
TRANSCRIPT OF PROCEEDINGS

COMMISSIONER: HON. RAY FINKELSTEIN AO QC

**IN THE MATTER OF A ROYAL COMMISSION
INTO THE CASINO OPERATOR AND LICENCE**

MELBOURNE, VICTORIA

10:01 AM, TUESDAY, 03 AUGUST 2021

Counsel for Crown Resorts Limited	MR MICHAEL BORSKY QC
Counsel for Victorian Commission for Gambling and Liquor Regulation	MR PETER ROZEN QC
Counsel for Consolidated Press Holdings	MR NOEL HUTLEY SC
Counsel for the State of Victoria	MR PETER GRAY QC
Helen Coonan	MR JOHN SHEAHAN QC

1 COMMISSIONER: Thank you, everyone.
10:01 2
10:01 3 Now, order of business. Counsel seem to have arranged between
10:01 4 themselves about who is making submissions first, which was
10:01 5 quite different to my order of events but as always I am in
10:01 6 Counsel's hands, so Mr Gray, you have the honour of going first.
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10:01 8
10:01 9 **CLOSING SUBMISSIONS BY MR GRAY**
10:01 10
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10:01 12 MR GRAY: Thank you very much, Commissioner.
10:01 13
10:01 14 The State's written submissions addressed four topics, two of
10:01 15 which make mention of the regulator. At the outset I wish to
10:01 16 mention a contextual matter relating to the regulator,
10:01 17 Commissioner. Outside the scope of this Royal Commission's
10:01 18 inquiry, over the last several months, there has been a parallel
10:01 19 review of the regulatory framework.
10:01 20
10:01 21 In the Government's media release on 22 February 2021
10:01 22 announcing this Royal Commission the Government also
10:01 23 announced that it had commissioned a review to advise on the
10:02 24 necessary structural and governance arrangements for
10:02 25 an independent casino regulator to occur in tandem with the
10:02 26 Royal Commission. That review is mentioned in the Royal
10:02 27 Commission's Letters Patent as well.
10:02 28
10:02 29 The State Government has this morning made an announcement
10:02 30 via media release, which should be with the media organisations
10:02 31 already. And in that announcement there is reference made to the
10:02 32 report, or the recommendations of the independent reviewer,
10:02 33 Ms Deborah Cope. She has recently presented her
10:02 34 recommendations and the Government announced that it intends
10:02 35 to transition the function of regulating the casino from the
10:02 36 VCGLR to a new casino and gambling regulator with a dedicated
10:02 37 casino regulated division over the coming months. The details of
10:03 38 the regulatory framework and timing of its implementation are
10:03 39 not yet determined and the transition will no doubt depend on
10:03 40 a future act of Parliament in any event. The two topics in the
10:03 41 submissions relating to the regulator are the likely or arguable
10:03 42 affect of certain provisions of the Management Agreement on
10:03 43 implementing Counsel Assisting's suggested recommendation or
10:03 44 suggestions at any rate that the VCGLR should take, or might
10:03 45 take disciplinary action under section 20 of the Casino Control
10:03 46 Act, *leading to the possibility of cancellation, suspension or*
10:03 47 *variation of Crown's casino licence.*

10:03 1
10:03 2 And, as you know, of course, Commissioner, Counsel Assisting's
10:03 3 submissions in that regard are also made in combination with
10:03 4 a suggestion about the appointment of a manager or monitor.
10:03 5
10:03 6 The other topic, which makes mention of the regulator, is the
10:03 7 suggestion by Counsel Assisting that the Royal Commission
10:03 8 consider recommending the appointment of that manager or
10:04 9 monitor. Now, each of these topics remains very important
10:04 10 irrespective of the announcement that has been made today of the
10:04 11 transition to a new regulator. I will now address in a little more
10:04 12 detail just the first of those points, the implications of certain
10:04 13 provisions of the Management Agreement. The purpose of my
10:04 14 doing so, Commissioner, is really to allow you to raise any issues
10:04 15 you wish with me arising out of the State's written submissions
10:04 16 on this topic.
10:04 17
10:04 18 The written submissions on this topic are quite detailed. In
10:04 19 essence, as you know, they refer to the regulatory certainty
10:04 20 provisions added to the Management Agreement and, therefore,
10:04 21 to the Casino (Management Agreement) Act in 2014. And those
10:04 22 submissions indicate or seek to demonstrate that those provisions
10:04 23 could cause obstacles to the proposal for the VCGLR to
10:04 24 undertake disciplinary action with the potential of leading to
10:05 25 cancellation or variation on the grounds that it is no longer in the
10:05 26 public interests for Crown to maintain the licence.
10:05 27
10:05 28 COMMISSIONER: There are really two issues that arise out of
10:05 29 those provisions: one which seems to be contrary to
10:05 30 well-established old-fashioned equity principles, that a person
10:05 31 can't profit from his wrongdoing, and the way the agreement
10:05 32 works is it allows that very thing to happen. And the second
10:05 33 thing is whether it is appropriate to maintain a prohibition against
10:05 34 a specific reason for cancellation, like the public interest. Each of
10:05 35 those things have serious problems so far as any government is
10:05 36 concerned, let alone a regulator. And what has been troubling
10:05 37 me, maybe not very much, I should tell you, but what has been
10:05 38 troubling me is whether if it is recommended that those two
10:06 39 aspects of clause 22 and whatever it is should be repealed
10:06 40 because they have statutory effect, whether that raises special
10:06 41 considerations for a government, effectively sovereign risk type
10:06 42 issues. My own view is that they don't, but it is a matter to
10:06 43 consider.
10:06 44
10:06 45 MR GRAY: Thank you, Commissioner.
10:06 46
10:06 47 Interestingly there are alternative positions put in the written

10:06 1 submissions of each of Consolidated Press Holdings on the one
10:06 2 hand referring to the last matter you raised and Crown on the
10:06 3 other in which there are indications at pages 84 and 85 of
10:06 4 Crown's written submissions ---
10:06 5
10:06 6 COMMISSIONER: I know.
10:06 7
10:06 8 MR GRAY: --- that they are willing to contemplate any
10:06 9 appropriate amendments to that regime. Suffice it to say that the
10:07 10 State doesn't have a particular position on those issues, it is
10:07 11 clearly a matter that is going to have to be considered in detail
10:07 12 once your final report is in.
10:07 13
10:07 14 COMMISSIONER: (Nods head).
10:07 15
10:07 16 MR GRAY: The purpose of our written submissions on those
10:07 17 topics were to raise those potential obstacles and implore the
10:07 18 Royal Commission to take them into account in formulating its
10:07 19 report.
10:07 20
10:07 21 COMMISSIONER: Assume that will happen.
10:07 22
10:07 23 MR GRAY: Thank you very much.
10:07 24
10:07 25 The other two issues addressed in the written submissions are the
10:07 26 Ministerial Direction relating to Responsible Gambling codes of
10:07 27 conduct and a brief section noting the importance of the casino
10:07 28 operator's revenue obligations and noting that Crown has recently
10:07 29 paid some \$61 million representing, according to Crown, short
10:07 30 payment of certain casino taxes plus penalty interest, a significant
10:08 31 component for penalty interest.
10:08 32
10:08 33 Now, we on behalf of the State note that Counsel Assisting in
10:08 34 their written submissions has suggested that much more by way
10:08 35 of shortfall in past casino tax may be still payable.
10:08 36
10:08 37 COMMISSIONER: (Nods head).
10:08 38
10:08 39 MR GRAY: And the purpose of our submissions on this point
10:08 40 was really limited to foreshadowing that the State intends to move
10:08 41 to a resolution of this matter and no doubt the VCGLR will have
10:08 42 a very important role to play in the interactions with Crown on
10:08 43 these issues and to go no further than that. The State is not
10:08 44 making a submission about whether the \$61 million that has been
10:08 45 paid represents all that is owing.
10:08 46
10:08 47 COMMISSIONER: It's probably not appropriate for the State to

10:08 1 do so at this stage. You may have other litigation in front of
10:08 2 a judge about that.
10:09 3

10:09 4 MR GRAY: That is simply a matter we acknowledge is very
10:09 5 important and will need to be sorted out in due course once your
10:09 6 final report is in.
10:09 7

10:09 8 I will conclude these oral submissions with a little more detail on
10:09 9 the other of those remaining two issues, the Responsible
10:09 10 Gambling Code of Conduct and the Ministerial Directions on
10:09 11 those matters. There are two Ministerial Directions as you will
10:09 12 recall, Commissioner: one made in 2018 which is the one
10:09 13 applicable to the casino operator and one made in 2020 which is
10:09 14 applicable to other venues, such as hotels and clubs.
10:09 15

10:09 16 Counsel Assisting correctly, in my respectful submission,
10:09 17 observed that the 2020 direction applicable to hotels and clubs is
10:09 18 more prescriptive than the 2018 direction that applies to the
10:09 19 casino operator. At least in certain respects. That is a fair
10:09 20 characterisation.
10:09 21

10:09 22 COMMISSIONER: Just give me one second, Mr Gray. We've
10:10 23 got a problem with your microphone.
10:10 24

10:10 25 MR GRAY: Should I move to another one?
10:10 26

10:10 27 COMMISSIONER: Give us a second and we'll try and fix it.
10:10 28 Sorry about that, Mr Gray.
10:10 29

10:10 30 MR GRAY: Not at all, Commissioner.
10:10 31

10:10 32 Counsel Assisting in their written submissions have also made
10:10 33 the submission that the direction applicable to the casino operator
10:10 34 should be no less prescriptive than the direction that is applicable
10:10 35 to other venues, and there is much force in that submission.
10:10 36 However, it would not be appropriate merely to adapt the
10:10 37 language of the 2020 direction applicable to pubs and clubs and
10:10 38 to apply it to the casino operator.
10:10 39

10:10 40 COMMISSIONER: Mr Gray, we will have to hold you up again.
10:10 41 Something is actually wrong with the microphone, it might not be
10:11 42 a positioning thing. If you just give us a second.
10:11 43

10:11 44 MR GRAY: Shall I move to Mr Rozen's lectern?
10:11 45

10:11 46 COMMISSIONER: Maybe we will try the microphone. Do one
10:11 47 of those "testing, testing", that will be fun.

10:11 1
10:11 2 MR GRAY: Should I continue now?
10:11 3
10:11 4 COMMISSIONER: I will just get the okay.
10:11 5
10:11 6 MR GRAY: Can you hear me now? Should I continue with the
10:11 7 submission? I will continue, Commissioner.
10:12 8
10:12 9 COMMISSIONER: Thank you.
10:12 10
10:12 11 MR GRAY: I think I will just mention that contrasting the two
10:12 12 Ministerial Directions on Responsible Gambling Code of
10:12 13 Conduct, it is true that the 2021 is more prescriptive, but it
10:12 14 wouldn't be appropriate merely to adapt its language and apply in
10:12 15 its entirety.
10:12 16
10:12 17 COMMISSIONER: That won't work, but I think there are some
10:12 18 provisions in the 2020 Ministerial Direction which, without too
10:12 19 much change in language, could quite easily apply, be applied, to
10:12 20 a casino. I don't think, I don't know about anybody else, but I
10:12 21 wasn't thinking of a wholesale adoption of the 2020 direction but
10:12 22 select out, I think I've got about four or five, something like that,
10:12 23 of what I thought were the key prescriptions in the 2020 direction
10:13 24 which ought sensibly apply to a casino.
10:13 25
10:13 26 MR GRAY: The State's position on that, Commissioner, and I
10:13 27 don't seek to dispute your characterisation, it is clearly
10:13 28 a reasonable view of things. But the State's position is that it is
10:13 29 better to step back and review the document as a whole. There is
10:13 30 merit in a wholesale review in light of evidence of best practice
10:13 31 of the minimisation of gambling harm and casinos.
10:13 32
10:13 33 COMMISSIONER: Yes.
10:13 34
10:13 35 MR GRAY: It may be that in the end you are right and that the
10:13 36 language used in some aspects of the 2020 direction will be a
10:13 37 useful starting point at the very least, and it may end up that the
10:13 38 Ministerial Direction to apply to casinos henceforth or once that
10:13 39 review is done, if it occurs, will be no less prescriptive in certain
10:13 40 respects.
10:13 41
10:13 42 COMMISSIONER: Do you put pre-commitment in the same
10:13 43 category?
10:13 44
10:13 45 MR GRAY: Well, I hadn't addressed any submissions on the
10:14 46 direction of pre-commitment, and I haven't come prepared with
10:14 47 any instructions on it so it would be difficult and probably

10:14 1 perilous for me to venture into that territory. If you want me to
10:14 2 take a question on notice about the pre-commitment direction
10:14 3 I can.

10:14 4
10:14 5 COMMISSIONER: (Nods head).

10:14 6
10:14 7 MR GRAY: No.

10:14 8
10:14 9 COMMISSIONER: Won't happen in any event.

10:14 10
10:14 11 MR GRAY: All right.

10:14 12
10:14 13 Now, we've said in our written submissions not a great deal on
10:14 14 the detail of this, but can I also assure the Commissioner that the
10:14 15 State does regard it as an idea that has a lot of merit to conduct
10:14 16 this wholesale review of the direction and assuming that such
10:14 17 a review occurs the evidence and the findings in this Royal
10:14 18 Commission are going to be of great importance to that review,
10:14 19 including on all those topics that Counsel Assisting have
10:14 20 addressed, and that Crown has responded to, all of those matters
10:15 21 will have to be weighed very carefully on topics such as the
10:15 22 adequacy and training of the staff who know about Responsible
10:15 23 Gambling and the appropriate interactions with customers, the
10:15 24 periods of continuous play, the functions and resourcing of the
10:15 25 Responsible Gambling Centre ---

10:15 26
10:15 27 COMMISSIONER: I was thinking the resourcing question is
10:15 28 a big issue.

10:15 29
10:15 30 MR GRAY: Yes, indeed. I can't take it any further than that.

10:15 31
10:15 32 COMMISSIONER: Just to understand that position, you would
10:15 33 encourage me not so much to make recommendations that ought
10:15 34 be adopted but perhaps make suggestions along the lines of ---
10:15 35 make suggestions of issues that will be a consideration if they
10:15 36 were appropriate to be adopted?

10:15 37
10:15 38 MR GRAY: I think that is right, Commissioner, and if you were
10:15 39 to identify the sorts of considerations that should guide any future
10:16 40 review that occurs in relation to that direction, of course the State
10:16 41 would weigh those things with the utmost gravity and importance
10:16 42 attached to them.

10:16 43
10:16 44 COMMISSIONER: Okay. Understand.

10:16 45
10:16 46 MR GRAY: Commissioner, unless there is anything further,
10:16 47 that's all I wished to address orally and we rely on our written

10:16 1 submissions.

10:16 2

10:16 3 COMMISSIONER: Okay. Thank you. No, I understand the
10:16 4 State's position very well.

10:16 5

10:16 6 MR GRAY: Thank you.

10:16 7

10:16 8 COMMISSIONER: Thank you, Mr Gray. Mr Borsky?

10:16 9

10:16 10

10:16 11 **CLOSING SUBMISSIONS BY MR BORSKY**

10:16 12

10:16 13

10:16 14 MR BORSKY: Good morning, Commissioner.

10:16 15

10:17 16 From the outset of this Commission Crown has recognised, and as I
10:17 17 stand here today, Crown has a deeper recognition, that as a result
10:17 18 of its own failings there has been a substantial and warranted
10:17 19 decrease in the public's confidence and trust in Crown's
10:17 20 operations. In their evidence to you, Crown's senior leaders
10:17 21 recognise that. The interim Executive Chairman, Ms Coonan,
10:17 22 agreed with Counsel Assisting without hesitation that Crown's
10:17 23 own failings have damaged its reputation as a company that can
10:17 24 operate a casino in a way that maintains public confidence. And
10:17 25 she agreed with Counsel Assisting without hesitation that Crown
10:17 26 is pursuing reforms which she and the Board regard as absolutely
10:18 27 necessary to regain the confidence of stakeholders and the public.

10:18 28

10:18 29 She is not alone in that regard on the Board. Each of the directors
10:18 30 from whom you've received and heard evidence have reflected
10:18 31 deeply on the failings and deficiencies that were identified in the
10:18 32 Bergin Inquiry in NSW, and in light of the serious further failings
10:18 33 that this Commission, your Commission, has exposed, the huge
10:18 34 challenges still confronting Crown and how Crown must respond.

10:18 35

10:18 36 I won't waste time this morning taking you back to the evidence;
10:18 37 you've read it and heard it, with respect, we are sure, but for the
10:18 38 benefit of the transcript, Mr Morrison in his statement at
10:18 39 paragraphs 17 to 19 acknowledges the substantial challenges
10:19 40 facing Crown by reason of its own failings, the challenges
10:19 41 according to Mr Morrison include rebuilding relationships and
10:19 42 trust with regulators and the public, repositioning Crown's
10:19 43 Responsible Gaming to best practice, and retaining high quality
10:19 44 staff and maintaining morale amongst others.

10:19 45

10:19 46 Mr Carter, who did not appear to give evidence viva voce before
10:19 47 you, but who provided a statement at paragraphs 39 to 43,

10:19 1 recognised that the reconstituted Board and senior management
10:19 2 will need to be committed to material, cultural, organisational and
10:19 3 operational change driven from the top down in
10:19 4 an uncompromising way.

10:19 5
10:19 6 Ms Korsanos, in her statement, and from whom you heard in
10:19 7 some detail, at paragraphs 108 to 117, recorded her analysis upon
10:20 8 her reflections, in answer to your question, as to the corporate
10:20 9 governance deficiencies that gave rise to the serious failings
10:20 10 exposed in Bergin.

10:20 11
10:20 12 Ms Halton, from whom you also heard orally, in her statement at
10:20 13 paragraphs 186 to 194, reflected on the risk management
10:20 14 deficiencies that gave rise to the failings and the changes that
10:20 15 Crown has since the Bergin Inquiry made to address them.

10:20 16
10:20 17 Ms Coonan orally at transcript P-3861 took responsibility for her
10:20 18 part in the failings. She gave evidence that she ---

10:20 19
10:20 20 COMMISSIONER: You don't have a microphone either,
10:21 21 Mr Borsky. Take a seat. Maybe we'll sort it. Maybe we won't.

10:21 22
10:21 23

10:21 24 (Brief pause in proceedings to resolve technical issues)

10:22 25

10:22 26

10:22 27 COMMISSIONER: Maybe we will take our early morning break
10:22 28 earlier. We will take a break. Maybe 5 minutes.

10:22 29

10:22 30

10:22 31 **ADJOURNED** [10:22A.M.]

10:31 32

10:31 33

10:31 34 **RESUMED** [10:31A.M.]

10:31 35

10:31 36

10:31 37 COMMISSIONER: Thank you. We'll have another go,
10:31 38 Mr Borsky.

10:31 39

10:31 40 MR BORSKY: Thank you, Commissioner. I won't repeat any of
10:31 41 what I said. I know you heard me, which is what counts to me.

10:31 42 I was just making submissions in support of our proposition that
10:31 43 Crown and its senior leaders recognise that as a result of Crown's
10:31 44 own failings there has been a substantial and warranted decrease
10:31 45 in the public's confidence and trust in its operations. I won't
10:31 46 repeat the evidentiary references I've given for that.

10:31 47

10:31 1 I was, just before you rose, Commissioner, addressing the
10:31 2 evidence of Ms Coonan in that regard at transcript P-3861, which
10:32 3 is not necessary to call up. There in her evidence, Ms Coonan,
10:32 4 the interim Executive Chair, took responsibility for her part in
10:32 5 those failings, told you that she had an even deeper appreciation
10:32 6 of those failings, when she sat in the witness box virtually, than
10:32 7 she had as a result of Bergin, thanks to the additional matters
10:32 8 exposed by your Commission, and that she and the company are
10:32 9 willing to do the hard yards and that there is no shirking the
10:32 10 issues in relation to Crown's recognised necessary reform.
10:32 11

10:32 12 You heard from the new CEO, Mr McCann, too. In his witness
10:32 13 statement at paragraph 32, he said that he recognised almost
10:32 14 immediately, upon joining Crown in June this year, that the
10:32 15 failings of Crown that have been exposed in your Commission
10:33 16 and in the Bergin Inquiry are serious and only able to be
10:33 17 addressed by the combination of a cultural overhaul and material
10:33 18 upgrading of processes, people and systems, with investment of
10:33 19 considerable resources in complies, financial crime, responsible
10:33 20 gaming, risk appetite, risk management, training and culture.
10:33 21

10:33 22 You also heard evidence from the members of the board and
10:33 23 others that the board are working hard, not only to turn around
10:33 24 the culture and reform Crown to regain the confidence of its
10:33 25 stakeholders and the public, but also actively to try to identify,
10:33 26 from within the ranks of the organisation, things that may be
10:33 27 inconsistent with that turnaround that they are working toward
10:33 28 achieving, so as to enable them and the company to deal with
10:33 29 them.

10:33 30 Ms Halton gave evidence to that effect at transcript 3639,
10:34 31 Ms Coonan 3838, and Mr Weeks, though not a member of the
10:34 32 board, giving evidence about his observations of them at 3391.
10:34 33

10:34 34 From the outset of this Royal Commission, Crown has adopted
10:34 35 a different approach to it as compared to the one it adopted in the
10:34 36 Bergin Inquiry. You wrote to directors of Crown, Commissioner,
10:34 37 on 10 March, asking whether Crown accepted that it was open to
10:34 38 Commissioner Bergin to make the principal findings that she
10:34 39 made, and to conclude that Crown was not suitable.
10:34 40

10:34 41 Crown, in its response seven days later, accepted that it was open
10:34 42 to Commissioner Bergin to find based on the evidence and
10:34 43 material before her that Crown was not suitable. And, in its
10:35 44 response, Crown accepted the essence of Commissioner Bergin's
10:35 45 three principal findings in support of that conclusion of
10:35 46 unsuitability as to the facilitation of money laundering, Crown
10:35 47 putting its staff at risk of arrest in China and Crown entering into

10:35 1 relationships with junket operators allegedly linked to organised
10:35 2 crime.

10:35 3

10:35 4 That, we respectfully submit, stands in contrast to the position
10:35 5 Crown adopted for much of Bergin. Crown has learnt a lesson.
10:35 6 Counsel Assisting you have acknowledged that Crown, during
10:35 7 this Royal Commission, has shown what Counsel Assisting
10:35 8 describe in their written submissions as repentance. Crown has
10:35 9 cooperated with this Commission. The Commissioner himself,
10:36 10 with respect graciously, acknowledged the cooperation and effort
10:36 11 and hard work by all who have participated in this Commission.
10:36 12 That was at transcript 3998. Some examples, and I won't dwell
10:36 13 on or labour them of Crown's cooperation in this Commission,
10:36 14 include working cooperatively with the Commission and its
10:36 15 appointed expert, McGrathNicol, cooperating with their requests,
10:36 16 including by procuring the necessary exemptions from
10:36 17 AUSTRAC, hosting them on Crown's site, making staff available
10:36 18 to McGrathNicol for interviews, focus groups, surveys and
10:36 19 questionnaires.

10:36 20

10:36 21 The Commission noted, prior to McGrathNicol commencing their
10:36 22 work, that that work would require cooperation and timely
10:36 23 assistance from Crown. McGrathNicol, in their report, observed
10:36 24 that they did in fact experience full cooperation and timely
10:37 25 assistance from Crown in relation to the work for the
10:37 26 Commission.

10:37 27

10:37 28 More generally, on instructions from Crown, there has been close
10:37 29 cooperation between solicitors and counsel for Crown and your
10:37 30 solicitors and Counsel Assisting. The work of this Commission
10:37 31 has revealed further misconduct and failings by Crown beyond
10:37 32 that found in the Bergin Inquiry which Crown accepts. For bear
10:37 33 mention at this stage; first, the underpayment of tax by Crown.
10:37 34 That underpayment arose from an admittedly completely
10:37 35 unacceptable decision by Crown to start claiming deductions for
10:38 36 bonus jackpots in circumstances where Crown knew that there
10:38 37 was at least doubt as to the deductibility, and Crown did not
10:38 38 notify the regulator that it was including bonus jackpots in the
10:38 39 deductions, and Crown expected, or at least hoped, that the
10:38 40 regulator would not notice. As I say, that was completely
10:38 41 unacceptable, as Crown hastens to admit.

10:38 42

10:38 43 Second, the China UnionPay or hotel transactions practice. That,
10:38 44 as you know, was the approved and documented practice by
10:38 45 which Crown, in breach of section 68(2) of the Casino Control
10:38 46 *Act, received payments from international guests staying at*
10:38 47 Crown hotels using a credit or debit card and then made those

10:38 1 funds available to those guests on the casino floor. The practice
10:39 2 was unethical, illegal under Victorian law, and may have
10:39 3 involved Crown dealing in the proceeds of crime, specifically
10:39 4 Chinese currency controls.
10:39 5

10:39 6 Third, deficiencies in aspects of Crown's approach to the
10:39 7 Responsible Service of Gaming. We deal with that important
10:39 8 topic in considerable detail from paragraphs F1 to F209 in our
10:39 9 written submissions. To mention orally just a couple of examples
10:39 10 of the deficiencies, if I may, Crown accepts that patrons have
10:39 11 been allowed to play, that is gamble, for periods longer than they
10:39 12 should responsibly have been allowed. The previous policy set
10:39 13 a maximum period of play of 18 hours, which Crown accepts was
10:39 14 inappropriately long. And the Commission has also heard
10:40 15 evidence that at least some of Crown's staff still do not
10:40 16 understand their obligations in relation to responsible gaming,
10:40 17 which is obviously unacceptable, must be addressed and will be
10:40 18 addressed by Crown. We deal with that topic at paragraphs F.105
10:40 19 to F.114.
10:40 20

10:40 21 Fourth and finally, at this point by way of summary, Crown
10:40 22 accepts its failings, in some instances engaging and dealing
10:40 23 appropriately with the VCGLR, its regulator, particularly its
10:40 24 dealings in relation to junkets, both in the context of the Sixth
10:40 25 Review and Recommendation 17 about which much ink has been
10:40 26 spilled, and the more recent disciplinary or show cause
10:40 27 proceeding. Crown also accepts that it was too defensive in
10:40 28 response to the VCGLR's China investigation.
10:40 29

10:40 30 I will return to the detail of some of those topics later this
10:41 31 morning, but what I wish to emphasise at this point is that all of
10:41 32 those failings are accepted by Crown with humility and
10:41 33 contrition. Crown recognises that it has failed to live up to the
10:41 34 standards rightly expected of it by law and by the Victorian
10:41 35 community as the privileged holder of the licence to operate
10:41 36 a casino in this State.
10:41 37

10:41 38 I am instructed on behalf of Crown, with respect, through this
10:41 39 Commission, to apologise to the community for those failings.
10:41 40

10:41 41 Now, to matters of context, which you may consider relevant in
10:41 42 weighing the consequences of those and other failings.
10:41 43

10:41 44 We submit that it remains the case that Crown's misconduct and
10:41 45 failings arose in large part from initiatives conceived or and
10:41 46 pursued in an old culture, that the new leadership of Crown has
10:42 47 been working hard and is committed to continuing to work hard

10:42 1 to reform. Take China UnionPay, or hotel transactions practice
10:42 2 as an example. The practice, as the Commission knows, ceased
10:42 3 in 2016. It is true that there was pressure from some quarters in
10:42 4 the business, particularly the commercial side within the VIP
10:42 5 international business, in 2018 or 2019 to reinstate the practice.
10:42 6 But, the fact is, the practice was not re-introduced and not
10:42 7 re-introduced as a result of the unequivocal direction from Crown
10:42 8 Resorts' then most senior in-house lawyer. Ms Williamson gave
10:42 9 evidence before you about those matters at transcript 3179 to
10:42 10 3182. Ms Williamson in her evidence mentioned Mr Ratnam as
10:43 11 the executive who, to the best of her recollection, might have
10:43 12 been the one who made that request of her for the practice to be
10:43 13 re-introduced. That was at transcript 3181 line 47 to 3182 line
10:43 14 17.

10:43 15
10:43 16 As you know, Commissioner, Mr Ratnam has since left Crown.
10:43 17 He worked in the VIP international business and was very closely
10:43 18 associated with Mr James Packer. Commissioner Bergin had
10:43 19 something to say about that at paragraph 22 in chapter 2.8 of her
10:43 20 report.

10:43 21
10:43 22 We submit that what this illegal and unacceptable past practice of
10:43 23 China UnionPay, or hotel transactions, shows the Commission
10:43 24 about the current leadership and culture of Crown is in fact
10:43 25 positive. As soon as it came to the attention of the current
10:44 26 leadership of Crown as a result of a whistleblower report in
10:44 27 March 2021, the issue was promptly disclosed to this
10:44 28 Commission, and independent counsel were promptly appointed
10:44 29 to conduct an urgent investigation. The report of the independent
10:44 30 investigating counsel was provided to the Commission and to the
10:44 31 VCGLR and other regulators, with Crown waiving all claims for
10:44 32 legal professional privilege in relation to the report and the
10:44 33 historical practice more broadly.

10:44 34
10:44 35 Counsel Assisting acknowledge that this reflects well on the
10:44 36 current Board and that it shows Crown's willingness to expose
10:44 37 itself to outside scrutiny and a greater acceptance of the need for
10:44 38 transparency and a more open approach to its regulators.

10:44 39
10:44 40 Now I return to the issue of underpayment of tax. Again, the
10:45 41 admittedly completely unacceptable decision to start claiming
10:45 42 deductions for bonus jackpots surreptitiously, and in
10:45 43 circumstances where there was known to be doubt as to the
10:45 44 deductibility, was made in 2012. There was disclosure to the
10:45 45 regulator in mid-2018 so that aspect of the misconduct, being the
10:45 46 surreptitiousness or concealment, we submit, was at least
10:45 47 ameliorated over three years ago. We address the detail of that

10:45 1 matter at paragraphs G22 to G30 and G101 to G105 of our
10:45 2 written submissions.
10:45 3
10:45 4 Counsel Assisting in their submissions recognise that disclosure
10:45 5 and they recognise that the VCGLR should have done more with
10:46 6 the information disclosed by Crown in mid-2018. Counsel
10:46 7 Assisting also submit that the disclosure in 2018 by Crown was in
10:46 8 one respect misleading because it failed to disclose that some
10:46 9 patrons were already entitled to receive some of the benefits that
10:46 10 they received from the promotions. We submit that you should
10:46 11 not find that there was any intention to mislead the regulator on
10:46 12 that point, and it could only be an intentional misleading that
10:46 13 could bear relevance to the question of suitability.
10:46 14
10:46 15 An intention to mislead on that point was not put to any one of
10:46 16 the many Crown witnesses who were examined in relation to this
10:46 17 important topic, and there is no document or other evidence
10:46 18 suggesting that any officer of Crown sought to conceal that fact
10:47 19 from the VCGLR or even appreciated its relevance. Nor is there
10:47 20 any evidence on the VCGLR side in their documents supporting
10:47 21 the proposition that the VCGLR would have considered it
10:47 22 relevant.
10:47 23
10:47 24 That said, Crown accepts that it was in any event completely
10:47 25 unacceptable for it to continue to treat bonus jackpots as
10:47 26 deductions as it did until this Commission brought the
10:47 27 misconduct to light.
10:47 28
10:47 29 Crown accepts that it was not the responsibility of the VCGLR,
10:47 30 its regulator, to help Crown get its affairs in order. It was
10:47 31 Crown's responsibility to set things right. As you know, the old
10:47 32 leadership of Crown under the then CEO and Managing Director
10:47 33 of Crown Resorts and Executive Director of Crown Melbourne,
10:47 34 planned to resolve the issue of bonus jackpots tax, together with
10:47 35 other then extant tax issues, in a comprehensive agreement with
10:48 36 the State. We've addressed the evidence on that matter at
10:48 37 paragraphs G37 to G41. He and other Executive Directors who
10:48 38 had knowledge of this issue have left Crown.
10:48 39
10:48 40 The current leadership, by contrast, have adopted a different
10:48 41 approach. They have, we submit, set things right. At the very
10:48 42 first meeting after Mr Walsh became CEO of Crown Melbourne
10:48 43 and Ms Coonan became Executive Chairman of Crown Resorts,
10:48 44 Mr Walsh raised aspects of the issue with Ms Coonan and she
10:48 45 directed that it be disclosed to Crown's lawyers with a view to it
10:48 46 being disclosed to this Commission. Mr Walsh's focus in the
10:48 47 discussion was on aspects of the issue that he understood and

10:48 1 perceived as going to Crown's culture, that is the failure to be
10:48 2 candid with the VCGLR in 2012. The tax liability aspect appears
10:49 3 from the evidence not to have been front of mind for Mr Walsh.
10:49 4 We address that at paragraphs G42 to G46 and G112. Since the
10:49 5 full extent of the issue has become clear, that is the cultural
10:49 6 dimension and the substantive tax liability aspect, and I repeat, it
10:49 7 has become clear with respect thanks to the work of this
10:49 8 Commission, since then the board, the Executive Chair and the
10:49 9 new CEO have waived privilege and shared all legal advices
10:49 10 relevant to this issue.

10:49 11
10:49 12 As you know, Crown had advice quantifying the extent of the
10:49 13 underpayment at two different levels, and Crown under its new
10:49 14 leadership undertook to the regulator and to the State that Crown
10:49 15 would make the payment at the higher of those two levels. That
10:50 16 payment has been made with penalty interest on 27 July. The
10:50 17 payment was \$61.5 million, 37.4 million of which was for the
10:50 18 unpaid tax and penalty interest of 24.1 million.

10:50 19
10:50 20 Counsel Assisting in their submissions refer to the still
10:50 21 undetermined question of Matchplay and whether there might be
10:50 22 further tax unpaid and owing by Crown in relation to Matchplay.
10:50 23 Crown has, in light of those submissions from Counsel Assisting,
10:50 24 obtained further advices from two silks, two members of Her
10:50 25 Majesty's Counsel, again both of whom confirm that in their
10:50 26 opinion there is no further outstanding gaming tax payable by
10:50 27 Crown in relation to Matchplay. We address that and our
10:51 28 submissions on the question of Matchplay at G79 to G93. But,
10:51 29 we submit, and I apprehend that there may be at least some
10:51 30 common ground on this point ---

10:51 31
10:51 32 COMMISSIONER: This is not the tax court.

10:51 33
10:51 34 MR BORSKY: This is not the tax court.

10:51 35
10:51 36 We have, with respect to the Commission and our friends
10:51 37 Counsel Assisting, have engaged with the subject and addressed
10:51 38 it fulsomely, but we agree it is not an issue you need or ought
10:51 39 determine.

10:51 40
10:51 41 COMMISSIONER: Another way of putting it is I'm not capable
10:51 42 of determining it.

10:51 43
10:51 44 MR BORSKY: I wouldn't put it that way, but yes.

10:51 45
10:51 46 COMMISSIONER: I don't mean not working out what the legal
10:51 47 position is, but rather whatever I say about it might not be

10:51 1 relevant, which is ---
10:51 2
10:51 3 MR BORSKY: Might not --- sorry, I spoke over you.
10:51 4
10:51 5 COMMISSIONER: What I was going to say was don't assume I
10:52 6 agree with the second lot of counsel's advice. They still seem to
10:52 7 me not to have grasped the real issue that has to be looked at.
10:52 8
10:52 9 MR BORSKY: If I may move to another example of why we say
10:52 10 that many of the elements of misconduct and failings arose from
10:52 11 issues pursued in the old culture at Crown. I want to address
10:52 12 again the important subject of AML, anti-money laundering. The
10:52 13 failings in anti-money laundering are, in our submission, largely
10:52 14 historic. Crown has acknowledged, indeed it acknowledged
10:52 15 immediately in the letter to you of 17 March, that its AML
10:52 16 controls were inadequate, and that between 2013 and 2019
10:53 17 Crown facilitated or enabled third parties to engage in apparent
10:53 18 money laundering, despite concerns having been raised by
10:53 19 Crown's bankers. So that is acknowledged. But in its present
10:53 20 state, Crown now has an appropriate, compliant and adequately
10:53 21 resourced AML program in place, albeit it is still at an early stage
10:53 22 of maturity but it is appropriate, compliant and adequately
10:53 23 resourced. Mr Blackburn gave you that evidence at transcript
10:53 24 3079 line 44 to 3080 line 9. And, as you know, there is still
10:53 25 a reform program underway under Mr Blackburn's leadership that
10:53 26 is on track to deliver an advanced state of AML maturity by the
10:53 27 end of next year.
10:54 28
10:54 29 Commissioner Bergin recognised that the suitability of
10:54 30 a company can ebb and flow with changes to the composition of
10:54 31 its board, senior management and others who influence its affairs.
10:54 32 And Ms Arzadon, who gave evidence before you, recognised that
10:54 33 even senior people who have made mistakes under an old and
10:54 34 deficient culture can change and embrace a new culture. And she
10:54 35 recognised that that can be a very powerful way to drive cultural
10:54 36 change through the broader organisation, transcript 3977.
10:54 37
10:55 38 You heard evidence from a number of Crown witnesses that
10:55 39 Crown is firmly and genuinely committed to staying the course
10:55 40 on reform. Mr Weeks was asked by Senior Counsel for the
10:55 41 VCGLR, Mr Rozen, why the Commission should have any
10:55 42 confidence that Crown will stay the course on cultural reform
10:55 43 rather than just going back to its old ways after this Commission
10:55 44 and perhaps other inquiries have concluded, and Mr Weeks at
10:55 45 transcript 3433 to 3434 explained his views in some details as to
10:55 46 why there were a range of factors that could give you comfort,
10:55 47 one of them being the quality of the people that have recently

10:55 1 come into the organisation, the other being the systems and
10:55 2 structures that have been built, and the piece of work that Crown
10:55 3 is still focused on and recognises still has work to do, and that is
10:55 4 reformation of its culture.

10:55 5

10:56 6 For those reasons Mr Weeks expressed confidence that the
10:56 7 company will move the culture to one in which the type of
10:56 8 conduct that has been observed and exposed in the inquiries will
10:56 9 be unacceptable and not repeated in the company.

10:56 10

10:56 11 Ms Korsanos at transcript 3708 to 3709 addressed the same
10:56 12 question, how and why should you have confidence that Crown
10:56 13 will not revert to its old ways after the glare of this and perhaps
10:56 14 other inquiries subsides.

10:56 15

10:56 16 Ms Halton too, at transcript 3645 to 3646, gave evidence on that
10:56 17 question. Each of them spoke of the quality of people who had
10:56 18 been recently recruited and their observations of the depth of
10:57 19 commitment at board level and at all levels below within Crown
10:57 20 to the reformation.

10:57 21

10:57 22 So, the difficult task confronting this Commission is, we
10:57 23 respectfully submit, to strike a balance in your report between
10:57 24 rightly condemning the past failings while still focusing on the
10:57 25 present state and, indeed, the likely future. We lawyers are
10:57 26 generally most comfortable analysing the past. That's the nature
10:57 27 of court cases and investigations. But this Commission is
10:57 28 charged with reporting on forward-looking questions of public
10:58 29 policy. Principally, whether Crown is suitable and whether it is
10:58 30 in the public interest for Crown to continue to hold the casino
10:58 31 licence and, if not, what actions will be required for Crown to
10:58 32 become a suitable person or for it to be in the public interest for
10:58 33 Crown to continue to hold the licence.

10:58 34

10:58 35 And, unlike in some judicial processes, the focus of this
10:58 36 Commission's important work is not a punitive one, or even one
10:58 37 concerned with deterrence, it is a policy question concerned with
10:58 38 the public interest. Counsel Assisting submit that public interest
10:58 39 is limited only to public trust and confidence in the operation of
10:58 40 casinos. We submit that it does include that important
10:58 41 consideration, indeed the statute requires regard to be had to that
10:59 42 when considering the public interest, but the statute does not say
10:59 43 that that is the only matter to which regard may be had in
10:59 44 considering the public interest.

10:59 45

10:59 46 As the Commissioner, with respect, knows well from other
10:59 47 contexts, the public interest is a very broad and multifaceted

10:59 1 concept, even in the judicial context in which you do not
10:59 2 presently sit. A fortiori, we submit in the present context of the
10:59 3 Royal Commission, charged with answering questions of public
10:59 4 policy of great significance to the people of this State, the notion
10:59 5 of public interest is broader than that which Counsel Assisting
10:59 6 submit. We've addressed that subject in more details in
10:59 7 paragraphs B25 to B33 of our written submissions. For example,
10:59 8 the Terms of Reference require you to have regard to financial
10:59 9 impacts on the state and also to the most practical, effective and
11:00 10 efficient way to address the matters arising out of your inquiry.
11:00 11 They are related to but distinct from and broader than the
11:00 12 conception of public interest urged upon you by our friends,
11:00 13 Counsel Assisting.

11:00 14
11:00 15 So, without envying your task, the two considerations Crown
11:00 16 submits as the solution to the problem with which you are
11:00 17 confronted are as follows: first, we submit --- our first alternative,
11:00 18 we submit, is that Crown is suitable to continue to hold the casino
11:00 19 licence, but because Crown's suitability is contingent, it accepts,
11:00 20 contingent on the reforms being implemented, it is appropriate for
11:01 21 an independent monitor or supervisor to be appointed to
11:01 22 supervise Crown. This is not the course commended to you by
11:01 23 Counsel Assisting, but aspects of their submissions, as we read
11:01 24 them, do lend some support to that approach. For example,
11:01 25 Counsel Assisting submit that while determination of the question
11:01 26 of suitability will of course involve an examination of past
11:01 27 conduct, the Commission is engaged in a predictive and holistic
11:01 28 assessment about how Crown Melbourne will conduct itself in
11:01 29 the future. They also submit that recent changes in the
11:01 30 composition of Crown's board and its association with others who
11:01 31 have influenced its affairs and conduct over time are relevant to
11:01 32 the assessment of suitability, and they also submit that features of
11:01 33 Crown's reform program are appropriate, albeit only part of the
11:02 34 transformation that will be ongoing through the process of
11:02 35 implementation.

11:02 36
11:02 37 Counsel Assisting argue that the statute demands suitability rather
11:02 38 than a transition to suitability. But there is, in our respectful
11:02 39 submission, logical coherence and legal support for the
11:02 40 proposition that a person may be presently suitable on the basis of
11:02 41 extant promises to do things in the future. There is an analogy
11:02 42 here to be drawn with a new applicant for the licence. The
11:02 43 VCGLR would need to be satisfied of the then current suitability
11:02 44 of a new applicant, but that would not require the applicant to
11:02 45 have in place already all of what it promises to have in order
11:02 46 suitably to operate the casino.
11:02 47

11:02 1 There are textual indicators in the statute of a legislative
11:03 2 contemplation of that kind of forward-looking approach. For
11:03 3 example, in section 9(2)(c) there is a condition that an applicant
11:03 4 for the new licence has or has arranged a satisfactory ownership
11:03 5 structure. In 9(2)(d), that the applicant has or is able to obtain
11:03 6 financial resources that are adequate, and the services of persons
11:03 7 who have sufficient experience in the management and operation
11:03 8 of a casino.

11:03 9

11:03 10 COMMISSIONER: It couldn't really be otherwise in respect of
11:03 11 an operation which hasn't commenced.

11:03 12

11:03 13 MR BORSKY: Quite.

11:03 14

11:03 15 COMMISSIONER: It's really not an analog, is it?

11:03 16

11:03 17 MR BORSKY: Well, the notion, the meaning of suitability, we
11:03 18 submit, must draw its content from the indicia in the statute, and
11:04 19 one of the important sources for that is section 9. So whilst I
11:04 20 don't pretend it is a perfect analog, it is a relevant indicator in the
11:04 21 statute we submit in support of our proposition that a person may
11:04 22 presently be suitable on the basis of extant promises to do
11:04 23 something in the future.

11:04 24

11:04 25 But while we do submit that there is a proper evidentiary and
11:04 26 legal basis upon which the Commission could find Crown
11:04 27 suitable, Crown does appreciate the significance of its failings
11:04 28 and Crown accepts that it is open for this Commission to
11:04 29 conclude on the evidence that Crown Melbourne is not
11:04 30 a presently suitable person to hold the casino licence.

11:04 31

11:04 32 We have responded comprehensively in writing to the
11:04 33 submissions of Counsel Assisting. Like our friends, Counsel
11:05 34 Assisting the Commission, our written submissions run to more
11:05 35 than 350 pages. Our submissions accept a number of the
11:05 36 criticisms ---

11:05 37

11:05 38 COMMISSIONER: I thought at one stage I was going ---

11:05 39

11:05 40 MR BORSKY: Yes, you did.

11:05 41

11:05 42 COMMISSIONER: --- to impose 100 ---

11:05 43

11:05 44 MR BORSKY: That's correct. You did at one stage. Our
11:05 45 submissions comply with the extant directions.

11:05 46

11:05 47 COMMISSIONER: I realise I made a mistake now.

11:05 1
11:05 2 MR BORSKY: Our submissions accept a number of the
11:05 3 submissions made of Crown by Counsel Assisting. Other
11:05 4 criticisms are not accepted, though we hope that the Commission
11:05 5 will not detect any air of combativeness or defensiveness in the
11:05 6 position that Crown has adopted.
11:05 7
11:05 8 Crown advances submissions as to why the criticisms made in
11:05 9 a particular area, dealt with in a chapter of our submissions, for
11:06 10 example, responsible gaming, do not of themselves warrant
11:06 11 a finding of unsuitability, but Crown's current leadership
11:06 12 recognises that when viewed in aggregate and holistically, the
11:06 13 failings in Crown that have been revealed and which Crown
11:06 14 accepts are significant, and they do render Crown's suitability
11:06 15 fairly in question.
11:06 16
11:06 17 Accordingly, Crown advances a second alternative submission
11:06 18 for the Commission's consideration. That second alternative is
11:06 19 that Crown is not presently suitable, but that upon implementation
11:06 20 of its reform program, supplemented by further initiatives arising
11:06 21 out of the recommendations of this Commission, Crown will
11:06 22 return to being a suitable person. Again, from the perspective of
11:06 23 the VCGLR and the State, and, indeed, the Victorian public, this
11:07 24 would importantly be safeguarded by the appointment of
11:07 25 an independent monitor or supervisor with all the functions and
11:07 26 powers necessary to scrutinise and supervisor Crown along the
11:07 27 way towards implementation of all of the reforms.
11:07 28
11:07 29 Our second alternative, which we raise for the Commission's
11:07 30 consideration, is in essence the first of the two alternatives
11:07 31 advanced in submissions by Counsel Assisting at paragraphs
11:07 32 19.1.21(a) and 2.1.21(a). Crown accepts, as Counsel Assisting
11:07 33 have submitted, that the monitor should have extensive powers to
11:07 34 scrutinise the reform process, examine Crown's affairs, including
11:07 35 by compulsorily obtaining access to documents and staff and to
11:07 36 appoint experts to assist in the task of supervision.
11:07 37
11:08 38 And Crown accepts, again as Counsel Assisting have submitted,
11:08 39 that the costs of the monitoring or supervision should be borne by
11:08 40 Crown. Crown would also accept, with respect, the suggestion
11:08 41 by Counsel Assisting that if the Commission were amenable to
11:08 42 recommending this course, then the real test of suitability would
11:08 43 be the next review by the regulator, presently scheduled for 2023.
11:08 44 The concerns about the regulator's ability in the past adequately to
11:08 45 undertake a suitability review to which reference has been made
11:08 46 in others' submissions would, in our submission, be ameliorated
11:08 47 by the appointment of the independent monitor or supervisor who

11:08 1 would have extraordinary powers and would report progressively
11:08 2 to the State via its regulator.

11:08 3

11:09 4 For our part, we would not be certain that legislative amendment
11:09 5 would be necessary to implement this office of monitor or
11:09 6 supervisor, contrary to the position expressed in writing by
11:09 7 Counsel Assisting. We say that for these reasons: under the
11:09 8 existing legislative regime, conditions of the casino licence can
11:09 9 be amended under section 16 of the Casino Control Act and the
11:09 10 regulator can give Crown a written direction relating to the
11:09 11 conduct, supervision or control of operations in the casino. And
11:09 12 of course it is a criminal offence for Crown not to comply with
11:09 13 that direction under section 23 of the Act. And the regulator,
11:09 14 under the existing legislative regime, can require the production
11:09 15 of documents to an authorised person and require a person to
11:09 16 attend before an authorised person for examination. That
11:10 17 authorised person, in our submission, could be the monitor or the
11:10 18 supervisor. I won't take time tracing you, Commissioner, through
11:10 19 the labyrinth statutory definitions but one need have regard to
11:10 20 an authorised person in section 3 of the Casino Control Act and
11:10 21 then the provisions of other acts to which that refers in the
11:10 22 Gambling Regulation Act and the VCGLR Act, that seems to us,
11:10 23 with respect, to be an open construction.

11:10 24

11:10 25 But, in any event, Crown would not oppose Counsel Assisting's
11:10 26 proposal that legislative amendment be made in order to give
11:10 27 effect to what might be the Commissioner's preferred conception
11:10 28 of the office and the necessary functions or powers of a monitor
11:10 29 or supervisor.

11:10 30

11:10 31 COMMISSIONER: How does the public interest deal with this
11:10 32 proposition, if I aggregate the conduct that came up in the Bergin
11:11 33 Inquiry, plus the conduct that's been identified here, and without
11:11 34 putting too fine a point on it, it is pretty serious misconduct, both
11:11 35 option one and option two are sort of risk-free options or options
11:11 36 where there is no real consequence of wrongdoing. Pay unpaid
11:11 37 taxes, pay a few costs, but you don't actually suffer any
11:11 38 consequence, that is, you can commit wrong for a decade of
11:11 39 various kinds and come along and say, "We've fixed it so don't
11:11 40 worry about it."

11:11 41

11:11 42 If I'm looking at the public interest, if I was a car thief and went
11:12 43 to the criminal court and said, "I won't steal a car again, take my
11:12 44 word for it, now just let me go", it's really not how the system
11:12 45 works, is it? Not only is it how the system works, it is not what
11:12 46 the public expects.

11:12 47

11:12 1 MR BORSKY: We don't submit to you that the misconduct was
11:12 2 not serious and we don't submit "Don't worry about it, I've fixed
11:12 3 it", we don't even submit that it is all fixed yet. We do also point
11:12 4 to the fact that there have been consequences. There have been
11:12 5 consequences to a number of previous senior leaders of Crown,
11:12 6 there have been consequences to shareholders and there have
11:12 7 been other consequences. And that is as it should be in our
11:13 8 respectful submission. But, we do submit that your task is not
11:13 9 a punitive or even a deterrent one. Your task is, with great
11:13 10 respect, to find the best solution in the public interest looking
11:13 11 forward. So, given where we are, given where the State of
11:13 12 Victoria and Crown are today, what is the best solution.

11:13 13

11:13 14 COMMISSIONER: The choice might be --- that is a fair enough
11:13 15 way of putting it, but the choice may be between you running the
11:13 16 casino and somebody else running the casino.

11:13 17

11:13 18 MR BORSKY: Yes. Yes. And what I'm proposing to do is
11:13 19 address you now on the reasons why, in our respectful
11:13 20 submission, you ought not recommend what we would term
11:14 21 a more extreme option than either of our two alternatives.

11:14 22

11:14 23 COMMISSIONER: (Nods head).

11:14 24

11:14 25 MR BORSKY: The first reason is that we submit the State of
11:14 26 Victoria has available to it in Crown today a company with
11:14 27 considerable expertise and resources to operate a casino. And
11:14 28 a company with an iron-clad commitment to reforming itself to
11:14 29 the very highest standards. Unsatisfactorily from one important
11:14 30 perspective, to which you have adverted, but potentially usefully
11:14 31 from the perspective of the State of Victoria looking forwards.
11:14 32 That commitment has been forged in the flames of multiple
11:14 33 public inquiries and binding undertakings given by Crown. No
11:15 34 new applicant would undertake to be under the scrutiny of
11:15 35 a supervisor or a monitor as Crown does before you. There is, as
11:15 36 has been observed in evidence to this Commission, plainly
11:15 37 a burning platform within Crown for the reforms. Ms Arzadon
11:15 38 explained to us by having a burning platform, by which she meant
11:15 39 the clear understanding that cultural change is necessary for a
11:15 40 corporation's survival is a key scenario in which cultural
11:15 41 transformation has a better chance of success. You heard
11:15 42 evidence from Ms Korsanos, and Mr McCann and Mr Blackburn
11:15 43 that there is undoubtedly such a burning platform within Crown.

11:15 44

11:15 45 When Mr Blackburn gave that evidence at transcript 2962 and
11:15 46 2963, that the culture he had come into reflected --- sorry, I will
11:16 47 start that again. That the culture he had come into did not reflect

11:16 1 the culture that he had seen evidenced through the past activity
11:16 2 about which he had heard and read, he said the culture that he had
11:16 3 joined is "one where compliance and financial crime and risk
11:16 4 management are prioritised by Crown, and that is my experience
11:16 5 since coming to Crown", he said.

11:16 6

11:16 7 *My professional life in financial crime and compliance*
11:16 8 *has been about fighting that fight at the board level, at the*
11:16 9 *senior executive level where you are confronted usually*
11:16 10 *with the risk/value proposition. I've confronted no*
11:16 11 *resistance at Crown which is quite an interesting place to*
11:16 12 *be as a compliance officer and a financial crime officer*
11:16 13 *but to not only face no resistance, but also to face many*
11:16 14 *business partners who are actually coming to me with*
11:16 15 *solutions.*

11:16 16

11:17 17 He said.

11:17 18

11:17 19 Now, Commissioner, when he gave that evidence, you challenged
11:17 20 him on it, noting that it was not voluntary behaviour, because
11:17 21 Crown is fighting for its life with government regulators, you
11:17 22 observed. And Mr Blackburn took your point, as I do with great
11:17 23 respect. But Mr Blackburn's evidence was that the culture he has
11:17 24 come into struck him as being pleasingly characterised not only
11:17 25 by that genuine commitment but by what he described as genuine
11:17 26 effort and altruism in that regard and he expressed confidence
11:17 27 there would be no reversion to old ways, transcript 2964. Again,
11:17 28 our first reason being the State of Victoria has available to it in
11:17 29 Crown a company with considerable expertise and resources to
11:17 30 operate a casino with an iron-clad commitment to reforming itself
11:17 31 to the very highest standards, safeguarded by the monitor or
11:17 32 supervisor which Crown accepts on any view would be
11:18 33 appropriate.

11:18 34

11:18 35 The second reason we advance is that Crown has already made in
11:18 36 our submission, significant progress towards reform of the
11:18 37 highest standards, particularly in AML. We've addressed that
11:18 38 particular subject at paragraphs D35 to D42. Counsel Assisting
11:18 39 and the Commissioner's appointed expert, McGrathNicol,
11:18 40 recognise that Crown's program of AFL --- I withdraw that, AML
11:18 41 reforms is impressive --- I really shouldn't have made that slip
11:18 42 given that Carlton beat St Kilda on the weekend, Commissioner.

11:18 43

11:18 44 COMMISSIONER: (Nods head).

11:18 45

11:18 46 MR BORSKY: Thank you for not responding.

11:18 47

11:18 1 They recognised that Crown's program of AML reforms is
11:18 2 "impressive in its scope and ambition and properly targeted and
11:18 3 prioritised". And Counsel Assisting and McGrathNicol
11:19 4 recognised that Crown's employees in the first line of defence are
11:19 5 willing, able and ready to uphold the rules and Crown employees
11:19 6 generally have a real concern to get this right.
11:19 7
11:19 8 I've submitted already that Crown's AML reform program will
11:19 9 deliver an aggregate advanced state of AML maturity by the end
11:19 10 of next year. That reform program, as you've heard, involves the
11:19 11 recruitment of more than 50 new specialised
11:19 12 Financial Crime & Compliance employees.
11:19 13
11:19 14 Mr Blackburn's evidence, which we submit the Commission
11:19 15 should accept, is that the program, that is the AML program, is
11:19 16 already past the foundational level, which means that Crown does
11:19 17 now have an appropriate, compliant and adequately resourced
11:20 18 AML program in place. If I may have called up CRW.512 ---
11:20 19
11:20 20 COMMISSIONER: I don't think that is going to work.
11:20 21
11:20 22 MR BORSKY: Okay, I'm sorry. I will give you the reference.
11:20 23 The critical slide in Mr Blackburn's
11:20 24 Financial Crime & Compliance apprehension to the board about
11:20 25 which you heard evidence is CRW.512.081.1750 is the
11:20 26 document, and the critical slide we would ask you to go back and
11:20 27 have another look at, please, Commissioner, is at page 1753.
11:20 28
11:20 29 On that slide, which was a chart tracking the progression and
11:20 30 maturity of AML programs, Crown was placed, as compared to
11:20 31 its peers and other institutions, like small and large financial
11:21 32 institutions. And Mr Blackburn's assessment, as a recognised
11:21 33 expert, we would submit, in the field, with substantial experience
11:21 34 in the financial services sector, is that Crown's AML program is
11:21 35 past foundational and ahead of other entities, including casinos
11:21 36 and even small banks. It is not yet at the level of the major banks.
11:21 37
11:21 38 COMMISSIONER: I remember him saying that. I also
11:21 39 remember Ms Siegers saying that comparison with banks was
11:21 40 hopeless.
11:21 41
11:21 42 MR BORSKY: I don't remember that precise word ---
11:21 43
11:21 44 COMMISSIONER: Not in her evidence, in the correspondence
11:21 45 post.
11:21 46
11:21 47 MR BORSKY: I think the Commissioner might be referring to

11:21 1 a memo Ms Siegers wrote to the Risk Committee in relation to
11:21 2 Mr Deans' advisory risk report? Ms Halton ---
11:21 3
11:21 4 COMMISSIONER: He knows about the banking industry and
11:21 5 knows nothing about casinos. Something along --- to that effect.
11:22 6
11:22 7 MR BORSKY: Are you putting to me, Commissioner, that
11:22 8 Ms Siegers suggested that Mr Deans knows something about the
11:22 9 banking industry and nothing about casinos?
11:22 10
11:22 11 COMMISSIONER: No. She was criticising views coming from
11:22 12 AML work at banks. She said it's not comparable, something like
11:22 13 that.
11:22 14
11:22 15 MR BORSKY: I see.
11:22 16
11:22 17 COMMISSIONER: Now.
11:22 18
11:22 19 MR BORSKY: In response, if I may, we would submit this:
11:22 20 Ms Halton explained in her evidence to you that that's not ---
11:22 21 knowing Ms Siegers as Ms Halton does, and knowing that
11:22 22 Ms Siegers's first language is not English, Ms Halton did not
11:22 23 interpret the comments in the same way that the Commissioner
11:22 24 might have --
11:22 25
11:22 26 COMMISSIONER: Correct.
11:22 27
11:22 28 MR BORSKY: --- and, in any event, the Risk Committee, as the
11:22 29 memorandum demonstrates and as our submissions develop, the
11:22 30 Risk Committee takes onboard the Deans report and we would
11:23 31 submit more fundamentally for present purposes that
11:23 32 Mr Blackburn is unquestionably, as we understand, a man with
11:23 33 relevant and substantial expertise in this field.
11:23 34
11:23 35 COMMISSIONER: (Nods head).
11:23 36
11:23 37 MR BORSKY: Most of his experience, indeed all of it recent is
11:23 38 in financial services. But he has, as that presentation reveals, he
11:23 39 has looked at casinos worldwide. That presentation, I will get the
11:23 40 particular slide reference, but that presentation makes clear that
11:23 41 Mr Blackburn has in preparing that for the board looked at
11:23 42 casinos elsewhere. So you can, with respect, proceed on the basis
11:23 43 of Mr Blackburn's assessment of Crown's maturity, Crown's
11:23 44 AML maturity, and it is, as I say, past foundational, ahead of
11:23 45 other casinos and small banks but not yet at the level of the large
11:24 46 banks.
11:24 47

11:24 1 So to return to the question you raised and the submission I'm
11:24 2 trying to develop, which is why you ought not recommend
11:24 3 cancellation to enable some other applicant to come along to take
11:24 4 over the licence, there is no evidence before you to suggest that
11:24 5 another casino operator would be better or even as good as
11:24 6 Crown is in this important area, AML. And Crown is, as you
11:24 7 know, committed to and has invested considerable resources in
11:24 8 becoming even better by the end of next year. That reference to
11:24 9 international casinos in Mr Blackburn's presentation is at 1776, if
11:24 10 the Commission pleases.

11:24 11
11:24 12 More broadly, Commissioner, we submit that cancellation or
11:25 13 suspension of Crown's licence would not be in the public interest,
11:25 14 and it would not be the most practical, effective and efficient
11:25 15 course for you to recommend. The terms of reference, as I have
11:25 16 mentioned, require you to have regard to those considerations and
11:25 17 to have regard to the financial impacts on the State of your
11:25 18 recommendations.

11:25 19
11:25 20 Cancellation, or even suspension of Crown's licence, would have
11:25 21 the very real potential to trigger events of default that would put
11:25 22 in jeopardy the significant public benefits that Crown would
11:25 23 otherwise continue to provide this State. To be clear, the
11:26 24 cancellation of its licence or even something less permanent than
11:26 25 that, provided it was for a certain duration, would be an event of
11:26 26 default under Crown's financing agreements. I'm being a little
11:26 27 careful in my reference to something less permanent for a certain
11:26 28 duration for reasons the Commissioner recalls and understands.
11:26 29 But the Commissioner needs to appreciate, in our respectful
11:26 30 submission, and take into account the position being in an event
11:26 31 of default, unless Crown were able to procure waivers from its
11:26 32 financiers, Crown would likely be in a position of having very
11:27 33 substantial debt obligations becoming immediately due and
11:27 34 payable. I won't be any more specific than that in open session.
11:27 35 We have tendered confidentially the full suite of financing
11:27 36 agreements. We can provide, if it might assist, the Commission
11:27 37 further information either in answer to specific questions or more
11:27 38 broadly, but we would respectfully seek the opportunity to do that
11:27 39 privately rather than publicly for reasons which have previously
11:27 40 been canvassed in close session.

11:27 41
11:27 42 We wish to emphasise that very real risk. And we wish, with the
11:27 43 greatest of respect, to remind the Commission that a very broad
11:27 44 range of stakeholders have an interest in Crown's continuing
11:28 45 viability and success. That includes Crown's staff, the Victorian
11:28 46 tourism industry, and industry more broadly, and of course the
11:28 47 State itself. I just develop some submissions briefly in relation to

11:28 1 each of those important stakeholders.

11:28 2

11:28 3 More than 20,000 people work across Crown's resorts. Over
11:28 4 11,600 of those work in Melbourne. The vast majority of them
11:28 5 were of course not complicit in the misconduct evidenced in this
11:28 6 Commission. Thousands of them, for example, work in food and
11:28 7 beverage.

11:28 8

11:28 9 COMMISSIONER: You should assume that I take the basic
11:29 10 view that as the annual report that I've looked at demonstrate, that
11:29 11 Crown Melbourne is a profitable concern, which is to say, and if I
11:29 12 segment out the hotel and other businesses and just look at the
11:29 13 casino business, it is a very profitable business. Maybe on the
11:29 14 decline a little bit, but very profitable. If it is a profitable
11:29 15 business, the way industry works is somebody will always step in
11:29 16 so that I don't treat 12,000 employees at risk. They might change
11:29 17 their employer, but they are not at risk of losing their jobs. It
11:29 18 would be different if it was a failing company in a financial sense,
11:29 19 that is if it was like a legacy business like other things have been
11:29 20 described as legacies. If it was like that then you and any other
11:30 21 operator would face a downward trend. But if it is a viable
11:30 22 business and a profitable business, there is always someone there
11:30 23 to step in and take over a profitable business. So I don't treat the
11:30 24 employees at risk, I don't treat third-party contractors at risk.
11:30 25 There might be some dislocation, but I don't really see them at
11:30 26 risk, except at the margins. By which I mean that I understand
11:30 27 that if a hedge fund was to buy a business and operate, I know
11:30 28 what they will do. They will cut costs to the extent they can and
11:30 29 get away with it. So some people might go. But when we have
11:30 30 a profitable operating business, there will be an operator there out
11:30 31 in the world, a suitable one.

11:30 32

11:31 33 MR BORSKY: Commissioner, we would not assume, and we
11:31 34 respectfully urge you not to assume that in the event of a default
11:31 35 by Crown, which would likely give rise to the consequences to
11:31 36 which I've adverted, the many thousands of Crown staff would
11:31 37 transition seamlessly to some new licensee or, indeed, to other
11:31 38 employment.

11:31 39

11:31 40 COMMISSIONER: Yes.

11:31 41

11:31 42 MR BORSKY: We do not make that assumption and we urge
11:31 43 you not to make that assumption. There would, on any view, be
11:31 44 enormous disruption and possibly financial hardship for so many
11:31 45 at a time when so many are already living through great
11:32 46 uncertainty and hardship as a result of the pandemic. There is no
11:32 47 evidentiary foundation upon which you could safely assume that

11:32 1 a replacement operator would seamlessly take on the full work
11:32 2 force without disruption or prejudice.
11:32 3
11:32 4 COMMISSIONER: I said there would be some disruption, but I
11:32 5 don't need a business person to tell me that if there is a profitable
11:32 6 business there is a buyer. I know that.
11:32 7
11:32 8 MR BORSKY: And I don't cavil with the position of Crown
11:32 9 being a profitable business, but there are earnings and liquidity
11:33 10 and there are the consequences or risks to which I've adverted
11:33 11 which bear careful consideration.
11:33 12
11:33 13 COMMISSIONER: It's not complex-free.
11:33 14
11:33 15 MR BORSKY: It is certainly not without complexity. We put it
11:33 16 considerably higher than that, as I have sought to explain.
11:33 17
11:33 18 Now, if we be wrong, and if in fact it might be possible
11:33 19 seamlessly to line up some replacement which would magically
11:33 20 guarantee all the employees continue in their employment without
11:33 21 disruption or without prejudice, say, then that might prompt one
11:33 22 to question the utility of the exercise of stripping the licence from
11:33 23 one corporation which employs thousands of people and handing
11:33 24 it to another which it to employ the same thousands of people.
11:34 25 That is not for one moment to suggest that there should not be
11:34 26 and should not seen to be consequences for misconduct. I hope
11:34 27 I've made plain that Crown's position is there have been and there
11:34 28 ought have been. The leadership has to take responsibility, and
11:34 29 by and large they have. Many of them have already departed and
11:34 30 some more are still to go. Shareholders too must, and no doubt
11:34 31 will, take pain. There have been penalties imposed. There might
11:34 32 be more. No doubt the recommendations of this Commission in
11:34 33 terms of conditions on the licence and perhaps other sanctions
11:34 34 will erode shareholder equity at least. And that may be a matter
11:34 35 about which the Commission has little sympathy. But we do
11:35 36 respectfully ask the Commission to bear in mind that over 46,000
11:35 37 of Crown's shareholders are in fact small shareholders, what
11:35 38 some might describe as mum and dad shareholders. There are
11:35 39 more than 46,000 shareholders in Crown who hold 5,000 shares
11:35 40 or fewer. So cancellation of Crown's licence, if it be
11:35 41 recommended and effected, would impose great financial losses
11:35 42 not only in shareholders in Crown who are well resourced and
11:35 43 well known, but also on tens of thousands of small shareholders
11:35 44 and, indeed, superannuation funds.
11:35 45
11:35 46 There would also be a significant impact on the Victorian tourism
11:35 47 industry and industry more broadly, and in that regard we submit

11:35 1 that it is particularly important at this time during the pandemic
11:36 2 where tourism and other economic activity is already so
11:36 3 hampered, especially in the big urban centres like Melbourne, that
11:36 4 great care should be exercised before recommending anything
11:36 5 that might adversely affect Melbourne and Victoria's ability to
11:36 6 advance its tourism industry and industry more generally.

11:36 7
11:36 8 And of course then there is the State itself. The State itself is
11:36 9 a recipient of taxes and other payments from Crown. Since 2014
11:36 10 Crown has paid the State at least \$1.4 billion through general
11:36 11 player casino taxes, commission-based player taxes and the
11:36 12 community benefit levy and Crown has also paid, and would
11:36 13 under the current statutory arrangements, continue to pay
11:36 14 substantial additional amounts to the state, including \$250 million
11:37 15 due in July 2033.

11:37 16
11:37 17 As I've developed, we submit that the Commission should take
11:37 18 a wider view of the public interest than that urged upon you by
11:37 19 Counsel Assisting.

11:37 20
11:37 21 But even on Counsel Assisting's, with respect, narrower
11:37 22 perception, Counsel Assisting warn you that cancellation of the
11:37 23 licence would be "highly disruptive". It seems to be common
11:37 24 ground between us and our learned friends that unless any
11:37 25 cancellation were deferred and structured so as to permit Crown
11:37 26 to continue to hold the licenses, significant harm would be caused
11:37 27 to many people, including those who had no involvement in
11:37 28 Crown's past misconduct.

11:37 29
11:37 30 We submit that deferring any cancellation that you might be
11:37 31 inclined to recommend would not be a solution to the problems of
11:37 32 cancellation. The successful execution of Crown's reformation
11:38 33 requires Crown to attract and retain the right people to lead the
11:38 34 significant program, and to keep staff motivated and focused on
11:38 35 that critical work.

11:38 36
11:38 37 As a matter of commercial reality, that will be made far more
11:38 38 difficult in a scenario of deferred cancellation with only a right
11:38 39 for Crown to reapply. Nor, in our respectful submission, would
11:38 40 separation of the operation of the casino or gaming area from the
11:38 41 operation of the balance of what is presently an integrated resort,
11:38 42 being a practical, effective or efficient solution. We are not
11:38 43 aware, and by "we" I mean those instructing me who have
11:39 44 considerable expertise and experience in the field, are not aware
11:39 45 of international examples, certainly there is no evidence before
11:39 46 the Commission of examples of the gaming component of
11:39 47 an integrated resort like Crown Melbourne being operated by

11:39 1 a different operator to the operator of the balance of the
11:39 2 hospitality and entertainment component.
11:39 3
11:39 4 COMMISSIONER: There is one example in the United States of
11:39 5 a disposition by the regulator, or through the regulator, of
11:39 6 a casino and associated hotels.
11:39 7
11:39 8 MR BORSKY: Disposition of the casino and associated hotels.
11:39 9
11:39 10 COMMISSIONER: Not separate from. Together with.
11:39 11
11:39 12 MR BORSKY: Thank you, and that's the point I'm seeking to
11:39 13 make.
11:39 14
11:39 15 COMMISSIONER: I understand.
11:39 16
11:39 17 MR BORSKY: Crown is an integrated resort, there are good
11:39 18 reasons for Crown being an integrated resort, those reasons have
11:39 19 inured to the great benefit of the State of Victoria for many years,
11:40 20 we developed that in writing and I will give you some examples
11:40 21 --
11:40 22
11:40 23 COMMISSIONER: I haven't quite got to the bottom of this yet,
11:40 24 only because I'm really bad with certificates of title and Crown
11:40 25 allotments and so on, but you know you have give the lease away,
11:40 26 you have to sublease if directed?
11:40 27
11:40 28 MR BORSKY: (Nods head).
11:40 29
11:40 30 COMMISSIONER: I haven't quite worked out the physical area
11:40 31 of the area that you have to sublease if directed, through
11:40 32 commercial rent. My current impression is the hotels, not the
11:40 33 ones across the road, but the ones that from the river to whatever
11:40 34 the name of the road is at the back, that is all land you have to
11:40 35 give up, ie, including the hotel. So that you might be compelled,
11:40 36 under your current arrangements with the Government, to give up
11:40 37 not only the casino but the hotel or at least the main hotel, not the
11:40 38 other ones across the road. But I'm still trying to look at the titles
11:40 39 to work that out.
11:40 40
11:40 41 MR BORSKY: I'm not sure about that.
11:40 42
11:40 43 COMMISSIONER: But I think you are at risk. The way it looks
11:41 44 like, you are on Crown land, except for the other hotels which are
11:41 45 freehold, or Torrens. Your Torrens land, the rest of it is Crown
11:41 46 land, and the lease is over the whole of the Crown land because
11:41 47 you are not allowed to own that, and the sublease that you have to

11:41 1 give away is over all of the Crown land. So the point that you are
11:41 2 making may be right, but likely wrong.
11:41 3
11:41 4 MR BORSKY: Well ---
11:41 5
11:41 6 COMMISSIONER: A title search will fix all that up soon, in my
11:41 7 mind.
11:41 8
11:41 9 MR BORSKY: I'm not sure a title search will suffice to fix that
11:41 10 up in your mind, with respect, because the definition of the
11:41 11 "casino" for the purposes of the Act, at least the current Act ---
11:41 12
11:41 13 COMMISSIONER: No, no, I'm not talking about that, I'm
11:41 14 talking about the obligation to sublease the area you have leased.
11:41 15 I don't care about the casino because the obligation to sublease
11:41 16 doesn't say casino and defines it by reference to land titles. There
11:41 17 is Crown allotments, certificates of title and so on.
11:42 18
11:42 19 MR BORSKY: There are, as I've submitted no examples
11:42 20 anywhere in the world of an integrated resort being unintegrated,
11:42 21 and I use that word deliberately.
11:42 22
11:42 23 COMMISSIONER: Although, if the leased area doesn't include
11:42 24 the hotel, the main hotel, Crown Towers, if it doesn't include that,
11:42 25 whoever operates Crown Towers would necessarily keep the
11:42 26 connection with the casino even if only for maximising profits.
11:42 27
11:42 28 MR BORSKY: Yes, but --- yes, there would be a connection. Of
11:42 29 course any operator of the gaming area of the casino would ---
11:42 30
11:42 31 COMMISSIONER: Both ways.
11:42 32
11:42 33 MR BORSKY: There would be a connection both ways, but if I
11:42 34 may just explain the way it presently operates for the benefit of
11:42 35 Crown and the State, the Commission might find it relevant.
11:43 36 Crown, as you would expect, has been able to achieve synergies
11:43 37 and other efficiencies by running the integrated resort.
11:43 38
11:43 39 COMMISSIONER: I get that.
11:43 40
11:43 41 MR BORSKY: And that is because the economics of
11:43 42 integration ---
11:43 43
11:43 44 COMMISSIONER: I understand that. Staff and cost-efficient
11:43 45 with crossover staff that go from one to the other.
11:43 46
11:43 47 MR BORSKY: More than that.

11:43 1
11:43 2 COMMISSIONER: It will be more expensive.
11:43 3
11:43 4 MR BORSKY: More than that, with respect. It will be that, but
11:43 5 there is more than that.
11:43 6
11:43 7 What it has permitted Crown to develop is higher quality
11:43 8 entertainment and hospitality facilities with incentives to support
11:43 9 the facility and indeed the promotion of Melbourne as
11:43 10 a destination. It is not a simple cost efficiency point.
11:43 11
11:43 12 COMMISSIONER: No, no, fair enough.
11:43 13
11:43 14 MR BORSKY: And, as the Commission would know, we've
11:43 15 detailed this in writing, Crown does a lot of work with
11:44 16 government and industry to support bids for conventions and the
11:44 17 like and major events in Melbourne that at least before COVID
11:44 18 contributed \$1.2 billion to the Victorian economy every year.
11:44 19 Crown provides about 10 per cent of all of Melbourne's hotel
11:44 20 rooms. So that plays a critical role in the supply of
11:44 21 accommodation for visitors during major events and throughout
11:44 22 the year. And Crown over a number of years has been
11:44 23 an international acclaimed integrated resort and Australia's best
11:44 24 luxury hotel. It's not just about the efficiency or the cost and,
11:44 25 therefore, the quality of the offering. It is more. The gaming
11:44 26 side, or the casino side of the integrated business and, therefore,
11:44 27 the State benefits most from this integration. It benefits most
11:45 28 because there are effectively cross-subsidies from the resort or
11:45 29 hotel. So the gaming business is the hotel's biggest customer at
11:45 30 what you might expect are good rates, and that maximises the
11:45 31 revenue and earnings of the gaming business which of course
11:45 32 benefits the State of Victoria in its collection of gaming taxes.
11:45 33
11:45 34 The Commission should, for those and other reasons, not assume
11:45 35 that gaming and non-gaming operations can efficiently or even
11:45 36 practically be separated. The result, in our submission, of
11:45 37 a disintegration of integrated resort would be an inferior offering
11:45 38 for customers, employees and other stakeholders and
11:45 39 a diminished substantially diminished offering to tourism and to
11:45 40 the State of Victoria. So we submit that the more practical,
11:46 41 effective and efficient course is for Crown to continue to operate
11:46 42 as an integrated resort under licence upon whatever conditionings
11:46 43 this Commission may consider appropriate to recommend,
11:46 44 including at a minimum that Crown be under the supervision of
11:46 45 an independent monitor or supervisor while it works to complete
11:46 46 its program of reforms and the further initiatives arising out of the
11:46 47 work of this Commission.

11:46 1
11:46 2 It is not, in our respectful submission, in the public interest to
11:46 3 visit on Crown's work force, the State or other stakeholders the
11:46 4 consequences of a recommendation which would see Crown
11:46 5 Melbourne stripped of its licence and broken up when the path to
11:46 6 suitable is clear, is embarked upon and where there can be
11:47 7 absolute assurance that there will be no deviation from that path
11:47 8 by virtue of the safeguards of an independent monitor or
11:47 9 supervisor which Crown accepts ought be appointed in any event.
11:47 10
11:47 11 I was proposing then to move to a slightly different topic and that
11:47 12 was Crown's answers to the Commission's questions sent by let
11:47 13 are. Did the Commission plan to take a morning break?
11:47 14
11:47 15 COMMISSIONER: We will take a morning break. I just want to
11:47 16 say something to Mr Gray in case I forget.
11:47 17
11:47 18 You asked earlier, I was meant to ask you before, but I forgot so
11:47 19 I'm doing it now so I don't forget later. You asked whether I
11:48 20 wanted to hear submissions from the State about
11:48 21 pre-commitment. The answer is "yes". I would like to hear
11:48 22 anything at all, in writing, about mandatory pre-commitment.
11:48 23
11:48 24 MR GRAY: Thank you, Commissioner.
11:48 25
11:48 26 COMMISSIONER: We'll adjourn for 10 minutes.
11:48 27
11:48 28
11:48 29 **ADJOURNED** **[9:49A.M.]**
12:06 30
12:06 31
12:06 32 **RESUMED** **[10:07A.M.]**
12:06 33
12:06 34 COMMISSIONER: Mr Borsky?
12:06 35
12:06 36 MR BORSKY: As the Commissioner pleases.
12:06 37
12:06 38 If it is convenient, I was going to turn to your Solicitors
12:06 39 Assisting's letter with the four questions. I've addressed our
12:06 40 answers to those four questions in detail in writing at paragraph
12:06 41 C152 with various paragraphs running to four pages. Let me
12:06 42 summarise our position as to the questions.
12:06 43
12:06 44 First, on the questions on whether the restriction on holding or
12:06 45 having a relevant interest in more than 5 per cent of the shares in
12:06 46 Crown Melbourne should be extended to a restriction on shares in
12:06 47 the holding company Crown Resorts, we submit that there is no

12:07 1 reason not to impose a restriction on a person holding or having
12:07 2 a relevant interest in shares in Crown Resorts. We submit that at
12:07 3 the level at which that restriction ought appropriately be set, if
12:07 4 one is to be set, would be 5 per cent. And we submit that there
12:07 5 ought be a carveout or exception for consent from the regulator or
12:07 6 the minister.

12:07 7
12:07 8 COMMISSIONER: Under the current regime, at least to the
12:07 9 extent that it was capable of operating, that was what the
12:07 10 intention was --

12:07 11
12:07 12 MR BORSKY: Yes.

12:07 13
12:07 14 COMMISSIONER: --- I think if you track it back down to Xavier
12:07 15 Connor's report, which is where the 35 per cent came from, he
12:07 16 suggested that as well.

12:07 17
12:07 18 MR BORSKY: Thank you. Pardon me one moment,
12:07 19 Commissioner. Sorry, I misspoke, I'm helpfully corrected. We
12:08 20 submit that the level of the restriction ought be set at 10 per cent.
12:08 21 I'm told I might have said something different.

12:08 22
12:08 23 COMMISSIONER: You did, you said 5 per cent.

12:08 24
12:08 25 MR BORSKY: I apologise. Thank you.

12:08 26
12:08 27 COMMISSIONER: Which is the percentage suggested in the
12:08 28 Bergin Report. Can I tell you what my hesitation about that
12:08 29 would be?

12:08 30
12:08 31 MR BORSKY: Of course.

12:08 32
12:08 33 COMMISSIONER: Like you said, quite accurately, the shares in
12:08 34 Crown Resorts are quite disbursed. A 10 per cent shareholding
12:08 35 could probably control a company meeting, unless all the proxy
12:08 36 gatherers got around and got everybody to show up. There is
12:08 37 plenty of boards, there is plenty of listed companies where
12:08 38 somebody picks up 10 per cent, they are invited on the board
12:08 39 straight away. In other words, it is regarded, and the Companies
12:08 40 Act says you have to give notice with 5 per cent in any event, for
12:09 41 those who listen to it. So 10 per cent in a listed company with
12:09 42 a dispersed shareholding is a powerful, if not influential interest.
12:09 43 That's why I'm a bit hesitant. And I don't think the Bergin Report
12:09 44 discussed, at least I don't remember it, discussing the potential
12:09 45 problems of --- not so much the problems but the effect that
12:09 46 a 10 per cent shareholder can have in most listed companies. Not
12:09 47 all, but ---

12:09 1
12:09 2 MR BORSKY: Well, no, her focus was a different one, as you
12:09 3 recall. Her focus was a much larger shareholder than that and
12:09 4 I will come back to that a bit later in reply, if I may.
12:09 5
12:09 6 COMMISSIONER: Anyhow, that is my concern.
12:09 7
12:09 8 MR BORSKY: Yes.
12:09 9
12:09 10 COMMISSIONER: That there should be a restriction, it seems to
12:09 11 be inevitably correct, because that was the intention ---
12:09 12
12:09 13 MR BORSKY: And flow through, we don't oppose as a matter
12:09 14 of principle. But we do, and I apologise for misstating it
12:10 15 originally.
12:10 16
12:10 17 COMMISSIONER: That's okay.
12:10 18
12:10 19 MR BORSKY: We do submit to you that 10 per cent is the
12:10 20 appropriate level. There are two reasons for that. The first is that
12:10 21 that would put Crown on equal footing with interstate
12:10 22 competitors. So the position in NSW and Queensland is
12:10 23 10 per cent is the cap. And that's significant as the Commissioner
12:10 24 would appreciate in terms of promoting the interests of Victoria,
12:10 25 allowing Crown, assuming it is entitled to continue to operate
12:10 26 Melbourne as the flagship casino, that from a capital structure
12:10 27 and management and other broader perspectives it is not
12:10 28 disadvantaged as compared to interstate competitors.
12:10 29
12:10 30 The second reason we submit 5 per cent is too low, because it
12:10 31 would require arm's length institutional investors who have for
12:10 32 quite some time held between 5 per cent and 10 per cent
12:11 33 perpetual ---
12:11 34
12:11 35 COMMISSIONER: Depends on whether it is prospective or
12:11 36 retrospective.
12:11 37
12:11 38 MR BORSKY: Well, quite.
12:11 39
12:11 40 COMMISSIONER: Don't worry about --
12:11 41
12:11 42 MR BORSKY: Transitional provision?
12:11 43
12:11 44 COMMISSIONER: There might be.
12:11 45
12:11 46 MR BORSKY: There might need to be. And whilst we would
12:11 47 respectfully take your point that 10 per cent holding particularly

12:11 1 with a shareholder composition base such as Crown's could
12:11 2 enable influence to be exerted ---
12:11 3
12:11 4 COMMISSIONER: Not influence, they control a meeting. You
12:11 5 have 10 per cent of the shares, you will control a meeting unless
12:11 6 there is a build-up, resistance, which has got together.
12:11 7
12:11 8 MR BORSKY: Whilst that may be so, we would respectfully
12:11 9 submit that there is no basis to assume that any major shareholder
12:11 10 would necessarily exert a deleterious influence on a company like
12:11 11 Crown. So, true it is, as Bergin found, and we accept, others will
12:11 12 have different views, we accept that CPH was not the sole, but
12:12 13 a substantial part of the reason why Crown went wrong. We
12:12 14 accept that. But that's not to suggest that an arm's length
12:12 15 institutional investor with say 9.9 per cent would, or even might,
12:12 16 lead Crown astray. It's not even suggested that the perpetual
12:12 17 Blackstone who hold between 5 per cent or 10 per cent had
12:12 18 anything to do with our misconduct.
12:12 19
12:12 20 COMMISSIONER: That might be true, but this is looking to the
12:12 21 future and asking where is a potential area of risk, and do you do
12:12 22 anything today about mitigating the risk.
12:12 23
12:12 24 MR BORSKY: I understand.
12:12 25
12:12 26 May I turn to the second question then which I think I can be
12:13 27 briefer on. That is in relation to CPH and whether --- you've
12:13 28 asked whether any restriction should apply to CPH as from
12:13 29 September 2024 when the question says they are undertaking to
12:13 30 ILGA expires. Our submission is that any restriction on
12:13 31 shareholdings should apply to all shareholders but that
12:13 32 transitional provisions might need to be thought through.
12:13 33
12:13 34 Then, if I may go to the fourth question next and I will return to
12:13 35 the third.
12:13 36
12:13 37 The third question is, should the Act be amended to require that
12:13 38 some directors of a casino licensee be independent of any holding
12:13 39 company? Our answer is "yes".
12:13 40
12:14 41 Then your third question is a more complex one, if we may say
12:14 42 with respect, or at least our position in answer to it is. That's the
12:14 43 question about possible repeal of the compensation provisions in
12:14 44 clauses 24A(2), (3) and (4) of the Casino Management
12:14 45 Agreement. In our submission those provisions need to be
12:14 46 looked at in two parts. So the first provision is 24A(2)(i) and that
12:14 47 is about the ---

12:14 1
12:14 2 COMMISSIONER: That's the cancellation one.
12:14 3
12:14 4 MR BORSKY: Yes. And Crown accepts that it should not be
12:14 5 entitled to compensation if its licence were to be cancelled due to
12:14 6 disciplinary action. Whether that be on grounds of Crown's
12:14 7 unsuitability or that it is not in the public interest that Crown
12:14 8 continue to hold the licence. So Crown accepts that it shouldn't
12:15 9 be entitled to compensation for the consequences of what has
12:15 10 been described as its wrongdoing.
12:15 11
12:15 12 24A --- there is a nuance on that which we develop in writing,
12:15 13 which is, looking forward into the future as we do hopefully, if
12:15 14 Crown were to be the licensee in many years, perfectly suitable,
12:15 15 no misconduct, but as a matter of public policy the Government
12:15 16 of the day decides that it is not in the public interest for
12:15 17 Melbourne to have a casino and for that reason cancels the
12:15 18 licence, it would not necessarily follow that Crown ought be
12:15 19 deprived of its compensation under 24A(2) in that, we hope,
12:15 20 not-too-hypothetical scenario. So there may be some need for
12:15 21 refinement and nuance in the process of legislative drafting.
12:16 22
12:16 23 COMMISSIONER: Yes, I get it.
12:16 24
12:16 25 MR BORSKY: That's our position. We don't seek to profit from
12:16 26 our wrongdoing. 24A(3) and 24A(4) are different in our
12:16 27 respectful submission. They are the provisions that provide for
12:16 28 Crown to be compensated capped at \$200 million.
12:16 29
12:16 30 COMMISSIONER: \$200 million plus CPI.
12:16 31
12:16 32 MR BORSKY: Indexing from 2015. That's right. And Crown
12:16 33 accepts that those provisions should not apply in a way that
12:16 34 creates a significant disincentive for the State to take measures to
12:16 35 give effect to the recommendations by your submission.
12:16 36
12:16 37 With great respect, we see the point and accept it as a matter of
12:16 38 principle. But the provisions do reflect, as an even cursory view
12:17 39 of the Explanatory Memorandum reveals, they do reflect just one
12:17 40 part of what was a suite of commercial arrangements negotiated
12:17 41 between the State and Crown which was agreed in 2014, and
12:17 42 included agreements by Crown over time to make substantial
12:17 43 additional payments to the State of at least, depending on Crown's
12:17 44 future performance, at least half a billion dollars additional to
12:17 45 what Crown was otherwise at that time in 2014 obliged to make.
12:17 46
12:17 47 In return for an extension of Crown's licence from 2033 to 2050,

12:17 1 and the ability to install additional gaming product, and the
12:17 2 insertion of these compensation provisions, Crown promised to
12:17 3 make a series of payments, so 250 million upon the amendments
12:18 4 entering into law, and \$250 million in 2033 and depending on
12:18 5 financial performance, additional payments in between of up to
12:18 6 \$200 million. Plus there was a guaranteed \$35 million in gaming
12:18 7 taxes in relation to the new gaming product that the State
12:18 8 authorised to be introduced. So, having regard to that context,
12:18 9 and there's been advertence already this morning to the potential
12:18 10 considerations of sovereign risk, Crown would respectfully
12:18 11 submit that the appropriate course for the provisions to be
12:18 12 amended, not repealed wholesale, but amended to ensure they do
12:18 13 not apply to dis-incentivise the state to give affect to your
12:18 14 recommendations, for example, in relation to responsible
12:19 15 gaming ---

12:19 16
12:19 17 COMMISSIONER: Which funnily enough, most of the
12:19 18 annexure 1 actions ---

12:19 19
12:19 20 MR BORSKY: Trigger events, yes?

12:19 21
12:19 22 COMMISSIONER: --- are pretty much all to do with problem
12:19 23 gambling.

12:19 24
12:19 25 MR BORSKY: Yes, that's why I cite the example. And so the
12:19 26 point we make, as delicately as I'm able, is this is part of the
12:19 27 legislative context, authorised, incentivised and indeed mandated
12:19 28 by the State, that is a consideration to which we advert in
12:19 29 detailed submissions in responsible gaming, where we accept
12:19 30 failings and we accept that those failings bear upon our
12:19 31 suitability, but we respectfully ask the Commissioner to bear in
12:19 32 mind that context, that that context must be borne in mind, when
12:19 33 assessing the suitability of a licensee under an extant statutory
12:19 34 regime, acknowledging, indeed embracing, that community
12:20 35 standards do and have rightly changed since 2014. But to apply
12:20 36 the community standards of today in relation to Responsible
12:20 37 Gaming and judge Crown unsuitable for its compliance with the
12:20 38 incentives and requirements of the Government of the day back
12:20 39 then may need to be tempered and thought through.

12:20 40
12:20 41 COMMISSIONER: (Nods head).

12:20 42
12:20 43 MR BORSKY: That is a summary of our answers to the four
12:20 44 questions. As I say, the Commissioner has the full detail in
12:20 45 writing.

12:20 46
12:20 47 Could I then just turn briefly to summarise Crown's position in

12:21 1 response to the submissions made by Counsel Assisting as to the
12:21 2 suitability of existing associates. I'm conscious that each --- I will
12:21 3 start again. There are only two existing associates in respect of
12:21 4 whom Counsel Assisting submits its open to you to make
12:21 5 a finding of unsuitability. The others, according to Counsel
12:21 6 Assisting's submissions, it's not open to you to find them
12:21 7 unsuitable. Now, I'm conscious that each of those two persons is
12:21 8 separately represented. One will be making oral submissions
12:21 9 before you and both have put in written submissions. So I won't
12:21 10 dwell on the topic. But Crown accepts that as current leaders of
12:21 11 Crown, and we've addressed it in writing, their conduct has some
12:21 12 relevance to your assessment of Crown's suitability. So may I
12:21 13 just in summary explain our submissions in relation to each.
12:22 14 First, Ms Coonan. The principles in our submission are quite
12:22 15 clear: the matters to be determined in assessing suitability of
12:22 16 an associate really concern whether the person is of good repute,
12:22 17 having character to character, honesty and integrity. And our
12:22 18 submission is that even if Counsel Assisting's characterisation of
12:22 19 the evidence in relation to Ms Coonan were accepted, which for
12:22 20 reasons we develop in writing in paragraph C12 to C22 and in
12:22 21 our annexure C1, they ought not be, but even if they were to be
12:22 22 accepted, no conduct by Ms Coonan has been identified by
12:22 23 Counsel Assisting that reflects adversely on her character,
12:22 24 honesty or integrity. In other words, even taking them at their
12:23 25 highest, the criticisms of Ms Coonan by Counsel Assisting do not
12:23 26 rise high enough to warrant a finding that she's unsuitable to be
12:23 27 an associate of a casino licensee.
12:23 28
12:23 29 The different, subtly different, submission that Counsel Assisting
12:23 30 advanced in relation to Ms Coonan next is she may not be "the
12:23 31 right person to shepherd in the extent of change required" at
12:23 32 Crown. Now, in relation to that Crown draws to the
12:23 33 Commission's attention that Ms Coonan, in any event, consistent
12:23 34 with her evidence before you in this Commission that she was
12:23 35 looking to perform an orderly handover, will announce her
12:24 36 retirement as interim executive chair and from all Crown boards
12:24 37 as soon as Crown has appointed a new leader. And from Crown's
12:24 38 perspective, Crown's expectation is that that new leader will be
12:24 39 appointed by 31 August this year.
12:24 40
12:24 41 Mr Walsh too will be leaving Crown this month. He will be
12:24 42 leaving Crown on terms that he and Crown are presently
12:24 43 discussing but he will be leaving Crown in August 2021. So the
12:24 44 Commission need and ought not in, our respectful submission,
12:24 45 make any finding that Mr Walsh is not suitable to be an associate
12:24 46 of Crown as licensee to operate the casino. The Terms of
12:24 47 Reference direct you to enquire into and report on whether there

12:24 1 are any "existing associates of Crown Melbourne" who are not
12:25 2 suitable. And when you hand your report to the governor,
12:25 3 Mr Walsh will not be an existing associate. In any event, we
12:25 4 submit that the areas in which Mr Walsh has been criticised
12:25 5 reflect errors of judgment not any lack of integrity or character.
12:25 6 And we submit that a holistic assessment of Mr Walsh's
12:25 7 suitability must pay regard to all of the evidence, including the
12:25 8 relevant matters in Mr Walsh's favour. For example, any
12:25 9 suggestion that Mr Walsh was trying to hide or conceal the bonus
12:25 10 jackpots issue from being disclosed to this Commission cannot be
12:25 11 accepted. Mr Walsh called a meeting with Allens, solicitors for
12:25 12 Crown in March, specifically for the purpose of bringing it to
12:25 13 their attention with a view to it being disclosed to the
12:26 14 Commission. At the meeting he provided details of the issue, as
12:26 15 he understood them. He then followed up with a folder of
12:26 16 materials, including the presentation which evidences the
12:26 17 admittedly unacceptable fact that Crown began claiming the
12:26 18 deductions surreptitiously in the hope that the VCGLR would not
12:26 19 notice and he then followed up via Crown's in-house lawyers
12:26 20 several times.

12:26 21
12:26 22 We address the evidence to Mr Walsh and his suitability also in
12:26 23 writing in annexure C2 and in relation to the bonus jackpots' issue
12:26 24 more specifically in paragraphs G110 to G128. We do
12:26 25 acknowledge that Mr Walsh should have raised the potential
12:26 26 underpayment of tax with Ms Coonan and the other directors
12:26 27 squarely and promptly. But we submit that the Commissioner
12:26 28 should treat that as an error of judgment, not of integrity. The
12:26 29 better view of the evidence, which we have analysed in detail, is
12:27 30 that Mr Walsh did not downplay the issue. At least certainly not
12:27 31 intentionally with a view to there not being disclosure to this
12:27 32 Commission that. Would be a very serious allegation or finding
12:27 33 which in our submission would be almost impossible to reconcile
12:27 34 logically with the lengths to which he in fact went to draw it to
12:27 35 the attention of Allens with a view to it being disclosed to this
12:27 36 Commission.

12:27 37
12:27 38 In one of the directions to us it was indicated that the
12:27 39 Commissioner expected us to reply this morning to the written
12:27 40 submissions of our friends served last night.

12:27 41
12:27 42 COMMISSIONER: I'm still reading them.

12:27 43
12:27 44 MR BORSKY: Did the Commission say "I'm still reading
12:27 45 them"?

12:27 46
12:27 47 COMMISSIONER: I'm still reading them.

1
12:27 2 MR BORSKY: Well, I've read them and, more importantly,
12:27 3 those ably assisting me have read them. I am in a position to
12:28 4 reply. I don't think it appropriate to take up a lot or perhaps even
12:28 5 much time doing so orally now. I'm in your hands. There are
12:28 6 a few short points, particularly in answer to CPH, which I would
12:28 7 seek to make. I don't know if it's convenient to do it now or at the
12:28 8 end after you've heard from Mr Hutley.
12:28 9
12:28 10 COMMISSIONER: It is probably convenient to hear Mr Hutley
12:28 11 first, isn't it?
12:28 12
12:28 13 MR BORSKY: As the Commission pleases.
12:28 14
12:28 15 COMMISSIONER: It's going to take a few minutes to link in the
12:28 16 interstate counsel. We can have a vote on it. Can we have
12:28 17 an early short lunch and then come back, I think, rather than go
12:28 18 out and come back ---
12:29 19
12:29 20 MR BORSKY: Thank you.
12:29 21
12:29 22 COMMISSIONER: --- while the technicians work and I might
12:29 23 say something inelegant again. 45 minutes. Come back at 1.15.
12:29 24
12:29 25
13:15 26 **ADJOURNED** **[12:29P.M.]**
13:15 27
13:15 28
13:15 29 **RESUMED** **[13:15P,M.]**
13:15 30
13:15 31
13:15 32 COMMISSIONER: Thank you. We will do Mr Hutley next.
13:15 33
13:16 34 Mr Hutley, can you hear me?
13:16 35
13:16 36 MR HUTLEY: Thank you, Commissioner. I can.
13:16 37
13:16 38 COMMISSIONER: Good. It is your turn to speak.
13:16 39
13:16 40
13:16 41 **CLOSING SUBMISSIONS BY MR HUTLEY**
13:16 42
13:16 43
13:16 44 MR HUTLEY: Thank you.
13:16 45
13:16 46 As you are aware, Commissioner, we have been given limited
13:16 47 entitlement to address orally, limited to in effect submissions in

13:16 1 relation to matters arising out of the submissions of Crown
13:16 2 Resorts, VCGLR, the State of Victoria and Ms Coonan.
13:16 3
13:16 4 As you've observed, we received those materials about the same
13:16 5 time you did and we have worked long, or others particularly
13:16 6 have worked long into the night and perhaps I early in the
13:16 7 morning, to seek to address them. Now, that means the focus of
13:16 8 them will be relatively limited. They will not address anything in
13:17 9 Crown, Counsel Assisting's written submissions, or for example
13:17 10 your four questions which we have addressed in writing.
13:17 11 Although, should you consider it appropriate, I might make some
13:17 12 submissions about the choice which was adverted to, either
13:17 13 Crown continuing to operate or some unidentified third party or
13:17 14 parties which took up a little of the submissions this morning, but
13:17 15 in that regard I'm wholly of course in your hands.
13:17 16
13:17 17 With that exception, the themes we propose to address are themes
13:17 18 which have come up in those interested parties submissions.
13:17 19
13:18 20 Firstly, it is, although it has to an extent been watered down by
13:18 21 my learned friend Mr Borsky's submissions orally, that the issue
13:18 22 as to identifying, as it were, the source of cultural problems and
13:18 23 now the submission that the Commission would avoid what we
13:18 24 would describe as simplistic attributions of sole or substantial
13:18 25 responsibility for those problems to particular individuals in
13:18 26 circumstances where firstly the full extent of the problems haven't
13:18 27 been identified, secondly, until a root cause analysis takes place,
13:18 28 one can't assume there is a consistent set of problems across the
13:18 29 organisation.
13:18 30
13:18 31 Secondly, we say the Commission exercise a degree of caution of
13:19 32 taking out of context, or for that matter extrapolating particular
13:19 33 pieces of evidence from the NSW Inquiry or, to some extent, as
13:19 34 relied upon by those parties to whom we address, particular
13:19 35 phrases drawn from the Bergin Report, cannot be
13:19 36 decontextualised.
13:19 37
13:19 38 Thirdly, that the Commission, whatever concerns may have
13:19 39 existed about the relationship between CPH and Crown in prior
13:19 40 times, owing to the removal of various agreements, the two
13:19 41 agreements which existed between CPH and Crown, and the
13:19 42 various undertakings which have been proffered to ILGA and
13:20 43 which have been reiterated to the VCGLR, that any concern about
13:20 44 the influence of my client in relation to Crown would have
13:20 45 evaporated.
13:20 46
13:20 47 Now, there are many aspects of the --- turning to the submissions

13:20 1 of Crown Resorts, there are many aspects of their submissions
13:20 2 with which we agree. Firstly, for example, the identification of
13:20 3 the numerous failings within Crown Resorts, and we say nothing
13:20 4 about those. The fact that Crown Resorts is undertaking drastic
13:20 5 transformation, which is ongoing and we say has produced
13:20 6 tangible alterations in areas of concern. Now, we accept that that
13:21 7 task is large, but we would urge you to find, consistent with what
13:21 8 Crown has said, that meaningful progress has been made, and you
13:21 9 could have a very high degree of confidence that it will be lasting
13:21 10 and successful. And that of course, if that finding is made, feeds
13:21 11 directly into the choice which you adverted to in debate with my
13:21 12 learned friend as to whether Crown runs it or perhaps some other.
13:21 13 In our respectful submission if you come to the conclusion that
13:21 14 you can have a degree, a satisfactory degree of confidence that
13:21 15 Crown has reformed in a way which renders it either suitable or
13:22 16 imminently suitable, to conclude that Crown should be, as it
13:22 17 were, stripped of its assets and those be put up to some
13:22 18 innominate collection of potential corporations to bid for it, in our
13:22 19 respectful submission would not be in the public interest and
13:22 20 would be to punish Crown, which is not the role of this inquiry.

13:22 21
13:22 22 Punishment is not a feature of the public interest with which one
13:22 23 is concerned here. One is concerned with the future of, as it
13:22 24 were, casino operation in this State, in Victoria. In our respectful
13:22 25 submission, it is easy because of one's legitimate concern about
13:23 26 what has transpired, to convert that into a perceived need for
13:23 27 removal, which in our respectful submission, unless one was
13:23 28 satisfied that Crown is irredeemable, would not be to advance the
13:23 29 public interest but to punish. And that, in our respectful
13:23 30 submission, would not be a proper exercise for or to advance the
13:23 31 public interest.

13:23 32
13:23 33 Now, the next point is we agree with Crown that the public
13:23 34 interest is for Crown to continue operating for the reasons
13:24 35 advanced by Crown, and I won't say any more about it, but of
13:24 36 course we also accept that Crown's acceptance of the
13:24 37 appropriateness of an independent monitor is wholly to be
13:24 38 commended and should take place.

13:24 39
13:24 40 Now, again in relation to this predicated choice, could I make one
13:24 41 further Commission. You have received our submissions that
13:24 42 there is no need for shareholder caps because the real question is
13:24 43 influence on management, not shareholding. We say our
13:24 44 undertakings and the other controls which are available to the
13:24 45 VCGLR with respect to involvement in the management and
13:25 46 becoming a close associate does not dictate that there be
13:25 47 a shareholder cap and there is, in our respectful submission, no

13:25 1 need for it. But, should one be imposed --- we made submissions
13:25 2 that it should be no lesser than 20 per cent and I don't develop
13:25 3 that, we've made our submissions, but to go back to the choice,
13:25 4 one has to have regard, if one sets up an auction, that if one also
13:25 5 imposes low shareholder caps, one may in effect foreclose the
13:25 6 practicality of any real option, and that has to be taken into
13:25 7 account. And were, for example, a current competitor of Crown,
13:26 8 even though its shareholder cap may be, at the moment,
13:26 9 depending upon the view you took preclude it, one would have to
13:26 10 take into account that auction, were it to take place, would
13:26 11 produce large concerns for the ACCC. Almost inevitably, which
13:26 12 would have to be addressed. And before one moved to the other
13:26 13 auction, one has to conceive of what that marketplace could look
13:26 14 like. And it is in our respectful submission by no means clear,
13:26 15 and a very significant risk that should that course be taken, there
13:26 16 would not be an appropriate scope for a proper investigation and
13:26 17 auction of the interests.

13:27 18
13:27 19 So, again, we submit, if you come to the conclusion that Crown is
13:27 20 redeemable, if I could use that as a shorthand, the public interest
13:27 21 in our respectful submission would dictate that that course be
13:27 22 followed and not some other course.

13:27 23
13:27 24 Now, can I then turn to, and I will do it by reference to the
13:27 25 chapter and sub-heading numbers in the submissions, and this is
13:27 26 dealing with A17 in the Crown Resorts.

13:27 27
13:27 28 There, it would appear that there are a number of submissions
13:27 29 which suggest that such deficiencies, as Crown Resorts and
13:27 30 Crown has exhibited, are due to the influence of my client.

13:27 31
13:28 32 Now, Mr Borsky orally submitted that my client's influence was
13:28 33 not the sole but a substantial part of the problem. That departs
13:28 34 from we, to a degree the submissions as we read them in A17,
13:28 35 and it is a commendable departure, there is a danger that one falls
13:28 36 into the trap that Ms Arzadon cautioned against, namely, without
13:28 37 an appropriate root cause analysis of succumbing to simplistic
13:28 38 solutions of all problems or a limited sub-set of clauses. The
13:29 39 issues which you have identified, and those which were identified
13:29 40 in the Bergin Report, are disparate and across a large organisation
13:29 41 with many thousands of employees. How that came about needs
13:29 42 to be identified and appropriate steps are being taken by Crown to
13:29 43 identify them. For, that as Ms Arzadon pointed out, would
13:29 44 self-assist in effect crafting targeted responses to the problems.
13:29 45 And you should be satisfied that they have taken, that is Crown
13:29 46 Resorts, have taken a responsible approach to it, and is
13:29 47 addressing it. And it is unnecessary for you, and in our respectful

13:29 1 submission, undesirable because of the lack of information for
13:29 2 you to seek to, as it were, undertake a bespoke root cause
13:30 3 analysis. That's all we wish to say on A17.

13:30 4
13:30 5 At C26, submissions are made by Crown to the effect that CPH
13:30 6 directors exercised influence over former Crown Board. Now,
13:30 7 that is not what the NSW Inquiry found. Now, the NSW Inquiry
13:30 8 made various findings as to the failings of Crown's board as
13:30 9 a whole. At footnote 122 of the Crown submissions,
13:30 10 reference is made to what they describe as a serious imbalance,
13:30 11 referring to my client's position, and take that from the Bergin
13:30 12 Inquiry report volume 2, chapter 4.3.5 at paragraph 11. It is
13:31 13 important you go to the entirety of that quote, and I won't read it
13:31 14 out here because it will take unnecessary time but the important
13:31 15 point is the imbalance which was there identified has been
13:31 16 removed. It was not said to be caused merely by either my
13:31 17 client's shareholding or even having nominee directors.

13:31 18
13:31 19 Secondly, Crown here has extrapolated from the statement at
13:31 20 paragraph 11 at C26 of their submissions to recover the removal
13:31 21 of all CPH directors. Now, of course, that ignores that
13:31 22 Ms Bergin's report said that Mr Jalland and Mr Poynton were
13:32 23 integral to the ongoing development of Crown and its reform to
13:32 24 suitability. So far from, as it were, a wholesale criticism of the
13:32 25 position of Crown nominees, Ms Bergin was of the view that two
13:32 26 such nominees were important for the reform of Crown. Again,
13:32 27 one has to read with all the criticisms of Ms Bergin's report, has
13:32 28 to read it with precision and it is important that there not be
13:32 29 a simplistic analysis of fault. I think that is sufficient for present
13:33 30 purposes.

13:33 31
13:33 32 Can I now turn to C27 of the Crown Resorts submissions. Some
13:33 33 submissions here are made in relation to the findings about
13:33 34 blurred reporting lines in the NSW Inquiry. Now, our position is,
13:33 35 as you will see from the submissions made in response to
13:33 36 Counsel's submissions is we do not accept that Mr Johnson was
13:33 37 involved "in the management of the VIP international group". In
13:33 38 fact, Crown's position is before the NSW Inquiry, you will see
13:34 39 from exhibit RC0001.dddd and the doc ID is
13:34 40 VCG.0001.0002.6436 at pinpoint 0018, paragraph 65(f), is that
13:34 41 Crown's submissions were that, for example, the decision-making
13:34 42 in relation to China cannot be seen as a product of undue CPH
13:34 43 influence. So Crown's position at the Bergin Inquiry is that they
13:34 44 were not influenced by my client and in our respectful submission
13:34 45 that was correct.

13:35 46
13:35 47 Now, we have set out in our written submissions at annexure A39

13:35 1 to 40 our submissions in the Commission about this question of
13:35 2 Mr Johnson's role in the VIP working group and I won't repeat
13:35 3 them. Now, a submission is made in one of the inquiries ---
13:35 4 NSW Inquiry report that it is, and I quote "clear that Mr Felstead
13:35 5 thought his communiques with Mr Johnson and Mr Packer are
13:35 6 enough to fulfil his obligations". As we've submitted both to the
13:35 7 Bergin Inquiry and we've submitted here, Mr Felstead's express
13:35 8 evidence was to the contrary where he acknowledged his
13:35 9 obligation to report to Mr Craigie and did not agree other
13:35 10 communications were a substitute for the reporting. And that's in
13:36 11 his evidence at transcript 1227.19 to 1227.26 of the ILGA
13:36 12 Inquiry, and that has been sent to the Commission this morning.
13:36 13
13:36 14 This is not to submit in any way that we are not acknowledging
13:36 15 that the Bergin Inquiry identified serious deficiencies in Crown.
13:36 16 What we are submitting is we did not, and we are not ever asked
13:36 17 here, to accept all of the findings made in the Bergin Inquiry,
13:36 18 these might be described as subsidiary findings, and we make that
13:36 19 point.
13:36 20
13:36 21 We now turn to C28 of the Crown Resorts submissions. CPH
13:36 22 agrees that the removal of senior management previously
13:36 23 responsible for Crown Resorts, such as Mr Alexander, is
13:37 24 significant. CPH does not accept the intimation that
13:37 25 Mr Alexander's loyalty to Mr Packer interfered with his duties to
13:37 26 Crown Resorts, and we address that in annexure A, paragraphs 15
13:37 27 and 32 of our written submissions.
13:37 28
13:37 29 Now could I turn to C29 of the Crown Resorts submissions.
13:37 30 Crown there submits that it was only once CPH's "influence" was
13:37 31 effectively removed "from the Board and Crown's affairs
13:37 32 generally" and Ms Coonan, Ms Halton and Ms Korsanos were
13:37 33 able to take control of the company and "chart a different course".
13:37 34 We submit, with respect, this borders on revisionist history. Each
13:37 35 of those individuals were directors on the Crown Board before
13:38 36 the Bergin Royal Commission. None of them ever withdrew
13:38 37 from the Board on the basis that they felt that they couldn't fulfil
13:38 38 their directorial duty. These submissions have to be treated with
13:38 39 the same form of healthy scepticism that Ms Arzadon observed in
13:38 40 relation to root cause analyses. That is not in any one way to
13:38 41 impugn any of those individuals. Each of them are obviously
13:38 42 directors of worthy of esteem and worthy of confidence going
13:38 43 forward. But this crisis is a crisis which impacts upon people in
13:38 44 the short-term. But you can have a complete confidence in them
13:39 45 that they will seek to meet their requirements. But that's not to
13:39 46 say they were oppressed whilst the former Board was in place.
13:39 47

13:39 1 It is noteworthy that Ms Bergin did not find that the Board
13:39 2 was improperly influenced. Quite a number of the positive
13:39 3 reforms relied upon by Crown at C82 to C88 took place over
13:39 4 a period from 2017, at a time where by hypothesis CPH nominees
13:39 5 were on the board.

13:39 6
13:39 7 Can I now turn to C102. This is an example --- this is
13:40 8 an instance, and we refer to it because it is an instance of perhaps
13:40 9 what I've called this tendency towards revisionism. That
13:40 10 paragraph discusses an incident said to be indicative of "old
13:40 11 Crown" where a draft FTI report, and Mr Commissioner, you will
13:40 12 remember reference to those, discussing deficiencies in junket
13:40 13 vetting processes was not made available to any member of the
13:40 14 board, including any member of the Brand Committee on which
13:40 15 Mr Johnson sat. That of course tends to suggest that the
13:40 16 problems of old Crown do not fall either solely or predominantly
13:40 17 to the CPH party's feet.

13:40 18
13:40 19 In E42 Crown Resorts seeks to deploy the "blurred reporting lines
13:41 20 concept" of the Bergin Report to explain the approach taken to
13:41 21 the draft FTI report, expanding the notion well beyond to how it
13:41 22 was deployed before the Bergin Inquiry, but also in a context
13:41 23 separate to Mr Johnson who was, along with every other board
13:41 24 member, not provided with the report. There is no basis to
13:41 25 attribute that reporting failure to CPH.

13:41 26
13:41 27 I now go on to H41(b). It is said that there is evidence that the
13:41 28 CUP process was a CPH initiative. CPH rejects the contention.
13:41 29 It is not supported by the evidence for reasons which we've
13:41 30 outlined at annexure A, paragraph 25 to 27 of CPH party
13:41 31 submissions. And there are a number of further points.

13:41 32
13:42 33 You recall the filenote of Arnold Bloch Leibler, of its discussions
13:42 34 with Mr Theiler, which is stated in Crown's footnotes which
13:42 35 records him at saying at paragraph 10, and I read this, I don't take
13:42 36 you to the report because I can't bring up documents:

13:42 37
13:42 38 *CPH did not encourage the Crown team to do things or to*
13:42 39 *do things in a way that the Crown team was*
13:42 40 *uncomfortable with, or to implement payment methods*
13:42 41 *that stretched Crown's risk appetite.*

13:42 42
13:42 43 That is a finding:

13:42 44
13:42 45 *In addition, an investigation commissioned by the board*
13:42 46 *as recorded in a memorandum from Mr Archibald QC did*
13:42 47 *not reach the conclusion that the CUP process was*

13:42 1 *a CPH initiative.*

13:42 2

13:42 3 That document you have at CRW.9000.002.0001.

13:42 4

13:43 5 Crown Resorts, in its footnote 1598, says that the findings that

13:43 6 CUP was a CPH initiative is also supported by a record of a VIP

13:43 7 review workshop held on 9 April 2013 which evidences CPH

13:43 8 representatives Messrs Johnson, Arbib, Bennet and Kady being

13:43 9 present when the following item was discussed.

13:43 10

13:43 11 Unfortunately this document, can I give you the exhibit number

13:43 12 and I will just refer to the reference. It is exhibit RC#0268ZZ,

13:43 13 and the pin number is CWN.514.071.3304 at 3305.

13:43 14

13:44 15 The footnote, the entry has this, which says foreign currency,

13:44 16 look into whether there is an opportunity for customers to use

13:44 17 China UnionPay to access dollars. And then the people who are

13:44 18 to deal with it are BF and JO. That's Barry Felstead and Jason

13:44 19 O'Connor.

13:44 20

13:44 21 Now, you can't rely on it, in our respectful submissions, for four

13:44 22 reasons. Firstly, it is unclear whether why CPH parties being

13:44 23 present when this workstream is discussed means it is a CPH

13:44 24 idea. There is no correlation between the two points. It is also,

13:44 25 as you will notice, 9 April 2013 and you know that the China

13:44 26 UnionPay was initiated fully a year beforehand.

13:44 27

13:45 28 Secondly, the very document identifies Mr Felstead and

13:45 29 Mr O'Connor as being responsible for the workstream.

13:45 30

13:45 31 Thirdly, Mr Theiler also specifically noted in his interview with

13:45 32 ABL that nothing came to the inquiry being considered by the

13:45 33 VIP working group. That was also noted in the memoranda of

13:45 34 Mr Archibald and Mr Karnar(?).

13:45 35

13:45 36 Fourthly, the evidence that this relatively benign concept was

13:45 37 raised at the meeting falls far short of proving that CPH's

13:45 38 initiative toward the whole hotel engaging in issuing false

13:45 39 invoices, obviously that matter was not put to either Mr Johnson

13:45 40 or Mr Kady.

13:45 41

13:45 42 Now, in our respectful submission, there is no basis for finding

13:46 43 that the China UnionPay process was a CPH initiative. Now,

13:46 44 an oblique reference was made by my learned friend Mr Borsky

13:46 45 to Mr Packer, by reference to Mr Ratnam who, and I quote

13:46 46 "might" have suggested that the CUP system be reinstated. Now,

13:46 47 what findings one could make from such a submission, with

13:46 1 respect, escapes us. There couldn't be a finding against
13:46 2 Mr Ratnam, certainly couldn't be a finding involving Mr Packer
13:46 3 by reference to his submission that he had a working relationship
13:46 4 with Mr Ratnam. That should be simply set aside.

13:46 5
13:47 6 That's all we wish to say directly in relation to the Crown written
13:47 7 submissions and oral submissions so far as they are contrary to
13:47 8 the position we take.

13:47 9
13:47 10 Can I now turn to the VCGLR submissions. Again I will use the
13:47 11 paragraph numbering for ease. At paragraph 5 the VCGLR
13:47 12 suggests that it should not have to undertake disciplinary action if
13:47 13 the Commission recommends the casino licence should be
13:47 14 cancelled.

13:47 15
13:47 16 The legislative regime has been established to ensure that before
13:47 17 that serious step is taken, the process in section 20 of the Casino
13:47 18 Control Act is followed. That is the legislative scheme which has
13:47 19 operated since the enactment of the Act, but which is based on --
13:47 20 based upon which participants in the industry have conducted
13:48 21 themselves. And includes importantly, with respect, a right of
13:48 22 judicial review under section 155(3) of the Act.

13:48 23
13:48 24 One of the great advantages of Royal Commissions, and one of
13:48 25 their limitations, is that they are free, practically, subject to
13:48 26 natural justice considerations, from review because they do not
13:48 27 affect legal interests.

13:48 28
13:48 29 Now, VCGLR's submission that that step be removed puts your
13:48 30 recommendations in a wholly different legal category than is their
13:48 31 natural position as being the extremely valuable and important
13:48 32 recommendations of a Royal Commission. Of course the
13:49 33 VCGLR can conduct its investigation by reference to any
13:49 34 recommendations this Commission makes and of course inform
13:49 35 itself, as it thinks fit, including no doubt anything that falls from
13:49 36 you. But, we submit, that should not be sidestepped.

13:49 37
13:49 38 For one, firstly, Crown Resorts on any view is continuing upon
13:49 39 a determined and passionately pursued road of reform. By the
13:49 40 time the Commission delivers its report, more progress will have
13:49 41 been made which will need to be taken into account and by the
13:50 42 time of any decision-making taking place, further reform will
13:50 43 have taken which will need to be taken into account. Crown
13:50 44 should not be deprived of its entitlement to have its rights dealt
13:50 45 with according to the rule of law. And you would not accede to
13:50 46 that submission of the VCGLR.
13:50 47

13:50 1 Can I turn next to paragraph 47(c) of the VCGLR's submissions.
13:50 2 Ms Bergin did not find that Mr Johnson had access to price
13:50 3 sensitive information about Crown resources at the time of the
13:50 4 share sale agreement with Melco. Rather she merely recited the
13:50 5 statement of Mr Barton whereby he indicated that that
13:50 6 information was price-sensitive, and that Mr Johnson contested
13:51 7 that proposition. That's page 191 at paragraphs 50 to 51 of her
13:51 8 report. They are the paragraphs which deal with this issue, they
13:51 9 are not cited in VCGLR's submissions.

13:51 10
13:51 11 The paragraph cited by VCGLR from Ms Bergin's report,
13:51 12 page 190, paragraphs 43 to 45, make no reference to
13:51 13 price-sensitive information at all. Rather, they describe that
13:51 14 Mr Johnson didn't disclose the transaction to Mr Barton.

13:51 15
13:51 16 I then turn to paragraph 161 of the VCGLR submissions. It is
13:51 17 noted that the VCGLR accepts that shareholding simply offers
13:51 18 a potential to influence, and that the key consideration is
13:51 19 influence not shareholding. However, the sentence referring to
13:52 20 CPH as a large shareholder that "has exerted its power"
13:52 21 intimates that the power emanates from the shareholding per se,
13:52 22 which is incorrect. There is no evidence that CPH in general has
13:52 23 ever exercised its shareholding to influence the management of
13:52 24 Crown Resorts. Rather, that influence was brought about by
13:52 25 having a role on the board, new management, and having access
13:52 26 to information. That relationship, and with it any influence, is at
13:52 27 at mend. There is nothing to suggest that it is existing, there is
13:52 28 nothing to suggest it will ever exist again and therefore be able to
13:52 29 exert influence. Or, its voting power in a manner that is
13:53 30 unacceptable, which is the only way in which it can assert or
13:53 31 exert any influence in light of there no longer being any nominee
13:53 32 directors of Crown on the Board, the relevant agreements being
13:53 33 terminated and the undertakings being given.

13:53 34
13:53 35 I now turn to 126 of the VCGLR's submissions. I don't know if
13:53 36 you've had an opportunity to read these.

13:53 37
13:53 38 COMMISSIONER: Briefly I have, yes.

13:53 39
13:53 40 MR HUTLEY: Now, this is the issue of power and whether there
13:53 41 exists a power under section 28A subsection 4(a) to require
13:53 42 undertaking.

13:53 43
13:53 44 That power depends upon the finding that CPH are associates in
13:54 45 the way you understand. It does not appear that Counsel
13:54 46 Assisting is asserting that CPH is an associate or any officers or
13:54 47 shareholder in CPH are associates. It does not appear that Crown

13:54 1 is asserting it. VCGLR's submissions do not make any
13:54 2 submission as to why one would find such an association for the
13:54 3 reason we submit that there is simply no longer no evidence of
13:54 4 such an association. VCGLR submissions make it sound like
13:54 5 compulsion to give undertakings will be required. In fact, on 26
13:54 6 July CPH voluntarily offered undertakings to the VCGLR
13:55 7 equivalent to those agreed with ILGA in March 2021. The
13:55 8 VCGLR's response was to assert on 28 July, a power to require
13:55 9 undertakings pursuant to section 28A4(a), apparently on the basis
13:55 10 of a report about which it had not previously written to CPH and
13:55 11 where CPH was not interviewed nor invited to make submissions.
13:55 12 Even in its submissions to this Commission, which discuss the
13:55 13 final China Report of the VCGLR at length, no reference is made
13:55 14 to what findings relate specifically to CPH, or how they form the
13:55 15 foundation of an opinion which is required for the exercise of the
13:55 16 power under 28A subsection 4(a).

13:55 17
13:56 18 Of course, Crown voluntarily offers the undertakings, and no
13:56 19 submission is made why they are insufficient. If binding
13:56 20 undertakings are required and my client has indicated a perfect
13:56 21 preparedness to give them, they can be given in the form of
13:56 22 a binding agreement under section 142 of the Casino Control Act
13:56 23 and we offer, and have offered, to do that very thing. We've
13:56 24 given a binding undertaking of course in NSW and we've offered
13:56 25 to do what we can in Victoria.

13:56 26
13:56 27 Now, the VCGLR makes no submissions about shareholding cap
13:57 28 and does not support a shareholding cap. That is 163.

13:57 29
13:57 30 Can I now turn to 178 of the VCGLR. This is a reference to the
13:57 31 VCGLR's China Report and it was not an investigation of CPH as
13:57 32 an associate. No CPH officer was interviewed for it, no
13:57 33 submissions from CPH were sought in respect of it before it was
13:57 34 finalised, nor was it provided to CPH by VCGLR after it was
13:57 35 finalised. It has been tendered before this Commission, but there
13:57 36 has been none, and we don't suggest in any way it is necessary to
13:58 37 be, any exploration about aspects of the report so far as they
13:58 38 referred to CPH or CPH persons. The first communication of any
13:58 39 kind by the VCGLR to CPH concerning the report was on 28
13:58 40 July, which I've just referred to, and when it was asserted that that
13:58 41 report supported the exercise of the 28A4(a) powers. And I've
13:58 42 made our submissions in relation to that.

13:58 43
13:58 44 But the important point is CPH's position is simply that we've not
13:58 45 been given an opportunity to comment upon the report, one.
13:58 46 Two, it doesn't form the basis for a conclusion we're an associate.
13:58 47 Three, without a basis for finding that we are an associate,

13:58 1 28A4(a) simply has no work to do. And it is suggested, and this
13:59 2 is at paragraph 180, that this approach is "redolent of the attitude
13:59 3 that has characterised Crown's approach towards VCGLR and has
13:59 4 been subject to criticism in the Counsel Assisting's submissions".

13:59 5
13:59 6 In our respectful submission, the fact that CPH observes to
13:59 7 a regulator that it does not accept that it has power, and without
13:59 8 the identification of the basis of a power from that regulator, it is
13:59 9 hardly redolent of anything other than a respect for the rule of law
13:59 10 on our part. Of course, if there was a basis and that was a basis
13:59 11 which was established, the power exists, there would be a basis
13:59 12 for engagement. But to in effect criticise my client for seeking
14:00 13 that the VCGLR exercise its powers according to law must never
14:00 14 be suggested to be anything other than an appropriate and
14:00 15 respectful approach to an administrative body to ensure that it
14:00 16 does not exceed its legal powers. As yet we have no indication
14:00 17 from VCGLR on the basis upon which it appears to assume it can
14:00 18 exercise that power. That has not been forthcoming in their
14:00 19 submissions, and in our respectful submission there is no basis,
14:00 20 and there is no possible basis of criticism of my client for making
14:00 21 observations to that effect.

14:01 22
14:01 23 I now turn to the State of Victoria's submissions. I refer here to
14:01 24 their submissions at paragraphs 15 and 33. The State accepts that
14:01 25 for the carveout of the compensation regime to be available prior
14:01 26 to any extension, variation or cancellation of the licence, the
14:01 27 VCGLR must comply with the procedural requirements in section
14:01 28 20. I've made our submissions as to why they should undertake
14:01 29 those requirements. And that is consistent with our submission
14:01 30 that that is consistent with the rule of law. But of course the
14:01 31 submission of the State provides a further reason why Crown
14:01 32 should have the proper opportunity to put its position as to why
14:01 33 its licence should not be suspended, varied, cancelled via the
14:01 34 section 20 process in light of findings and recommendations of
14:02 35 this Commission.

14:02 36
14:02 37 Now, the proposal by both the State at paragraph 33 of their
14:02 38 submissions and VCGLR at 25 to 30, that section 20 be removed
14:02 39 and this process skipped, we submit would undermine the basis
14:02 40 on which the regulatory certainty provisions, which are
14:02 41 summarised at paragraph 9 of the State's submissions, were
14:02 42 agreed. And the same point can be made of Crown Resorts'
14:02 43 submission at C152(2)(c)(i). You will have seen, in our
14:02 44 submissions, the reference to issues of sovereign risk of
14:02 45 contracting with Victoria, and operate and the effect upon those,
14:02 46 we won't go any further, they are at paragraphs 164 to 170. But
14:03 47 a central proposition which needs to be dealt with is whether the

14:03 1 steps here proposed in effect are fundamentally are at odds with
14:03 2 a concept of the rule of law in relation to a threat to remove
14:03 3 a valuable entitlement. And I don't think I need say any further.
14:03 4 But that is a fundamental question of due process and rule of law.
14:03 5
14:03 6 I then turn to paragraphs 39 to 83 of the State's Commissions.
14:03 7 CPH agrees with the State's analysis of the compensation
14:03 8 provisions. It may be available to Crown Resorts unless the
14:03 9 proper disciplinary process is followed. Note, and in our
14:03 10 respectful submission, this is not a question of benefitting from
14:04 11 one's wrongs. All this provides is that should Crown Resorts'
14:04 12 licence be removed because of pure public policy change, that's
14:04 13 sub-paragraph (e), then compensation will result. All of the other
14:04 14 review processes, which are review processes consistent with in
14:04 15 effect the matters into which you are enquiring and are matters of
14:04 16 concern can be brought to bear in an analysis which following
14:04 17 section 20 would --- could serve to operate upon the availability
14:04 18 of compensation. And we submit there is nothing that need to go
14:04 19 beyond that.
14:05 20
14:05 21 Lastly, can I say, one small observation in relation to the
14:05 22 submissions made on behalf of Ms Coonan. At paragraphs 84 to
14:05 23 94 and 97, Ms Coonan's submissions indicate that she did not
14:05 24 have "control" of the board which prior to February 2021 was
14:05 25 "dominated by old Crown" as to strategy for the Bergin Inquiry or
14:05 26 the response to the draft China Report.
14:05 27
14:05 28 Now, with respect to Ms Coonan, characterising events of that
14:05 29 variety on an ex post facto basis has to be approached with
14:05 30 a degree of scepticism and reflection of the submissions made on
14:05 31 behalf of Crown resources that Crown has changed its position in
14:06 32 relation to how it approaches this inquiry, as opposed to the
14:06 33 Bergin Inquiry. Changed. Not the Board has in part changed or
14:06 34 members of the Board have --- those who didn't dissent, the
14:06 35 position of Crown generally.
14:06 36
14:06 37 Those are all the submissions we wish to make.
14:06 38
14:06 39 COMMISSIONER: Thank you very much, Mr Hutley. Thank
14:06 40 you.
14:06 41
14:06 42 Mr Sheahan. Good afternoon. I can see and I hope hear you.
14:06 43
14:06 44
14:06 45 **CLOSING SUBMISSIONS BY MR SHEAHAN**
14:06 46
14:06 47

14:06 1 MR SHEAHAN: I hope so too, Commissioner. On behalf of
14:06 2 Ms Coonan I wish to make submissions on just two topics,
14:06 3 consistent with (inaudible). First are some corporate governance
14:06 4 questions prompted by the submissions of CPH, and the second
14:06 5 are two aspects of a tax issue.
14:07 6
14:07 7 On the question of corporate governance, one of the most
14:07 8 invaluable recent studies of corporate governance in Australia is
14:07 9 the prudential review of CBA performed by APRA in 2018 in
14:07 10 light of the bank's AML issues. You will recall, Commissioner,
14:07 11 that led to what was the largest civil penalty ever imposed in
14:07 12 Australian history, \$700 million. The importance in the
14:07 13 prudential review found there were signal failures in CBA's
14:07 14 corporate governance, and that included inadequate oversight and
14:07 15 challenge by the board and its committees, in particular in
14:07 16 relation to the non-financial risks, and weakness in how issues,
14:07 17 incidents and risks were identified and escalated through the
14:07 18 institution, and a lack of urgency and the subsequent management
14:08 19 and resolution. Those may have a familiar ring in this matter.
14:08 20
14:08 21 Commissioner, that was a board enormously successful,
14:08 22 comprising of boards who were highly qualified and apart from
14:08 23 the CEO completely independent. There was no question of any
14:08 24 dominant shareholding or influence. In comparison to CBA and
14:08 25 with the benefit of all that we now know, Commissioner, you
14:08 26 might think that Crown was a corporate governance crisis waiting
14:08 27 to happen. Was it inevitable? But the odds were that in due
14:08 28 course the governing structures, the corporate governing
14:08 29 structures, driven by the shareholder structures that drove them,
14:08 30 that underlay them, would have eventually come to make the
14:09 31 (inaudible) and discipline required to sustain good corporate
14:09 32 governance unable to be achieved.
14:09 33
14:09 34 That's the --- my point in mentioning the example of CBA is
14:09 35 twofold. The first is to put some of CPH's submissions in the
14:09 36 proper context. When they say in their written submissions at
14:09 37 page 53, paragraph 10, it is simply not the case that CPH nominee
14:09 38 directors stood in the way of each and every decision that would
14:09 39 have prompted reformation within Crown. Taken literally, it
14:09 40 would all be correct, but that misses the point, good corporate
14:09 41 governance is hard, it requires constant vigilance, it is inanimate
14:09 42 and complacency, comfort and (inaudible) loyalty. Similarly
14:09 43 when CPH submits that it is "incorrect to simplistically attribute
14:10 44 past failures (inaudible) to CPH", that might be correct but again
14:10 45 it misses the point. The point is that the governance structures of
14:10 46 Crown, driven by their ownership structures with a good
14:10 47 corporate governance was unlikely to develop or to be

14:10 1 consistently sustained despite the best efforts of independent
14:10 2 directors.

14:10 3

14:10 4 A corollary of that is that the Commission should not hesitate to
14:10 5 accept Ms Coonan's evidence, which are consistent with the
14:10 6 findings of the Bergin Report that until broad renewal is achieved
14:10 7 at Crown, real progress on governance reform couldn't occur.
14:10 8 That's the position that is also affirmed by Ms Korsanos and
14:10 9 Ms Halton.

14:10 10

14:10 11 In that regard, there are three other points to be made, which are
14:11 12 in a sense central to the position of Ms Coonan. The first is that
14:11 13 she recognised, and has always recognised, that the role of
14:11 14 leading Crown through the renewal process is best completed by
14:11 15 someone who has not been a part of the old governance structure
14:11 16 for a substantial period.

14:11 17

14:11 18 The second point is that it was nevertheless important, we would
14:11 19 submit, vital, really, for Ms Coonan to do as she told the Bergin
14:11 20 Inquiry she would do, that is to stay the course. She would have
14:11 21 preferred to have retired. It would have been much easier for her
14:11 22 to do so, particularly off the back of the Bergin Commission
14:11 23 report which dealt with her so positively. But in truth, it was vital
14:12 24 for Crown, and for its stakeholders, and in the public interest, for
14:12 25 Ms Coonan to stay on to bring about, first, Board renewal,
14:12 26 second, senior executive renewal and, third, to commence the
14:12 27 process of reform at Crown.

14:12 28

14:12 29 It is fair to say, Commissioner, that a great deal has been achieved
14:12 30 under her leadership, despite some (inaudible) first steps in
14:12 31 relation to dealings with the VCGLR.

14:12 32

14:12 33 The third point is that, and I think this follows from the first, and
14:12 34 that is that Ms Coonan intended to retire from her positions at
14:12 35 Crown when succession plans were put in place. And she had
14:12 36 hoped to be able to do that before the next Crown AGM, which is
14:12 37 in October. Now, her hope it seems is almost certain to be
14:13 38 achieved. You have heard Crown submissions which would
14:13 39 indicate that it expects to appoint a new Chair by the end of this
14:13 40 month. And that has a corollary for what findings this
14:13 41 Commission should or should not make in relation to questions of
14:13 42 suitability as Mr Borsky pointed out.

14:13 43

14:13 44 The second topic which we address and arises from the
14:13 45 regulator's submissions is an observation, no more than that, that
14:13 46 it is critical, this is in paragraph 10(d)(iii), it is critical of Crown's
14:13 47 handling of the underpayment of tax issue, and it suggests that

14:13 1 Ms Coonan failed to appreciate the importance of the matter.
14:13 2
14:13 3 Now, the observation seems to be premised on a notion that
14:13 4 Ms Coonan knew about an underpayment of tax issue prior to
14:13 5 June this year. There is simply no evidence to support that
14:14 6 premise. None. The only point of interest that emerged in the
14:14 7 evidence on this topic was an inference that might be drawn from
14:14 8 some documents that Ms Coonan had said something to
14:14 9 Mr Walsh to the effect that she would consider something,
14:14 10 presumably consider the historic cultural issue that had been
14:14 11 drawn to her attention. And, we emphasise, not an underpayment
14:14 12 of tax issue, which he had not mentioned to her. Now, we deal
14:14 13 with this in a little length in writing, but Mr Walsh's evidence,
14:14 14 properly read, was not that she had said she would consider
14:14 15 something. Here, we were simply to note that Mr Walsh in his
14:15 16 written submissions to the Commission, adopts Crown's
14:15 17 submissions on the subject, and that appears in paragraph 43 of
14:15 18 his submissions and Crown's submissions on this topic, the same
14:15 19 effect as Ms Coonan's (inaudible) there is no conflict between her
14:15 20 position and Mr Walsh's position about what he said to her and
14:15 21 she said to him on the occasion of this telephone conversation in
14:15 22 February.
14:15 23
14:15 24 Finally, as regards Crown's response to the underpayment issue,
14:15 25 the second aspect of what (inaudible) observes, the fact is once
14:15 26 the board became aware of the underpayment issue in June, it
14:15 27 responded to it quickly, properly and effectively. The evidence
14:16 28 summarised in our submission, and it was adverted to by our
14:16 29 learned friend Mr Borsky this morning. (Inaudible)
14:16 30 Commissioner, you will recall that Crown immediately sought
14:16 31 advice from its regulator tax advisors Ernst & Young,
14:16 32 Mr Robinson QC. Then, before they had advised, briefed
14:16 33 an independent team via counsel to get fresh advice on the same
14:16 34 subject. And then, having got the two advices, elected to pay to
14:16 35 the Government the higher amount of the two opinions, together
14:16 36 with penalties without a demand.
14:16 37
14:16 38 Now, Ms Coonan understands that a sceptical assessment of all
14:16 39 this would be that it is the sort of response that you expect in the
14:17 40 glare of a Royal Commission. But with Crown, we know how it
14:17 41 used to respond in the glare of a Public Commission of Inquiry,
14:17 42 how it used to respond was that it dug in. Under Ms Coonan's
14:17 43 leadership and since the retirement of what is called the oldco,
14:17 44 Crown's behaviour has been and continues to be markedly
14:17 45 different. That is a state of affairs for which Ms Coonan has
14:17 46 worked tirelessly. Those are our submissions, sir.
14:17 47

14:17 1 COMMISSIONER: Thank you very much, Mr Sheahan. Thank
14:17 2 you.

14:17 3

14:17 4 Now, Mr Rozen?

14:17 5

14:17 6

14:17 7 **CLOSING SUBMISSIONS BY MR ROZEN**

14:17 8

14:17 9

14:17 10 MR ROZEN: As the Commission pleases.

14:17 11

14:17 12 Commissioner, yesterday, along with other parties, the VCGLR
14:18 13 filed detailed written submissions responding to the submissions
14:18 14 of Counsel Assisting. Those submissions were made on the basis
14:18 15 of the then current legislative framework, or continues to be the
14:18 16 current legislative framework and assumes the VCGLR would
14:18 17 implement the recommendations of this Royal Commission.

14:18 18

14:18 19 The VCGLR acknowledges, based on the announcement this
14:18 20 morning to which Mr Gray made reference at the commencement
14:18 21 of his submissions, that there will be changes to that legislative
14:18 22 framework and that a new gambling regulator will be established.

14:18 23

14:18 24 The Commissioner may recall Mr Gray advising this Commission
14:18 25 that those changes would occur over the coming months and the
14:18 26 timing is not yet determined. In those circumstances, whilst the
14:18 27 future in relation to my client is a little bit uncertain, it would
14:18 28 appear that it will continue to perform its regulatory role in
14:19 29 respect of Crown and the Casino Control Act for the foreseeable
14:19 30 weeks and perhaps months, including importantly the aftermath
14:19 31 of your report being provided to the governor.

14:19 32

14:19 33 It is in that context that we make these oral submissions. We
14:19 34 propose to emphasise a few aspects of our written submissions
14:19 35 but before doing that, I'm instructed, Commissioner, to express
14:19 36 the VCGLR's gratitude for the enormous amount of work done by
14:19 37 this Commission, by Counsel Assisting and by Solicitors
14:19 38 Assisting to date. It is apparent that the evidence uncovered in
14:19 39 this Royal Commission and the final report will be of great
14:19 40 assistance to the VCGLR and any successor regulator in their
14:19 41 vital role of casino regulation.

14:19 42

14:19 43 The VCGLR has sought to cooperate with this Commission until
14:19 44 now and it will assist the Commission in future if it will be of
14:19 45 assistance for relevant correspondence to be provided to the
14:20 46 Commission for the remainder of its life.

14:20 47

14:20 1 Commissioner, by its Terms of Reference, this Commission is
14:20 2 required to make an assessment of Crown Melbourne's suitability
14:20 3 to continue to hold Victoria's only casino licence. The
14:20 4 Commissioner is also required to determine if it is in the public
14:20 5 interest for Crown Melbourne to continue to hold that licence. If
14:20 6 the Commission concludes that Crown Melbourne is not suitable,
14:20 7 or that it is not in the public interest for it to hold the Victorian
14:20 8 casino licence, it is required to report on what action, if any,
14:20 9 would be required to make it suitable, or for it to be in the public
14:20 10 interest for Crown Melbourne to hold the licence. The Terms of
14:20 11 Reference require inquiry and report into the same questions
14:20 12 concerning Crown Resorts and any other existing associates of
14:20 13 Crown Melbourne.

14:20 14
14:20 15 Commissioner, these assessments are normally entrusted to the
14:20 16 VCGLR under the Casino Control Act as is well understood. The
14:20 17 VCGLR is required to assess Crown's suitability at intervals not
14:21 18 exceeding five years under section 25. And, with respect, your
14:21 19 observation earlier in response to Mr Borsky's submissions that
14:21 20 the role this Commission has is more analogous to that function
14:21 21 than the function under section 9 is with respect the correct one.

14:21 22
14:21 23 The last assessment that was made under section 25 was in 2018
14:21 24 and covered the period 1 July 2013 to 30 June 2018. The next
14:21 25 review must be completed by June 2023. In addition, the
14:21 26 VCGLR has powers to suspend or cancel a casino licence under
14:21 27 the disciplinary action process in section 20 of the Act. And,
14:21 28 finally, the suitability of associates of the licensee is monitored by
14:21 29 the VCGLR under section 28A.

14:21 30
14:21 31 The VCGLR notes the submissions by Counsel Assisting that it is
14:21 32 open to this Commission to conclude that Crown Melbourne is
14:22 33 not suitable and that it is no longer in the public interest for it to
14:22 34 hold the casino licence. The VCGLR makes no submissions in
14:22 35 reply about these matters and wishes to briefly to explain why
14:22 36 that is the case. It is for three reasons. The first reason is that as
14:22 37 this Royal Commission has been established to answer the very
14:22 38 questions that the VCGLR would ordinarily be required to
14:22 39 answer, the VCGLR considers that it is not appropriate for it to
14:22 40 express its view. The Government has made a clear decision it
14:22 41 wants to be advised by this Royal Commission, equipped as it is,
14:22 42 by the extensive powers conferred by the Inquiries Act. These
14:22 43 are powers which exceed those of the VCGLR in a number of
14:22 44 important respects. And the Commission has significantly greater
14:22 45 resources than the VCGLR. The second reason is related to the
14:22 46 first. It is likely that the VCGLR, or its successor casino
14:22 47 regulator, will be called upon to consider the suitability of the

14:23 1 licensee and its associates when this Commission concludes. In
 14:23 2 the absence of legislative amendment, whatever
 14:23 3 recommendations this Commission makes regarding suitability,
 14:23 4 can be implemented only by the VCGLR. It would be unwise
 14:23 5 and inappropriate for the VCGLR to express a view now in
 14:23 6 circumstances where it could later be argued that it had prejudged
 14:23 7 any such questions. Equally, it would be unwise for the VCGLR
 14:23 8 to bind the hands of any successor regulator.

14:23 9

14:23 10 And, finally, at a practical level, the VCGLR has been privy to
 14:23 11 most but not all of the evidence that has been adduced in this
 14:23 12 inquiry. Some of the evidence of course has been the subject of
 14:23 13 non-publication orders. For those reasons the VCGLR does not
 14:23 14 make any submissions on whether Crown Melbourne is presently
 14:23 15 suitable or whether it is no longer in the public interest for Crown
 14:23 16 Melbourne to hold the casino licence.

14:24 17

14:24 18 If I could turn to the future, which is principally what we wish to
 14:24 19 address the Commissioner about. Commissioner, having
 14:24 20 concluded resoundingly that Crown is not suitable to hold the
 14:24 21 casino licence and that it is not in the public interest for it to do
 14:24 22 so, Counsel Assisting suggest you have two options: firstly,
 14:24 23 recommending the licence be cancelled or alternatively making
 14:24 24 a recommendation facilitating the path back to suitability.

14:24 25

14:24 26 In our submission there is at least one further option that is not
 14:24 27 examined in detail by Counsel Assisting. The licence could be
 14:24 28 suspended, possibly in combination with the appointment of
 14:24 29 a manager by the VCGLR pursuant to section 22 of the Casino
 14:24 30 Control Act. *The appointment of a manager under that provision*
 14:24 31 *is of course quite a different matter for the appointment of*
 14:24 32 *a monitor to which I will return in a moment. Under section*
 14:24 33 *22(6) of the Casino Control Act, any such manager is deemed to*
 14:25 34 *be the holder of the licence, assumes full control and*
 14:25 35 *responsibility for the business of the casino operator in respect of*
 14:25 36 *the casino and, importantly, may employ such staff as may be*
 14:25 37 *required to operate the casino. Further, under the Act, the*
 14:25 38 *VCGLR has the power to determine what proportion of the net*
 14:25 39 *earnings of the casino while it is under control of such a manager*
 14:25 40 *are paid to consolidated revenue and what proportion are paid to*
 14:25 41 *Crown. That is under subsection 8.*

14:25 42

14:25 43 Turning to the two options identified in Counsel Assisting's
 14:25 44 submissions, starting with cancellation or potentially suspension
 14:25 45 of the licence. As we've already noted, in the absence of
 14:25 46 legislative amendment, a recommendation by this Commission
 14:25 47 that the licence be cancelled or suspended could only be

14:25 1 implemented by the VCGLR taking disciplinary action under
14:26 2 section 20. Such action may only be commenced under one or
14:26 3 more of the statutory grounds identified in subsection one. There
14:26 4 is potentially a question about whether a finding by this
14:26 5 Commission without more would be a sufficient basis for action
14:26 6 under section 20. Even assuming that the answer to that is, "yes",
14:26 7 that there would be sufficient basis for action, any section 20
14:26 8 disciplinary process would be inefficient, would duplicate the
14:26 9 process of this Commission to date, and would be likely to be
14:26 10 lengthy and costly. The VCGLR would have to examine the
14:26 11 evidence of suitability afresh and necessarily would consider
14:26 12 different or more limited evidence. Such an inquiry by the
14:26 13 VCGLR would have to present on a different evidentiary basis
14:26 14 given the VCGLR has not been able to access all of the evidence
14:26 15 before this Commission.

14:26 16
14:26 17 Further, as the evidence before this Commission reveals, the
14:27 18 suitability landscape is constantly changing. New directors and
14:27 19 senior officers are being appointed by Crown and will also be
14:27 20 appointed in the future. New policies, procedures and systems
14:27 21 are being implemented.

14:27 22
14:27 23 Finally, the section 20 disciplinary process would occur in
14:27 24 circumstances where the VCGLR currently has more limited
14:27 25 powers than either this Royal Commission or a Standing Royal
14:27 26 Commission.

14:27 27
14:27 28 In light of these considerations, the VCGLR submits that the
14:27 29 public interest is not served by it having to engage in a further
14:27 30 lengthy and costly legal process to give effect to a finding of this
14:27 31 Commission that the licensee is unsuitable, or that it is not in the
14:27 32 public interest for Crown Melbourne to hold the licence and,
14:27 33 therefore, the licence should be cancelled.

14:27 34
14:27 35 The VCGLR notes the State's intention to legislate to enable the
14:27 36 VCGLR to give effect to the findings of this Royal Commission.
14:28 37 The Premier, when announcing the Royal Commission in
14:28 38 February of this year, also announced the Government's intention
14:28 39 to give the VCGLR whatever powers are necessary to give effect
14:28 40 to the findings of this Royal Commission. The Terms of
14:28 41 Reference also state that the Royal Commission is to inquire into
14:28 42 and report on whether it considers changes to the relevant
14:28 43 Victorian legislation are necessary for the State to address the
14:28 44 findings and implement the recommendations of this Royal
14:28 45 Commission.

14:28 46
14:28 47 Finally, under paragraph 12 of its Terms of Reference, this

14:28 1 Commission is to have regard "to the most practical, effective and
 14:28 2 efficient way to address its recommendations". Having regard to
 14:28 3 these matters, if this Commission recommends that Crown's
 14:28 4 licence should be cancelled, it would be preferable for it also to
 14:28 5 recommend that there be legislative change to give effect to that
 14:28 6 recommendation without the need for the VCGLR to take further
 14:28 7 disciplinary action under the Casino Control Act.

14:29 8

14:29 9 Turning then to the second option identified by Counsel
 14:29 10 Assisting, a pathway back to suitability.

14:29 11

14:29 12 If the Commission concludes that Crown Melbourne is capable of
 14:29 13 returning to suitability, Counsel Assisting's submissions note that
 14:29 14 the task of reform will be complicated and difficult and will
 14:29 15 require nothing short of complete holistic bottom-up and
 14:29 16 top-down reform. Beyond that, the submissions of Counsel
 14:29 17 Assisting provide limited assistance on what, if anything, is
 14:29 18 required for Crown to return to suitability.

14:29 19

14:29 20 The VCGLR does agree with Counsel Assisting's submissions
 14:29 21 that Crown should not any reform process unsupervised. Further,
 14:29 22 as Counsel Assisting correctly observe, the next test of whether
 14:29 23 Crown is suitable will be the VCGLR's Seventh Casino Review
 14:30 24 which must be completed by June 2023. Counsel Assisting
 14:30 25 expressed concerns about the thoroughness of such a review
 14:30 26 process given the limited powers of the VCGLR under the current
 14:30 27 empowering legislation when compared to those of this Royal
 14:30 28 Commission. The VCGLR shares those concerns. It submits that
 14:30 29 this Commission should recommend that the VCGLR, or its
 14:30 30 successor regulator, be given the appropriate powers akin to those
 14:30 31 of a Standing Royal Commission to carry out the vital work of
 14:30 32 overseeing Crown's operations, including the conduct of the
 14:30 33 seventh review. Enhanced regulatory powers, such as the express
 14:30 34 statutory abrogation of legal professional privilege for the
 14:30 35 purpose of VCGLR investigations, and having stronger penalties
 14:30 36 available to the casino regulator, would each significantly
 14:30 37 strengthen Victoria's system of casino supervision. Significant
 14:30 38 improvements would be achieved through enhanced powers for
 14:31 39 the VCGLR and in our written submissions we've detailed
 14:31 40 a number of areas that we submit ought to be considered by this
 14:31 41 Commission. If I can just identify a couple of those presently.

14:31 42

14:31 43 Firstly, a power to ensure that Crown cannot deploy its common
 14:31 44 law right to legal professional privilege as a tool to avoid
 14:31 45 producing information the VCGLR needs to properly regulate
 14:31 46 Crown as exemplified by the China investigation. Secondly,
 14:31 47 powers that ensured Crown could not deploy Commonwealth

14:31 1 secrecy provisions that exist in anti-money laundering and
 14:31 2 counter-terrorism financing legislation as a tool to avoid
 14:31 3 producing the information the VCGLR needs to properly regulate
 14:31 4 Crown. And, finally, powers to ensure the VCGLR can provide
 14:31 5 the rigorous oversight necessary to manage the risks inherent in
 14:31 6 the operation of a casino. The benefits of these enhancements
 14:32 7 include increasing the VCGLR's speed of investigations by
 14:32 8 enabling it to find critical documents and information sooner and
 14:32 9 improving the regulator's ability to get to the bottom of issues
 14:32 10 faster. It is clearly not in the public interest for it to take in
 14:32 11 excess of three years for an investigation such as that which was
 14:32 12 conducted into the China arrests by the VCGLR. The
 14:32 13 circumstances are of course set out in detail in Counsel
 14:32 14 Assisting's submissions.

14:32 15
 14:32 16 The need for such increased powers is highlighted by the
 14:32 17 evidence before you about Crown's conduct in its dealings with
 14:32 18 the VCGLR. That conduct has ranged from the casually
 14:32 19 recalcitrant to the overtly belligerent and threatening. It has been
 14:32 20 the antithesis of the conduct that could reasonably be expected of
 14:32 21 the holder of Victoria's only casino licence, a position of
 14:32 22 particular privilege under the law. That conduct has included (a)
 14:33 23 Crown's failure to cooperate with the VCGLR's China
 14:33 24 investigation by firstly giving a misleading presentation to the
 14:33 25 VCGLR in August 2017. Secondly, the general approach to
 14:33 26 document production, including hiding behind claims of legal
 14:33 27 professional privilege.

14:33 28
 14:33 29 In relation to the question of document production in the China
 14:33 30 investigation, I wish briefly to respond to a submission that is
 14:33 31 made on behalf of Crown in its written submissions and it is at
 14:33 32 paragraph I37 on page 298 for Mr Borsky's benefit. It is in the
 14:33 33 context of a criticism that is made of Crown in Counsel
 14:33 34 Assisting's submissions about being more forthcoming in
 14:33 35 document production with the Bergin Inquiry than was the case
 14:33 36 with the VCGLR. The response consists of two submissions, the
 14:34 37 first of which is, and I will quote, it's quite brief:

14:34 38
 14:34 39 *Well before the Bergin Inquiry was even announced,*
 14:34 40 *Crown offered to provide all documents discovered in the*
 14:34 41 *class action to the VCGLR*

14:34 42
 14:34 43 *For reasons unknown to Crown, that offer was not taken*
 14:34 44 *up by the VCGLR*

14:34 45
 14:34 46 Implicit in that submission is that Crown tried to be cooperative
 14:34 47 and helpful to the VCGLR but those offers were shunned and

14:34 1 Crown was not given any explanation or reason for why that was
14:34 2 the case. In fact, there was a written response to the offer and
14:34 3 I will give you the reference for that. It is VCG.0001.0002.3365.
14:34 4 It is exhibit RC#0001.wwwww. In the letter Mr Orkel(?) of the
14:35 5 VCGLR explained to Mr Murphy why the offer was not taken up.
14:35 6 And, quite simply, it would have meant the VCGLR would have
14:35 7 to trawl through all of the discovered documents to find
14:35 8 documents that were relevant to its investigation. You may
14:35 9 conclude in those circumstances that Crown's offer far from being
14:35 10 helpful was merely a tactic. You may also conclude that the
14:35 11 submission that Crown have made to you today that it received no
14:35 12 response does not reflect well on Crown. It might even be said to
14:35 13 be a bit of what quaintly has been referred to in evidence as "old
14:35 14 Crown".

14:35 15
14:35 16 Finally, in relation to the China investigation, we note the
14:35 17 evidence of Crown's failure to make the same concessions to the
14:35 18 VCGLR that it made to the Bergin Inquiry. The second example
14:36 19 which is detailed in Counsel Assisting's submissions concerning
14:36 20 Crown's response to the VCGLR, concerns the implementation of
14:36 21 Recommendation 17. I won't go through that. We deal with ---
14:36 22 that is dealt with in detail in Counsel Assisting's submissions.
14:36 23 Crown submits in its written submissions that its response to
14:36 24 Recommendation 17 was conceived --- that it was inappropriate
14:36 25 but submits it wasn't typical of the response it made to the
14:36 26 recommendations it made in the Sixth Review.

14:36 27
14:36 28 In our written submissions we refer to evidence of its response to
14:36 29 other recommendations which suggests, in our submission, that
14:36 30 the problems associated with the Recommendation 17 response
14:36 31 were not isolated.

14:36 32
14:36 33 The fourth example concerns Crown's failure to cooperate with
14:36 34 the VCGLR's disciplinary action. We note the concessions made
14:36 35 by both Crown and Mr Walsh in his written submissions about
14:37 36 that matter. And of course what was particularly concerning was
14:37 37 that the response came so soon after the commitments that were
14:37 38 made by Ms Coonan to the VCGLR in December 2020.

14:37 39
14:37 40 And, finally, we refer to Crown's concealment of its
14:37 41 underpayment of tax described in Counsel Assisting's
14:37 42 submissions as the improper introduction and concealment of
14:37 43 deductions in 2011 and 2012.

14:37 44
14:37 45 Turning to the question of the monitor, which has been referred to
14:37 46 in both Counsel Assisting's submissions and the submissions of
14:37 47 the State and other parties today. We note Counsel Assisting's

14:37 1 submissions that there should be a statutory monitor with
14:37 2 extensive powers to scrutinise the reform process. The VCGLR
14:37 3 does not oppose the concept of a statutory or independent monitor
14:37 4 but considers it important to clearly establish the powers and role
14:38 5 of such a monitor and how it would report to the regulator. The
14:38 6 VCGLR considers that it would be appropriate for a monitor to
14:38 7 have extensive powers but also report to the VCGLR, or any
14:38 8 successor regulator, on Crown's achievement of its reform
14:38 9 process to inform the regulator in its assessment of Crown's
14:38 10 suitability. This would ensure that the monitor fulfil its role of
14:38 11 monitoring and the VCGLR can is then enabled to fulfil its role to
14:38 12 assess suitability. Such reporting by the monitor to the regulator
14:38 13 would also ensure that information and intelligence about the
14:38 14 casino operator is appropriately captured and retained for the
14:38 15 future when a monitor may no longer be required, on the
14:38 16 assumption that the monitor might be a temporary appointment.
14:38 17 And, as Crown appears to accept, the legislation should require
14:38 18 Crown to pay for such a monitor.
14:38 19

14:38 20 There is an existing legislative mechanism that might be able to
14:38 21 be enhanced for the appointment of a monitor. Under section
14:39 22 29(3) of the VCGLR Act, the VCGLR can nominate a person to
14:39 23 assist or advise it in the performance of its functions under the
14:39 24 Casino Control Act. Using this section the VCGLR could engage
14:39 25 various experts, such as its own independent expert to undertake
14:39 26 a forensic review of Crown's anti-money laundering reform
14:39 27 agenda, and others to monitor Crown's implementation of other
14:39 28 reforms. This section could be expanded so that such a person or
14:39 29 persons would be equipped with the necessary and appropriate
14:39 30 authority and powers and obliged to share information with and
14:39 31 remain answerable to and report to the regulator. The legislation
14:39 32 should also clearly enable the VCGLR to be fully compensated
14:39 33 by Crown for any costs associated with engagement of experts.
14:39 34

14:39 35 In our written submissions the VCGLR makes suggestions about
14:39 36 other legislative amendments to require Crown to inform the
14:39 37 regulator about breaches and potential breaches of its statutory
14:40 38 obligations. These changes are modelled on the obligations of
14:40 39 Australian financial services licensees under the Corporations
14:40 40 Act 2001, Commonwealth. The benefit of such legislative
14:40 41 amendment would be twofold: firstly it would clearly set out the
14:40 42 regulator's expectations of openness and transparency on the part
14:40 43 of Crown, and in addition, such annual declarations, when
14:40 44 addressed honestly and seriously, may help encourage the
14:40 45 necessary cultural changes that are needed at Crown.
14:40 46

14:40 47 If the Commissioner considers that Crown Melbourne is not

14:40 1 a suitable person, and the Commissioner reports on what actions,
14:40 2 if any, would be required for Crown Melbourne to become
14:40 3 a suitable person, the VCGLR would welcome any observations
14:40 4 the Commission has as to the areas for reform and any
14:40 5 approaches that can most effectively identify areas for reform
14:40 6 and, secondly, the methods for the VCGLR, or any successor
14:41 7 regulator, to most effectively evaluate Crown's actions and reform
14:41 8 outcomes, including identifying any key priorities and timelines.

14:41 9

14:41 10 The final matter to which I should make brief reference is to
14:41 11 respond to a submission that was made by Mr Hutley on behalf of
14:41 12 CPH. If I've correctly understood the submission, it was that
14:41 13 CPH had offered a binding agreement to the VCGLR under
14:41 14 section 142 of the Casino Control Act. I'm instructed that no
14:41 15 such offer has been made.

14:41 16

14:41 17 Unless there are any questions that the Commission has, they are
14:41 18 the submissions that I would make.

14:41 19

14:41 20 COMMISSIONER: No questions. Thank you, Mr Rozen.

14:41 21

14:41 22 MR ROZEN: Thank you.

14:41 23

14:41 24 COMMISSIONER: Did you want to say something?

14:41 25

14:41 26 MR BORSKY: I don't seek to be heard in reply to any of my
14:41 27 learned friends but with your leave, Commissioner, we would
14:42 28 seek the opportunity to put in something very, very short in
14:42 29 writing addressing hopefully of assistance to you in relation to the
14:42 30 question of title searches ---

14:42 31

14:42 32 COMMISSIONER: I was actually going to ask you to do that.

14:42 33

14:42 34 MR BORSKY: Thank you.

14:42 35

14:42 36 COMMISSIONER: It's being done as well at this end.

14:42 37

14:42 38 MR BORSKY: No doubt.

14:42 39

14:42 40 COMMISSIONER: But it would be nice to make sure that we
14:42 41 have common ground on what --- at the moment, what I said
14:42 42 earlier, I'm pretty sure that both the casino and the hotel and the
14:42 43 shops and everything between the river and the street, whatever
14:42 44 the street is called (inaudible) that's it, is Crown land.

14:42 45

14:42 46 MR BORSKY: By which you mean the "Crown" in right of the
14:42 47 State of Victoria.

14:42 1
14:42 2 COMMISSIONER: Yes, the Crown in right of the State of
14:43 3 Victoria.
14:43 4
14:43 5 MR BORSKY: We are very clear on the distinction!
14:43 6
14:43 7 COMMISSIONER: Yes, okay, why don't we just say
14:43 8 government land. Not only that, under the lease at the expiry of
14:43 9 the term, however it comes to an end, all the real estate vests in
14:43 10 the Crown and, therefore, at the moment I'm working on the basis
14:43 11 that a sublease, which you are required to give if demanded,
14:43 12 covers the whole of the Crown Casino Complex, apart from the
14:43 13 car park and a couple of hotels on the other side of the street.
14:43 14
14:43 15 MR BORSKY: I ---
14:43 16
14:43 17 COMMISSIONER: Check it out because I might be wrong.
14:43 18
14:43 19 MR BORSKY: I understand the point as it was put to me this
14:43 20 morning with great respect.
14:43 21
14:43 22 COMMISSIONER: Yes.
14:43 23
14:43 24 MR BORSKY: We would like an opportunity to assist the
14:43 25 Commission in writing on that issue broadly.
14:43 26
14:43 27 COMMISSIONER: Sure.
14:43 28
14:43 29 MR BORSKY: Of course we will do it promptly and within
14:43 30 whatever page limit you deem appropriate.
14:43 31
14:43 32 COMMISSIONER: It is just a question of identifying the land.
14:43 33 So somebody has to go to the titles office ---
14:44 34
14:44 35 MR BORSKY: We would seek to be heard in writing a little
14:44 36 more broadly than that.
14:44 37
14:44 38 COMMISSIONER: On what?
14:44 39
14:44 40 MR BORSKY: On the contractual and statutory framework as
14:44 41 well, which as I understand it gives rise to the point you put to me
14:44 42 this morning.
14:44 43
14:44 44 COMMISSIONER: About your compellability to grant
14:44 45 a sublease.
14:44 46
14:44 47 MR BORSKY: For example.

14:44 1
14:44 2 COMMISSIONER: And the circumstances in which --- you can
14:44 3 make submissions about it, but it is a question of reading
14:44 4 a contract or a statute.
14:44 5
14:44 6 MR BORSKY: Indeed.
14:44 7
14:44 8 COMMISSIONER: You can point me to the sections that I
14:44 9 might have missed.
14:44 10
14:44 11 MR BORSKY: Does the Commission which to impose
14:44 12 a page limit or time limit?
14:44 13
14:44 14 COMMISSIONER: I could care. End of the week would be
14:44 15 good.
14:44 16
14:44 17 MR BORSKY: I don't remember what day it is but

14:44 18
14:44 19 COMMISSIONER: Nobody does.
14:44 20
14:44 21 MR BORSKY: There is much common ground in this process,
14:44 22 Commissioner. On the assumption that it is Tuesday, would next
14:44 23 Monday be acceptable.
14:44 24
14:44 25 COMMISSIONER: Yes.
14:44 26
14:44 27 MR BORSKY: As the Commission pleases.
14:44 28
14:44 29 COMMISSIONER: Before you sit down.
14:44 30
14:44 31 MR BORSKY: Yes.
14:44 32
14:44 33 COMMISSIONER: One thing they should do is ask you on
14:45 34 behalf of my team to express to your former colleague and now
14:45 35 no longer a colleague, congratulations and I'm sure she's much
14:45 36 relieved to be somewhere else than here.
14:45 37
14:45 38 MR BORSKY: I won't comment on that but we certainly echo
14:45 39 and will respectfully convey your sentiment. Thank you.
14:45 40
14:45 41 COMMISSIONER: Thank you. All right, Mr Finanzio, did you
14:45 42 want to ---
14:45 43
14:45 44 MR FINANZIO: I have nothing to say.
14:45 45
14:45 46 COMMISSIONER: Okay. Once upon a time I would have said
14:45 47 "I reserve my decision" and after a fashion you will get it. Thank

14:45 1 you again all very much for all of your hard work. It has been at
14:45 2 least interesting. Thank you all.

3

4

5 **HEARING CONCLUDED AT 12.46 PM**

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