – who were backed by organised crime. Now, I said I would address some of the examples concerning the different junket operators. Commissioner, I'm being told my video may have disappeared again.

COMMISSIONER: No. I see you, Mr Herzfeld. Thank you.

MR HERZFELD: Regrettably, it's just those assisting who can't hear or see me, so I'm now really on my own, but I will just bat on.

COMMISSIONER: That sometimes happens. Yes.

MR HERZFELD: Yes. Now, I said I would address three examples of junket operators.

COMMISSIONER: Yes.

MR HERZFELD: The examples that I would seek to address orally are Ng Chi Un, associated with Hot Pot; Si Xin Qin, who is not one of the junket operators the subject of the media allegations, but is the subject of submissions by counsel assisting; and Alvin Chau, associated with Suncity. And in respect of each of those examples, counsel assisting submits that Crown should not have done business with the junket operators, and I will seek to address that submission for each. So can I take them in turn. First of all Ng Chi Un and Hot Pot.

COMMISSIONER: Yes.

MR HERZFELD: Now, the submissions here arise from the media allegations that Crown had a junket relationship with the company via a different junket, known as the Hot Pot junket. And counsel assisting submits, at paragraph 100, that it should be found that Crown Resorts did have a business relationship with the Hot Pot junket

which was in fact the junket operated by Ng Chi Un. And it submitted that that fact should have been obvious to Crown Resorts on the information available to it. That reference to the Hot Pot junket is in the article that I took you to, Commissioner.

COMMISSIONER: Yes. Thank you.

MR HERZFELD: Now, Crown accepts that the junket operated by Ng Chi Un is the junket referred to in that article. And Crown also accepts that, at the time of this article, Crown should have determined this to be so. That's for these reasons: in the due diligence material available to Crown at the time of the article, there were references to Ng Chi Un's ownership of the Meng Mun Seafood Hot Pot. In our submission, it can't be concluded from these references alone that Ng Chi Un was the person referred to in the article, because Hot Pot is a common kind of Chinese cooking method,, and the evidence is that Hot Pot restaurants are very common in Macau and a number of junket operators own Hot Pot restaurants.

But Crown does accept that there were two further pieces of information available to it at the time of the article. First, in the course of conducting checks relating to Ng Chi Un's junket at other casinos at the outset of the relationship – so that's in August 2010 – his junket was referred to as the Meng Mun junket, so that's a link to the company name. And, secondly, it was said in the article that the Hot Pot junket was paid $232,000 in commissions from Crown for organising trips to Crown in the 2016 financial year and that could have been linked, and should have been linked, to the PAYG withholding from foreign residents form that you were taken to in evidence. So counsel assisting's submissions on this point at paragraph 100 are essentially accepted.

None of this renders false anything in the 31 July 2019 release. It doesn't contradict the statement at point E that, apart from Suncity, Crown does not now deal with any of the other junket operators or players mentioned in the program, and that's because Ng Chi Un's last junket program was on the 4th of September 2015, and Crown thereafter decided not to carry on any further business with him following the non-payment of a debt in 2015 which I will come back to in a moment. Nor does it render false the statement at point C of the release concerning the company, that Crown has had no dealings or knowledge of an organisation of that name or description, because it's accepted, and contrary to the media allegations, that none of the available material links Ng Chi Un with the company.

So while Crown should have picked up the link between Ng Chi Un and Hot Pot at the time, none of the material identified in fact contradicts any statement in the 31 July 2019 release. Can I then come to the question of whether Crown should have dealt with Ng Chi Un as a junket operator. Counsel assisting contends that there are indications, numerous indications within the Crown Resorts material that Ng Chi Un was linked with organised crime, and the material identified comprises two things. First of all, a reference in a Crown Melbourne patron credit profile from January 2014 to Ng Chi Un being associated with certain people who were in turn associated with the Water Room group.

And secondly, the content of an internal Crown email from EMP1 dated 10 December 2015. Would you turn to that email which is exhibit BA45, and the number is CRL.579.018.5541.

COMMISSIONER: Yes, thank you.

MR HERZFELD: And down the bottom of that email you will see what was said about Ng Chi Un as well as Pun Chi Man.

COMMISSIONER: Yes.

MR HERZFELD: And the meaning of that reference was then explained upon further inquiries being made by Mr Preston during the course of the Inquiry and communicated to you. That's in exhibit BL37. It's not necessary to bring it up. In short, the reference was to the "unsavoury" associates of Ng Chi Un. The context was that Crown's credit control team had indicated that they proposed to bank cheques by Ng Chi Un and Pun Chi Man. It was believed those cheques would have bounced and the team in Macau were concerned that a bounced cheque was a serious offence in Macau and if the cheques bounced, characters from the networks of Ng Chi Un and Pun Chi Man might take actions against employees of Crown. Now, Crown accepts that at the least this is evidence of standover tactics and it suggests, though it's not definitive, links to organised crime.

Counsel assisting further submits that on the information available to Crown Resorts, Crown Resorts could not have been satisfied that Ng Chi Un was of good repute and Crown Resorts should not have dealt with him as a junket operator, and Crown accepts that submission. The email of 10 December 2015 was not simply in the nature of an allegation or rumour or an unconfirmed recording in an international database. It was a report from Crown staff in Hong Kong and Macau of their belief as to the character of Ng Chi Un and his associates. Information of that kind should have been made known to those at Crown determining whether to enter a junket relationship with Ng Chi Un, and with the benefit of that information Crown should not have dealt with him as a junket operator. And that submission applies equally to the other man mentioned in the email, Pun Chi Man.

Can I move to the next example, because it provides a useful counterpoint to the example I've just covered, which is the example of Si Xin Qin. Now, he was not the subject of the media allegations, but counsel assisting's submissions describe his case as an obvious due diligence fail. It was asserted in the statement of issues and contentions at paragraph 30 that on the material available to Crown it could not have been satisfied that Si Xin Qin was a person of good repute and should not have entered into a business relationship with him. That contention isn't repeated in the submissions but, in any event, Crown submits that such a conclusion shouldn't be reached.

Now, Crown witnesses were questioned about the customer profile of Si Xin Qin. It's dated 3 January 2017, and if you could open that, Commissioner, confidentially - - -

COMMISSIONER: Yes.

MR HERZFELD: - - - which is exhibit AF44; it's CRL.579.019.3755.

COMMISSIONER: Yes.

MR HERZFELD: It looks like it might cover a series of events, but it's in fact just one event from different databases. In summary - - -

COMMISSIONER: Yes, we've established that.

MR HERZFELD: Yes. In summary, global database and internet searches from the independent of 2016 and the beginning of January 2017 state he had been detained by Chinese authorities on suspicion of money laundering and illegal banking in 2012, but that was not verified by official sources. It's put in various different language in the different databases, but that's the substance of it. And it was that document and only that document which was put to Crown witnesses to obtain their views on whether he is the kind of person who Crown should be dealing with. But in our submission the position is a little more complicated.

COMMISSIONER: I think the illegal underground banking activities alleged as well was highlighted with your witnesses.

MR HERZFELD: Yes. Off the back of this document, and the submission that I'm coming to make is that the position is a little more complicated upon analysis of the underlying material. And so one of the sources referred to is a Wealth-X dossier of the kind that can be seen in exhibit AF35; that's CRL.500.004.4631.

COMMISSIONER: Yes.

MR HERZFELD: And if you can be taken to .4632, please, you will see in the biography box in red text what is written there.

COMMISSIONER: Yes.

MR HERZFELD: And you will see, Commissioner, the reference there was reportedly no evidence that the transaction contravened any laws. And if you turn to .4633 you will see that references in similar red text make clear that the basis for this information is the Wall Street Journal.

COMMISSIONER: Yes.

MR HERZFELD: The relevant article was published on 4 December 2012 and it was exhibit M26, and again – I will give the document reference if it can be brought up confidentially. It's CRL.52 - - -

COMMISSIONER: Is this the Wall Street Journal?

MR HERZFELD: It is, but the reason it's confidential is it's part of a legal professional privilege claim because of the email to which it attaches to. The article itself isn't confidential, but the only version is the version attached to an email providing legal advice and in the propend way that particular copy is privileged. The article itself I have no difficulty with anyone seeing, but I'm seeking to preserve the position in relation to the email.

COMMISSIONER: Just bring it up on the screen, please. It's not privileged, the article; I will read the article. Thank you.

MR HERZFELD: CRL.522.001.1764.

COMMISSIONER: Thank you.

MR HERZFELD: At pinpoint 1769.

COMMISSIONER: Thank you. Yes.

MR HERZFELD: And in .1769, in the fifth full paragraph beginning "Chinese police have also detained people" - - -

COMMISSIONER: Yes.

MR HERZFELD: - - - and the following paragraph refers specifically to – I'm going to – I haven't struggled with any of the names so far, but I'm going to struggle this time, Si Xin Qin.

COMMISSIONER: Yes, that's all right.

MR HERZFELD: Now, can we just notice these things: first of all, The Wall Street Journal article, which is the source for this, doesn't in fact refer to him being detained in connection with money laundering, but there is a reference to "underground banking", but that's not quite the same thing. But, more significantly, both it and the Wealth-X dossier expressly state that there was no evidence that the transaction in which he was involved contravened any laws. A further significant matter is that the intercompany loans in question involved Las Vegas Sands Corp, a casino licensed and operating within Nevada, Singapore and Macau, and the parent company of Venetian. Now, that's publicly available information. In fact, Crown had further information available to it which was not in the public domain. If you could, please, be taken to exhibit M30, which is CRL.545.001.0611. And you will see this is an email dated 26 March 2013 from Mr Michael Chen. And if you turn,

firstly, to the second paragraph beginning "As you know". And then the sixth paragraph, where there's specific reference made to Si Xin Qin. And the source of the information in that email, which was not in the public domain, appears to be either Si Xin Qin himself or one of the supporters referred to.

The information available to Crown also suggests a possible reason for that detention which was the subject of that email. If you return to The Wall Street Journal article at exhibit M26, which was CRL.522.001.1764, at pinpoint .1768, the third-last paragraph on the page beginning "Displays of wealth". And then, over the page, the first full paragraph on the page links what is referred to there to these arrests. And that link is also suggested by another media article, which is exhibit AF54, which is INQ.100.001.1065 and, in the third paragraph, there's a reference, specifically, to Si Xin Qin, and then the last paragraph speculates on the reasons for this arrest.

COMMISSIONER: Yes.

MR HERZFELD: And so these reports and Mr Chen's email are consistent with the notorious fact that China as a country in which the rule of law is inconsistently applied and, in this light, contrary to the submissions of counsel assisting, it was, in our submission, well open to Crown to determine that Si Xin Qin was and remains of good repute having regard not only to reputation, but, rather, to an assessment of his actual character, honesty and integrity. The due diligence material evidences an arrest without charge a number of years ago; express identification in the reports of the absence of evidence of illegality; direct attempts by Crown to investigate the reports; other possible reasons for the arrest; and no subsequent information suggestive of poor character.

COMMISSIONER: I think he was detained for about three months by the looks of things.

MR HERZFELD: According to that email from Mr Chen, three months - - -

COMMISSIONER: Yes.

MR HERZFELD: - - - without ever being formally charged for anything and released without an explanation of cause for detention. So that's, in our submission, a counter-example at the other end of the spectrum to Ng Chi Un. And can I then, finally, come to an example which, in my submission, is in the middle, and that's why I've gone to these three examples, and that's the example of Suncity. Now, I should say, at the outset, that Crown accepts that the 31 July release did contain a factual inaccuracy concerning Suncity, as I think has already been made clear to you, Commissioner.

COMMISSIONER: Yes.

MR HERZFELD: The erroneous statement was that the parent of the Suncity junket is a large company listed on the Hong Kong Stock Exchange. Of course, Crown, in

fact, dealt with Alvin Chau, who was the executive chairman and substantial shareholder of that listed company, not the corporate entity. He was and is a close associate of the listed Suncity entity, so that, in our submission, the erroneous statement would not mislead a reader in any substantive respect. And the statement was removed from the subsequent advertisement published on the 6th of August 2020.

With that said, can I turn to the submissions counsel assisting makes about Alvin Chau. Now, the first submission counsel assisting makes is that, on the due diligence that was available to Crown, it should not have had dealings with Alvin Chau. That is, the contention is that purely on the basis of the information in the due diligence reports which are referred to at paragraphs 127 and 128 of counsel assisting's submissions, they ought alone to have been enough for Crown to conclude that it could not be satisfied Alvin Chau was a person of good repute in the statutory sense. Now, to be clear, there are other matters that I will address which are relevant to the position of Alvin Chau. The point which I'm now addressing is the submission that the due diligence material, of itself, was sufficient to disqualify him.

Now, it's not submitted by counsel assisting that, at the time Alvin Chau first became a junket operator at Crown Melbourne in September 2009 and Crown Perth in June 2010, that Crown knew any of the matters in the due diligence reports to which counsel assisting refers. Those reports are from 2016 and '17. And can I take you to them, Commissioner, as a representative example. I think there are six reports. I will take you to three, because there's substantial overlap between them. Firstly, could you please be taken to exhibit BJ131, which is CRL.579.019.4902, which is a C6 Group report from 12 December 2016.

COMMISSIONER: Yes.

MR HERZFELD: And on point 4902, you will see, under the heading Overview, there's a statement:

> *Reputational issue related to a subject's associate.*

COMMISSIONER: Yes.

MR HERZFELD: And that's a reference to what appears on .4904 under the heading Potential Red Flags in the second bullet point under that heading:

> *According to media reports Chau is associated to Being Yaju, an individual reported affiliated with Chinese criminal syndicates.*

COMMISSIONER: Yes.

MR HERZFELD: So the second kind of due diligence information to which counsel assisting refers is exhibit BJ130 which is CRL.579.019.4767. That's a Wealth-X

dossier dated 3 January 2017, and at .4768 under the heading Biography there's the statement:

> *He appears to have been a former member of the 14K triad's Macau branch.*

And then at .4770 under the heading Interesting Facts, the last line contains a similar statement. And then over the following pages there are a number of known associates that are said to be former members of the same triad. And the final kind of due diligence information is exhibit BJ40 which is CRL.500.007.1107. That's a Wealth Insight dossier dated 3 January 2017, and you will see at – I'm sorry, I think that's actually a number of documents. If you turn to .1131, that's the beginning of the Wealth Insight dossier.

COMMISSIONER: Yes.

MR HERZFELD: And at .1135, four paragraphs from the end, there's a statement:

> *In 2012, the US government reported that Mr Chau and two other individuals were involved in organised crime and were restricted to do business only in Macau and China.*

So unlike some of the other junket operators the subject of the Inquiry, the due diligence material doesn't refer to arrests or charges or convictions and that's why I'm taking you to it. And in considering the submission that those reports alone were sufficient for Crown not to do business with Alvin Chau it's necessary, first of all, to approach the matter from the time of those due diligence reports and then to approach the matter whether, looking back on it now, they ought to be sufficient for the future, and I want to address both positions separately.

In looking at whether in 2016 they were sufficient, it's necessary to approach the matter, as I've probably already said a number of times, recognising the legislative scheme doesn't rest on reputation alone, and in the context of regulator expectations and industry approach at the relevant time. And part of that context is the investigations conducted by the New South Wales regulator following the 2014 Four Corners broadcast, a relevant extract of which is set out in paragraph 115 of counsel assisting's submissions. Those investigations must have included Alvin Chau because he's referred to in that broadcast, and given Mr Sidoti's evidence that inquiries were made in Hong Kong, those investigations presumably also included the veracity of allegations such as those made in the 2011 Apple Daily article which is referred to in paragraph 115 of counsel assisting's submissions which asserted that Alvin Chau had or formerly had 14K triad membership.

And presumably they also involved investigation of the matter referred to in the Wealth Insight dossier concerning the US Government's reporting from 2012. And having investigated all those matters, the New South Wales regulator did not identify conclusive evidence concerning, relevantly, Alvin Chau, and it didn't direct the Star to stop dealing with Suncity. Now, there's nothing in the due diligence material to

which counsel assisting refers which in substance goes beyond those matters. And in that context, Crown doesn't accept that information of the kind in those due diligence reports ought, at the time, have caused it to conclude that it should no longer do business with Alvin Chau or Suncity.

And consistently with that submission, it may be noted that Suncity has had and continues to have a junket operator relationship with the Star in both New South Wales and Queensland. Can I then address the different question which is whether, going forward, material of the kind in the due diligence reports ought to be sufficient to disqualify someone in the position of Alvin Chau which, as I say, is a different question. And in our submission, it's not a straightforward question. It's not straightforward because the question posed by the legislation is not merely whether the material disqualifies him as having a poor reputation, it's whether the material is sufficient of itself to disqualify him as a person of good repute having regard not merely to reputation, but the view that one can form about his actual character, honesty and integrity.

And unlike some of the other junket operators, as I said, there's little in the due diligence material in the way of verifiable material such as convictions which one could go and check or even charges. And so whether material of this kind is enough, going forward, to disqualify someone in Alvin Chau's position is a matter on which minds might reasonably differ and in relation to which regulator attitudes would be important. All of this being said, given the seriousness of the allegations, Crown submits that, going forward, material of this kind ought to be sufficient to disqualify a person in the position of Alvin Chau as a person of good repute having regard to his character, honesty and integrity, subject to anything further which might be countervailing evidence of a more definitive kind.

Now, as I said, there's other material beyond the due diligence reports relevant to Alvin Chau, and can I now turn to that other material. First, counsel assisting draw attention to AUSTRACs email of 8 June 2017. If you could turn that up, Commissioner, it's exhibit BE82 which is CRL.606.001.0211.

COMMISSIONER: Thank you.

MR HERZFELD: And what counsel assisting - - -

COMMISSIONER: .....

MR HERZFELD: I'm so sorry, Commissioner.

COMMISSIONER: Yes, I recall this.

MR HERZFELD: And what counsel assisting fix on is AUSTRACs description of Alvin Chau as a foreign PEP with a substantial criminal history but, in our submission, what you can see from the email chain is that that description appears to have been drawn simply from the due diligence material which was provided to

AUSTRAC by Crown, so it doesn't go beyond what I've already addressed you on. In any event, in conjunction with Mr Felstead, Mr Preston had further written and oral engagement with AUSTRAC on this issue following which AUSTRAC raised no further concerns about Alvin Chau.

And so in our submission, that engagement of itself doesn't take the matter further as to whether at the time Crown's decision-making was defective having regard only to the due diligence material and the AUSTRAC engagement. Counsel assisting's submissions at paragraph 131 appears also implicitly to criticise Mr Preston for not escalating the request from AUSTRAC to the board, but in the context of the matters that I've taken you to, it's not apparent that it was a matter which ought to have been escalated in this way. The position would have been quite different if AUSTRAC had raised further concerns, but, in the face of its apparent satisfaction with Crown's position, it's not evident that it was a matter that needed to be raised with the board.

COMMISSIONER: Well, I have to suggest to you that if a federal regulator with a reputation such as AUSTRAC starts asking questions about the biggest junket player in the casino, of this ilk, I do hope, in the future, it would be elevated to the risk management or the board, so your submission worries me.

MR HERZFELD: Well, Commissioner, as I say, the context of this email was simply a comment by AUSTRAC upon the material which had been provided by Crown. It's a different circumstance if a regulator such as AUSTRAC, from its own materials, raises an issue of this kind, but, nonetheless, what I'm seeking to address, rather, is whether there was proper action at the time and, as you know, Commissioner, various structures will be quite different going forward. So I'm simply addressing the criticism which is made of Mr Preston at the time. I don't think that that's – I'm not seeking for that to be in tension with the point that you, Commissioner, have put to me about what ought to happen going forward.

COMMISSIONER: Well, it's obvious even if AUSTRAC – let's assume AUSTRAC had some errors in it, the question that's being asked by the regulator is pertinent to a possible risk, on many fronts, to Crown, and it would have been a good idea, had it been raised, so that the board and/or the risk management committee could have known that there was a serious question asked about their biggest junket operator by the federal regulator. And so that's all I'm putting to you. You've said that there's nothing here that would require elevation or escalation, and I want to give you the opportunity to reconsider that submission.

MR HERZFELD: I'm not going to reconsider it, Commissioner, but there followed after this - - -

COMMISSIONER: All right then.

MR HERZFELD: There followed after this - - -

COMMISSIONER: I understand you're not reconsidering it. I understand, Mr Herzfeld.

MR HERZFELD: Yes. All I was going to say, Commissioner, is that it would have been different – quite different – if there had not then followed engagement with AUSTRAC and evident satisfaction on the part of AUSTRAC with what had been put back to them. Anyway, I - - -

COMMISSIONER: But, look, if it had been escalated to a risk specialist, they may have said, "Look, we better have a look at this chap. We better have a look in detail and we might make for ourselves an assessment of all of this, rather than have it brought out now." You see, it's not just whether it's appropriate to elevate it for that purpose to which you're referring, it is to share with those who are expert in risk management to see if anything else should be done. And I would have thought that this is the very sort of thing that should have been elevated, but I understand your submission.

MR HERZFELD: Yes. Can I then return to the final topic relating to Alvin Chau.

COMMISSIONER: Yes.

MR HERZFELD: Which is, of course, what in fact transpired with the dealings with Suncity and the Suncity Room. And we'll deal with the detail of those matters in connection with money laundering. But can I address them here, to the extent that they're said to bear on the way in which Crown managed its junket operator relationship with Alvin Chau?

COMMISSIONER: Yes, of course.

MR HERZFELD: First, Crown accepts that, over time, there have been a number of issues identified with the conduct of the Suncity Room and, of course, Crown imposed progressively more stringent controls in response to these issues. Secondly, while it hasn't been submitted by counsel assisting that Alvin Chau, himself, had any knowing involvement in relation to those issues, Crown accepts that the conduct of those connected with the junket beyond Alvin Chau must be considered. And, thirdly, with the benefit of hindsight, Crown accepts that the various incidents combined with the adverse due diligence in Crown's possession, should have caused Crown to reassess its relationship with Alvin Chau earlier than it did. As you know, that reassessment began early in 2020, but as I say, Crown accepts that that reassessment should have occurred earlier.

Now, those three examples, Commissioner, are useful because they draw out the different kinds of circumstances with which a casino operator and, for that matter, a regulator such as ILGA, following the 2014 Four Corners report, has to grapple. On the one hand, there was a clear error with Ng Chi Un and Pun Chi Man. On the other hand, we submit that the submission of counsel assisting concerning Si Xin Qin leaps too quickly to a conclusion of poor repute having regard to character, integrity and

honesty. And, in the middle, there is the difficult situation presented by due diligence material of the kind relevant to Alvin Chau, which are all allegations or reports without any verifiable events, such as arrests or charges.

Now, as I say, we will respond in writing concerning each of the other junket operators the subject of submissions by counsel assisting, but we do submit that the position is considerably more nuanced than that for which counsel assisting contends, as I've sought to show with the three examples that I have taken you to, Commissioner. I don't want to interrupt, Commissioner, your focus on that email, but I'm – I was going to suggest it could be taken down, but I can see that's happened.

Can I turn to the final topic, which are the suitability questions said to arise from junket findings. And I've already, along the way, obviously made a number of submissions on this topic, but can I respond directly, to the extent I haven't already, to the submissions which are made in writing by counsel assisting on these topics? The first submission to which I would seek to respond is that made at paragraph 282, which is that:

> *Crown's conduct allowed or facilitated individuals of seriously questionable repute and with probable links to organised crime and/or with triad connections to enter into business relationships with it.*

And, in our submission, that finding should not be made. The material before the Inquiry does not support a finding that the individuals in question had probable links to organised crime or triad connections. Crown accepts that some of the junket operators may fairly be described as having questionable reputations and, equally, accepts that the material suggests the links of the kind in that statement, but Crown does not accept that it can be put as highly as "probable links to organised crime or with triad connections".

Crown also accepts in relation to, for instance, Ng Chi Un and Pun Chi Man, that it should not have entered into junket operator relationships with those individuals. But it's not, in our submission, a basis to impugn Crown's present suitability that various of the junket operators the subject of inquiry have had questionable reputations. As I've explained, that was not, at relevant times, the regulatory or industry approach to disqualification of junket operators, nor was it the approach required by the legislative scheme. And the same points may be made about the submission that these junket relationships heightened the risks of Crown Resorts being drawn into money laundering.

There is a submission put that the mere fact that Crown had business relationships with persons of good repute means that Crown breached a core obligation under the regulatory regime – that's at paragraph 283 – and, for the reasons I have explained, that's not so. It's not an accurate description, in our submission, to say that Crown fails to satisfy the requirement of being a casino operator of integrity with a commitment to preserving a crime-free environment, simply from the fact that

Crown had business relationships with persons of good – who were not of good repute, in a reputational sense, or even from the fact that, looking at the matter today, certain of the junket operators with whom Crown had business relationships are not ones which, going forward, a casino operator ought to have business relationships with.

So far as the question is one of suitability, that matter has to be considered contextually at the time and, moreover, one needs to pay regard to the improvements made over time to the due diligence processes and all of the steps which have been taken by Crown more recently to deal with its junket operator relationships. The other difficulty with that submission is that it really does ignore all of the actions that Crown has taken and continues to take which are directed to preserving a crime-free environment which have gone entirely without criticism and are therefore not the focus of this Inquiry.

There are specific failings asserted in Crown's systems with respect to the junkets it entered into business relationships with, and Crown accepts certain of those criticisms in particular instances, as I've sought to exemplify in my oral submissions. And I'm referring particularly to the summary at paragraph 285 in counsel assisting's written submissions. Nonetheless, they're not a fair characterisation of Crown's approach to junkets as a whole. They don't take account of the contextual matters and they're matters which have been improved over time and which Crown has committed to further improving, obviously subject to the recent decision no longer to deal with junkets subject to a regulatory regime.

On that topic, can I respond to what's then put under the heading of remediation, and this seems rather to be put on the basis that these things are things Crown puts forward in an attempt to become suitable, but we rather submit that the steps that Crown has been taking in more recent times are not merely things required for Crown to become suitable, but are in fact markers of its present suitability. And so in addition to the recent decision of the board, which I don't propose to say anything further about, can I respond to some of the specific criticisms of the other measures which are made in the submissions of counsel assisting.

First of all, counsel assisting make submissions about various limitations in the Deloitte review and, in our submission, those limitations to the extent that they are there don't undermine either the cogency of Deloitte's proposals or the extent to which Crown's engagement of Deloitte and its decision to implement those proposals are a marker of suitability. In relation to the specific criticisms, can we make these points. There's a criticism that Deloitte wasn't asked to undertake a root cause analysis or review all of Crown's decisions relating to the junkets named in the media, and that's true, but it would, of course, have increased the scope of Deloitte's task very substantially and therefore reduced the speed with which its recommendations could be made, absorbed and then implemented. There's always a balance with instructing an external consultant as to the breadth of their task. It doesn't undermine - - -

COMMISSIONER: Can I just ask you to pause for a moment. If I may just ask a question here. Deloitte were retained, is this right, because of a requirement of the VCGLR to do a robust assessment; is that right?

MR HERZFELD: Commissioner, I will have to have that checked. I'm not - - -

COMMISSIONER: I think that's probably – it may not be right, but I understood that there was some assessment that had to be done that the VCGLR requested of Crown and it was done, and I wondered whether it was the Deloitte – I think it was Mr Jeans rather than Deloitte.

MR HERZFELD: Yes.

COMMISSIONER: So it was Mr Jeans looking at the AML program, not Deloitte.

MR HERZFELD: Yes, I think that's – I think that's right. I'm watching my - - -

COMMISSIONER: I'm told by my counsel assisting who are with me at the moment that was Mr Jeans, Mr Herzfeld, so this one was unprompted by the VCGLR. This was done by Crown of its own volition, as I understand it.

MR HERZFELD: Yes, that's my understanding as well, and I will correct that if it's wrong when - - -

COMMISSIONER: Thank you. Yes, I'm sorry to interrupt.

MR HERZFELD: Not at all. So the criticism that Deloitte's engagement didn't cover things which it could have covered nonetheless doesn't undermine the cogency of its analysis of what it did cover and the utility of what it did cover. It's not surprising that Deloitte wasn't asked to comment on how Crown could enable a risk culture around junket operators. That's both a difficult and diffuse question but also, in our submission, more appropriately something for Crown itself to consider rather than an external consultant, and so too the precise way in which Crown implements Deloitte's recommendations to gather further information in relation to junkets from Crown employees.

A further matter said to be deficient in Deloitte's assessment is that Deloitte didn't make a recommendation of the standard of proof which Crown should adopt, but that too is really a matter for Crown and/or regulators to determine. It's not something which the legislative scheme prescribes and, to the contrary, the legislative scheme rather requires a difficult evaluative decision. So it's not a surprise that it's something which Crown didn't seek a recommendation on from Deloitte. Deloitte's recommendations were really about process improvements, not that substantive kind of question which is linked to the legislative scheme.

And finally, the fact that Deloitte didn't refer specifically to junket financiers in its recommendation is really immaterial. Deloitte did identify the absence of additional

investigation of companies that the operator is affiliated with or known associates; it just didn't mention financiers by name and, in any event, as counsel assisting accepts, Crown specifically committed to conducting due diligence on financiers in any due diligence process going forward. There is a submission made that there's been no indication from Crown as to what steps will be taken to implement the Deloitte recommendation.

In our submission, that's not quite correct because, as I said, there was a work plan attached to Mr Barton's 10 September 2020 paper, and as I've already said we propose to update the Inquiry of the status of that work plan when we provide our written submissions, though of course to some extent that's now been overtaken by the board's recent decision.

COMMISSIONER: I think the board's recent decision, as you've tendered the ASX document, indicates – assuming, Mr Herzfeld, that there would be no arrangement pursuant to which regulators licence junkets, then – as I read what's in the media release, then Crown would not proceed to deal with a junket unless the regulators in each state in which it operated "approved" that junket operator or "sanctioned it", I think; is that right?

MR HERZFELD: Yes, I think the language is licence, approve or sanction and that's seeking to deal with – if I can put it this way, somewhat different possible models of regulator review. A licensing might be an ongoing licence to someone given once a year, for instance.

COMMISSIONER: Yes.

MR HERZFELD: An approval could contemplate ad hoc approvals, and sanction might contemplate the process of non-objection, that is, something submitted to the regulator and a period is given for the regulator to object.

COMMISSIONER: Yes.

MR HERZFELD: They are obviously matters that you might hear further submissions about in relation to the regulatory regime, but that's what that language is seeking to cover.

COMMISSIONER: But if the statement that "Crown is permanently ceasing" is to be understood as "permanently ceasing", then the second part would only be reinvigorated – I withdraw that – would only be triggered if there was a regime within the regulatory regime for junkets, as I understand it.

MR HERZFELD: Yes.

COMMISSIONER: Yes. Thank you, Mr Herzfeld. I'm sorry to interrupt.

MR HERZFELD: Can I then make some submissions about the concluding submissions of counsel assisting, which is that the junket failings are a product of more fundamental problems and, in our submissions, the matters relied upon by counsel assisting are either historical or largely unsupported. Can I take them in turn. The first submission is that:

> *Crown wholly failed to design and implement a risk management system that was commensurate with the level of risk that was apparent.*

And, in our submission, the Inquiry shouldn't make a finding of that kind. First, Crown's due diligence processes evolved over time and, in their most recent form, did involve gathering considerable information and the involvement of senior officers. Secondly, it hasn't been shown that the approach that Crown took differed in any marked way from regulator expectations and industry approach at the time. And the fact that mistakes were made in some cases or that, with the benefit of hindsight, different judgments should have been made or more inquiries should have been undertaken, or better links should have been drawn, doesn't support the broad proposition for which counsel assisting contends so far as it is put as a fundamental deficiency with the whole of Crown as a company, which, as I understand it, is the way in which it's being put by counsel assisting.

Secondly, it's put that junkets provide a good example of the board's failure to provide active stewardship. In our submission, that's not a fair characterisation. Junkets have been an accepted part of the Australian industry for quite some time with very benign attitudes being taken to them by regulators and those tasked with suitability reviews of the kind to which I've taken you, and their attitude has not really differed from that taken by Crown until more recent times. That being said, the board has clearly been very keenly engaged with respect to junkets in more recent times and that is ..... suitability, not a marker of unsuitability. And so when we do submit that when it comes to a submission about governance, what is more telling than the conduct of the junkets over the last 10 years, it's rather the way in which the board has taken steps to grapple with these quite difficult issues in, if I may say, quite a dramatic way.

The next submission is that the failure of Crown Resorts to meaningfully act on these longstanding allegations bespeaks both a culture of denial and an arrogant indifference to regulatory compliance and, in our submission, the Inquiry should not make that finding. First – and I really am now starting to sound like a broken record – it really does pay insufficient regard to the regulatory and industry context to which I've drawn attention. There's no basis to conclude that Crown was indifferent to the regulations to which it was subject as they were understood and applied at the time, not merely by Crown, but Star and also the regulators administering those regulations.

Secondly, the analysis of individual junket operator decision-making doesn't demonstrate either an indifference to regulatory compliance or a culture of denial. Particularly in more recent times, the due diligence processes have involved real

attempts to identify, consistently with the regulatory scheme, those with whom Crown should not do business, and a conclusion that certain judgments that were made were wrong or are not the kinds of judgments which today ought to be made, doesn't carry with it a conclusion that there was a culture of denial or an arrogant indifference to regulatory compliance.

Part of the submission about a culture of denial seems to be a suggestion that any reputational question marks needed to be disqualifying features and, for the reasons that I've given to you, Commissioner, that was neither the regulatory structure at the time – the legislative structure at the time – nor the way that it was administered in practice. And so it's not appropriately described as a culture of denial to identify in the materials Crown staff saying things like, "Well, there's this report, but we can't find anything to verify it." That doesn't demonstrate a culture of denial any more than the same statement made by Mr Sidoti demonstrates a culture of denial.

To the contrary, what it demonstrates is those charged with the responsibility to carry out the essential requirement of deciding whether junket operators were of good repute, having regard to their character, honesty and integrity, attempting to do that quite difficult balancing exercise in some cases and, as I think I've made clear, that was not always done correctly, and Ng Chi Un and Pun Chi Man are the examples that I've given to you, Commissioner. But at the other end of the spectrum, Si Xin Qin is one where we do say the opposite conclusion has been reached too quickly and, on the due diligence material alone relating to Alvin Chau, in our submission, that is not a straightforward balancing exercise. And, of course, the final thing that we say about the suggestion of a culture of denial and an arrogant indifference to regulatory compliance is that submission certainly can't be made about the present circumstances. The present situation shows anything but a culture of denial or indifference. In fact, it shows Crown taking a very definitive step, which is not one that can properly be characterised by either of the descriptions which counsel assisting have sought to attach to the culture of Crown.

Commissioner, unless you have any questions, I think I promised that I would finish today. And I think that I've perhaps over promised – no, not over promised, under-promised and over-delivered by finishing at 20 minutes before 4. So unless you have any questions and unless there's any suggestions from those assisting me from afar, other than to confirm that what you said earlier, Commissioner, was correct, which was that the Deloitte engagement was a separate engagement to the one that you were referring to.

COMMISSIONER: Yes. Thank you, Mr Herzfeld. Yes. Yes, Mr Young.

MR YOUNG: Yes. Thank you, Commissioner. I've reappeared.

COMMISSIONER: Yes, you have. I see you there.

MR YOUNG: Commissioner, we can turn now, if it's convenient, to the submissions concerning the Melco transaction and the CPH relationship.

COMMISSIONER: Yes, yes. That would be very helpful. Thank you.

MR YOUNG: Thank you. We are advantaged by following CPH in relation to these topics. And that will allow me to be a little crisper and shorter than we might otherwise have been orally. We will address the same issues in writing.

COMMISSIONER: Thank you.

MR YOUNG: I'm going to address these two topics, Commissioner - - -

COMMISSIONER: Yes.

MR YOUNG: - - - the first is an issue as to whether Crown breached its regulatory agreements as a result of that share sale between CPH Crown Holdings and Melco Resorts and Entertainment. The relevant breach relates to a provision in the VIP GMA agreement, which is found in schedule 1, clause 2.4.

COMMISSIONER: Yes.

MR YOUNG: And there is an equivalent term in schedule 2 of the Crown approvals deed.

COMMISSIONER: Yes.

MR YOUNG: But I will direct whatever references I need to make to clause 2.4 to the former agreement.

COMMISSIONER: Yes, thank you.

MR YOUNG: The second issue is whether Crown's relationship with CPH and Mr Packer involves such an influence of those – or that entity and that person over Crown's affairs that it becomes a matter relevant to suitability. Now, to some extent I've already addressed the latter question. I won't re-tread my footsteps to the extent I addressed things earlier.

COMMISSIONER: Thank you.

MR YOUNG: But I will address some wider aspects of that second issue.

COMMISSIONER: Yes. Thank you.

MR YOUNG: In summary, our submission is that the sale of the Crown shares by CPH Crown to Melco Resorts in May 2019 did not give rise to any breach by Crown of any of its obligations under the VIP gaming management agreement or the Crown approvals deed, and, in particular ,there was no breach of clause 2.4 of schedule 1. That is so for three core reasons. The first is that Great Respect did not, by that

transaction, acquire directly or indirectly any interest in Crown by virtue of the transaction within the meaning of that clause 2.4.

The second ground is that Crown did not have knowledge of the transaction or of any ramifications relating to the VIP GMA agreement, and there is no basis for attributing any knowledge, if there were any, of the CPH nominee directors or Mr Packer to Crown. The third reason is that, in any event, even if the first two points are points that we are wrong about, Crown did not have any actual power to prevent the transaction occurring. If it meets your convenience, Commissioner, I will pass over the usual formalities of going to the clause - - -

COMMISSIONER: Yes.

MR YOUNG: - - - and the background of the transaction.

COMMISSIONER: Yes. Thank you.

MR YOUNG: But I do need to recite a little bit of the history for my purposes. You will recall, Madam Commissioner, that in May of 2017 Crown sold the last tranche of its shareholding in Melco Crown.

COMMISSIONER: Yes.

MR YOUNG: And as a result of that sale it no longer had any ownership interest in Melco Crown, or in any joint venture with Melco International. Now, the second piece of broad background is that commencing in June 2017, and continuing through until August of 2019, there were discussions between Crown and representatives of the New South Wales State Government regarding amendments to the VIP GMA agreement and the approvals deed that would delete the relevant parts of the schedule, being clauses 2.4 to 2.6 of schedule 1 and the entirety of schedule 2 which defined the concept of a Stanley Ho associate.

COMMISSIONER: Yes.

MR YOUNG: Now, these matters were canvassed by counsel assisting both orally and in written submissions. In the written submissions, the reference is to paragraph 27, but I did want to bring out by way of surrounding circumstances a couple of other aspects of that process of discussion. We accept that the discussions never reached the point of a final or binding agreement that would remove the relevant clauses. We have never suggested that. But the discussions did reach, by March 2019, the point where there was an in-principle agreement, subject to execution of the formal agreement and a ministerial consent, that the relevant clauses would be removed from these agreements.

Now, the relevance of that surrounding circumstance is triggered by the way in which counsel assisting have advanced certain hypotheses about the significance of those clauses. The assumption was advanced with various witnesses that the New

South Wales government was very sensitive about Dr Stanley Ho, or any entity associated with him, acquiring an interest or foothold or ability to influence Crown or other casinos in New South Wales. Now, no doubt that was the position at the time the agreements, the VIP GMA and the approvals deed were entered into. However, the position had changed somewhat by 2019 because of the process of negotiation between – I shouldn't really call it negotiation, it was more of a discussion between Crown and representatives of the New South Wales government who came from the justice department, liquor and gaming department and ILGA.

They were all consulted about their attitude to the removal of the relevant clauses. At no point during those discussions was there any serious opposition to the removal of the clauses. It was simply a question of getting the language of the variation deed correct and negotiating certain features of the continuing regime about overseas casinos, and in what circumstances those provisions would apply which have no relevance to the current discussion. Moreover, there was in-principle agreement reached on a date in – the earliest point where that was evidenced in the exhibits is exhibit Y30. I don't need to take you to these documents, Commissioner, but I will give the references. Exhibit Y30.

The response from the government was that they were happy with the proposed changes in the draft variation deed. Subsequently on 1 March 2019, after consultations with ILGA, Liquor & Gaming NSW came back to advise that they were agreed that the clauses should be deleted and that all that remained was the execution of the formal documents, including the ministerial consent. That never occurred, solely because of the intervention of this Inquiry. That's apparent - - -

COMMISSIONER: I don't know about that. I think that I there was – what happened, there was a change of personnel and Ms Manos had to reinvent the whole process again and the person who was then appointed then said, "Well, I better get some legal advice on this".

MR YOUNG: Yes.

COMMISSIONER: So it was a changing circumstance, Mr Young.

MR YOUNG: Yes. Undoubtedly what you put to me, Commissioner, is true as an explanation for the lengthy period between 2017 and 2019. Those disruptions occurred primarily towards the end of 2017 and through 2018, but from early 2019 there seemed to be unanimity that the changes were appropriate and would be made. Now, allied to those surrounding circumstances there's one further matter. You may recall, Commissioner, that reference was made in the evidence to the fourth VCGLR review of Crown Resorts - - -

COMMISSIONER: Yes.

MR YOUNG: - - - in relation to its operation of Crown Melbourne. It's exhibit AB56. The relevant pages are pages 28 and 29. I don't think it's necessary to call it

up. I will just remind you, Commissioner, of the conclusion of the VCGLR concerning Dr Stanley Ho's influence in relation to Melco. The Victorian regulator concluded as follows:

> *On 29 August 2006, the Commission determined that, at the time, there was no reason to object to the business association between PBL and Melco and has been actively monitoring this business association since then to ensure that it continues to remain suitable.*

The reasoning underpinning that was this on the previous page:

> *The Commission also looked carefully at the role of Macau gaming magnate Dr Stanley Ho.*

He:

> *...was relevant to the investigation ... because of his position –*

at the outset of the investigation –

> *as chair of Melco and the association of the joint venture with ... SJM –*

a company he controlled. But:

> *During the Commission's investigation, Dr Ho resigned as chair and as a director of Melco ... This left Dr Ho with no role in the joint venture. Further rigorous investigations satisfactorily determined that Dr Ho does not have any ongoing influence over Melco or the new chair of Melco, Lawrence Ho.*

Now, I fully appreciate that they are the views of the Victorian regulator after its investigation of a transaction involving Melco and Lawrence Ho. And that appears in the fourth review by the regulator of the Melbourne casino operator in June of 2008. But that is a circumstance that also bears on the general proposition that, in 2019, the government was still very sensitive about any influence that Dr Ho might exercise. It's not at all clear that that was so, because of the – what we know of the attitude of the New South Wales government in the context of the negotiation I've mentioned, and also we assume there was an awareness on the part of New South Wales authorities of that investigation in Victoria. In addition - - -

COMMISSIONER: I think it's a little different – if I may draw this to your attention - - -

MR YOUNG: Yes.

COMMISSIONER: - - - it may be relevant, Mr Young. But what had happened in 2013 was that the negotiation for the Barangaroo licence was at the very top level, and it was a Ministerial level, really, I mean, when you see the Ministerial directions

that were given to ILGA, and so what you have is a different structure in this contract, and the detailed contracts that we've had to look at, whereby the Ministers became involved to give directions and also were concerned, it seems, at a Ministerial level to have that protection for New South Wales.

MR YOUNG: Yes.

COMMISSIONER: That is that no direct or indirect interest was obtained by Dr Ho in the casino operator to which the licence was granted. So the fact that the departmental officers – and there was a short consultation with ILGA coming back – the fact that that happened at that level is one thing, but this was truly a very significant matter for a government with Ministerial involvement in contractual provisions. As you know, there's one direction that imposes what might be seen as a fetter on the regulator. So it's a very different environment, I think, to what happened in Victoria. Victoria was looking at Melco being an associate – a business associate – of what was to be a close associate, I think, is how that worked.

MR YOUNG: Yes. To some extent, Commissioner, you have the advantage over me of - - -

COMMISSIONER: That's all right.

MR YOUNG: - - - knowing of those ministerial directions.

COMMISSIONER: Yes.

MR YOUNG: And what you say no doubt diminishes the background relevance of the Victorian viewpoint; I accept that.

COMMISSIONER: Yes.

MR YOUNG: But the course of the discussions between 2017 and 2019 does indicate, we would say, a changed climate. And, of course, that has to be connected with the reality that, by 2019, Dr Stanley Ho was very aged.

COMMISSIONER: Yes. He was unwell, I think.

MR YOUNG: Yes, both aged and unwell.

COMMISSIONER: Yes.

MR YOUNG: Now, those matters may be of little relevance, but having regard to the assumptions that were put about the high sensitivity of the matter in 2019, that may be to overstate things a little.

COMMISSIONER: You would have to convince me of that.

MR YOUNG: Yes. Well, I've done my best, Commissioner.

COMMISSIONER: All right then. All right then, Mr Young.

MR YOUNG: But, at all events, that's our submission in the light of those matters that I've mentioned.

COMMISSIONER: Yes. Yes. Thank you.

MR YOUNG: Now, can I move to the technical legal issues.

COMMISSIONER: Yes.

MR YOUNG: The first was a submission that there was no acquisition by Great Respect, directly or indirectly, of an interest in Crown. It's only been advanced in the context of an indirect interest as the only element of that formula worthy of examination. Our submissions broadly mirror the major submissions advanced by Mr Hutley on behalf of CPH on this technical legal point. In our submission, properly construed in context, looking at surrounding circumstances and the objective purpose of the provision, clause 2.4 does not extend beyond the circumstance where Great Respect's shareholding is held through a group of companies which are wholly or majority owned by Dr Stanley Ho or a Stanley Ho associate.

The submission by counsel assisting was wider. It was any level of shareholding that you contract through another shareholding, and another one and so forth, would amount to an indirect interest. In our submission, that is not a reasonable objective interpretation of the provision. First of all, it is not consistent with the evident purpose of the prohibition in clause 2.4, which seeks to prevent Dr Stanley Ho asserting influence over Crown, either directly or via entities that he owns or controls. The construction advanced by counsel assisting would go far beyond that and would dissemble into the proposition that even a small level of shareholding in one company that holds another small level in another company is sufficient to create an indirect interest.

Secondly, the prevailing circumstance at the time of the execution of the relevant deeds was that the parties knew, at that time, that Great Respect had a 19.5 per cent interest in the shares in Melco, which, in turn, held shares in Melco Crown, which was Crown's joint venture partner. Now, that circumstance must have been intended, objectively, to be outside the scope of what qualifies as an indirect interest, otherwise, pre-contract and immediately upon the contract, there was a circumstance that would trigger the operation of clause 2.4, and that cannot objectively have been intended.

The third ground is this: when one looks to helpful or persuasive authorities in Australian law to explain the concept of direct or indirect interest, one finds that there are cases containing analysis and reasoning by judges of high standing which

have considered the construction of similar phrases in other legislation, including section 50 of the Trade Practices Act, as it was then called, and section 31 of the Duties Act in Victoria. The thrust of all of that analysis is to the same effect, that is to say the concept of indirect interest does not go beyond the chain of shareholdings that involves majority owned or controlled entities at each link in the chain. Now, unless there's a need to explain something further, Commissioner, I was going to leave my oral submissions at that point, having succinctly stated our propositions.

COMMISSIONER: Yes. Thank you.

MR YOUNG: I'm then going to move to the question of knowledge of individuals, which I won't do in elaborate detail, but I've got to deal with some aspects of the evidence. That may be a convenient time. I expect I will finish this section on Melco and CPH within roughly 40 minutes of commencement tomorrow.

COMMISSIONER: Yes.

MR YOUNG: And we would then move to the topic of AML.

COMMISSIONER: You would prefer to do that in the morning, Mr Young?

MR YOUNG: Yes, I would, Commissioner. I have - - -

COMMISSIONER: That's all right. That's all right.

MR YOUNG: - - - things to do, I'm afraid.

COMMISSIONER: Yes. Yes, you're not alone. All right then. I shall adjourn until 10 o'clock tomorrow morning.

MR YOUNG: Thank you.

ADJOURNED **[4.02 pm]**

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