INQUIRY BY THE HONOURABLE PATRICIA BERGIN SC UNDER SECTION 143 OF THE *CASINO CONTROL ACT 1992* (NSW)

AMENDED TERMS OF REFERENCE DATED 24 JUNE 2020

SUBMISSIONS ON THE SUITABILITY REVIEW

CROWN RESORTS LIMITED

CROWN SYDNEY GAMING PTY LTD

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A. THE FRAMEWORK IN WHICH SUITABILITY IS TO BE ASSESSED

A1. Introduction

1. On 14 August 2019, pursuant to s 143 of the *Casino Control Act 1992* (NSW) (**CC Act**), the Independent Liquor and Gaming (**the Authority**) appointed the Hon. P A Bergin SC (**Commissioner**) to preside over an inquiry into a range of matters concerning the casino licence relating to the Barangaroo restricted gaming facility and its licensee, Crown Sydney Gaming Pty Limited (**the Licensee**). The Licensee is a wholly owned subsidiary of Crown Resorts Limited (**Crown Resorts**). These submissions use the term Crown to refer broadly to the Crown group of companies.

2. Part A of the Amended Terms of Reference constitutes the 'Suitability Review'. This review is to occur in 'response to' allegations made on and from 27 July 2019 by the Nine Network, the Sydney Morning Herald, The Age and other media outlets which, the Amended Terms of Reference state, *"raised questions as to whether the Licensee remains a suitable person*" to hold a restricted gaming license for the purposes of the CC Act. Specifically, the Suitability Review requires the Commissioner to consider:

   (a) whether the Licensee is a suitable person to continue to give effect to the Barangaroo restricted gaming licence (**Restricted Gaming Licence**);

   (b) whether Crown Resorts is a suitable person to be a close associate of the Licensee;

   (c) in the event that the answer to either (a) or (b) above is no, what, if any, changes would be required to render those persons suitable.

3. Counsel Assisting has submitted that that the evidence presented to this Inquiry demonstrates that the Licensee is not a suitable person to continue to give effect to the licence and that Crown Resorts is not a suitable person to be a close associate of the Licensee.[1]

4. For the reasons set out in this opening section, and expanded upon in detail in subsequent sections, that submission is unbalanced and unsupported by a fair reading of the material before the Inquiry. In fact, Counsel Assisting's whole approach to the question of suitability is unsound, including because it pays no real regard to the conscientious and considered steps that Crown has taken to address the shortcomings and failings that have emerged during the course of the Inquiry.

[1] T4833/39 – 41 (Counsel Assisting closing submissions).

5. A strange feature of the suitability review required by the Amended Terms of Reference is that suitability is to be inquired into expressly by reference to allegations in the media. That is, the Commissioner must inquire into and report upon the Licensee's suitability (and whether Crown Resorts is a suitable person to be a close associate of the Licensee) *"in response to the* [media] *Allegations*". The Commissioner and Counsel Assisting must of course address the Amended Terms of Reference, but that circumstance should not be allowed to skew the assessment of suitability in the way that has occurred in the submissions from Counsel Assisting. Rather than considering suitability from an overall perspective, having close regard to the terms and objects of the CC Act, this framing of the terms of reference has led Counsel Assisting to analyse suitability vis a vis each topic of media allegations in a discrete and isolated way.[2] Counsel Assisting have examined each topic of media allegations referred to in the Amended Terms of Reference and concluded that, if they consider at least some of the allegations on a particular topic of media allegations to be substantiated on the evidence (in whole or part), it must follow that the Licensee and Crown Resorts are unsuitable. This, it is respectfully submitted, does not accord with how suitability is to be assessed under the CC Act, and establishes an exceptional and unprecedented standard not applicable to any other casino operator, either in Australia or overseas.[3]

6. Counsel Assisting have submitted that adverse findings should be made with respect to the suitability of the Licensee (and whether Crown Resorts is a suitable close associate of the Licensee) based, separately and individually, on matters concerning each of the following: Crown's failings in relation to anti-money laundering (**AML**) measures; Crown's previous dealings with junket operators; the arrests of Crown staff in China in 2016; the Melco transaction; and the influence of Mr James Packer and Crown's largest shareholder Consolidated Press Holdings Limited (**CPH**). No doubt Counsel Assisting would also say that the same matters, assessed cumulatively, would also support a finding of unsuitability. Nonetheless, it is noteworthy that Counsel Assisting have been prepared to advance a contention that Crown is unsuitable without undertaking a holistic assessment of all relevant circumstances, including reforms and remedies that Crown has progressively implemented.

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[2] Paragraph 15 of the Amended Terms of Reference exposes one of the difficulties in framing the Inquiry in this way. That paragraph states that "the Allegations" include allegations that Crown Resorts or its agents, affiliates or subsidiaries: (a) engaged in money-laundering; (b) breached gambling laws; (c) partnered with junket operators. Plainly, there was no allegation, nor could it ever reasonably be alleged, that Crown Resorts itself *"engaged in money-laundering"*.

[3] The position in relation to international jurisdictions is dealt with in the closing section of these submissions. As for the experience in Australia, it is important to bear in mind that casino operators are, and have been, subject to regular and ongoing suitability reviews. This includes past reviews by the Authority into the suitability of The Star under the CC Act, and by the VCGLR into Crown Melbourne's suitability under the Victorian legislation. These reviews have previously looked into, for example, arrangements between these casino licensees and junket operators and not found those arrangements to render the licensee unsuitable (see, e.g., VCGLR, Sixth Review of the Casino Operator and Licence, June 2018 (Exhibit A91, INQ.140.010.2949); ILGA, Star Casino Licence Review by J M Horton QC, 28 November 2016 (Exhibit A75, INQ.080.050.0944) (**2016 Star Review**)).

7. The evidence in connection with each of these matters, and why that evidence, when directed to the question of the *current suitability* of the Licensee (and Crown Resorts as a close associate of the Licensee) does not warrant a finding of unsuitability in respect of either entity, is addressed in detail in the remaining sections of Crown's submissions. However, before addressing each of the contentions in detail, it is necessary to properly frame the question of suitability, and to identify the matters which bear upon that question.

A2. The CC Act

8. Analysis of the framework in which suitability is to be assessed under the Amended Terms of Reference must begin with the text of the CC Act. Pursuant to s 143 of that Act, the Commissioner has been appointed to hold an Inquiry *"for the purpose of the exercise of* [the Authority's] *functions"* under the CC Act.

9. The function under which the 'Suitability Review' is being conducted is said by Counsel Assisting to be that prescribed by s 141(2)(c) of the CC Act, viz:

> *to keep under constant review all matters connected with casinos and the activities of casino operators, persons associated with casino operators, and persons who are in a position to exercise direct or indirect control over the casino operators or persons associated with casino operators.*[4]

Crown agrees with Counsel Assisting that this is the relevant provision.

10. Section 141(2)(c) contains no reference to suitability, and there is no textual indication in the section itself as to the scope of the *"constant review* [of] *all matters connected with casinos and the activities of casino operators".*

11. Counsel Assisting did not expressly identify the link between the test of suitability, as it appears elsewhere in the CC Act, and the *"constant review of all matters"* power conferred by s 141(2)(c) which is being exercised by the Commissioner in this Inquiry. Counsel Assisting did, however, correctly observe that the function in s 141(2)(c) is distinct from the functions conferred on the Authority by the CC Act which expressly invoke the concept of suitability,[5] viz:

    (a) Section 31: which requires the Authority to review the ongoing suitability of a casino operator at periodic intervals not exceeding five years.

    (b) Section 35(3): which requires the Authority, in considering whether to approve a major change in the state of affairs of a casino operator which involves a person becoming a

[4] T4835/34 – 41 (Counsel Assisting closing submissions).
[5] T4835/43 – T4836/06 (Counsel Assisting closing submissions).

close associate of a casino operator, to only provide such approval if satisfied that the person is a suitable person associated with the management of a casino.

12. The distinction between these powers and that conferred by s 141(2)(c) cannot be glossed over, particularly in circumstances where the Licensee is yet to commence casino operations at the restricted gaming facility at Barangaroo. Section 31 is, in its terms, a 'suitability review'. The concept of suitability is also directly invoked in the context of an *application* for a restricted gaming licence under s 13A of the CC Act. This Inquiry, conducted in exercise of the Authority's constant review power under s 141(2)(c), occurs in an interregnum between the Authority's decision to grant the Licence under Part 2 of the CC Act, and the first periodic review of the Licensee pursuant to s 31 of the CC Act. As noted, each of those statutory functions – the grant of an application and a periodic review – expressly invoke the concept of suitability. Section 141(2)(c) does not. The review has been progressing in circumstances where there is presently no *"casino operation*" being conducted by the Licensee in New South Wales, although that operation is scheduled to commence soon.

13. It is respectfully submitted that identifying precisely what work the concept of 'suitability' has to do, and the content of this concept, in the context of a *"constant review"* pursuant to s 141(2)(c) of the CC Act, conducted at a time *before* casino operations have commenced under the License, is not as straightforward as Counsel Assisting contends. Counsel Assisting referred to reviews of Star Casino conducted by the Honourable P D McLellan QC in December 1997 (**1997 Star Review**) and by Jonathan Horton QC in November 2016. Each of the 1997 Star Review and the 2016 Star Review were periodic licence reviews conducted under s 31 of the CC Act. As a result, they were exercising the Authority's function of a regular investigation into, among other things, the casino operator's suitability, which required all relevant aspects of the casino's operations to be taken into account.

14. While not approached in this manner by Counsel Assisting, it is respectfully submitted that, for present purposes, the concept of suitability is directed towards Crown's current suitability to hold its Restricted Gaming Licence. The focus on current suitability is supported by s 23, although that provision has no direct application. Section 23 concerns 'Disciplinary action against casino operator'. It stipulates that 'disciplinary action' means (a) the cancellation or suspension of the licence; (b) the imposition of a pecuniary penalty; (c) the amendment of the terms or conditions of the licence; (d) the issue of a letter of censure to the Licensee. Section 23(1) stipulates that, among the 'grounds for disciplinary action', is that:

> *the licensee is, for specified reasons, considered to be no longer a suitable person to give effect to the licence and this Act.*

15. It is important to note three matters about the text of this provision.

    (a) First, the unsuitability must be for "specified reasons".

    (b) Second, there is an express temporal element; namely, that the Licensee *"is no longer"* a suitable person. This temporal element, of course, refers back to the antecedent finding of suitability that was made at the time the Licence was applied for. But it also requires that attention be directed to suitability as at the time that consideration is being given to whether or not grounds for disciplinary action exist.

    (c) Third, the suitability must be tied to giving "effect to" the Licence and the CC Act.

16. There is no definition of "suitable person" in the CC Act. Crown accepts that the words "no longer a suitable person" in s 23(1) mean that the factors required to be taken into account under s 13A(2) of the CC Act in assessing suitability at the time an application is originally made for a licence are also relevant in conducting a review of whether the licensee and its close associates continue to be suitable persons after the licence has been granted.[6] Those factors are, cumulatively:[7]

    (a) whether the Licensee and each close associate of the Licensee (including Crown Resorts) are persons of good repute, having regard to character, honesty and integrity;

    (b) whether the Licensee and its close associates are of sound and stable financial background;

    (c) whether the Licensee has arranged a satisfactory ownership trust or corporate structure;

    (d) whether the Licensee has access to suitable and adequate financial resources to operate the Barangaroo facility;

    (e) whether the Licensee has or is able to obtain the services of persons who have sufficient experience in the management and operation of a casino or similar gaming facility;

    (f) whether the Licensee has sufficient business ability to maintain a successful gaming facility;

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[6] See: T4836/28 – T4837/24; 1997 Star Review, p. 7; 2016 Star Review; VCGLR, Sixth Review of Crown Melbourne Ltd, June 2016. While these factors are relevant to the question of whether the Licensee "remains" suitable, it is not correct, as Counsel Assisting contended, that suitability is being assessed pursuant to s 13A of the Act, both in terms of the original decision to grant the licence and in the subsequent review of the licence and its conditions from time to time (cf: T4840/45 – T4841/04 (Counsel Assisting closing submissions)). Section 13A provides that the criteria in subsection (2) are for the "purpose" of the Authority undertaking the task stipulated in subsection (1). Subsection (1) provides that the *"[T]he Authority must not grant an application for a restricted gaming licence*". That section is, in terms, directed to the *grant* of *an application* for a licence.

[7] T4836/08 – 26 (Counsel Assisting closing submissions).

(g) whether the Licensee or any of its close associates has any business association with any person, body or association who, in the opinion of the Authority, is not of good repute having regard to character, honesty and integrity or has undesirable or unsatisfactory financial sources;

(h) whether each director and officer determined by the Authority to be associated or connected with the ownership, administration or management of the operations or the business of the applicant or its close associates is a suitable person to act in that capacity.

17. Of the factors to be taken into account, only (a), (g) and (h) are relevant for the purposes of this Inquiry. This is what was submitted by Counsel Assisting. Paragraphs (a) and (g) are particularly important because they both define the concept that is relevant to an assessment of suitability, namely "good repute, having regard to character, honesty and integrity". This is a use of the expression "good repute" in the very specialised sense of the person's actual character, honesty and integrity. It is not concerned with repute in the sense of fame or public perception, which might be based on things such as rumour or unverified allegations.

18. The construction of *"good repute*" advanced by Counsel Assisting in their reply submissions is incorrect.[8] Counsel Assisting sought to advance a submission that good repute was effectively at large, unconstrained by the statutory context in which it appears. Crown does not accept that the Inquiry is to view the question of suitability having regard to the *"ordinary meaning of the expression 'good repute'."*[9] If one applies the principles relating to disciplinary hearings, which Counsel Assisting contended are 'apposite'[10], then one such principle is that notions of reputation, character, honesty and integrity are not at large.[11] They take their meaning from the particular statutory context in which they appear, having regard to the characteristics of the regulated industry or profession in question.

19. Crown of course accepts that the notion of reputation is relevant,[12] but it is reputation in the sense of the public's perception of the Licensee and its close associates having regard to their character, honesty and integrity. The problem with the width of Counsel Assisting's construction is exposed by the submission that the *"reputation of junket operators"* is relevant to the assessment of Crown's suitability.[13] That is wrong. Crown's dealings with junket operators

[8] T5823/32 – T5826/28.
[9] T5825/25.
[10] T5828/16 – 19.
[11] *Prothonotary of the Supreme Court of NSW v Alcorn* [2007] NSWCA 288 at [57] – [60]; *Wang v Australian Securities and Investments Commission* [2019] FCA 1178 at [73]; *McBride v Walton* (NSWCA unreported, 15 July 1994 at [15] per Kirby P.
[12] Cf. T5825/26.
[13] T5824/05 – 06.

are clearly relevant, but they are relevant only insofar as those dealings reflect on the public perception of *Crown* having regard to *Crown's* character, honesty and integrity.

20. Although the inquiry under s 23(1) of the CC Act does not expressly raise the question of suitability of *"each close associate"* of the Licensee, Crown accepts that, on the proper construction of the legislation, among the "specified reasons" that a Licensee could be found to be no longer suitable to give effect to the License is because a close associate of the Licensee is, for example, no longer considered to be a suitable person and for some reason that association cannot be adjusted or terminated.

21. The Authority's constant review function under s 141(2)(c) must be exercised having regard to the primary objects of the CC Act as set out in s 4A. Those objects are:

    (a) ensuring that the management and operation of a casino remain free from criminal influence or exploitation; and

    (b) ensuring that gaming in a casino is conducted honestly; and

    (c) containing and controlling the potential of a casino to cause harm to the public interest and to individuals and families.

22. Those objects are relevant to construing each of the functions conferred on the Authority by the CC Act and are, as explained below, critical to an assessment of suitability in this Inquiry.

23. In terms of the question of the suitability of the Licensee's close associates, the term close associate is defined in s 3(1) of the CC Act with reference to the meaning set out in the *Gaming and Liquor Administration Act* 2007 (NSW) (**GLA Act**). Under s (5)(1) of the GLA Act, there are two tests for ascertaining whether a person is a close associate of a licensee:

    (a) if the person holds or will hold a relevant financial interest[14] or will be entitled to exercise a relevant power[15] in the business of the licensee and, by virtue of that interest or power, is or will be able to, in the opinion of the Authority, exercise a significant influence over or with respect to the management or operation of the licensee's business;

[14] A "relevant financial interest" is defined by subsection 5(2) of the *Gaming and Liquor Administration Act* to mean any share of the capital of the business or any entitlement to receive income, rent or some other financial benefit or financial advantage from the business. See also T4834/35 – 46 (Counsel Assisting closing submissions).

[15] A "relevant power" is defined to mean a power, whether exercisable by voting or otherwise and whether alone or in association with others, to participate in directorial management or executive decisions or to elect or appoint any person to a relevant position; secondly, a person is a close associate if the person holds or will hold any relevant position, whether in the person's own right or on behalf of another, in the business of the licensee. And "relevant position" is defined in subsection (5)(2) of the *Gaming and Liquor Administration Act* to mean a director, manager, secretary or other executive position. See also T4835/01 – 08 (Counsel Assisting closing submissions).

(b) holds or will hold any relevant position, whether in his or her own right or on behalf of any other person, in the business of the applicant or licensee that is or will be carried on under the authority of the licence.

24. Crown accepts that Crown Resorts is a close associate of the Licensee in that it has a relevant financial interest in the Licensee and that it, by virtue of that interest, is able to exercise a significant influence over or with respect to the management and operation of the Licensee.[16]

A3. Principles relevant to assessing suitability under the CC Act

25. Crown submits that the following principles are applicable to the assessment of whether the Licensee remains a suitable person, and whether Crown Resorts is a suitable person to be a close associate of the Licensee.[17]

26. *First*, as noted above, 'suitability' or 'suitable person' is not a defined term in the CC Act.[18] The primary factors to which regard is to be had are those identified in s 13A. As mentioned above, s 13A(2)(a) and (g) indicate that suitability is to be assessed by reference to a person's good repute having regard to that person's character, honesty and integrity; or by reference to the same characteristics of the persons with which it has business associations.

27. Relevantly, the objects of the CC Act are also directed towards matters of honesty and integrity. The first object in s 4A – ensuring that the management and operation of a casino remain free from criminal influence or exploitation – depends centrally upon the character, honesty and integrity of the operator. The second objective – ensuring that gaming in a casino is conducted honestly – likewise depends on the operator's character, honesty and integrity. And the third objective – containing and controlling the potential of a casino to cause harm to the public interest and to individuals and families – also centrally depends upon the operator's character, honesty and integrity. Consequently, the question of Crown's suitability should be approached by asking whether, at the present time and having regard to the plans and actions that Crown is implementing, the Licensee and Crown Resorts ought to be regarded as entities which have the character, honesty and integrity to fulfil the responsibility of operating the Barangaroo facility.

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[16] T4835/22 – 32 (Counsel Assisting closing submissions).

[17] Which include principles drawn from the authorities in Australian and in the United States. As Counsel Assisting observed, which Crown accepts, "*New Jersey and Massachusetts authority decided in the context of very similar suitability and probity reviews in those states, which requires an assessment of matters, including a casino's integrity, honesty, good character and reputation, which may assist you in determining the issue in this Inquiry*". T4838/25 – 29 (Counsel Assisting closing submissions).

[18] The test of a 'suitable person' is common in statutes that govern liquor and gaming licences: See, eg, *Casino Control Act* 1982 (Qld) s 20; *Liquor Act* 1992 (Qld) s 173EQ; *Casino Act* 1997 (SA) s 21; *Gaming Control Act* 1993 (Tas) s 76G; *Casino Control Act* 1991 (Vic) s 25; *Liquor Control Reform Act* 1998 (Vic) s 41; and *Casino Control Act* 1984 (WA) s 19(1a).

28. Crown submits that this assessment of suitability must be a comprehensive one, which takes into account all relevant circumstances, including the steps that Crown has taken to redress and remedy any shortcomings that have been exhibited in the past.

29. Understood in this way, the matters discussed in the last three paragraphs distil the essential questions which arise under Part A of the Amended Terms of Reference.

30. As outlined in further detail below, there is no basis in the evidence before the Inquiry to find that Crown Resorts has acted dishonestly. Nor is there any foundation for the submission that Crown Resorts' conduct is indicative of a lack of integrity. To the extent that past mistakes and cultural failings reflect adversely on the corporate character of Crown Resorts, the steps taken by Crown to recognise and address those matters demonstrates that the company has the character necessary to give effect to the Restricted Gaming Licence (through the Licensee) and the CC Act. It is Crown's character now, as opposed to at an earlier point in time, which is relevant.[19] In the absence of a finding that the Licensee and Crown Resorts has failed to conduct itself with honesty and integrity, or is not of good character, it is respectfully submitted that there is no sound basis to make a finding of unsuitability.

31. *Second*, and relatedly, careful attention must be directed to what the Licensee must be suitable for. Suitability is not assessed in the abstract. Rather, the statutory text, and the Amended Terms of Reference are clear: it is whether the Licensee is a suitable person to give effect to the Restricted Gaming Licence at Barangaroo. This same test is applicable to evaluating the suitability of Crown Resorts to remain as a close associate of the Licensee. That is, whether Crown Resorts being a close associate of the Licensee impugns the suitability of the Licensee to give effect to the *Restricted Gaming Licence*. The CC Act also requires the Licensee to be suitable for the purposes of giving effect to the legislation. This can be viewed as the need for the public to have trust and confidence in the character, honesty and integrity of the licensed activity.

32. The nature of the Restricted Gaming Licence, and the fact that the Licensee has not yet commenced any casino operations pursuant to that licence, are highly relevant matters to the assessment of suitability. Again, reference must be had to the objects of the CC Act, given, as Counsel Assisting accepts, this is the "lens" through which suitability is to be assessed. The question can be framed as follows:

> Having regard to the terms of the Restricted Gaming Licence, is the Licensee a suitable person for the purposes of:

[19] *Ex parte Tziniolis; Re The Medical Practitioners Act* (1966) 67 SR (NSW) 448 per Holmes JA at 475.

(a) ensuring that the management and operation of a casino remain free from criminal influence or exploitation; and

(b) ensuring that gaming in a casino is conducted honestly; and

(c) containing and controlling the potential of a casino to cause harm to the public interest and to individuals and families?

33. For the reasons outlined in summary below, and expanded upon in further detail in the remaining sections of these submissions, there is no proper evidentiary foundation to conclude that the Licensee is not a suitable person for the purposes of giving effect to the Restricted Gaming Licence in light of these objects.

34. *Third*, there is some analogy between suitability and other familiar formulations such as 'fit and proper person' but it is far from exact. The latter expression is more at large than the statutory concept of suitability which is tied specifically to character, honesty and integrity.[20] There is authority to the effect that concepts of fitness and propriety may extend to any aspect of fitness or propriety that is relevant to the public interest.[21] In Crown's submission, the concept of suitability in the CC Act is more focused, but that is not to dispute that the provisions of the CC Act exist for the benefit of the public, or that the statutory concept of suitability serves the public interest. However, it has been designed to achieve that end by concentrating on matters going to character, honesty and integrity.

35. A defect of character which is reasonably likely to cause concern as to the integrity of the licensee is relevant in considering whether that person is a suitable person to hold the particular licence in question. However, the concept 'suitability' is not without limits. The phrase takes its meaning from the statutory context in which it appears.[22] Here, that is, fundamentally, for the Licensee to be suitable to give effect to the Restricted Gaming Licence. It also means that conceptions of reputation are not at large; rather, as noted above, "good repute" is only relevant in the very specialised sense of the Licensee's and Crown Resorts' actual character, honesty and integrity. Allied to this is the well-established line of authority to the effect that whether a person is fit and proper, or suitable, must be considered in the context of the profession or occupation in relation to which the concept is used and according to the standards that prevailed in the relevant industry.[23]

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[20] *Maxwell and Maxwell v Dixon* [1965] WAR 167 at 169.
[21] *Australian Broadcasting Corporation v Bond* (1990) 170 CLR 321 at 348 (***Bond***) (Mason CJ); *Boyd v Carah Coaches Pty Ltd* (1979) 145 CLR 78; *Hughes and Vale Pty Ltd v State of New South Wales No 2* [1955] 93 CLR 127.
[22] *Bond* at 380 per Toohey and Gaudron JJ.
[23] *Rex v Hyde Justices* [1912] 1 KB 645.

36. *Fourth*, the suitability of the corporate licensee or close associate is to be evaluated by reference to all of the actions taken by its directors and senior management (that is, the officers primarily responsible for managing the corporation) up to the point at which the assessment is to be made. This point has been considered in several United States decisions in the casino licensing context, including in New Jersey, where each licence issued or renewed under their Casino Control Act requires an inquiry into the character of the prospective licensee. The New Jersey Supreme Court has held that corporate character under their casino licensing legislation is to be assessed by reference to the character of those responsible for its day to day operations, its major shareholder(s), and its board of directors.[24] Crown accepts the following characterisation of the position by Counsel Assisting:

> "*Of course, the character and integrity and therefore suitability of a company is informed by the character and integrity of those who control its affairs. It follows that a company's suitability may ebb and flow with changes to the composition of the company's board of management and others who influence its affairs over time*".[25]

37. *Fifth*, Crown also accepts that the suitability of the Licensee is not a matter that can be assessed in isolation from the suitability of Crown Resorts and, indeed, the practices of the entire Crown Resorts group.[26] Counsel Assisting contended that "*the examination of a company's conduct and business practices as part of a suitability review also requires a more holistic assessment of the company's corporate governance, including adherence to adopted policies and procedures*".[27] Crown submits that this holistic assessment must necessarily take into account efforts made to improve the company's corporate governance processes and practices over time. It is respectfully submitted that Counsel Assisting's submissions as they later proceed either ignore, or give insufficient credit to, the concerted actions Crown has undertaken, and is taking, to improve and strengthen its systems and processes and to remedy shortcomings that have been identified.

38. *Sixth*, while past conduct is, of course, a relevant consideration to be taken into account in assessing suitability, the weight to be given to such conduct will vary according to the circumstances of the particular case and the nature of the conduct in question. [28]

39. As the statutory test requires an assessment to be made at the present time as to the Licensee's suitability to operate the Restricted Gaming Licence *in the future*, the evaluation of suitability involves an element of prediction. The special nature of the operations that Crown will be

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[24] *Trapp Rock Industries Inc v Kohl* 59 NJ 471, 284 A. 2d 161 (1971).
[25] T4839/14 – 17 (Counsel Assisting closing submissions).
[26] T4840/31 – 33 (Counsel Assisting closing submissions).
[27] T4839/29 – 32 (Counsel Assisting closing submissions).
[28] *The Queen v. Knightsbridge Crown Court Ex parte International Sporting Club (London) Ltd and Palm Beach Club Ltd*, Nos. 163-81, 191-81 at 2 and 17 (Q.B. Div'I Ct. June 5, 1981).

conducting under the Restricted Gaming Licence is also an important consideration. A decision on whether or not to entrust the Licensee with the privilege of licensure in a protected field involves an estimate of the extent to which the integrity of the Licensee can be trusted to engage in the licensed activity in a proper manner.

40. While it may be said that a significant element in making a predictive judgement is past conduct, that past conduct must be properly contextualised and viewed in light of what, if any, steps have been taken by the Licensee to acknowledge, remediate and prevent future occurrences of that conduct. That is, the assessment must be made as to the likelihood of past misconduct *reoccurring* in the future. That is particularly so in circumstances where, as here, the Licensee is yet to commence operating under its Restricted Gaming Licence.

A4. The Licensee's suitability

41. In assessing the suitability of the Licensee, focus must be directed to the nature of the licence which the Licensee must be a suitable person to give effect to. In July 2014, the Authority granted the Licensee a Restricted Gaming Licence. The CC Act draws an express distinction between the "casino licence" and the Restricted Gaming Licence.[29] Although the Barangaroo restricted gaming facility is treated as a casino for the purposes of the CC Act, the nature of the licence, compared to the casino licence under the CC Act, and the casino licence operated by Crown in Victoria and Western Australia, is very different.

42. By reason of its Restricted Gaming Licence, Crown Sydney[30] will have a different profile from all other major casinos in Australia.[31] It will consist of a boutique, tables-only casino, which will not be accessible by the general public and will not contain poker machines.

43. The Restricted Gaming Licence held by Crown Sydney Gaming contains a number of conditions which limit the gaming operations at Crown Sydney.[32] The Restricted Gaming Licence contains, relevantly, the following provisions:

(a) Defined terms, including (cl 1):

(i) "Restricted Gaming Facility" means premises situated or proposed to be situated on that part of Barangaroo identified as the site of the Restricted Gaming Facility Site Map (being the map referred to in s 3(4) of the CC Act;

[29] Section 6, CC Act.
[30] A name used in these submissions to refer collectively to the operations of the entities Crown Sydney Gaming Pty Ltd (**Crown Sydney Gaming**) and Crown Sydney Property Pty Ltd (**Crown Sydney Property**).
[31] Third witness statement of Ken Barton dated 16 September 2020 (**Third Barton Statement**), [92].
[32] Third Barton Statement, [93].

(ii) "VIP Gaming" means the conduct of gaming in accordance with this restricted gaming licence;

(iii) "VIP Guest Policy" means the VIP guest policy determined by the Licensee from time to time which relates to the Restricted Gaming Facility and which is consistent with the principles agreed between the Licensee and the State of New South Wales;

(iv) "VIP Membership Policy" means the VIP membership policy determined by the Licensee from time to time which relates to the Restricted Gaming Facility and which is consistent with the principles agreed between the Licensee and the State of New South Wales.

(b) The licence permits gaming to be conducted in the Restricted Gaming Facility from 15 November 2019 (cl 3(a)).

(c) Gaming in the Restricted Gaming Facility includes the operation of traditional table games, semi-automated table games and fully automated table games. Gaming in the Restricted Gaming Facility will not include the playing of poker machines (cl 4).

(d) Gaming in the Restricted Gaming Facility will not include the playing of games where the amounts placed for any single bet or wager on that game is less than the Minimum Bet Limit for that game determined in accordance with this restricted gaming licence (cl 5).[33]

(e) The Licensee must ensure that the Restricted Gaming Facility is not open to the general public and is open only to:

(i) VIP Members, defined to mean a Rebate Player[34] or any other person who has applied for and has been granted (and continues to hold) membership by Crown Sydney having regard to the VIP Membership Policy;

(ii) VIP Members' Guests, defined to mean a bona fide guest of a VIP Member determined in accordance with the VIP Guest Policy;

[33] Minimum bet limits in the case of baccarat, blackjack or roulette are the higher of: (a) $30 for baccarat, $20 for blackjack and $25 for roulette and (b) the amount which the Authority is satisfied is the lowest minimum bet limit for the relevant game in a comparable VIP gaming area located in Melbourne Crown Casino (or, if Melbourne Crown Casino, has ceased to exist or does not offer the relevant game, another Australian casino nominated by Crown Sydney).

[34] Rebate Player is defined to mean an international or interstate resident who participates in VIP Gaming either individually or as a participant in a junket, in accordance with a system of internal controls and administrative and accounting procedures applicable to that person agreed with the Authority and lodges the requisite front money (cl 1).

(iii) Licensee's Guests, defined to mean bona fide guests of the Licensee's management determined in accordance with the VIP Guest Policy (cl 6.1).

(f) The Licensee must have a VIP Membership Policy which includes the requirements specified in cl 6.2 of the Licence (cl 6.2)

44. In order to satisfy the Restricted Gaming Licence condition that the Restricted Gaming Facility not be open to the general public, Crown is required to have a VIP Membership Policy, a VIP Guest Policy and a Membership Review Policy. These policies have been incorporated into a proposed single Crown Sydney Membership & Guest Policy (**Policy**). The Policy is ready for submission to the Authority for approval.[35]

45. Under the proposed Policy, the sign-up process for Crown Sydney VIP membership will involve the following:

(a) verifying the applicant's identity, which requires, at a minimum, the applicant's first and last name, date of birth, residential address and photographic (primary) identification, with a copy retained on file at Crown Sydney;

(b) provision of a headshot photo for the purpose of inclusion on the Crown Rewards VIP membership card. This can be taken onsite or provided by the applicant through a self-service mobile application;

(c) satisfaction of a background security check. In order to satisfy the background security check, the prospective member's details are entered into one of either (in the case of members who have activity at Crown Melbourne or Crown Perth) Dow Jones, or (in the case of patrons attending Crown Sydney) Acuris Risk Intelligence for the purpose of probity checks; and

(d) acceptance of the Crown Sydney VIP Membership terms and conditions, including the Restricted Gaming Facility Acknowledgement.[36]

46. Every person who proposes to enter the Restricted Gaming Facility will be required to provide a patron card (membership, VIP International, or guest card) with their photo, which will be scanned through Crown Sydney's Entry Management System. The Entry Management System will determine whether:

(a) that patron is permitted to enter the Restricted Gaming Facility;

[35] Third Barton Statement, [98].
[36] Third Barton Statement, [99].

(b) further information is required (for example, where the patron's membership has expired); or

(c) the patron is not permitted to enter the Restricted Gaming Facility (for example, where their membership tier does not permit access to certain areas within the Restricted Gaming Facility, or where they are otherwise not permitted such as due to the existence of a current exclusion order or ban).[37]

47. In order for a guest of a VIP member to enter the Restricted Gaming Facility, the guest will be required to register by providing identity information with current photo ID, which will be scanned and verified through a document verification service check. Guest details will also be passed through Acuris Risk Intelligence for the purpose of a PEP and Sanctions check**,** which will allow for the real time checking of the database.[38]

48. As briefly mentioned above, the fact that gaming operations at Crown Sydney will be fundamentally different from the casino operations at Crown Melbourne and Crown Perth is an important component of the suitability assessment. In particular, it is important to assess the relevance of matters which have been inquired into as part of the 'Suitability Assessment' under Part A of the Amended Terms of Reference in light of the restrictions that are already imposed on the Licensee by the Restricted Gaming Licence. Simply stated, the restricted operation at Barangaroo will be very different from operations under a general casino licence of the kind held by The Star in New South Wales and Crown in Victoria and Western Australia. The volume and nature of gaming at the Restricted Gaming Facility, combined with strict and closely supervised entry requirements, mean that, leaving to one side the additional controls that Crown has implemented, or is in the process of implementing, the evidence which has been adduced with respect to past concerns at Crown Melbourne and Crown Perth must be viewed in light of the different licence applicable to gaming at those casinos. The statutory analysis of suitability must, in the first instance, involve specific consideration of the terms of the licence in question.[39]

49. Further, as an entity which is yet to conduct any gaming operations pursuant to its Restricted Gaming Licence, the Licensee cannot itself be found to have failed to give effect to its licence or, for that matter, to any of the objects underpinning the CC Act. For example, there has been no failure by the Licensee to ensure that gaming in the Restricted Gaming Facility is free from criminal influence or is conducted honestly. Accordingly, it must be the conduct of the Licensee's holding company, Crown Resorts, which is attributed to the Licensee for the

[37] Third Barton Statement, [100].
[38] Third Barton Statement, [101].
[39] Relevant in this connection is the overstatement by Counsel Assisting of the relevance of the historic business operations of Crown's VIP international business and the conduct of restricted gaming operations at Barangaroo. See, eg, at T 4858.32; and T 4858-9.

purposes of assessing the latter's suitability to give effect to the Restricted Gaming Licence from the time operations commence.

A5. The suitability of Crown Resorts as a close associate of the Licensee

50. The need to consider the terms of the Restricted Gaming Licence at Barangaroo, and the nature of casino operations to be conducted at that facility, also applies to considering the suitability of Crown Resorts as a close associate. This is because the analysis is, again, in the first instance concerned with suitability to give effect to that restricted licence.

51. As for the allegations which have been the subject of detailed examination in this Inquiry in relation to the risk of money laundering, the China arrests, and junkets, for the reasons set out in the discrete sections of these submissions addressing each of these matters, when that evidence is properly and fairly analysed and understood, Crown submits that the identified defects in the past do not render Crown Resorts (and, therefore, the Licensee) unsuitable within the meaning of that term under the CC Act.

52. The evidence in relation to each of these matters identifies some serious mistakes and shortcomings, but it does not bespeak dishonesty by Crown Resorts, or a failure to act with integrity. We will come to each of these matters in some detail, but to take the China arrests, as an example, Crown accepts that its risk-management structures were not engaged in the conduct of its business in China, and that this non-engagement led to significant mistakes being made, including the Board being denied control of the risk appetite of the company in relation to China. But those mistakes do not reflect dishonesty or a lack of integrity. To the extent that the China arrests were the result of a failing of culture at Crown, those cultural failings did not encompass deceptive or dishonest conduct. The mistakes made in China were honest mistakes. The overwhelming evidence is that senior management relied at all times on the advice they received. In the aftermath of the China arrests, moreover, Crown took conscientious steps to address the failures that had occurred.

53. The evidence of past conduct of Crown Resorts in relation to the China arrests – as well as its dealings with junkets and management of money laundering risk - must also be viewed in its full and proper context. As already noted, the relevance of past conduct to the assessment of *current* suitability will vary according to the particular circumstances and the nature of the past conduct. It is respectfully submitted that the weight to be attached to evidence of past failings on a suitability review must be influenced by what, if any, measures have been taken by the licensee or close associate to remedy those failings. This must follow because the statutory enquiry is whether or not the Licensee is currently and prospectively suitable to give effect to the

Restricted Gaming Licence and the CC Act, rather than whether it was suitable at any previous point of time.

54. These matters are addressed in detail later in these submissions, but Crown submits that the steps already taken, and now being taken, by Crown Resorts to address the shortcomings and failings apparent on the evidence adduced in this Inquiry are sufficient to negate any finding of unsuitability that might otherwise have been open on the evidence.

55. Before turning to the evidence, it is necessary to make a further general observation about Counsel Assisting's submissions on the notion of suitability. As already noted, Counsel Assisting's submissions use the concept of suitability and unsuitability in a manner that is divorced from its statutory meaning. The notion of suitability often appears in Counsel Assisting's submissions as an amorphous concept capable of applying to any aspect of Crown's business or organisational structure with which Counsel Assisting takes issue.

56. By way of example, Counsel Assisting have submitted that the independence of the Crown Resorts board is *"clearly"* something that must be addressed *"in order for the Licensee to be suitable and for Crown Resorts to be a suitable close associate"*.[40] While it is true that Professor Horvath, Ms Coonan and Mr Packer each acknowledged that the Crown board would be more independent in the future,[41] that is a separate matter to whether or not the Board, as currently comprised, renders the Licensee unsuitable or Crown Resorts an unsuitable close associate. It is respectfully submitted that it is a serious matter to suggest that the lack of adequate independence of the Crown Board means that the Licensee is not suitable to give effect to its Licence (ie, because it will not act with honesty or integrity) or the objects of the CC Act (ie, because of the risk of infiltration of crime into the Barangaroo Restricted Gaming Facility). Before making such a submission, a detailed analysis, through reference to the evidence and the meaning of "suitable person" under the CC Act, is required as to precisely why and how a lack of sufficient independence on the Crown Resorts impacts on character, honesty or integrity. No such analysis has been provided.

57. Another example concerns the China Arrests, where the mistakes by management that led to those arrests are said to be made relevant to a current assessment of Crown's suitability by virtue of the decision by its Board of directors to publish an advertisement in July 2019. As discussed later, that advertisement refuted the false allegation that Crown was deliberately breaching the Chinese criminal law. That refutation was rightly made, and the directors were faithfully acting on the basis of the information before them to the effect that the allegation was false.

[40] Submissions of Counsel Assisting: Influence of Mr Packer since November 2018, [77].
[41] Mr Packer (T3747/46); Professor Horvath (13/10/20 T4152/35 – 43); Ms Coonan (16/10/20 T4456/36 – 4457/26).

58. This example is emblematic of Counsel Assisting's broad-brush and unbalanced approach to suitability. The approach taken is, in effect, binary. That is, Counsel Assisting either concludes that there is no substance to the allegation (eg, in relation to visas) and dismisses it without further mention and without acknowledging that Crown was justified in refuting it; or, if there is any criticism capable of being made of Crown, that criticism is submitted to be directly relevant to an assessment of whether or not the Licensee is a suitable person. This approach should not be accepted. The statutory language imposes a different standard and the foregoing principles applicable to suitability must be applied. On the matters relevant to this Inquiry, failings or mistakes should only be submitted to be relevant to suitability if they bear on the question of whether or not the Licensee is a person of good repute, having regard to character, honesty and integrity, or is capable of giving effect to its licence and the CC Act by ensuring that the management and operation of a casino remain free from criminal influence or exploitation.

B. THE CHINA ARRESTS

B1. Summary

59. There is no dispute that failings occurred in relation to China. Risk-management structures and processes were not utilised. Important developments in the operating environment in China were not escalated to board-level committees and to the wider board. They should have been. The failure to escalate those developments meant that a small group of individuals made the decisions about how to respond to them. The board should have made those decisions. That small group, and not the board, set the risk appetite of Crown in relation to China. This should not have happened.

60. Further, the management of the external advice obtained in connection with the China operations was inadequate. All of that advice should have been provided to and assessed by Crown's internal lawyers.[42] That Crown's internal lawyers obtained copies of much of the advice only after the China arrests was a failing.[43]

61. Accepting that failings occurred, any balanced assessment of the decisions taken by individuals at the time must take account of the surrounding circumstances. Hindsight bias must be resisted. An important matter of context is the fact that those making the decisions looked at operating in China, as Mr Jason O'Connor put it, "through the eyes of a westerner".[44] They assumed that operating within the law would not lead to arrest, detention, or conviction for gambling crimes. That assumption was ultimately shown to be mistaken, but it was an understandable assumption to make.

62. Other relevant circumstances include that Crown had been operating in China, including having staff based in China, since at least the early 2000s,[45] without incident; that numerous competitors of Crown were also operating in China and had China-based staff;[46] that external advice was obtained on each occasion a development in China occurred, in response to that development; and that on each occasion that external advice, far from identifying an "obvious" and persisting increase in risk, was ultimately to the effect that no substantial change in

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[42] The 19 February 2013 advice (Exhibit M27; CRL.545.001.0615) was, however, received by the internal legal team, including Ms Debra Tegoni.

[43] See written submissions of counsel assisting on China (**China submissions**) at paragraphs 132-139, especially at paragraph 136, where they criticise the management of the legal advice obtained in relation to China.

[44] T2060/25-26, 32.

[45] Exhibit O67 (CRL.540.001.0114 at .0123 ([17]) (Barry Felstead's Federal Court statement); Exhibit R34 (CRL.540.001.0210 at .0217 ([33]) (Jason O'Connor's Federal Court statement).

[46] See Exhibit O33(A) (CRL.643.001.0005) (note that this was added to the existing Exhibit 033 (INQ.950.002.0147), which also refers to competitors). See also the statement of Ms Jane Pan, who was a member of sales staff imprisoned in China, which has been produced to the Inquiry (CRL.540.001.0193; no exhibit number). Paragraph 37 of that statement identifies competitors with sales staff in China at the time. There is no reason to doubt Ms Pan's evidence.

operations was required. These matters must be borne in mind in passing judgement on the decisions taken by management.

63. On the topic of hindsight bias, it is worth mentioning at this early point that the characterisation of what happened in China as a series of obvious escalations in risk culminating naturally and inevitably in the arrests of staff should not be overstated. It does not reflect the evidence as to the way things were perceived at the time. Further, the analysis fails to grapple with the gulf, measured by more than a year, between the last of these events and the arrests themselves. And it fails to recognise that general perceptions of how China operates, and general perceptions as to the existence of any dependable rule of law in China, are very different now from what they were in the period between 2012 and 2016.

64. Many matters put by counsel assisting in their closing submissions are not in issue. Those matters are set out in Annexure A to these submissions.

65. There are, however, certain submissions of counsel assisting that go beyond what the evidence fairly supports or that proceed from false premises. In short, Crown rejects the following propositions:

- that it adopted a narrow or technical interpretation of Article 303 of the PRC Criminal Law, thereby failing to comply with the spirit of the law;[47]
- that it acted contrary to its own idiosyncratic understanding of Chinese business law, thereby acting unethically;[48]
- that management appreciated that there was a material risk that staff would be arrested and convicted for gambling crimes (insofar as counsel assisting make such a submission);[49]
- that certain matters can only be construed as attempts to disguise or conceal things from Chinese authorities, or to mislead Chinese authorities;[50]
- that, by reason of the foregoing, Crown consciously adopted a business model that placed employees at risk of arrest and conviction for gambling crimes;[51]

[47] See, for example, China submissions, paragraph 364.
[48] China submissions, paragraphs 150, 178-180, 351(a).
[49] China submissions, paragraph 350(a), (e).
[50] China submissions, paragraphs 179, 193.
[51] China submissions, paragraph 351.

- that decision-making in relation to China can be seen to be a product of undue CPH influence;[52] and

- that there has been no, or no sufficient, examination of the facts, matters, and circumstances pertaining to the China arrests.[53]

66. Turning to suitability, what occurred in China does not render Crown or the licensee unsuitable. The focus of the suitability question must be directed to the position that Crown will be in when operations in Sydney commence. While the events in China of more than four years ago undoubtedly reveal serious failings, all operations in China ceased at that time. Further, the failings that occurred have led to significant reforms. Neither the personnel nor the structures nor the policies that were in place at the time of the China arrests are the same personnel, structures, and policies that are in place today. It follows that the events in China are not a sound basis for evaluating suitability as at the commencement of operations in Sydney. Nor are they a sound indication of how Crown will deal with circumstances that may arise at some later point in the future.

B2. Acceptance of failings

67. As already noted, there is no dispute that failings occurred in relation to China.

68. The principal failing was constituted by a series of failures to prudently assess, and escalate, important developments in the operating environment in China to the board-level risk committees and the wider board. This was the root cause of what happened in China. It was attributable to serious misjudgements that developments in China could be adequately managed "on the ground".

69. Whether operations in China remained within Crown's risk appetite in the light of those developments was a matter for the board. And because the developments were not escalated to the wider board as the relevant decision-making organ, the important decisions about how to proceed by way of response to those developments were not made by the board. Instead, those decisions were made by a narrow group of individuals all looking at the matter from broadly the same perspective.

70. Risk-management structures and procedures, through which each development in the operating environment could have been ventilated for wider assessment, did exist at the time. The statement of Mr Drew Stuart in the class action, which has been tendered in the Inquiry,[54]

[52] China submissions, paragraphs 11(c), 311, 356.
[53] China submissions, paragraphs 358, 362.
[54] Exhibit O69 (CRL.540.001.0181).

sets out the risk-management structures and procedures then in place at Crown Melbourne and at Crown, and explains the link between the two. It sets out how those structures and procedures were designed to identify, assess, and manage risks. As Crown apprehends counsel assisting's submissions, they do not cavil with the evidence in Mr Stuart's statement,[55] which was consistent with his oral evidence. Mr Stuart's evidence as to the risk-management structures in place at the time was not challenged.

71. What is apparent, however, is that the structures and procedures described by Mr Stuart were simply not engaged in relation to a series of important developments in the operating environment in China. That represents a failing. It shows a lack of awareness of the importance of escalating risks and a lack of awareness that a company's risk appetite is a matter for the board. The misjudgement that risk could be adequately managed "on the ground" speaks to the need to impress upon management (and for that matter directors) the importance of drawing risks to the attention of those administering risk-management structures so that they can be properly considered and debated through channels designed to do just that.

72. The need to impress upon all those who work for Crown the importance of utilising the risk-management processes is something of which Crown is acutely aware. It will not repeat the mistakes in China. Ms Anne Siegers was engaged in 2017 in the aftermath of the China arrests to overhaul the company's risk management policy, processes, and structures to ensure they represented best practice. Part of the risk-management training she designed and has delivered is directed to emphasising the importance of drawing to the attention of the risk-management committees anything that is potentially a risk – whatever view a particular individual might take of it. That training recognises that the breadth of perspectives brought to bear though engagement of the risk-management structures may well identify risks not perceived by a particular individual.[56]

73. Crown accepts that the following matters ought to have been exposed to wider consideration and assessment through Crown's risk-management structures and procedures (through which they would have come to the attention of the wider board):

    (a) the 6 February 2015 press conference held by Chinese authorities;[57]

    (b) the 17 June 2015 arrests of the South Koreans;[58]

[55] See China submissions, paragraphs 34-54.
[56] Mr Felstead referred to risk-management changes since the China arrests: see at T1244/1-22.
[57] China submissions, paragraphs 186-219.
[58] China submissions, paragraphs 220-244.

(c) the questioning of Mr BX and Mr JX in June 2015, and the request for the letter confirming Mr BX's employment;[59]

(d) the CCTV news program in October 2015.[60]

74. Crown accepts that the failure to ventilate these matters through the risk-management processes and to draw them to the attention of the wider board was unacceptable.

75. Crown also accepts that the management of external advice received by the VIP international executives was inadequate. All advice as and when received should have been provided to Crown's internal legal teams for assessment and scrutiny. The legal department did see the core legal advice on Article 303.[61] However, it should not have been left to Michael Chen to manage and communicate the ongoing flow of advice, even if he was regarded as the person with the most knowledge and experience of Chinese affairs and as the person dealing directly with WilmerHale. A process should have been in place requiring all advice obtained by management to be passed on to internal lawyers. That would have ensured that any ambiguities or obscurities in the advices were clarified. Further, the fact that Crown's internal legal teams obtained copies of most of the later advices only after the arrests is another failing.[62]

76. Crown has addressed the failings in relation to management of advice. All external advice relating to jurisdictions outside Australia is now obtained through Crown's internal legal teams. Crown has improved its internal systems for the retention of external advice. It has implemented the "WorkSite" file management system and has adopted a practice of saving all external advice to that system using a naming convention.

77. Finally, while Crown does not accept the proposition that the VIP Working Group was effectively a CPH silo or an instance of CPH exercising undue control over decision-making in relation to China, Crown does acknowledge that it appears that the fact that Mr Johnston was an attendee of the VIP Working Group had some effect on the way in which Mr Felstead reported upwards. As Mr Felstead frankly acknowledged in his evidence, the way in which he reported on VIP operations in China was not uniform: he reported to Mr Johnston on some occasions; and to Mr Craigie on other occasions.

B3. Context

78. How severely the individuals concerned should be judged for these acknowledged failings requires an examination of matters of context and an understanding of the wider circumstances

[59] China submissions, paragraphs 245-318.
[60] China submissions, paragraphs 319-333.
[61] See O'Connor's email chain to Tegoni of 20 February 2013, Exhibit P4 (CRL.625.001.0079 – 0081).
[62] See China submissions, paragraphs 132-139.

in which events occurred. It is submitted that counsel assisting's submissions on China pay insufficient regard to these matters.

Rule of law assumption

79. The first matter of context is well captured by an aspect of Mr O'Connor's evidence: he spoke of looking at China "through the eyes of a westerner".[63] He said that he:[64]

> didn't fully appreciate that China's legal system doesn't operate the same way as the western legal system does and just because one might feel that they are on the right side of the strict letter of the law doesn't necessarily mean that that's the way it will be applied in China.

80. While there was of course an appreciation that China was different in various respects from Australia, nevertheless it was assumed that operating cautiously within the bounds of the criminal law would not lead to arrest and conviction for gambling crimes.

81. That assumption is shown to have been mistaken by the conviction of Mr O'Connor and three administrative staff for contravention of Article 303 of the PRC Criminal Law. Based on the authoritative interpretations of Article 303 published by the Supreme People's Court, there was no basis to fear, or to conclude, that those individuals were contravening that law. Article 303 is discussed in more detail later in these submissions, but it suffices to say for the moment that: (a) if Mr O'Connor can ever be said to have organised anyone to go abroad to gamble, at most it was one or two individuals on a given occasion;[65] and (b) it is difficult to see how the three administrative staff, who did not meet with customers, could be said to have organised anyone and, further, those three administrative staff certainly did not receive anything answering the description of "kickback or referral fees" (however broad a view one takes of that concept). They received only a standard wage, with no incentive component.[66] Yet Mr O'Connor and the three administrative staff were all convicted of contravening Article 303.

82. It is readily understandable that executives who knew of the legal advice from WilmerHale made the assumption that there was an identifiable rule of law in China that the Chinese authorities would follow. In hindsight, that assumption was mistaken, but that mistake should not be judged severely. It is submitted that latitude needs to be extended to management for making this assumption.

More than a decade operating in China without incident

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[63] T2060/25-26, 32.
[64] T2060/32-36.
[65] See Exhibit M180 and Ex M181; CRL.739.001.0001 attaching CRL.739.001.0002; Exhibit R34 (CRL.540.001.0210 at.0215 ([28])).
[66] T1371/37-T1372/3-23.

83. The second matter of context is that, when the arrests occurred in October 2016, Crown had been operating in China (including by employee staff who worked in China) from at least the early 2000s.[67] That is, Crown had been operating in China for more than a decade prior to the arrests. It should not be forgotten that the events in China on which this Inquiry has focused concern the tail end of a substantial period of operating in China without incident. It is not the case that Crown's history of operating in China was beset with difficulties over a long period of time. Looking backwards from the time of the arrests, the questioning of the two staff members in June 2015 ought to have been seen to be a matter of serious concern and a warning sign. But as events were happening and as further advice was taken it was not perceived that way: see, e.g., Mr Felstead at T1219-1220. Some of those who knew of the questioning of Mr BX considered that it was an escalation of risk, such as Mr O'Connor.[68] However, he and others were comforted by the legal advice that was obtained in the context of the questioning having taken place. It was only with the benefit of hindsight that Mr Felstead and Mr Johnston considered that the questioning was a matter of serious concern and an escalation of risk, notwithstanding the legal advice.[69] Thereafter, nothing further occurred during that period to change perceptions. As a result, the arrests took everyone by surprise. This needs to be weighed in the balance in passing judgement.

Presence of competitors in China

84. The third matter of context concerns the existence of competitors in China. It is evident that there were competitors with staff living in China, including at least The Star (branded Echo Entertainment prior to 2015), SkyCity Entertainment Group, Caesars, MGM, City of Dreams, Galaxy Entertainment Group, Las Vegas Sands and Gentings.[70] There has also been reporting in the *Australian Financial Review* that The Star had at least 12 marketing staff in mainland China prior to the arrests of Crown's staff and that it had ramped up its marketing activities in the months preceding the arrests,[71] and that other casino operators "aggressively" reinserted staff into China by January 2017 and started recruiting new staff.[72] It would not be fair to characterise Crown as a cavalier outlier operating in an environment that the rest of the industry was not operating in. Rightly or wrongly, the presence of competitors with staff in China gave senior management comfort that the environment was one in which it was possible safely to operate. Nor did all other competitors have representative offices in China; some

[67] Exhibit O67 (CRL.540.001.0114 at 0123 ([17])); Exhibit R34 (CRL.540.001.0210 at .0217 ([33])).
[68] T2030/44-T2031/2.
[69] T1220/21-28; T2977/7-14.
[70] See Exhibit O33(A) (CRL.643.001.0005). See also the statement of Ms Jane Pan, who was a member of sales staff in China, which has been produced to the Inquiry (CRL.540.001.0193; no exhibit number). [37] of that statement identifies competitors with sales staff in China at the time.
[71] CRL.644.001.1640.
[72] CRL.738.001.0001.

did, some did not, as WilmerHale's advice made clear.[73] It is certainly by no means clear, and there is no evidence to suggest, that all competitors had a licence to operate in China.[74]

External advice sought each time the development occurred

85. The fourth matter of context concerns the seeking of advice each time an important development occurred in the operating environment in China. Specifically:

    (a) in response to the 6 February 2015 press conference, advice was sought on 9 and 10 February 2015 from WilmerHale[75] (advice was also sought on 25 February 2015[76]) and Mintz Group was engaged in early March;[77]

    (b) in response to the South Korean arrests in June 2015, advice was sought from WilmerHale (23 June 2015[78]) and Mintz Group (19 June 2015[79]);

    (c) in response to the questioning of Mr BX, advice was sought from both WilmerHale[80] and Mintz Group,[81] including in relation to the sending of the letter;

    (d) in response to the CCTV news story in October 2015, advice was sought from WilmerHale on 15 October 2015[82] and from Mintz Group on 16 October 2015.[83]

86. Each development in China on which counsel assisting placed emphasis *was* assessed and considered by those individuals in the light of external expert advice, and they took it upon themselves to manage events at an operational level. It is important not to forget that. That way of managing things was a serious mistake, but management's misjudgement lies in thinking that it was sufficient to manage events "on the ground" and failing to appreciate the importance of engaging the risk-management structures for wider assessment.

Content of external advice reassured management

87. The fifth matter of context is that none of that advice was to the effect that Crown needed to withdraw its staff from China or that staff were at a material risk of being arrested and convicted for gambling crimes. On the contrary, the effect of this advice was that, while there was a heightened need for caution, no substantial change was required to operations in China.

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[73] Exhibit M141 (CRL.545.001.0021 at .0023) ("There were a number of cases in the past where foreign casino's [sic] rep offices were closed").
[74] Compare T5731/38-40.
[75] See Exhibit M141 (CRL.545.001.0021); Exhibit M143 (CRL.545.001.0054).
[76] See Exhibit M154 (CRL545.001.0128).
[77] See China Submissions, paragraph 108; Exhibit M158 (CRL.527.001.1006); M159 (CRL.527.001.1007).
[78] Exhibit M195 (CRL.545.001.0098).
[79] Exhibit M188 (CRL.522.001.0527).
[80] Exhibit R15 (CRL.636.001.0411).
[81] Exhibit R17 (CRL.638.001.0001).
[82] Exhibit M234 (CRL.522.001.0076).
[83] Exhibit M235 (CRL.545.001.0014).

88. Counsel assisting make certain criticisms in connection with the external advice. They criticise the management of that advice and they say that certain assumption underlying it ought to have been clarified with the advisers.[84] The criminal law advice that Article 303 prohibited organising groups of ten or more did not depend on any assumption; that advice explicitly set out the authoritative interpretation of Article 303. In relation to the additional requirement of Article 303 that the person organising the groups must receive a kickback or referral fee, Mr Chen did clarify with WilmerHale that the bonus component of a salary package would not constitute a kickback or referral fee within the meaning of Article 303.[85] In the midst of those criticisms, it is important not to lose sight of the fact that advice was sought in relation to each development in China; that advice did not raise alarm bells; and that advice plainly operated upon the minds of those making decisions. Accepting counsel assisting's criticisms in connection with the external advice, those matters hold true. And they form an important part of the context in which decisions of management fall to be judged.

Reporting within management

89. One final matter to note, in fairness to Mr Felstead in particular, is that, while there was a failure to escalate important developments in China to the board-level risk-management committees and to the wider board, it was not the case that there was no escalation or reporting of matters at all. All of the important developments that counsel assisting emphasise, save for the CCTV news program, were escalated or otherwise circulated to Mr Felstead's superiors (either Mr Craigie or Mr Johnston). This extends to the following:

    (a) The 6 February 2015 press conference, and the reference to casinos in that press conference: in relation to these matters, Mr Felstead said he "may well" have reported them to Mr Craigie, he just could not specifically recall; and he said that he assumed that Mr Craigie would have heard about it at the same time that Mr Felstead did, since Mr Craigie was on the same email lists as Mr Felstead.[86] Further, there was reference to the matter in a VIP international business update circulated at a CEO meeting on 18 March 2015.[87] Although Mr Craigie could not recall one way or the other whether he was aware of the February 2015 press conference prior to the South Korean arrests, he accepted he received various news articles mentioning it shortly after it was held.[88]

[84] China submissions, paragraphs 132-139.
[85] Chen's Federal Court statement (CRL.540.001.0250) at paragraphs 51 and 52; Exhibit [Insert Exhibit Number].
[86] T1170/8-T1170-T1171/16.
[87] Exhibit AB16 (CPH.001.241.5285 at .5287).
[88] T1480/15-T1482/6.

(b) The 17 June 2015 arrests of the South Koreans: in relation to this matter, Mr Craigie became aware of it at least by the time he was sent an email by Mr Rankin about the matter.[89] Mr Felstead sent an email to Mr Craigie addressing the matter.[90]

(c) The questioning of Mr BX: in relation to this development, this was drawn to the attention of Mr Johnston by email to him from Mr Felstead.[91] The matter also came to the attention of Mr Neilson, then General Counsel and Company Secretary of Crown.[92]

90. It is not the position, then, that there was no escalation or reporting of matters of importance amongst senior management. Most of the important developments got to the most senior officer (Mr Craigie), but not to the risk committees or the wider board, principally because management assessed these developments in the light of advice from China experts, WilmerHale and Mintz Group, which is discussed in more detail below.

91. Nevertheless, Crown accepts, without reservation, that these matters ought to have been drawn to the attention of the board-level risk management committees and to the wider board. It should be noted, however, that the February 2015 press conference and the South Korean arrests did come to the attention of Mr Craigie, who was a member of the Crown Risk Management Committee at the time. As he accepted in his evidence, it was a failing on his part not to raise those matters with the other members of the Risk Management Committee.[93]

B4. Matters not in issue

92. Many of the matters put by counsel assisting are not in issue. They are set out in Annexure A.

B5. Matters in issue

93. There are, however, certain submissions of counsel assisting that Crown says go beyond what the evidence fairly supports or proceed from false premises.

94. By way of summary:

(a) The proposition that Crown adopted a narrow and technical interpretation of Article 303 of the PRC Criminal Law, resting on fine distinctions,[94] and thereby failed to comply with the spirit of the law, is unfair and wrong. The interpretation of Article 303 that WilmerHale conveyed to Crown, and that Crown adopted, was consistent with the

[89] Exhibit M198 (CRL.545.001.1108).
[90] Exhibit M198 (CRL.545.001.1108).
[91] Exhibit R16 (CRL.636.001.1747).
[92] Exhibit R33 (CRL.638.001.0655).
[93] T1497/14-32.
[94] China submissions, paragraphs 190, 350(a).

interpretation expressed by the Supreme People's Court in two official pronouncements in 2005.

(b) The proposition that management adopted an idiosyncratic view of Chinese business law, namely, that Crown would only need a licence if it was operating an office in China, and then consciously acted contrary to that view by operating an office without a licence, is not supported by the evidence. First, there is no clear evidence to support the unstated premise of the proposition, namely, that Crown required a licence for its activities in China, whether or not operating an office. Secondly, there is no clear evidence that anyone in management believed the Guangzhou apartment to be in breach of Chinese business law.

(c) The proposition that the "crackdown on foreign casinos" was directed to the "precise business activities" of Crown in China[95] is incorrect. First, one would not assume that the relevant remark in the 6 February 2015 press conference was directed to those engaged in lawful operations. One would assume any governmental "crackdown" was directed to those breaking the law. Secondly, what has been referred to as the crackdown on "foreign casinos" comprises one sentence in a lengthy press conference in which an official in fact referred to casinos in "neighbouring countries". There are good reasons to believe that these "neighbouring countries" were countries closely proximate to China, such as South Korea, and did not include Australia. Thirdly, the official's remark was made in the context of a press conference relevantly directed to so-called "yellow gambling crimes", meaning gambling crimes connected with prostitution and pornography,[96] activities in which Crown of course did not engage.

(d) The proposition that the South Korean arrests, the questioning of Mr BX, and the CCTV report, were "obvious" and enduring escalations of risk may be correct as a matter of hindsight. But it tends to overstate the way in which those events were perceived at the time and does not pay sufficient regard to the advice that was obtained by management in relation to each of those events. Further, it tends to assume a close nexus between those events and the China arrests that is not apparent from the substantial gap (more than a year) between each event and the arrests.

(e) The proposition that certain matters, such as the content of the letter to Chinese authorities[97] and the lack of signage at the Guangzhou residential apartment,[98] can only be construed as attempts to disguise or conceal illegal activities from the Chinese

[95] China submissions, paragraph 191.
[96] Expert Report of Margaret K. Lewis dated 9 December 2019 at [5.1]-[5.5].
[97] China submissions, paragraphs 265 to 271.
[98] China submissions, paragraphs 174, 179.

authorities, or mislead Chinese authorities, is an extreme view. There are far more obvious explanations for these matters. These explanations include the fact that the advice Crown consistently received from WilmerHale and Mintz Group was to adopt a low-key approach; the fact that China was a jurisdiction in which gambling was itself illegal[99] and anything connected with gambling was a sensitive topic;[100] and the fact that Chinese patrons did not want their overseas gambling activities to be known to the authorities.[101] While these matters may give rise to their own problems, they gainsay the proposition that certain matters are only explicable as attempts to deceive the Chinese authorities.

(f) The proposition that "management appreciated that there was a risk of arrest, detention or conviction" for gambling crimes faced by staff[102] is not borne out by the evidence. As put by counsel assisting, the proposition does not speak of a "material" risk. However, given it is possible to say of almost anything that there is "a" risk that it might occur, the proposition will be treated as being that management appreciated that staff were at a *material* risk of arrest and conviction for gambling crimes. The evidence does not establish that. It does not go so far as to suggest that management, believing that Crown's operations stayed well within what was permitted by law, nevertheless perceived a material risk that staff would be arrested and convicted for gambling crimes. No advice received by management was ever to that effect. Further, the proposition is contrary to management's own actions in travelling to China, including as early as May 2015.[103] Mr Felstead travelled to China on numerous occasions and was accompanied by his wife on one such occasion (in the weeks before the China arrests).[104] Mr O'Connor was of course arrested and convicted while in China.

(g) The proposition that, by reason of the above matters, Crown consciously adopted a business model that placed employees at risk of arrest and conviction for gambling crimes in China[105] is contrary to the evidence that all relevant members of management proceeded on the basis of legal advice to the effect that Crown's operations in China did *not* breach gambling laws. Nor did any member of the board or management think there was a risk of arrest and conviction for gambling crimes. That is not to say that there were not risks of operating in a totalitarian state like China where arbitrary actions could occur.

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[99] See China submissions, paragraph 145.
[100] T2068/25-34.
[101] T2068/25-34.
[102] China submissions, paragraph 350(a).
[103] Exhibit M180; M181.
[104] T1375/31-47.
[105] China submissions, paragraph 351.

(h) The proposition that decision-making in relation to China was subject to undue CPH influence[106] relies on inflating the role of Mr Johnston while ignoring that all the other key individuals (Mr Felstead, Mr O'Connor, Mr Chen) only worked for Crown entities.

(i) The proposition that there has not been any adequate examination of the facts, matters, and circumstances leading to the China arrests[107] disregards multiple streams of inquiry that have necessarily led to a detailed examination of what happened in China. Those streams of inquiry include the class action and the VCGLR investigation. Responding to the allegations in the class action required a detailed examination of whether various risks in operating in China (including the risk of arrest and conviction of staff) existed and, if so, whether they were known within Crown and, if so, by which individuals. The allegations also required a detailed examination of Crown's risk-management structures and procedures at the time. These issues, and the facts and evidence relating to them, were canvassed in multiple reports to the board by Crown's solicitors, commencing in late 2016.[108] The board was advised that the investigation of these matters should be carried out in this way, having regard to the pendency of the class action.[109] Responding to the VCGLR investigation, which traversed most of the same matters concerning China as those traversed in this Inquiry, similarly required a detailed investigation of what happened in China. The VCGLR investigation has, like the class action, been the subject of regularly reporting to the board by Crown's solicitors. Further, the board was provided with a draft copy of the VCGLR's detailed report in 2018[110] and a further version of the report in 2019.[111]

Article 303 of the PRC Criminal Law and alleged reliance on "fine distinctions"

95. Counsel assisting submitted that Crown's view of Article 303 of the PRC Criminal Law involved "two precise questions" and rested on "fine distinctions".[112] It was said to be a "technical, narrow" view of the law.[113] From this premise, it was submitted that, whatever the letter of the law might have been, Crown failed to comply with its spirit.[114]

96. These contentions assume that there was scope for differing interpretations of Article 303 in relevant respects. In particular, they assume that Article 303 was open to be interpreted either as being engaged only where 10 or more PRC citizens were organised at one time to go abroad

[106] China submissions, paragraph 11(c), 311, 356.
[107] China submissions, paragraphs 358, 362.
[108] T4398/1-3.; T4604/45-T4605/1-19.
[109] T4397/20-29; T4407/4-9.
[110] Board pack dated 20 June 2018 (CRL.506.007.6384 at .6638 to .6683).
[111] Exhibit MFIB.
[112] China submissions, paragraphs 190, 350(a), 364.
[113] China submissions, paragraph 31(b).
[114] China submissions, paragraph 364.

to gamble or, alternatively, as being engaged even where 10 or more PRC citizens were organised cumulatively over a period of time. However, as is explained below, two official pronouncements of the Supreme People's Court had removed the scope for differing interpretations relied on by counsel assisting.

97. As is clear and not disputed, the view that Crown took of Article 303 was based on the advice it received from WilmerHale, a major international law firm. That advice reflected two official pronouncements of the Supreme People's Court as to the interpretation of Article 303. Whether or not the WilmerHale advice specifically referred to these pronouncements is not to the point. As is explained below, they were both published in 2005 and WilmerHale, as Chinese law experts, can be taken to have been aware of them and to have factored them into their advice to Crown.

98. The first official pronouncement is the "Supreme People's Court and Supreme People's Procuratorate Interpretation on Several Questions Concerning the Specific Application of Law in Criminal Gambling Cases", issued in May 2005 (**2005 SPC/SPP Interpretation**). Article 1 of the 2005 SPC/SPP Interpretation provided as follows:[115]

> Any of the situations set out below, if undertaken for the purpose of profit, will constitute "gathering a crowd to gamble" as provided by Article 303 of the Criminal Law:
>
> (1) organising three or more persons to gamble and generating illegitimate profits by taking a cut of the winnings in amounts that equal 5,000 yuan or more **in aggregate**;
>
> (2) organising three or more persons to gamble where the amount gambled is 50,000 yuan or more **in aggregate**;
>
> (3) organising three or more persons to gamble where the number of people participating in the gambling is 20 persons or more **in aggregate**;
>
> (4) organising 10 or more persons who are citizens of the People's Republic of China to go abroad to gamble, from which **kickbacks or referral fees** are collected.
>
> [Emphases added.]

99. As can be seen from Article 1(4) of the 2005 SPC/SPP Interpretation, the requirement that "kickbacks or referral fees" be collected, and be collected from the organising, before Article 303 was relevantly engaged, was a requirement set forth in an official pronouncement of the Supreme People's Court. If the requirement that kickbacks or referral fees be collected, and be

[115] China submissions, paragraph 107(c).

collected from the organising, is to be criticised as a "narrow" or "technical" interpretation of Article 303, that criticism must also be levelled at the Supreme People's Court.

100. It is also to be noted that Article 1 of the 2005 SPC/SPP Interpretation uses the expression "in aggregate" in paragraphs (1), (2), and (3). Yet the expression is conspicuously absent from Article 1(4), being the limb of the 2005 SPC/SPP Interpretation relevant to Crown's operations in China.

101. The second official pronouncement on the interpretation of Article 303 confirms that the law did not turn on the aggregate number of people organised over a period of time. That second official pronouncement is guidance issue by the Criminal Division of the Supreme People's Court in May 2005 (**2005 Criminal Division Interpretation**). The 2005 Criminal Division Interpretation was issued at the same time as the 2005 SPC/SPP Interpretation (May 2005). The 2005 Criminal Division Interpretation said this:[116]

> … the number of persons organized is not calculated on an aggregate basis; it is necessary that 10 or more PRC citizens are organized at one time to go abroad to gamble.

102. Thus, an interpretation of Article 303 that required the organising of 10 or more PRC citizens to go abroad to gamble occur at one time, as opposed to the 10 or more PRC citizens being calculated by aggregating the citizens organised over a period of time, was the interpretation adopted in two official Supreme People's Court pronouncements: the first being the 2005 SPC/SPP Interpretation, which used the expression "in aggregate" in every paragraph except in the paragraph applicable to Crown; and the second being the 2005 Criminal Division Interpretation, which explicitly said that the 10 or more PRC citizens organised was not calculated on an aggregate basis.[117] Again, such an interpretation was not some narrow or technical interpretation unique to Crown or its advisers.

103. In attempt to make good their "fine distinctions" submission, counsel assisting submitted as follows:

> If you're breaking Chinese law and you go to jail if you're organising a tour group of more than 10 people on one occasion, but it's perfectly fine to organise a tour group of 10 people over two occasions, it remains the case … that that is a fine distinction or a precise legal question".[118]

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[116] Expert report of Professor Margaret K. Lewis dated 13 November 2020 at [4.2].
[117] WilmerHale referred to the Second Supreme People's Court binding interpretation in Exhibit M285, which includes an email from Kenneth Zhou to Debra Tegoni of 18 October 2016 (CRL.522.001.3952 at .3957)
[118] T5735/9-12.

104. However, as the preceding discussion demonstrates, the interpretative choice postulated by counsel assisting in an attempt to illustrate Crown's alleged reliance on fine distinctions is not a choice that arose having regard to the authoritative pronouncements of the Supreme People's Court.

105. In short, Crown repeatedly sought advice as to compliance with Article 303 and the advice it received was consistent with the interpretation of Article 303 espoused by the Supreme People's Court in official pronouncements. In those circumstances, it is not a fair criticism to say that Crown took a narrow or technical view of Article 303 and failed to comply with the spirit of the law.

106. Insofar as counsel assisting place reliance on the agreement of certain directors to propositions put to them concerning "fine distinctions", that agreement carries no weight in circumstances where it was never put to the directors that official pronouncements of the Supreme People's Court meant that the putative ambiguity on which the propositions put to them were premised did not arise.

Chinese business law propositions

107. Before dealing with counsel assisting's submissions on Chinese business law, two preliminary observations should be made.

108. First, the contentions advanced by counsel assisting about Chinese business law are somewhat tangential. This is because neither any Crown company nor any Crown employee was ever the subject of regulatory action in China for allegedly breaching Chinese business law. Further, the media allegations did not say anything about Chinese business law at all. The media allegation that Crown operated "under the radar" was certainly not premised on any proposition about Chinese business law.

109. Secondly, counsel assisting's submissions on Chinese business law involve parsing WilmerHale advices that were responding to queries about compliance with Chinese criminal law. Rightly or wrongly, it is plain that business law was not something that Mr Chen had in mind when he sought those advices. That tends to undermine the assertion of unethical conduct, which assumes a conscious disregard for Chinese business law. To seek business law advice and then to disregard it is one thing. However, that did not occur here. Criminal law advice was sought and in the course of giving that advice certain remarks were made that are now grouped under the heading "business law advice".

110. Turning to counsel assisting's submissions, the main submission is that management of Crown adopted an idiosyncratic view of what Chinese business law required. That idiosyncratic view

was that a licence to carry out Crown's activities in China would only be required if Crown were to operate a representative office. Crown then proceeded to act contrary to its own idiosyncratic view by operating an office without a licence, thus acting unethically.[119]

111. Counsel assisting insist that they do not submit that, as a matter of Chinese business law, Crown required a licence to carry out its activities in China. But implicit in the submission that Crown adopted an "idiosyncratic view" of Chinese business law is the very clear suggestion that the view taken was erroneous. The "idiosyncratic view" submission very clearly suggests that Crown required a licence to carry out its activities in China, whether or not it was operating a representative office.

112. Further, it is apparent that counsel assisting are of the view that Crown was conducting business in China and, in that context, counsel assisting emphasise the following words in a WilmerHale advice from 2013: "conducting business in China requires a business license or otherwise government approval" (the proper interpretation of those words is discussed below).

113. In those circumstances, the claim that to attack the contention that Crown required a licence to carry out its activities is to attack a straw man can be seen to be specious.

114. As the following analysis shows, it is not possible to deal with the "idiosyncratic view" submission without examining its unstated premise, namely, that Crown required a licence for its activities in China, whether or not it was operating a representative office.

No clear evidence that Crown required a licence

115. Such evidence as there is as to Chinese business law does not clearly point to the conclusion that Crown was required to have a licence or other business registration for its activities in China. There are two reasons for this.

116. First, the remarks in the WilmerHale advice relied upon by counsel assisting are open to different interpretations.

117. Counsel assisting focus on one part of a sentence in WilmerHale advice given on 19 February 2013 that reads: "conducting business in China requires a business license or otherwise government approval".[120] Counsel assisting omit the first part of the sentence, which is important. It reads: "With respect to the potential liability on institutions". REDACTED - PRIVILEGE

REDACTED - PRIVILEGE

[redacted]

[119] China submissions, paragraphs 178-180, 351(a).
[120] Exhibit M27 (CRL.545.001.0615).

REDACTED - PRIVILEGE

118. Properly understood, the effect of the remark in the WilmerHale advice of 19 February 2013 was that, *if* Crown registered a Chinese legal entity, it would be limited to a specified and permitted scope of business, such as marketing hotel resorts, but that scope would not extend to encouraging or assisting Chinese nationals to visit and gamble at casinos in Australia. This scope of business limitation applied "to China entities only".[122]

119. In the same 19 February 2013 advice from WilmerHale, they advised that Crown employees in China could lawfully engage with existing or potential customers provided they complied with WilmerHale's advice as to Article 303 (that is, employees could not organise at one time 10 or more PRC citizens for overseas gambling and must not benefit from such activities by receiving a kickback or referral fee).[123]

120. At the time WilmerHale gave their 19 February 2013 advice, they did not know whether Crown had registered a Chinese legal entity. However, by 19 August 2014 they knew that Crown had not registered such an entity.[124] In that context, WilmerHale's advice of 19 August 2014 conveyed that it was fine for a foreign company without any presence in China to have employee contracts with Chinese nationals.[125]

121. The 19 August 2014 advice went on to speak about the fact that it "may be advisable" to set up some formal business registrations, such as a representative office in China, but there was no suggestion that such a step was essential to comply with the law.[126] The remark that it "may be advisable" to set up a representative office is far from advice that Crown was required under Chinese business law to do so.

122. Armed with the knowledge that Crown did not have any licence or other formal business registration, WilmerHale continued to advise up until the arrests that Crown employees in China could lawfully engage with existing or potential customers provided they complied with the WilmerHale advice as to Article 303.

123. REDACTED - PRIVILEGE

REDACTED - PRIVILEGE [127] Consistently with that advice, when Mr O'Connor was asked about the

[121] Q2 (CRL.625.001.0151).
[122] Q2 (CRL.625.001.0151).
[123] Exhibit M27 (CRL.545.001.0615).
[124] Exhibit P7 (CRL.625.001.0007 at .0010).
[125] Exhibit P7 (CRL.625.001.0007 at .0010).
[126] Exhibit P7 (CRL.625.001.0007 at .0010).
[127] Exhibit R43 (CRL.680.001.0006). Counsel assisting refer to this at China submissions, paragraph 144(c).

part of the sentence in the 19 February 2013 WilmerHale advice that reads "conducting business in China requires a business license or otherwise government approval", he said that he did not regard Crown's activities in China as "conducting business".[128] Thus, even if the remark in the 19 February 2013 WilmerHale advice be interpreted in the way for which counsel assisting contend, it is not clear that Crown was "conducting business" in China in the sense engaging a relevant Chinese business law (whatever that law might be).

No unethical conduct

124. As noted, counsel assisting submit that management understood that a licence was required to operate a representative office and yet an office was operated without a licence.[129] This is submitted to constitute "plainly unethical" conduct.[130]

125. Three points need to be made in response to this submission.

126. First, the implication of the submission is that management consciously proceeded in a manner contrary to what they understood to be lawful as a matter of Chinese business law. The submission thus requires management to have specifically turned their minds to the requirements of Chinese business law and then to have chosen to disregard them. There is no clear evidence of that. As already mentioned, it is clear that the focus of management was on the criminal law. The WilmerHale advice relied upon by counsel assisting to support their business law contentions was responsive to requests for advice by Mr Chen about compliance with the criminal law.

127. Secondly, the submission can only extend to those members of management who were aware of the Guangzhou apartment at the time. No director, including Mr Craigie,[131] was aware of it. Mr Felstead had no knowledge of it.[132] Mr Felstead specifically objected to a proposal to have a representative office in China.[133] Mr Felstead also said that he was not aware of any requirement to have a business licence.[134] The only members of management who said in their evidence that they were aware of the Guangzhou apartment at the time are Mr O'Connor, Mr Chen, and Ms Williamson.

128. Thirdly, as to those three members of management, there is no clear evidence that they considered the apartment to be in breach of Chinese business law:

[128] T1993/36-49.
[129] China submissions, paragraph 164.
[130] China submissions, paragraph 178-180.
[131] T1471/45-T1472/1.
[132] T1131/14-19.
[133] T1134/29-30.
[134] T1156/31-43.

(a) As to Mr O'Connor, his evidence was that, while he was aware that a residential apartment was being used to store visa-processing materials, he would not describe it as a representative office.[135] There is no evidence that he conceived of the use of the apartment as violating what he understood Chinese business law to require. He may or may not have been wrong. But the point is that his conduct cannot be described as unethical.

(b) As to Mr Chen, who no longer works for Crown, the Inquiry never heard from him. Whether he took the view that the Guangzhou apartment was operating in breach of Chinese business law is not the subject of evidence. Further, it is apparent that his focus was on the Chinese criminal law, which tends to weaken the suggestion of conscious disregard of the putative idiosyncratic understanding of Chinese business law.

(c) REDACTED - PRIVILEGE [redacted] REDACTED - PRIVILEGE [redacted].[136] That being the case, the remark in the 19 February 2013 WilmerHale advice that "conducting business in China requires a license", even if interpreted as counsel assisting contend, would not, in her eyes at least, have provoked an apprehension that Crown required a licence as a matter of Chinese business law.

129. Finally, insofar as it is submitted that management disregarded an instruction not to open an office, it is not clear that the instruction said to have been disregarded was directed to such premises as the Guangzhou apartment. The instruction said to have been disregarded was Mr Felstead's remark in a 10 February 2015 email that "having them operate as non-gaming offices doesn't seem overly practical to me".[137] This remark was in terms directed to non-gaming offices. Mr Felstead appears to have been saying that it did not make sense to open a non-gaming office, such as a representative office marketing Crown's hotels, in a context where Crown was seeking to attract Chinese patrons to gamble at its casinos. It is by no means clear that the operation of a residential apartment, used by only one administrative employee for visa processing purposes and to store visa-processing materials was contrary to Mr Felstead's instruction.[138]

130. None of this is to say that the Guangzhou apartment ought to have been operating. Further, there is no doubt that its existence should have been drawn to the attention of the board-level risk committees. But the suggestion that it demonstrates unethical behaviour because

[135] T1997/21-22.
[136] Exhibit R43 (CRL.680.001.0006).
[137] Exhibit M141 (CRL.545.001.0021).
[138] See Jane Pan's Federal Court statement at [11]: (CRL: **Exhibit ##**) (CRL.540.001.0193).

management believed its existence to be contrary to Chinese business law is not supported by the evidence.

Propositions concerning the February 2015 press conference

131. Crown does not dispute that the 6 February 2015 press conference was an important development in the operating environment in China. Crown accepts that it ought to have been drawn to the attention of the board-level risk committees and to the wider board, so that the decision as to how to proceed could be made by the board. It is not disputed that these matters represent failings.

132. But counsel assisting's submission that "[t]he precise business activities that Crown Resorts staff in China were undertaking had been identified by the Chinese government as being subject to the crackdown"[139] is not accurate for at least four reasons.

The press conference was presumably directed at unlawful activity

133. First, looking at the matter through western eyes, one would not regard one's activities as within the purview of a governmental crackdown if one had been advised that those activities were not in breach of the law. The convictions of Mr O'Connor and three administrative staff show that rule of law assumption to have been mistaken. However, armed at the time with legal advice that Crown's operations in China were lawful, management should not be judged as severely as counsel assisting suggest for taking the view that those operations could proceed.

The press conference was directed at casinos in "neighbouring countries"

134. Secondly, it is not clear that the relevant remark in the press conference was directed at casinos in Australia. What is described as the announcement of a crackdown on "foreign casinos" is in fact a single sentence forming part of an answer to a reporter's question in a lengthy press conference. In response to a question from a *Beijing Times* reporter in the question and answer component of the press conference, a Chinese official said:[140]

> Many of our neighbouring countries have casinos: they have established in China some offices to attract and solicit Chinese citizens to go outside the borders to gamble: this is also a focal point of the crackdown.

135. The evidence of Professor Lewis in the class action is that the reference in this sentence to "neighbouring countries" was a reference to countries of close proximity to China.[141] It did

[139] China submissions, paragraph 191.
[140] Expert Report of Margaret K. Lewis dated 9 December 2019 (CRL.540.001.0006 at [5.5.3].
[141] Expert Report of Margaret K. Lewis dated 9 December 2019 (CRL.540.001.0006 at [5.5.3.2].

not pick up Australia. That is consistent with the view taken by WilmerHale.[142] It is also consistent with the arrests of staff of South Korean casinos in the months following the press conference.

The press conference was directed to those engaged in "yellow" gambling crimes

136. Thirdly, the relevant part of the press conference was focused on "yellow gambling crimes", meaning prostitution and pornography,[143] and these were of course not activities in which Crown was engaged. Consistently with the focus of the press conference on "yellow gambling crimes", the South Korean operators whose staff were arrested in the months following the press conference were alleged to have been arranging prostitutes for clients.[144]

Passage of time between press conference and China arrests

137. Fourthly, if there were a "precise" correspondence between the February 2015 press conference and Crown's activities, it is not apparent why nearly two years passed between those events.

Crown accepts that the February 2015 press conference should have been reported

138. Notwithstanding the points made in the preceding paragraphs, Crown accepts that the February 2015 press conference was a serious change in the state of affairs in China and a potential heightening of the risks of a company such as Crown operating in China.[145] Those matters tend to emphasise the serious mistake that both Mr O'Connor and Mr Felstead made in not reporting the February 2015 press conference to Crown's risk management committees. There is evidence, however, that the press conference statement about a crackdown was widely known at management levels by March 2015, including by Mr Craigie.[146]

139. What is clear from the evidence is that concern about the February 2015 press conference waned after further legal advice was obtained. One illustration of that is that Mr Felstead and Mr O'Connor resumed their travels to China by May 2015[147] after a short break while the position following the February 2015 press conference was clarified.

Assertion that events should have been seen as "obvious" escalations of risk

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[142] Exhibit M195 (CRL.545.001.0098): "Chinese gamblers have started to travel more frequently to neighbouring countries/regions such as South Korea, Malaysia, and Vietnam"; Exhibit M234 (CRL522.001.0076 at .0078): " … it appears that government is now focusing on casinos in neighbouring countries which has attracted a large number of Chinese nationals, such as Korea".
[143] Expert Report of Margaret K. Lewis dated 9 December 2019 (CRL.540.001.0006 at [5.1]-[5.5].
[144] T1590/15-27.
[145] See the evidence referred to in the China submissions, paragraphs 203-206.
[146] See Exhibit AB15 (Exhibit CPH.001.241.4993), attaching AB16 (CPH.001.241.5285) and Exhibit M169 (CRL.522.001.0136).
[147] See, for example, Exhibit M180 and Exhibit M181.

140. As has been acknowledged already, the South Korean arrests, the questioning of Mr BX, and the CCTV news report were important developments in the operating environment in China that ought to have been drawn to the attention of the risk-management committees and to the wider board. That they were not represents a failing. There is no dispute about that.

141. Whether it is right to suggest that these events ought to have been perceived at the time as "obvious" and persisting escalations of risk[148] in the face of the legal and other advice that was obtained is another question.

South Korean arrests

142. As to the South Korean arrests, it is difficult to see how the evidence allows that event to be fairly characterised as an "obvious" and persisting escalation of risk at the time in the eyes of Mr Johnston, Mr Craigie, Mr Felstead, Mr O'Connor, and Mr Chen. Those individuals all received advice from Mintz Group that the South Koreans arrests were "an isolated case".[149] Mintz Group said it was "convinced" of that.[150] The advice drew attention to the Koreans' contravening of Chinese currency laws and use of cash for "client entertainment",[151] by which was meant prostitution.[152] Neither of those activities was engaged in by Crown.

143. Further, the submission that the South Korean arrests represented an "obvious" escalation of the risk to staff assumes a strong nexus between that event and the arrests of Crown staff. But there was one year and four months passing between those events.

144. None of this is to dispute that, with the benefit of hindsight, the South Korean arrests can be classed as an obvious escalation of risk. However, the factors affecting the thinking of management at time must be acknowledged.

Questioning of Mr BX

145. Turning to the questioning of Mr BX, the submission that this ought to have been seen by management and Mr Johnston at the time as an "obvious" escalation in risk does not fairly account for the advice management received at the time. The request for a letter confirming Mr BX's employment was certainly not seen by WilmerHale as alarming. They advised that a letter *should* be furnished.[153] Mintz Group had the same advice and said that such a request was "normal".[154] Further, when the letter was furnished, Mr BX reported that he had been told by

[148] See, for example, China submissions, paragraph 336.
[149] Exhibit M202 (CRL.522.001.4220).
[150] Exhibit M202 (CRL.522.001.4220).
[151] Exhibit M202 (CRL.522.001.4220).
[152] T1590/15-27.
[153] Exhibit R15 (CRL.636.001.0411).
[154] Exhibit R17 (CRL.638.001.0001).

the police that everything was all right.[155] Mintz Group's remark that, unavoidably, the letter "could" be used as evidence was as to a possibility not a probability.[156]

146. It was asserted by counsel assisting that, upon the questioning of Mr BX, management and Mr Johnston "knew that there was an informant".[157] At times, counsel assisting also seemed to assume a continuing informant. That assertion appears to assume consciousness of illegal activity (one does not inform on lawful activity). However, counsel assisting accept that Crown did not knowingly break the law.

147. Further, the submission that the questioning of Mr BX and the request for the letter was an obvious escalation of the risk to staff disregards the expert advice that had been given from early times that such questioning was something that occurred in China[158], and assumes a close nexus between those events and the arrests of staff that is not apparent from the 15 months between them. The assertion that Chinese authorities "were no doubt enlarging the evidentiary pile"[159] in this lengthy period is speculation. Moreover, it is not apparent what further material needed to be added to the "evidentiary pile" in those 15 months given the details in the letter and what Mr BX had apparently told authorities (including that Crown had casinos in Australia).

CCTV news program

148. As to the CCTV news program, the advice of WilmerHale sought in response to that program indicated that the government was focused on "casinos in neighbouring countries which has [sic] attracted a large number of Chinese nationals, such as Korea".[160] The advice was that employees should not "get involved in any activities which may potentially raise money-laundering or foreign exchange evasion issues" and that marketing materials should not "expressly" promote the casino business.[161] That is far from advice from which one would draw, as an "obvious" conclusion, that staff were at risk of arrest and conviction for gambling crimes. The advice of Mintz Group on 15 October 2015 was that "your team should not feel overly concerned".[162] That advice was followed up on 19 October 2015 with the following advice:[163]

> [I] thought I would pass along the key results of our inquiries with about 8 separate sources these past 5 days. All point to the recent arrests being very much pointed at the Korean entity in question, and not part of a broader

[155] Exhibit O36 (INQ.950.002.0157).
[156] Exhibit R17 (CRL.638.001.0001).
[157] T5738/22.
[158] Exhibits M14 (CRL.##) and M15 (CRL.##)
[159] T5738/43-44.
[160] Exhibit M234 (CRL.522.001.0076 at .0078).
[161] Exhibit M234 (CRL.522.001.0076 at .0077).
[162] Exhibit M230 (CRL.545.001.0015).
[163] Exhibit M235 (CRL.545.001.0014).

> crackdown underway. Your team should be in good shape for its activities this week, though the same ground rules are suggested as we discussed earlier.

149. Advice that "[y]our team should be in good shape for its activities this week" is hardly advice from which a conclusion of escalating risk to staff is "obvious".

150. Further, the premise embedded within the proposition that the CCTV broadcast was an "obvious" escalation of risk, namely, that there is a clear nexus between that event and the China arrests, does not sit conformably with the whole year that passed between those two events.

Hindsight bias

151. Again, none of the foregoing is to say that these events were not significant and not a cause for alert. Nor is it to say that they should not have been reported up the line to the CEO, Mr Craigie, to the board-level risk committees and to the wider board. There is no doubt that they should have been. But the proposition that they should have been seen at the time as "obvious" and persisting escalations in the risk of being arrested and convicted for gambling crimes is influenced by hindsight, tends towards overstatement, and ignores the content of the advice received in response to each event. It also assumes a close nexus between each event and the China arrests that is difficult to reconcile with the periods of time, measuring more than a year, passing between them.

Alleged "disguising" and "concealment" of matters from the Chinese authorities

152. Counsel assisting characterised certain matters, such as the content of the letter to the Chinese authorities and the lack of signage on the residential apartment, as constituting attempts to "disguise" or "conceal" Crown's activities from Chinese authorities, or to mislead Chinese authorities. Allied to this notion seems to be the proposition that anything less than specifically calling attention to the fact that Crown was a gambling company is to be equated with deception or dishonesty.

153. These propositions ignore other, more obvious explanations for the matters said to be instances of attempted deception and also ignore certain realities of operating in China. There are at least four points to make in this regard.

154. First, restrictions on gambling-related activity in China were very extensive.[164] Gambling itself was illegal in China.[165] The vast majority of gambling-related enterprise in China was illegal.[166] So far as gambling matters are concerned, there was a very narrow field within which one could

[164] Exhibit A265 (INQ.500.001.2504).
[165] See China submissions, paragraph 145.
[166] Exhibit A265 (INQ.500.001.2504).

operate with the law, as set out in the authoritative official interpretations of Article 303. This is the environment in which Crown, a casino and resort company, was operating. To minimise the risk of inadvertently trespassing upon wide-ranging restrictions on gambling-related activity (or being mistaken to be trespassing upon such restrictions), it was not irrational or unreasonable not to actively call attention to the fact that Crown was in the business of gambling. Common sense, rather than deception, is a far more probable explanation for the low-key approach that was adopted.

155. Secondly, there were community and cultural sensitivities about anything to do with gambling in China.[167] Further, Chinese patrons had a strong desire that their gambling activity not to be known to authorities.[168] Travelling overseas to spend large sums of money on gambling was apt to make one a target of the Chinese authorities' attention.[169] That was because the corruption crackdown had directed the attention of Chinese authorities to the wealth of private citizens and the fact of gambling overseas was an indicator of that wealth.[170] Once again, these matters are a more likely explanation for the low-key approach adopted than some active attempt to deceive Chinese authorities.

156. Thirdly, an approach whereby Crown did not call attention to Crown's core business was the approach advised by the China experts, WilmerHale and Mintz Group, neither of which would have advised anything that they considered would increase the risk to staff of arrest and conviction for gambling crimes. For example:

(a) In WilmerHale's advice of 9 February 2015 following the February 2015 press conference, they advised: "Employees should also avoid dealing with government officials to the extent they can because of the ongoing anti-corruption campaign."[171]

(b) In WilmerHale's advice of 15 October 2015, they said: "Under the current environment, it appears important that our marketing (and marketing materials) do not expressly promote the casino business".[172]

(c) In Mintz Group's advice of 13 March 2015, they said: "… proceed with marketing efforts, but keep them low-key, with small groups at a time, and no publicity".[173]

[167] T1976/1-8; T2068/25-34.
[168] T1976/1-8; T2068/25-34.
[169] Exhibit A150 (INQ.100.011.0022).
[170] Exhibit A150 (INQ.100.011.0022).
[171] Exhibit M141 (CRL.502.016.8751 at .8753).
[172] Exhibit M234 (CRL.522.001.0076 at .0077).
[173] Exhibit M166 (CRL.522.001.0168 at .0169).

(d) This advice to adopt a "low key" approach was repeated in Mintz Group's advice of 25 March 2015.[174]

(e) In Mintz Group's advice of 28 June 2015 following the South Korean arrests, they said that it was important "not [to] allow activities to become too high profile".[175]

157. Thus, an approach in which Crown did not call attention to the nature of its core business in China was an approach consistent with the advice it was receiving from Chinese legal and security experts, who as mentioned would not be providing advice that they considered increased risk. The advice Crown was receiving is a further, more probable explanation for the low-key approach than an attempt to deceive Chinese authorities.

158. Fourthly, counsel assisting's submissions as to "concealment" and "disguise" appear to assume consciousness of illegal activity. Counsel assisting submitted that that "there is an important distinction between acting *legally* in a low-key way and Crown Resorts deliberately trying to disguise or conceal its activities in China from the Chinese authorities".[176] But counsel assisting accept that the media allegation that Crown knowingly breached the law was false. At the very least, there is a tension between counsel assisting's submissions as to "concealment" and "disguise" and their acceptance that Crown did not knowingly break the law.

159. Turning to the specific matters that appear to be relied on by counsel assisting as instances of concealment or deception:

(a) The letter to authorities – the letter was sent on Crown letterhead. It identified the full names of three Crown entities, including Crown Melbourne and Crown Resorts, and set out the company details of each.[177] As to the form of words used, WilmerHale advised that the letter should contain "one or two sentences on Crown Resorts, such as it is a well-known resort hotel in Australia with a long history".[178] The sentence went beyond that and said: "Crown Resorts is one of the leading hotel, resort and entertainment companies in Australia and is listed on the Australian Stock Exchange". The reference to "entertainment", to which WilmerHale did not advert, is a euphemism for gambling. The formulation is generic and commonly used.[179] The proposition that the letter was some sort of attempt to be less than honest with the authorities has no sound basis.

[174] Exhibit M176 (CRL.522.001.0127 at .0133).
[175] Exhibit M202 (CRL.545.001.0021 at .0023).
[176] T5738/14-17.
[177] Exhibit R18 (CRL.638.001.0005).
[178] Exhibit R15 (CRL.636.001.0411).
[179] T2255/24-34.

(b) Lack of branding of the Guangzhou apartment[180] – this was a residential apartment. The proposition that the lack of Crown branding on a residential apartment indicates deception travels well beyond any reasonable view of the matter. Insofar as counsel assisting rely on Mr Craigie's agreement with the proposition put to him that the Guangzhou apartment was an attempt to disguise from the Chinese authorities the fact that Crown was operating an office in China, Mr Craigie had no contemporaneous knowledge of the Guangzhou apartment (and nor did any other director asked about it). Mr Craigie did no more than agree with a proposition based on a set of assumptions in circumstances where he had no knowledge of how or why the Guangzhou apartment was leased.

(c) The existence of a set of marketing collateral for China different from that used in other jurisdictions[181] – as Mr Craigie's evidence showed, this was simply a matter of compliance, not deception. Mr Craigie drew an analogy with vetting Victorian marketing collateral to remove poker machine imagery.[182] When that is done as a matter of compliance, as it is done, it is not suggested that it involves some sort of disguising of Crown's activities in Victoria. Likewise, there is no basis to find in the existence of a different set of marketing collateral for China some attempt to deceive authorities in that jurisdiction.

(d) The removal of the Crown logo from private jets – to the extent that these jets flew into China,[183] the removal of the Crown logo was consistent with the desire on the part of Chinese patrons for discretion and was consistent with adopting a low-key approach in China, which approach was not irrational or productive of increased risk for the reasons already identified.

160. Michael Chen's proposal to obtain foreign worker permits[184] requires separate attention. The proposal never went anywhere. That suggests Mr Chen thought better of it. There is no doubt that the idea indicates a moment of very poor judgment. Mr Jalland rightly described it as a stupid idea.[185] The idea should never have been conceived. However, the proposition that it was triggered by an intent to deceive Chinese authorities is less clear, and somewhat extreme. It may be that the idea was driven, not by a desire to deceive Chinese authorities, but by a concern to reassure staff (so much is suggested by Mr Chen's description of the proposal as a

[180] China submissions, paragraphs 174, 179.
[181] China submissions, paragraph 194.
[182] T1491/14-20.
[183] See T1136/39-41.
[184] Exhibit M139 (CRL.545.001.0025).
[185] T3296/20-44.

"precautionary measure").[186] Mr Chen, who has not worked for Crown since early 2017 years, did not give evidence as to why he floated this proposal but did not pursue it.

161. The interactions of the three Chinese staff members with police also needs to be dealt with separately. What exactly they said to the authorities who questioned these staff members is unclear. We have Mr BX's direct account of what he told authorities, which included the fact that the company he worked for had casinos in Australia.[187] He also said that his role was processing visa applications.[188] If and to the extent that he lied to authorities, that is of course improper. In that regard, it should be acknowledged that Mr Chen's email to Ms Williamson and Mr O'Connor of 9 July 2015 said that Mr BX told police that he worked for Crown Resorts and assisted in organising leisure trips for customers.[189] If he said this, it was misleading, but that is Mr Chen's third-hand account and it does not coincide with Mr BX's own account in Chinese (as translated).[190] Nor does it match Mr Zhou's account in his email of 9 July 2015 after speaking directly to Mr BX.[191] The email between Mr O'Connor and Mr Felstead of 10 July 2015 reflects Mr BX's direct account.[192]

162. Whatever the true position, it is instructive to try to put oneself in the shoes of a local Chinese staff member. As already noted, gambling was illegal in China. There was likely to be a sensitivity about anything connected with gambling, as Mr Chen's statement to the VCGLR alludes to.[193] This is understandable in circumstances where many gambling-related activities were unlawful in China, including organising PRC citizens to go abroad to gamble outside certain defined circumstances. Mr BX may also have said that he did not organise "groups" of gamblers because he was conscious that the organising of such groups was illegal were the number organised at the one time was 10 or more. In the circumstances, it is far from clear that those Crown executives who read the emails should have concluded that their employee had lied, or that they should take any action by way of informing on their own employee and endangering him. More importantly for present purposes, the ultimate question is the relevance of these events to current suitability. In that regard, Crown submits that the idea that statements made by a local Chinese worker under questioning from authorities speaks to a cultural problem running throughout Crown and persisting to the present day should not be persuasive.

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[186] Exhibit M139 (CRL.545.001.0025).
[187] Exhibit O36 (INQ.950.002.0157).
[188] Exhibit O36 (INQ.950.002.0157).
[189] Exhibit R15; see also T5326/12-17.
[190] Exhibit O36 (INQ.950.002.0157).
[191] Exhibit R33 (CRL.638.001.0655).
[192] Exhibit O28 (INQ.950.002.0140).
[193] Exhibit N28 (INQ.140.020.0247 at 0247_049, 0247_071 and 0247_080).

163. Another point to bear in mind, particularly when assessing the position of the local Chinese staff under questioning from Chinese authorities, is that any charge of gambling offences, even if erroneous, was almost certain to result in a conviction. The unchallenged evidence of Professor Lewis in the class action is that China had at the time of the arrests a conviction rate of 99.92%.[194] The atrocious conditions faced by anyone in Chinese prison are described in harrowing detail by Mr O'Connor in his Federal Court statement.[195] Bearing in mind the near certainty of a charge resulting in a conviction and the conditions that one would face in Chinese prison, and bearing in mind the limited scope within which it was lawful to organise gambling tours, the responses of the local staff to the Chinese authorities under questioning can be seen in a more sympathetic light.

Alleged appreciation of the risk of arrest and conviction for gambling crimes

164. Counsel assisting submitted that "management appreciated that there was a risk of arrest, detention or conviction" for gambling crimes.[196] As noted above, this submission will be dealt with on the basis that it refers to an appreciation of a material risk to staff of arrest and conviction for gambling crimes. The evidence does not establish any such appreciation.

165. Counsel assisting referred to the email from Michael Chen sent on 26 March 2013 in which he referred to the China team "living in constant fear of getting tapped on the shoulder".[197] By "tapped on the shoulder", Mr Chen was referring to the possibility of staff being questioned by Chinese authorities. There is no reason to think that he was referring to staff being arrested and convicted for gambling crimes. He said that it was not uncommon or unusual, whatever the industry, for authorities in China to "show up unannounced and interrogate a staff member". The point that Mr Chen was making in the email was that, while unannounced questioning by authorities did occur in China, Crown had obtained advice that "the activities we undertake in China do NOT violate any criminal laws" and that, as to the possibility of questioning, a protocol had been developed with WilmerHale. Mr Chen drew a distinction between the present position and the position when he worked at Caesars. He said that, when working for Caesars, the team would "duck for cover" from time to time because "we did not have good advice to know that the activities were NOT illegal".

166. His email was principally to say to Mr Felstead that steps had been taken to deal with the concerns of staff about being "tapped on the shoulder": (1) a protocol had been prepared; (2)

[194] Expert Report of Margaret K. Lewis dated 9 December 2019 (CRL.540.001.0006 at p 42 [1.2].
[195] Exhibit R34 (CRL.540.001.0210). [150]-[174] (.0243-.0247) deal with Mr O'Connor's time in prison. His statement also deals with the coercion that was applied to him to get him to sign a statement (in Chinese) ([126]-[149]; .0238-.0243). Further, Mr O'Connor explains how he would have faced the prospect of enduring indefinite detention had he not pleaded guilty (at [175]-[178]; .0247-.0248).
[196] China submissions, paragraph 350(a).
[197] Exhibit M30 (CRL.545.001.0611).

advice had been obtained to the effect that Crown's activities were clearly not illegal. The email was not saying that there was an outstanding concern that needed to be addressed. Relevantly for present purposes, while the email drew attention to the possibility of unannounced questioning by authorities, it did not say that, notwithstanding the clear advice Crown had received that its activities were lawful, staff were at risk of being arrested and convicted for gambling crimes. It was to the opposite effect.

167. Mr Chen's email is relied upon by counsel assisting to suggest Mr Felstead and Mr O'Connor (who received the email) appreciated that staff were at risk of arrest and conviction for gambling crimes. However, the email does not go so far. It falls short of a warning that staff were at material risk of arrest and conviction for gambling crimes notwithstanding the legal advice.

168. Further, the notion that management perceived a material risk of arrest and conviction is contrary to their own actions in travelling to China after the email, as Mr Felstead, Mr O'Connor and Mr Chen frequently did. Quite apart from their concern for the welfare of staff,[198] they would not have travelled to China if they had considered there to be a material risk of arrest and conviction.

169. To the extent that it is suggested that the deferral of travel by senior executives to China in February 2015 was triggered by a fear of arrest and conviction, this is not borne out by the evidence. Mr Felstead rejected that proposition.[199] He said the decision was about keeping a low-key profile and not doing a large road show until the picture was clearer.[200] That is entirely consistent with the resumption of travel to China VIP international executives in May 2015.[201]

Alleged CPH silo in relation to China decision-making

170. To the extent that it is suggested that the decision-making in relation to China was unduly influenced by CPH,[202] that proposition is not sustainable.

171. The key executives involved in decision-making on China were Mr Felstead, Mr O'Connor, and Mr Chen. None of those executives was a CPH representative. Mr Craigie was aware of certain developments in China. He was not a CPH executive.

172. The proposition that CPH had substantial influence in the decision-making in relation to China relies on overstating the role of Mr Johnston. It involves characterising the VIP Working

[198] See Exhibit M136 (CRL.522.001.0572).
[199] T1195/18-21.
[200] Ibid.
[201] M180 (CRL.505.010.4316); M181 (CRL.505.010.4318); T1374/22-37.
[202] China submissions, paragraphs 11(c), 311, 356.

Group as "Mr Johnston's group".[203] No witness accepted that "CPH Working Group" was an appropriate label for the "VIP Working Group".[204] Attendees of the VIP Working Group were Mr Felstead, Mr O'Connor, Mr Chen, Mr Theiler; and, less frequently, Mr Barton, Ms Maguire, and Mr Kunaratnam. None of those individuals was a CPH representative. The CPH representative who regularly attended that group was Mr Johnston, and he had been a director of Crown Resorts since 2007. There is some evidence that Mr Kady and Mr Bennett from CPH attended one of the early meetings, but it does not go further than that. Everyone else attending that group worked only for a Crown entity.

173. The evidence shows that the key decisions in relation to China were made by Mr Felstead, Mr O'Connor, and Mr Chen. Mr Johnston was aware of certain events and was consulted about certain matters. Mr Johnston's evidence was that he attended the VIP Working Group in order to lend assistance on issues where he had special expertise,[205] and there was no serious challenge to this evidence. The suggestion that he directed the course taken in China in the exercise of supposed CPH control overstates his role and is not supported by the evidence.

174. As to the overall strategy to be followed in China, that may have been discussed at the VIP Working Group, but it made no decisions. The decision to adopt the platform junket strategy was made by the board on the recommendation of Mr Craigie.[206]

175. As to the effect of the VIP Working Group on reporting lines, although it appears that the reporting lines that Mr Felstead followed were affected to some extent by the fact that Mr Johnston was an attendee at the VIP Working Group, this should not be overstated. It is certainly not correct to say that the VIP Working Group was itself a separate reporting line or that Mr Felstead reported to the VIP Working Group.

176. Moreover, there was certainly no intention to affect reporting lines. The evidence of Mr Johnston and others, as quoted by counsel assisting at T5710/8 to T5711/23, was that the idea behind the group was that Mr Johnston could lend his particular expertise to guide and assist the VIP executives in the execution of their duties. There is no evidence that the VIP Working Group was established for anything other than a bona fide purpose.

Alleged failure to examine the facts, matters, and circumstances pertaining to China

177. The events in China are the subject of a class action in the Federal Court. That action alleges awareness on the part of officers of Crown of the risk of arrest and conviction of staff. It alleges knowledge of illegality and knowledge that Crown's operations were identified as a

[203] China submissions, paragraph 356.
[204] Compare T1460/5-7.
[205] T2935/22.
[206] T1494/16-25.

target in the February 2015 press conference. It also alleges misrepresentations as to Crown's risk-management processes. It relies on the arrests of the South Koreans.

178. Thus, many of the matters examined in this Inquiry are also examined in the class action.

179. The process of responding to the class action has been going on since early 2017. As part of responding to the allegations in that action, Crown and its advisers have reviewed at least 264,000 documents. They have conducted countless interviews. They have consulted various experts. Witness statements and submissions have been prepared.

180. In responding to the class action, Crown has investigated the facts, matters, and circumstances pertaining to the China arrests in detail. The results of that work were conveyed to the board by Mr Murphy of MinterEllison on a regular basis.[207] Because of the pendency of the class action, and legal advice, this is the form that all board members agreed that the investigation of the china arrests (or "post mortem" as Mr Brazil described it) would take, and that course of action was agreed and on track on and from February 2017.[208]

181. Ms Coonan gave evidence that Mr Murphy's reports to the Board concerning the issues in the class action extended over a lengthy period and involved at least twenty reports. She confirmed that he conveyed to the Board things about how the evidence was falling out, and also that risk management was looked at as part of the class action reporting process.[209]

182. Separately, there has been a VCGLR investigation. That investigation has covered broadly the same matters as this Inquiry's examination of China, following a similar structure. Again, in responding to that investigation, Crown has reviewed thousands of documents, conducted many interviews, observed current and former employees being interviewed, prepared submissions, and responded to various questions from the VCGLR.

183. The VCGLR provided a draft report of its investigation to the board in June 2018[210] and a further version was provided to the board in May 2019.[211]

184. MinterEllison has reported to the Crown board as to these two streams – the class action and the VCLGR investigation – on a regular basis for many years, as can be seen from the board minutes.

185. This Inquiry has of course gone over the same ground in detail once again.

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[207] T4398/1-3; T4604/45-T4605/1-19.
[208] T3780/37-45.
[209] See Helen Coonan's evidence at T4604-4605.
[210] Board pack dated 20 June 2018 (CRL.506.007.6384 at .6638 to .6683).
[211] Exhibit MFIB.

186. In these circumstances, the idea that Crown has not investigated what happened in China, or that it has not had the ongoing benefit of investigations, is not credible.

187. The remark that investigations have been "left to the regulators"[212] assumes, wrongly, that the subject of an investigation sits passively by and can respond to the investigation without conducting any investigation of its own.

188. The allied proposition that the root cause of the failures has not been appreciated or assessed[213] is also unsound. The root cause of the failures is clear: the misjudgement entailed in thinking that risks could be handled at an operational level without escalating them to the risk-management committees or the wider board. Ms Coonan said exactly that in her evidence.[214] It was not suggested to her that the root cause lay anywhere else.

189. Finally, in relation to the criticism of Ms Siegers for not "conduct[ing] any review of the risk management failures which led to the China Arrests",[215] there is no evidence that the risk-management structures themselves were deficient in any substantial way. As mentioned above, the evidence of Mr Stuart as to the structures in place at the time appears to have been accepted by counsel assisting. The critical failing was the failure to utilise those structures at all; to expose developments to wider assessment through those structures. In any event, the risk-management structures in place at the time have been looked at in detail, particularly through the class action (which alleges failures in that regard), and those structures have been improved in various respects so that they reflect best practice. By way of example:

(a) The position of Group General Manager Risk and Audit (which is occupied by Ms Sieger) was created to establish a group audit and risk function.[216]

(b) The papers of the Crown Resorts Risk Management Committee now include an executive summary which provides the committee with an overview of all material events that have taken place since the last meeting of the committee.[217]

(c) The Crown Resorts Risk Management Strategy, as at June 2020, provides for a "three lines of defence" model which, as the first line of defence, prioritises risk ownership by the CEO and executives[218] and involves a "bottom up" approach to risk management which requires each business unit to review and update its risk profile.[219]

[212] China submissions, paragraph 362.
[213] China submissions, paragraph 362.
[214] T4423/24-33.
[215] China submissions, paragraph 362.
[216] T2480/28-30.
[217] T2485/32-38.
[218] Exhibit W32 (CRL.668.001.0019 at .0026).
[219] Exhibit W32 (CRL.668.001.0019 at .0038).

(d) Under the Crown Resorts Risk Management Policy introduced in February 2020, each Crown business is responsible for maintaining a risk register which catalogues material risks to each business, and the preparation and maintenance of the risk registers is the responsibility of each Crown business and is to be reviewed on a regular basis by senior executives and the Crown Risk Management Committee.[220]

190. Crown is also in the process of considering and implementing further improvements to its risk management frameworks.[221]

B6. The aftermath of the China arrests: remedial steps

191. Following the China arrests, the board took the following steps:

(a) The board immediately ceased operations in China.

(b) The board authorised a full review of all other overseas operations by Crown, and that review was undertaken in the first part of 2017.[222]

(c) The board agreed that there should be a post-mortem investigation of what had gone wrong in China, but on legal advice it considered that the investigation should be undertaken by the legal team conducting the class action, with the assistance of company representatives, as the class action traversed the same factual issues.[223]

(d) There were several changes at the highest level of the company. The CEO, Mr Craigie, departed by agreement. Mr Rankin also stood down as Chairman. From the evidence given by Mr Packer, it can be inferred that this was caused by the fact that the major shareholder had lost confidence in his stewardship as Chairman, and his lack of oversight and involvement in relation to matters that transpired in China.[224]

(e) In mid-2017, Ms Siegers was engaged to carry out a complete overhaul of the risk management processes and structures within Crown. She directed particular attention to the steps that could be taken to embed a culture whereby all significant events and risks were brought to the attention of the relevant risk management processes and committees.[225]

(f) The board implemented new processes relating to the review of junket relationships. All existing junket relationships were reviewed and many were terminated. Further due

[220] Exhibit W35 (CRL.668.001.0046 at .0048).
[221] CB6 (CRL.695.001.0004).
[222] Exhibit BJ58 (CRL.506.006.5405 at 5412).
[223] T4397/20-29; T4407/4-9; T4604/34-4605/19.
[224] T3602/39-43; T3609/6-9.
[225] T2489/3-16.

diligence measures were put in place together with new approval and review processes. These matters are detailed in later submissions.

B7. Effect on suitability

192. Counsel assisting submitted that the facts and circumstances pertaining to the China arrests are directly relevant to suitability for the following reasons:[226]

(a) First, they submitted that the conduct of management and directors in relation to the China arrests provides evidence of Crown's lack of compliance with the governance and risk-management structures and functions within Crown, both in the context of its overseas operations and more broadly across the organisation. They submitted that the evidence in relation to the China arrests demonstrates serious and systemic failures of those structures and frameworks, for which the board was responsible.

(b) Secondly, they submitted that the evidence in relation to China arrests provides an indication as to how Crown Resorts and its leaders may respond to dynamic and changing circumstances that are inherent within its business. They submitted that this is underscored by the current board's strong public defence of Crown's conduct in China in the advertisement, in a manner that they said failed to have due regard to the facts and circumstances that led to the China arrests.

(c) Thirdly, they submitted that the evidence in relation to the China arrests exposes the culture within Crown Resorts and how it directly has an impact on the manner in which the business is conducted and decisions are made. They submitted that the culture within Crown exposed it and its staff to risk and led to the failure to respond adequately in the face of escalating risk. Further, they said it demonstrates the manner in which the governance structures of Crown were compromised by the influence of its controlling shareholder, which resulted in the failure to recognise and report the escalating risks that culminated in the arrests.

193. There are two central answers to these submissions. First, counsel assisting's submissions do not take any account of the changes, including in personnel and procedures, that have occurred since the China arrests. They do not take account of Crown's cessation of operations in China and its comprehensive review of all its overseas operations. Proceeding on that basis, they assume that what happened in China, more than four years ago, is both a proxy for the position as at the commencement of operations in Sydney and a reliable indicator of what may occur

[226] T4843/35-T4844/15.

at some later point in the future. Secondly, counsel assisting's submissions rely on very substantial propositions that have been shown above to be unsound.

194. Each of counsel assisting's three reasons is addressed in turn below. In assessing those reasons, it is necessary to bear the following general observations about suitability in mind:

(a) first, because Crown's operations have not commenced, the real question is what the position will be as to its suitability will be when operations commence;

(b) secondly, the focus of the CC Act is on judging suitability by reference to the licence holder's character, honesty and integrity, not mistakes that have been made and then conscientiously addressed;

(c) thirdly, any sound and balanced assessment of suitability must take account of reforms directed to remediating failings and to the prospect of further improvements being made, including through consultation with regulators;

(d) fourthly, insofar as reputation is relevant, it is not to be considered by reference to false allegations in the media, nor by applying exceptional standards not applied to other casinos, and not applied by regulators in their oversight of casinos, but by what has been done to fix mistakes.

Counsel assisting's first reason

195. The first reason given by counsel assisting is that the conduct of management and directors in relation to the China arrests provides evidence of Crown's non-compliance with its governance and risk-management structures.

196. It is accepted that compliance with risk-management structures did not occur in the sense that important developments in the operating environment in China were not ventilated for consideration and assessment through those structures. It is accepted that this was a serious failing. It is accepted that it led to the board being denied control of the risk appetite of the company in relation to China.

197. But those matters do not disclose any failures by the board to implement proper risk management structures, nor any substantial defect in the risk management structures themselves. Rather, the problem was that individuals who possessed relevant information did not engage with those structures. That problem has been acknowledged and addressed. Crown is acutely aware that an approach whereby an attempt is made to manage risk "on the ground", not engaging the risk-management structures, is an erroneous approach apt to lead to mistakes. That is now notorious. The mistake will not be repeated. The China arrests were a most serious lesson in that regard.

Counsel assisting's second reason

198. The second reason given by counsel assisting is that the evidence in relation to the China arrests provides an indication as to how Crown and its leaders may respond to dynamic and changing circumstances that are inherent within its business. Again, however, this assumes that no lessons have been learned from the China arrests. It assumes that no reforms have been undertaken. That is simply not the case.

199. Counsel assisting attempt to bolster the submission by reference to the public defence of Crown's conduct in China in the advertisement. So far as it concerned China, that defence refuted the false allegation that Crown had knowingly broken the law in China. Counsel assisting has accepted that this allegation of criminal conduct by the company was false and rightly refuted.

200. Counsel assisting argued that Crown was remiss in focusing its advertisement solely on the false allegation that Crown knowingly breached Chinese criminal law, and deciding not to deal with the failures by management to properly address the warning signs that appeared. There was nothing unreasonable about Crown's decision to focus on the most egregious allegation of deliberate criminal conduct, and it was entitled to make that judgement. Moreover, where there was a class action on foot, it would have been irresponsible and potentially damaging to shareholder interests for Crown to make public statements to the effect suggested by counsel assisting.

201. As to the remarks in the advertisement that called into question the objectivity of the former employee, on balance, they are not the way in which Crown would in the future go about addressing the allegation that triggered those remarks. However, that does not excuse the allegation that triggered the remarks, which was that Crown tried to buy the employee's silence. That was a serious allegation and false one. Further, reasonable minds can differ as to the appropriateness of the remarks.[227]

Counsel assisting's third reason

202. The third reason given by counsel assisting has two components. The first is that the evidence in relation to the China arrests sheds an unfavourable light on the culture of Crown. It is accepted that repeated failures to draw matters to the attention of the risk-management committees are properly characterised as a cultural. Crown accepts and agrees with that criticism. Again, however, that failing has been clearly identified and will not be repeated. Under Ms Siegers' supervision, steps were promptly put in place to ensure that the culture

[227] See Mr Jalland's view is his second statement dated 14 September 2020 at [30].

changed so that matters were brought to the attention of the risk-management committees. Therefore, these failings are historical and do not go to suitability.

203. Insofar as counsel assisting has in mind, in their reference to "culture", alleged instances of deception and dishonesty, or alleged failure to comply with the spirit of the law, contentions of that kind have been addressed above and do not have any sound basis.

204. The second component to counsel assisting's third reason is that the evidence in relation to the China arrests demonstrates the manner in which the governance structures of Crown were compromised by the influence of its controlling shareholder, CPH. That submission has already been addressed. For the reasons given above, the idea that what happened in China is attributable to CPH falls flat on several levels, including on a simple examination of the personnel involved and the evidence as to the nature and extent of their involvement. Crown does accept that the VIP Working Group appears to have had some effect on the way in which Mr Felstead reported matters upwards, but that effect should not be overstated. Moreover, it is now a historical matter only.

Other asserted suitability concerns

205. It was suggested by counsel assisting that, contrary to the advertisement, Crown did not in fact rely on legal advice. It was suggested that, because not all board members were aware of the advice at the time, Crown did not in fact rely on it.[228] The contention is specious. The overwhelming evidence is that all relevant members of management relied on the advice received. That being the case, there is no difficulty whatsoever with the board, having investigated the matter, stating that Crown relied on advice. That statement is entirely correct, regardless of the fact that some board members had no knowledge of the advice. For completeness, it should also be noted that this contention by counsel assisting is a new one and it was not put to directors that the statement in the advertisement was false for the reason now suggested.

206. It was also suggested that the board itself failed to have regard to, or respond appropriately to, the warning signs in China.[229] That submission lacks any factual basis for the reasons already explained. Importantly, it is belied by counsel assisting's submission that, had the board been informed of the matters that ought to have been escalated to it, it would have put in place strategies to avoid the China arrests.[230] Not only does that submission implicitly accept that

[228] China submissions, paragraph 346.
[229] China submissions, paragraph 352.
[230] Made in the same paragraph: see China submissions, paragraph 352.

the material events were not brought to the board's attention, it also accepts that the board would have acted properly and responsibly if the material events had come to its attention.

B8. Honesty and integrity of relevant witnesses

207. Insofar as Mr O'Connor and Mr Craigie are concerned, there is no criticism of their credit or integrity. There is an allegation made specifically against Mr Felstead that he acted or failed to act "without justifiable reason". But before dealing with that specific allegation against Mr Felstead, it is necessary to say generally in relation to all three of Mr Felstead, Mr O'Connor, and Mr Craigie. In Crown's submissions, each of them should be accepted as an honest witness who gave frank evidence in which he acknowledged mistakes and shortcomings. It was not put to any of them that they acted in bad faith or dishonestly. Nor was it put to them that they consciously adopted a business model that put staff in China at material risk of arrest and conviction for gambling crimes. A submission of that kind is now made based on a number of propositions which are unsustainable, but in any event it was never put to these witnesses that they were involved in the adoption or pursuit of such a business model.

208. It is apparent that each of these individuals placed heavy reliance on Mr Chen and his expertise in relation to China.[231] Mr Chen worked out of Hong Kong and frequently travelled into mainland China.[232] He was the person directly in charge of all operations in China.[233] He reported to Mr O'Connor and through him to Mr Felstead,[234] but his superiors had many other responsibilities.[235] He spoke Mandarin.[236] He dealt with staff on the ground in mainland China.[237] He had worked in or around China for a considerable time.[238] Before he worked for Crown managing its China operations, he worked for Caesars managing its China operations.[239] Insofar as there are issues concerning the questions asked of WilmerHale, the business law advice, the use of Mintz Group, and other issues arising in relation to on-the-ground operations in China, these were matters managed directly by Mr Chen.[240] The whole of the evidence makes it very clear that Mr O'Connor and Mr Felstead, in particular, placed very heavy trust in Mr Chen.[241] Given his experience in relation to China, and his frequent email correspondence and other reporting as to what was happening in China, there were reasons

[231] Exhibit O67 (CRL.540.001.0114 at .0123-.0124) at [21]-[22].
[232] Exhibit R34 (CRL.540.001.0210 at .0216) at [31].
[233] CRL.540.001.0250 at .0252 at [8]; Exhibit R34 (CRL.540.001.0210 at .0216) at [30].
[234] CRL.540.001.0250 at .0253 at [15].
[235] Exhibit R34 (CRL.540.001.0210 at .0214) at [23]-[24]; Exhibit O67 (CRL.540.001.0114 at .0116) at [7].
[236] CRL.540.001.0250 at .0252 at [5].
[237] CRL.540.001.0250 at .0252 at [8].
[238] CRL.540.001.0250 at .0253 at [8].
[239] CRL.540.001.0250 at .0252 at [8].
[240] CRL.540.001.0250 at .0256 at [22].
[241] Ex R34 (CRL.540.001.0210 at .0216) at [31]; Ex O67 (CRL.540.001.0114 at .0123-.0124) at [21]-[23].

for his superiors to think that he was managing issues arising in China competently and diligently and that he was the best person to manage the risks of operating in China.

209. As mentioned, a specific submission is advanced by counsel assisting in relation to Mr Felstead (and also Mr Johnston). The submission is that they acted or failed to act "without justifiable reason".[242] That is a grave allegation to make. It also seems to be suggested that those men breached their duties as officers of Crown. No allegation of that seriousness was put to either witness in connection with the events that preceded the China arrests. Crown submits that each witness gave forthright and honest evidence. Mr Felstead forthrightly acknowledged his mistakes in relation to the management of events in China.

210. The allegation made by counsel assisting rises well above the evidence. It has explained above how the matters operating on the minds of Mr Felstead and Mr Johnston (and others) meant that the decisions they took at the time, while in hindsight serious misjudgements, were far from irrational or without any basis. In particular, the advice they received at the time clearly influenced their thinking. Misjudgements were made but they acted in good faith and for a proper purpose, and believed they were acting in the best interests of Crown.

[242] China submissions, paragraphs 306-307.

C. JUNKETS

C1. Introduction

211. The ultimate issues put forward by Counsel Assisting for the Inquiry to determine in relation to junkets are set out in the Submissions of Counsel Assisting; The Media Allegations on Junkets and Visa Allegations (**CA**) at [280]ff. In short, Counsel Assisting contend that "Crown Resorts' due diligence and decision-making in relation to junket operators has rendered it (and the Licensee) unsuitable, and the limited suite of proposals that Crown Resorts have put forward to address shortcomings in the junket due diligence process do not make it suitable" (**CA [280]**). For the following reasons, Crown submits that the Inquiry should not reach that conclusion.

C2. The present position

212. The ultimate question for the Inquiry is whether Crown is ***presently*** an unsuitable person to be concerned in the operation of the Barangaroo restricted gaming facility. That being so, it is important to approach Counsel Assisting's submissions concerning junkets with an understanding of the ***present*** position. There are five matters of particular significance.

213. *First*, as Ms Helen Coonan made clear in her evidence (**T4557–4559**) the period of Crown's suspension of its junket relationships in August 2020 was, in part, to allow a decision to be made whether Crown wished to continue dealing with junkets at all; and only if the answer was in the affirmative, how to best structure Crown's future due diligence, approval and review processes. The first decision has now been made. At a Board meeting on 11 November 2020, the Board resolved:

> to procure that each of Crown Melbourne, Crown Sydney and Crown Perth:
>
> 1. *permanently cease dealing with all junket operators, subject to item 2;*
> 2. *promptly consult with their respective gaming regulators in Victoria, New South Wales and Western Australia to ascertain their respective views before implementing a decision to cease dealing with junkets having regard to the terms of existing agreements in place with each of those gaming regulators and competitive neutrality principles and to determine whether they have any objections to Crown taking the decision at 1 above; and*

any future dealings with junket operators would only occur with a Junket Operator if that junket Operator is licensed or otherwise approved or sanctioned by all gaming regulators in the States in which the Company operates.[243]

214. In short, following consultation with the Victorian, New South Wales and Western Australian regulators, and subject to any objection by them, Crown has resolved permanently to cease dealing with all junket operators. It will only do so again if a junket operator is licensed, approved or otherwise sanctioned by all gaming regulators in the States in which Crown operates.

215. *Secondly*, as accepted by Counsel Assisting (**CA [255]–[279]**) Crown's due diligence processes with respect to junkets have evolved and improved over time. For the reasons explained below, the Inquiry should not make all of the findings about those processes, or particular junket operators or other persons, sought by Counsel Assisting. However, Crown accepts that there have been shortcomings in its junket due diligence processes. Crown also accepts that, in their most recent form, those processes do not eliminate all risks associated with junkets. One reason that is so is because a casino operator can never have full information, and usually will have significantly less information than that which is available to regulators and law enforcement agencies. Consequently, there is a question whether Crown or other casino operators should continue to deal with junkets in the future absent licensing, approval or sanction of junkets by regulators.

216. *Thirdly*, in August 2020 Crown decided to suspend all of its junket relationships until 30 June 2021 to allow a comprehensive review of all junket relationships.[244] In fact, since 29 March 2020 all travellers arriving in Australia from overseas have been required to isolate in mandatory quarantine accommodation for 14 days from their arrival, subject to limited exceptions.[245] In the same month, Crown closed all its gaming activities and a significant part of its non-gaming operations at Crown Melbourne and Crown Perth.[246] Accordingly, it has in practice been impossible since March 2020 for junkets to operate at Crown Melbourne or Crown Perth. This fact does not deny the genuineness of Crown's suspension. To the contrary, it means that in practice junket operations ceased at Crown's Australian casinos many

[243] (CRL.758.001.0006) [Not currently tendered]. As at the date of these submissions, minutes of the board meeting held on 11 November 2020 were in draft form, however the resolution regarding junkets was in fact passed by the board and formed the basis of the ASX announcement on 17 November 2020 (CRL.748.001.0013) [Not currently tendered]]
[244] The statement of issues at [20] appeared to cast doubt on whether this was, in fact, the purpose of the suspension. No submission is made to that effect in the submissions of Counsel Assisting. There is no basis for the doubt suggested in the statement of issues: see, eg, Exhibit AE17 at .0003; Exhibit AE18 at .0017; Exhibit AB58 at .0002; statement of Guy Jalland dated 14 September 2020 (Exhibit CH1) at [88]; Jalland T 3328; Coonan T 4557, 4562–4563.
[245] In Victoria, see Direction and Detention Notices issued in Victoria from midnight 28 March 2020. In Western Australia, see *Self-Quarantine Following Overseas Travel Directions (No 2) 2020* (WA), commencing 10.30pm on 28 March 2020.
[246] See Crown ASX release dated 23 March 2020 [Not currently tendered].

months ago. In circumstances where junkets were unable to travel to Australia in any event, it is unsurprising that junket operators were not immediately notified of the suspension; in any event, they were notified at the end of September (**ex AJ** at .0007). So far as the suspension was to allow consideration of whether, as Ms Coonan said, Crown wishes to continue dealing with junkets at all, the period of the suspension has allowed that to occur

217. *Fourthly*, in parallel with these steps, Crown was undertaking a thorough consideration of how to improve its junket **(**and persons of interest) due diligence processes. Notwithstanding the decision referred to above, this work will continue and will still have practical value because it may assist regulators in considering the course they want to take in the future.

218. The Deloitte Junket Due Diligence and Persons of Interest Process Review (**ex BM9**) that Crown commissioned has identified a series of matters which Crown accepts have been shortcomings in its junket due diligence and persons of interest review processes. The Board resolved to implement the recommendations at its meeting on 18 August 2020 (**ex AE18** at .0017) and a work plan was put before the Board for its meeting on 10 September 2020 (**ex CB6**) which the Board endorsed (**ex AB58** at 0.0002). The present status of the implementation of those recommendations is shown by] an internal management document titled '[Crown and Minters are preparing an update on the status of the various Deloitte recommendations regarding junkets, as counsel for Crown said during oral submissions we would do so in our written submissions (although we note that many of the recommendations will now be deferred due to the decision to cease dealings with junkets)].

219. In accordance with Deloitte's recommendations, among other things:

(a) due diligence would expand to those who finance, guarantee, represent and otherwise participate in the management or profits of a junket;

(b) Crown would seek to improve its ability to recognise patterns and associations, and draw together connective threads, including by seeking declarations from junkets, increasing the sources of due diligence material, better cross-referencing information against internal databases, improving training and guidance (including defined escalation points and triggers for further investigation), engaging third party investigation support in appropriate cases, and improving the systems for retention and recording of due diligence decisions;

(c) Crown's compliance and AML teams would have greater input into any due diligence process for junkets; and

(d) Crown would seek to engage more proactively with law enforcement and other agencies as part of its due diligence processes.

220. Of course, having regard to the Board's recent resolution, the extent to which these processes will fall to be applied will depend on (a) whether a regulator licensing, approval or sanction regime comes to apply and (b) the interaction between any such regime and casino operator due diligence. These are matters which will be discussed with relevant regulators.

221. *Fifthly*, prior to the Board's 11 November 2020 decision, a decision was taken that the ultimate decision as to whether Crown would begin or continue a junket relationship would be made by the new Head of Compliance & Financial Crimes. In the new organisational structure to be implemented by Crown, that position will have a direct reporting line to the Board: see the statement of Kenneth Barton dated 16 September 2020 (**ex CB1**) at [80] and Mr Barton's 10 September 2020 board paper (**ex CB6**); see also Barton **T 2861–2**. As at 17 November 2020, a contract of employment had been provided to the proposed appointee.[247] The role of this person so far as junkets are concerned may be affected by the recent decision: for instance, if there is no dealing with junkets, the issue of the ultimate decision-maker does not arise.

222. Any assessment of Crown's present suitability in light of the matters identified by Counsel Assisting must take into account Crown's recognition of shortcomings in its junket due diligence processes and the steps identified above. Even before the Board's decision of 11 November 2020, those steps were not fairly described as "too little too late" or "largely tokenistic" (**CA [290]**). Those descriptions certainly cannot be applied following the Board's decision. To the contrary, the steps identified above are reflective of significant and proper steps being taken by Crown to grapple with the issues the subject of this Inquiry.

C3. Context

The importance of context

223. Crown agrees that, at all material times, a statutory objective in the casino regulation legislation in New South Wales and Victoria has been to ensure that the management and operation of a casino remain free from criminal influence or exploitation (**CA [40]**). That object is set out in s 4A of the *Casino Control Act 1992* (NSW) (**NSW CCA**) and s 1 of the *Casino Control Act 1991* (Vic) (**Vic CCA**). However, that object is pursued in a number of more particular ways. In New South Wales, one is s 13A of the NSW CCA. Crown makes three broad submissions about this provision.

[247] Sixth Statement of Kenneth McRae Barton dated 17 November 2020 (CRL.744.001.0001) at [33].

224. *First*, s 13A(1) provides:

> The Authority must not grant an application for a restricted gaming licence unless it is satisfied that the approved applicant, and each close associate of the approved applicant, is a suitable person to be concerned in or associated with the management and operation of the Barangaroo restricted gaming facility.

Crown is a "close associate" of Crown Sydney (NSW CCA, s 3(1) read with *Gaming and Liquor Administration Act 2007* (NSW), s 5).

225. Section 13A(2) commences: "For that purpose, the Authority is to consider whether". There then follow a number of specified matters. The matter specified in para (g) is: "any of those persons has any business association with any person, body or association who, in the opinion of the Authority, is not of good repute having regard to character, honesty and integrity or has undesirable or unsatisfactory financial sources".

226. It follows that in determining whether Crown Sydney was a "suitable person" within the meaning of s 13A at the time of the grant of the restrict gaming licence, it was necessary for ILGA to ***consider*** whether Crown or Crown Sydney had any business association with any person who, in ILGA's opinion: was not of good repute having regard to character, honesty and integrity; or had undesirable or unsatisfactory financial sources. The fact that Crown or Crown Sydney had such an association may or may not have rendered Crown Sydney unsuitable, depending on the circumstances. Those circumstances might include, for instance: the nature and significance of the association; what knowledge Crown or Crown Sydney had of the person's repute having regard to character, honesty or integrity, or their financial sources; and what actions Crown or Crown Sydney took upon acquiring such knowledge. Those matters would fall to be assessed in light of contemporaneous regulatory expectations and industry practice.

227. The same applies in determining, for the purposes of s 23 of the NSW CCA, whether Crown Sydney is "considered to be no longer a suitable person to give effect to the licence and this Act" (s 23(1), "grounds for disciplinary action" para (d)). It may be accepted that this is informed by s 13A. Likewise, s 13A informs the content of the obligation imposed on Crown Sydney by cl 14(a) of the VIP Management Agreement (**ex F36**) "to ensure that at all times during the term of the Restricted Gaming Licence it remains a suitable person to give effect to the Restricted Gaming Licence and the Gaming Legislation". In each case, it is relevant to ***consider*** whether Crown or Crown Sydney has any business association with any person, body or association who: is not of good repute having regard to character, honesty and integrity; or has undesirable or unsatisfactory financial sources. But whether the existence of such an

association leads to a conclusion that Crown Sydney is no longer a "suitable person" depends on circumstances of the kind mentioned above. That is so *a fortiori* when considering whether a past business association leads to this consequence.

228. Contrary to **CA [44]**, none of these provisions imposes an absolute obligation on Crown or Crown Sydney to ensure that it only has business relationships with persons of good repute.[248] Such an absolute obligation would be breached if ***in fact*** a person with whom Crown has a business relationship is not of good repute, even if is entirely reasonable that Crown does not know this. That fact would not reflect on Crown's character, honesty or integrity. The fact of such a relationship is a matter to consider in determining whether Crown Sydney is a suitable person but that consideration must take into account all of the circumstances.

229. Further, contrary to the submissions of Counsel Assisting at **T 5040** and **C [48]**, it is not a necessary implication of the statutory framework that a casino operator must deal only with those that it is satisfied are of good repute. That is not stated expressly. Nor does it necessarily follow from the statutory scheme. To require positive satisfaction in the case of every business association that the counterparty is of good repute makes no allowance for differences in circumstance of the kind referred to above. That is one reason why Counsel Assisting's reference to junket operators having an "onus" to demonstrate good repute, or a casino operator having an "onus" to be satisfied that a junket operator is of good repute, is inapt (cf **T 5828–9**).

230. *Secondly*, it is important to focus on the language of s 13A(2)(g) of the NSW CCA (which is likewise to be found in the equivalent provisions in ss 9 and 28A of the Vic CCA). The provision directs attention to two separate matters for the opinion of ILGA about a person with whom the proposed licensee or a close associate has a business relationship: (1) whether the person "is not of good repute having regard to character, honesty and integrity"; and (2) whether the person "has undesirable or unsatisfactory financial sources".

231. The focus in the first matter on "good repute" should not be taken to suggest a focus on reputation, as opposed to the objective facts. It may be accept that, as a matter of ordinary language, a person will not be of good repute if their reputation is poor, even if in fact they are of good character.[249] As Lord Denning put it (albeit in another context): "A man's 'character', it is sometimes said, is ***what he in fact is*** whereas his 'reputation' is ***what other people think***

[248] This issue was raised in questioning of a number of directors, with varying degrees of precision (**CA [48] fn 65**). For instance, it was put to Mr Johnston that one of the licence conditions on Crown Sydney is to ensure that its business associates are of good repute (**T 3079/10–15**). For the reasons explained, this was not quite accurate.
[249] See, eg, *Re T & Director of Youth & Community Services* [1980] 1 NSWLR 392 at 395; *Real Estate and Business Agents Supervisory Board v LJW* [2011] WASCA 35 at [28]–[30].

he is."[250] However, that is not the focus of s 13A(2)(g). It requires consideration of whether the person is not of good repute "having regard to character, honesty and integrity". These words suggest a focus not upon reputation but upon what is in fact the case. That tends to be confirmed by the second matter identified: the focus is on whether the person in fact has undesirable or unsatisfactory financial sources, not merely on what is generally thought about the person's financial sources. These are the matters that ILGA must consider.

232. In this light, the correct approach to s 13A(2)(g) is that ILGA must consider the reputation of a business associate in light of their actual character, honesty and integrity. In this way, ILGA may conclude that a business associate who has a spotless reputation is, in fact, not of good repute because of their actual character, honesty and integrity, which may not be generally known. Conversely, ILGA may conclude that a business associate's poor reputation is baseless in light of evidence about their actual character, honesty and integrity. That is necessary to avoid the vice identified by Sir Lawrence Street in his 1991 report (**ex A44** at [7.1.5]):

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

233. An approach based on reputation in the sense of "fame" or "public perception" may forever disqualify a potential business associate of a casino operator who is in fact of sound character but who is, through no fault of their own, the subject of unfounded rumours and allegations which they cannot disprove. Indeed, competitors of such a potential business associate could gain an advantage by starting or perpetuating such rumours and allegations.

234. The Inquiry should not accept the submission by Counsel Assisting that the words "having regard to" should be equated with "including", such that poor reputation may be considered alone (**T 5824–5825**). That is simply not what the statute says: to consider a person's poor reputation without considering the persons' character, honesty and integrity is simply not to consider repute ***having regard to*** character, honesty and integrity. That is not contradicted by a case such as *Real Estate and Business Agents Supervisory Board v LJW*,[251] which draws the distinction between "character" and "repute" in the context of a provision directing attention to "good character and repute" (cf **T 5825**). That is a quite different formulation than the one used in the NSW CCA. A regulator which must consider character ***and*** repute must consider both character and reputation; a regulator which must consider repute ***having regard to*** character is charged with a different task, as explained above.

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[250] *Plato Films Ltd v Speidel* [1961] AC 1090 at 1137–1338 (original emphasis). See also *Prothonotary of the Supreme Court of NSW v P* [2003] NSWCA 320 at [17(8)].
[251] [2011] WASCA 35 at [28]–[30].

235. The Inquiry therefore should not proceed on the basis that, at all times, a casino operator in Victoria or New South Wales has had an obligation not to deal with any person who has a poor reputation. To the contrary, the legislative scheme requires ILGA, and by implication a casino operator, to assess a business associate's repute by reference to their actual character, honesty and integrity. That is a task requiring an evaluative judgement. The way in which rumour, allegation and reports are to be balanced may be contestable. The appropriate balancing will be guided by contemporary regulatory expectations and industry practice. That is another reason why Counsel Assisting's reference to junket operators having an "onus" to demonstrate good repute, or a casino operator having an "onus" to be satisfied that a junket operator is of good repute, is inapt (cf **T 5828–9**).

236. *Thirdly*, as a consequence of the first two points, in considering whether the matters identified by Counsel Assisting render Crown an unsuitable person to be concerned in the operation of the Barangaroo restricted gaming facility, it is necessary to consider those matters in their proper context. Among other things, it is important not to apply, retrospectively, an exceptional standard to Crown which is substantially higher than the standard contemporaneously applied by regulators and the industry generally. Crown ought not to be regarded as presently unsuitable on the basis that it had a relationship with a person who is now identified as not being of good repute in the statutory sense in circumstances where Crown acted, at the time, consistently with regulatory expectations and industry practice. It is of course open to this Inquiry to recommend that a higher standard be applied prospectively. But it would be fundamentally unjust to apply such a new standard as the yardstick by which Crown's past conduct should be measured.

Regulatory and industry context

237. Having regard to the submissions immediately above, Crown submits that the following matters of regulatory and industry context must be taken into account when assessing each of the submissions made by Counsel Assisting concerning junkets.

238. *First*, until 1 July 2004 in Victoria[252] and 5 June 2010 in Western Australia[253] the relevant regulator took responsibility for approving junket operators. The approval criteria included: (a) in Victoria, that the applicant was "of good repute, having regard to character, honesty and

[252] Section 69 of the *Casino Control Act 1991* (Vic) previously prohibited a person from organising or promoting a junket without the approval of the Director of Casino Surveillance given in accordance with the regulations, being the *Casino Control (Junkets and Premium Players) Regulations 1999* (Vic). Section 69 was repealed by the *Gambling Regulation Act 2003* (Vic) s 12.1.2, sch 5 [84].
[253] The *Casino Control Amendment Regulations 2010* (WA) repealed Pt 3 of the *Casino Control Regulations 2009* (WA), which imposed a requirement for junket operators to be approved by the Gaming and Wagering Commission.

integrity;"[254] and (b) in Western Australia, that the applicant was "of good character".[255] Prior to these dates, it was entirely reasonable for Crown to assume that if a junket operator was approved by the regulator little or no further due diligence as to the junket operator's probity was required to be undertaken by Crown. Even after these dates, it was reasonable for Crown to assume that (unless material new adverse information were to emerge, which would not have been possible for the regulator to consider) junket operators who had been approved by these regulators were likely suitable to continue doing business with.

239. In this light, it is significant that a number of the junket operators referred to in the submissions of Counsel Assisting were approved in the manner described above: see confidential annexure 3 to the statement of Joshua Preston dated 6 March 2020 (**Exhibit J2**) at items 3 (Lin Cheuk Chiu), 7 (Roy Moo),[256] 8 (Ang Lian Ping) and 16 (Sin Keung Lam).

240. *Secondly*, even after the Victorian regulator stopped approving junket operators, the systems Crown had in place for making decisions whether to enter into a commercial relationship with a junket operator or to continue such a relationship were at all times available to be scrutinised by that regulator: see, eg, Internal Control Statement: Junket and Premium Player Programs (version 10.0) (**ex BA46**) at cll 2.4.2, 2.5.1. It may be accepted that the Victorian internal control does not specify a great deal of detail as to what Crown must do in terms of its audit and probity processes (**CA [43]**). Additionally, the requirement for Crown to monitor the ongoing probity of junket operators was first included in the relevant internal control in 2015 (compare ex **BA8** CRL.523.001.0928). But the Victorian regulator was content with that approach. The VCGLR in both its fifth review of Crown Melbourne (June 2013) (**Exhibit AG50**) and its sixth review of Crown Melbourne (June 2018) (**Exhibit A91**) referred specifically to matters relating to junkets, and identified particular matters of concern relating to Crown's processes, yet made no adverse comments about Crown's due diligence processes for junkets.

241. Further, Crown was at all times required to notify the Victorian regulator of all new non-resident junket operators prior to the relevant junket operator commencing any gaming activity at Crown Melbourne. At all times, the VCGLR had the power to object to Crown commencing a new relationship or to direct Crown to cease its relationship with a particular junket operator: see, eg, Internal Control Statement: Junket and Premium Player Programs (version 10.0) (**ex BA46**) at cll 2.4.1, 2.5.2. In addition, the VCGLR had power to request reports and data concerning (among other things) the names of junket operators, the names of junket players, commissions and settlement sheets: cll 2.2, 2.2.1, 2.4.2. At no time did the

[254] *Casino Control (Junkets and Premium Players) Regulations 1999* (Vic), reg 9(1).
[255] *Casino Control Regulations 1999* (WA), reg 11(1).
[256] See also **CA [89]–[91]**.

VCGLR direct Crown to cease its relationship with any of the junket operators the subject of this Inquiry.

242. *Thirdly*, turning to New South Wales, it is significant that the regulatory focus has long been upon actual criminality, rather than allegations of criminality. Until it was repealed with effect from 21 December 2018,[257] reg 17(1) of the *Casino Control Regulation 2009* (NSW) required a casino operator who becomes aware that a junket operator (referred to as a "promoter") or representative has been convicted of an offence, or the subject of a finding of guilt, must notify ILGA. Regulation 17(3) excluded, among other things, spent convictions.[258] The provision did not require notification of ***allegations*** of criminality or other matters which might bear upon the character of a junket operator or representative.

243. This focus upon actual criminality was carried over into the present internal control *structure*. Thus, ILGA approved an internal control for The Star concerning junkets on 21 December 2018 (**ex DA21**; Webb **T 4789.21–24**). Clause 10 provides:

> The Casino Operator will report to the Casino Regulator within 7 days of becoming aware of a Junket Promoter or Junket Representative becoming (or having been) the subject of any of the following (control of risk B, J):
>
> *a) criminal charges;*
> *b) a finding of criminal guilt;*
> *c) a conviction; or*
> *d) any other matter that the Casino Regulator or the Commissioner of Police has prescribed in writing to the casino operator as a probity event.*

Subject to whatever might be prescribed pursuant to para (d), as Ms Rose Webb accepted on the last day of evidence this clause sets the standard for notification at actual criminality not allegations of criminality (Webb **T 4795.1–5, 4799.33–38**). That same standard has been proposed for Crown Sydney (**ex EF6**).[259]

244. Consistently with this, Mr Christopher Sidoti gave evidence that, following allegations made in the 15 September 2014 *Four Corners* broadcast "High Rollers High Risk" (**ex U31**) concerning the Suncity and Neptune junkets, ILGA — which he chaired at the time — investigated those junkets. Those investigations included making inquiries of the

[257] *Casino Control Amendment (Miscellaneous) Regulation 2018* (NSW), sched 1 [2].
[258] That would comprehend Macanese convictions expunged after 10 years, if that is indeed the position in Macau (**T5046/35–36**).
[259] It appears that the standard operating procedures for The Star permit the casino operator to terminate a junket operator relationship in the event of "ill status" (Webb **T4799–4800**) but that no obligation to notify ILGA is imposed merely because of the "ill status" of the junket operator. However, the document is confidential and not available to Crown. Accordingly, it cannot make any further submission about it.

Hong Kong police and consultants ILGA had previously used in Hong Kong and Macau. Based on those investigations, ILGA determined that the individuals concerned in the allegations had not been conclusively linked to Neptune and Suncity, and that the allegations made against them had not been conclusively established (**T 935–936**).

245. This *Four Corners* broadcast is one of the matters relied upon by Counsel Assisting to impugn Crown's due diligence in relation to Suncity and Neptune (**CA [115]**, **[149]**, **[159]**). For instance, **CA [159]** refers to the fact that following the broadcast, an internal report prepared by Crown into one of the people mentioned — Cheung Chi Tai — identified him as the alleged leader of a triad society in Hong Kong and a casino VIP room operator in Macau. The submission continues: "No steps were taken to cancel arrangements with him at that time." In so acting, Crown did not proceed differently from ILGA.

246. Counsel Assisting suggested this submission is undermined by criticisms which can be made of the Agenda Group report prepared in 2015 (**Exhibit F41**; **T 5833–6**). It is not clear that it was to this report, or to this report alone, that Mr Sidoti was referring; his evidence appeared to be directed to more specific investigations into Suncity and Neptune, neither of which is mentioned by name in The Agenda Group report. In any event, the significance of ILGA's conclusions about those junket operators is not lessened by Counsel Assisting's criticisms of The Agenda Group report: if this was the approach taken by, or on behalf of, ILGA at the time, it is not reasonable to hold Crown to a higher standard.

247. It does not appear that any dissatisfaction about these regulatory settings was expressed by Dr Horton QC in his 2016 assessment of the suitability of The Star to hold a casino licence in New South Wales in 2016 (**ex A75**), though the operation of junkets was part of his terms of reference. There may be further details concerning junket due diligence processes adopted by The Star in the Confidential Appendix referred to at [35]. But there is nothing in the open report suggesting any dissatisfaction with those processes.

248. Pursuant to s 36 of the NSW CCA, ILGA has at all times had a power to declare any class of contracts it considers materially significant to the integrity of the operation of a casino to be a "controlled contract". Pursuant to s 37, a casino must not enter into any controlled contract if ILGA objects. It is unclear how this has been applied in respect of The Star but it is capable from its language of being applied to any contract between The Star and a junket operator. Ms Webb was unable to provide any information on this point in answer to questions put on behalf of Crown (**T4811/37–43**).

249. None of the above submissions concerning the relevance of NSW regulator expectations is affected by the content of Crown's 2015 submission to the Casino Regulatory Review (**ex**

BA1). The fact that Crown advocated for a risk-based model centred on internal controls does not deny either the NSW regulatory focus or the NSW regulator powers referred to above (cf **T5831–3**).

250. *Fourthly*, turning to Queensland, while it is the case that the Queensland regulator does not licence junkets *per se* (**T4988**), reg 37(1) of the *Casino Control Regulation 1999* (Qld) has at all times required a casino operator to give notice to the chief executive[260] about a junket operator, referred to as a "promoter", with whom the casino operator has entered into a junket agreement. Regulation 37(4) states: "The purpose of the notice is to allow the chief executive to assess the suitability of the promoter for involvement in future junket agreements." Regulation 38(1) and (4) makes equivalent provision for promoter's representatives. It is evidently intended that a conclusion that a junket promoter or representative is not suitable within the meaning of these regulations might enliven other powers under the *Casino Control Act 1982* (Qld), for instance s 86 which empowers the Minister to give directions to a casino licensee about any aspect of the operation of a casino.

251. In this light it is significant that, as detailed in paragraphs 252–262 below, and subject to the limitation identified in paragraph 259 below, Crown's records identify that the following junkets or junket operators the subject of the Inquiry have operated at Queensland casinos:

(a) Suncity, at least as recently as 27 February 2020;

(b) Zhou Qiyun (Chinatown), at least as recently as 8 January 2016;

(c) Chi Hung Wang (Neptune), at least as recently as 5 February 2017;

(d) Yan To Chan (Neptune), at least as recently as 17 January 2016;

(e) Zezhai Song, at least as recently as 19 August 2019; and

(f) Sixin Qin, at least as recently as 26 February 2020.

Evidently, the chief executive did not consider them to be unsuitable within the meaning of the regulations just mentioned above, either because a choice was made by the Queensland regulator not to assess their suitability (notwithstanding the terms of the regulations) or because they were assessed and deemed suitable.

252. *Fifthly*, turning to Australian industry practice, it may be accepted that there is not a great deal of evidence before the Inquiry (though that is not a matter for which Crown ought be

[260] This is a reference to the chief executive of the Department administering the Act: see *Acts Interpretation Act 1954* (Qld) s 33.

criticised). There was little exploration by Counsel Assisting with the witnesses put forward by The Star as to its due diligence processes, including the extent to which those processes apply to persons associated with a particular junket other than the junket operator; assertions on these topics went essentially unchallenged (Arnott **T 820–821**; Hawkins **T 889–890**). However, putting aside the detail of The Star's processes, the significant point is that the junkets with whom The Star has had, and in some cases continues to have, dealings include many of those with whom Crown has had dealings which are the focus of this Inquiry.

253. Mr Gregory Hawkins gave evidence that The Star Sydney had a special room for Suncity until August 2019 and that The Star continues to have a junket relationship with Suncity and Alvin Chau, though the junket operator is — for reasons Mr Hawkins could not explain — a different person (**T 848, 885–896**). The documents available to Crown from its own records show that the Suncity junket was approved to operate at The Star Sydney [redacted] and The Star Gold Coast [redacted].

254. Mr Hawkins also gave evidence that The Star had a junket relationship with the Chinatown junket until 2016 (Hawkins **XN T 902–3**). [redacted]

(a) Tom Zhou played under junket programs at the Star Sydney (**CRL.732.001.1231**);

(b) Tian Di was approved to operate as a junket operator at The Star Sydney [redacted]

(c) Zhou Qiyun was approved to operate as a junket operator at:

(i) The Star Sydney [redacted]

(ii) [redacted]

[redacted] and

(d) [redacted]

255. Mr Hawkins' evidence was that he had not heard of Ng Chi Un (**T 902.17–40**). [redacted]

256. [redacted]

(a) [redacted]

(b) [redacted] and

(c) [redacted]

(i) [redacted]

(ii) [redacted]

257. [redacted]

258. [redacted]

(a) [redacted]

(b) [redacted]

259. [redacted]

260. Subject to what has just been said, Crown relies on this material in two ways. First, Crown relies on this material in support of the factual proposition that a number of the junket operators the subject of this Inquiry who operated at Crown's casinos also operated at The Star Sydney and The Star Gold Coast. This supports Crown's submission that it acted consistently with Australian industry practice with respect to these junkets. Secondly, in any event and quite aside from the first ground of reliance, Crown relies on this material in support of the proposition that, when it made decisions about these junket operators, Crown was acting consistently with industry practice so far as it was aware.

261. These facts suggest little substantive difference between the outcomes of Crown's due diligence processes with respect to junkets and those employed at The Star. There was no suggestion in Dr Horton QC's assessment of the suitability of The Star to hold a casino licence in New South Wales in 2016 (**ex A75**) that junket operator relationships of the kind referred to above rendered it unsuitable, though the operation of junkets was part of his terms of reference.

262. To be clear, Crown does not make any criticism of The Star, or suggest that the Inquiry should make any criticism of The Star, in relation to the material above. To the contrary, the submission that is made is that neither Crown nor The Star should be criticised for acting consistently with Australian industry practice and regulator expectations with respect to these junkets at the relevant time.

263. It is plain from the matters canvassed above that a system based on the aphorism "when in doubt, rule it out" (**T 5054**) does not reflect the previous approach of the regulators to which Crown was subject nor the previous practice of the industry in which it has operated. That informs the view which the Inquiry should take of the judgments the legislative scheme required Crown to make about the junket operators the focus of the Inquiry.

C4. Background matters concerning junkets

264. **CA [5]–[43]** are largely background matters concerning junkets, which Crown does not contest. (**CA [44]–[48]** have already been addressed above.) Crown makes two further points.

The importance of junkets to VIP revenue

265. **CA [8]** states: "Indeed, in Australia, as in Macau, casino operators are heavily dependent on junkets for the continued success of the VIP market segment of their revenues." (See also **CA [328]**.) Crown accepts that, in the years since 2013 up to immediately preceding the COVID-19 outbreak, the turnover of Crown's VIP international segment had become increasingly dependent on junkets: see the 12 December 2019 Strategic Review of the VIP Business (**ex**

AC1 at 0.0093). However, that fact must be put in context by reference to **ex AC29**, about which Mr John Poynton gave evidence at **T 3421–3422** but which is not mentioned in the submissions of Counsel Assisting.

266. *First*, **ex AC29** shows that the contribution of the VIP segment as a whole to Crown's earnings (profit) has always been much lower than its contribution to turnover (revenue). At its peak in 2015, it contributed 29.79% of Crown's turnover but only 14.76% of Crown's earnings. As Mr Barry Felstead explained (**T 1369**):

> There's a very key distinction is when we hear of numbers – when we hear large numbers, such as $20 billion turnover, $30 billion turnover, they're quite eye-watering numbers. In reality, the contribution or the net profit to the casino out of that is less than one-quarter of one per cent. So it is a very, very low margin business from turnover. So turnover is – turnover is just the bets recorded. The VIP business is one of our lowest margins business, if not the lowest margin business, and, typically, if you're looking for profit from turnover, you're looking at about less than one-quarter of one per cent. So it's about two point – .25 per cent of turnover will give you the profit that we make out of that business. And that's primarily due to we have expenses, we have commissions, which are huge. We have large amounts of expenses. We have taxes. We have overseas offices. It is a very, very low margin business played on a very low house edge game.

See also Barton **T 2868**; Johnson **T 3085**.

267. *Secondly*, and significantly, the contribution of the VIP segment as a whole both to Crown's turnover and earnings has generally been declining. From the 2015 peak just mentioned, by 2019:

(a) the contribution to turnover had declined to 17.38%; and

(b) the contribution to earnings had declined to [redacted]

Both figures had been even lower in 2017 (turnover 15.92%; earnings [redacted]).

Suitability reviews of The Star

268. **CA [33]–[34]** refer to the conclusions reached in Mr McClellan QC's 2000 report into the suitability of Star City Pty Ltd, in light of "significant problems in the operation of its private gaming area known as the Endeavour Room" (**ex A47** at .0293). As noted by Counsel Assisting, Mc McClellan QC said (at .0363):

> I have no direct evidence of money laundering having taken place at the casino. However, because the casino has been frequented by persons known to have been engaged in criminal activity who have gambled large sums of money, I am satisfied that money laundering has occurred. In addition, the National Crime Authority tells me it reasonably suspects that it is occurring.

269. Notwithstanding this, and other, problems, Mr McClellan QC did not find Star City Pty Ltd unsuitable. Mr McClellan QC made this finding in a context where junkets of the kind the subject of the present Inquiry were operating at The Star (at .0370–1). He did not consider them to be business associates who were not of good repute (at .0316–0.317).

270. Mr McClellan QC may not have had before him as much evidence relating to junkets as presented to the present Inquiry. But there are three significant points. *First*, the presence of quite serious problems did not lead to a conclusion Star City Pty Ltd was unsuitable. *Secondly*, as noted in **CA [34]** Star City Pty Ltd shortly afterwards suspended its junket programme from 1 July 2001 (a similar step to that taken by Crown). *Thirdly*, the relatively benign attitude taken to junkets by Mr McClellan QC underscores the contemporary regulatory and industry approach to junkets.

271. Dr Horton QC's more recent suitability review of the Star referred to in **CA [36]** has already been referred to in paragraphs 246 and 252 above.

C5. Due diligence procedures for junkets

272. Counsel Assisting submits "that at all material times, Crown Resorts' procedures for vetting junkets have not been robust" (**CA [254]**).

273. As noted at the outset of these submissions, Crown accepts that there have been shortcomings in its junket due diligence processes. Crown also accepts that, in its most recent form, the processes do not eliminate all risks associated with junkets including because a casino operator can never have full information. However, Crown otherwise submits that the finding sought by Counsel Assisting should not be made.

Overarching submissions

274. Crown makes three overarching submissions.

275. *First*, as accepted by Counsel Assisting (**CA [255]–[279]**) Crown's due diligence processes with respect to junkets have evolved and improved over time. It is not readily apparent how the structure of Crown's processes quite some time ago, in circumstances where these processes have been improved more recently, bears upon a conclusion about Crown's present suitability.

The principal focus ought to be on Crown's present processes, recognising the improvements Crown has sought to make over time and is continuing to make (subject, of course, to the Board's recent decision with respect to junkets).

276. *Secondly*, there are limits to the extent to which a casino operator is able to undertake the kind of due diligence which might be expected of a regulator. A regulator can be given statutory powers to insist upon the provision of information. The statutory scheme can empower the regulator to access material of other regulators. The provision of false or incomplete information to the regulator can be criminalised. None of this was possible in relation to Crown's junket decision-making.

277. For both casino operator and regulator, there are challenges in dealing with junkets. There may often be less visibility over aspects of a junket's operations, including how it enforces debts against players and the investors/financiers who might sit behind it, than would be ideal. That is not a difficulty which is unique to Crown. Rather, it is a difficult faced by regulators and casino operators alike when dealing with junkets whose operations include financial dealings with players (see, eg, Lin **T 218**; Preston **T 464, 467, 481, 482**; Hawkins **T 864**; Felstead **T 1333**; Vickers **T 1635, 1653**). One of the ways in which Crown sought to address this issue was to insist that junket operator be individuals; this was a way to address the risk that individuals connected with junkets might hide behind corporate structures (Preston **T 461**). As explained further below, Crown accepts that its due diligence processes have not sufficiently addressed this risk. But the Inquiry should recognise that it was a risk to which Crown was alive and which it sought to address.

278. *Thirdly*, insofar as the submission by Counsel Assisting is prompted by the content of the 31 July 2019 media release, that release was expressly directed to the processes Crown had in place at that time. It stated: "Crown itself has a robust process for vetting junket operators, including a combination of probity, integrity and police checks, and Crown Resorts undertakes regular reviews of these operators in light of new or additional information." The statement did not purport to comment upon Crown's past processes.

279. Further, the context for that release was the sensationalised media allegations discussed below which in substance alleged a joint criminal enterprise by Crown and junket operators. It is therefore hardly surprising that the evidence given by Crown directors to this Inquiry has a different tone to that of the advertisement (**cf CA [250]**). The Inquiry process has stretched over many months and had the benefit of a quasi-adversarial process. The period of reflection, the amount of material gathered to aid that reflection and the testing of propositions by the Inquiry could not have been realistically replicated in the short time necessary to respond to the media allegations at the end of July 2019.

280. Whether systems are "robust" is necessarily an evaluative judgement. It is a description of the capacity of the system to avoid mistakes and to deliver "correct" outcomes. But no system is failproof and what outcomes are correct must be judged having regard to the contemporaneous regulatory and industry practice. The "robustness" of a system is not in truth a binary characteristic. It is a matter on which minds may reasonably differ.

281. The decision by the Board, in response to the media allegations detailed below, to defend Crown's junket due diligence processes was of course a decision made by the Board on the information then before it. Counsel Assisting do not submit that the Board's characterisation of the process as "robust" on the information then before the Board was unreasonable.

282. As to whether it is ***now*** to be regarded as a fair characterisation, for the reasons explained it reflected then, and reflects now, an evaluative judgment. That is evidenced by the different views taken by directors of the description of the process today. Ms Coonan said she would have softened the language, and replaced "robust" with "extensive" (**T 4436**, **4498**). She said she did not think the processes were "robust enough" (**T 4491**). Professor Horvath accepted that the description of the process as "robust" in the media release was erroneous (**T 4179**). Ms Halton did as well but said she believed it was right at the time (**T 4324**). In contrast, Mr Johnston did not agree with the proposition that the due diligence process as at the date of the media release was not "robust" (**T 3155–6, 3180**). Mr Alexander accepted only that the process was not as robust as it should have been (**T 3561**). Mr Demetriou accepted that, today, the process had deficiencies — and said, with the benefit of hindsight, that the wording of the media release would have been changed — but would not accept the characterisation of the process as "not robust" (**T 3979–80**).

283. So far as these are statements, now, about the characterisation of the processes with the benefit of hindsight, they are simply different evaluative judgments. They are each reasonably open judgments. Crown maintains that, both at the time of the 31 July 2019 media release, and looking back at the position now, it is reasonably open to characterise its due diligence process as robust. And for that reason, the Inquiry should not make the finding sought by Counsel Assisting that the process for vetting junkets has at all times not been robust (CA [254]).

The suspension of junket relationships as an "admission"

284. CA **[251]–[252]** submit that the suspension of junkets relationships in August 2020 should be treated as an admission by Crown (although it is not made clear precisely what is said thereby to have been admitted). That submission should not be accepted. The decision to suspend junkets occurred in the context of this Inquiry, in circumstances where it was plain that serious allegations were being made by Counsel Assisting and it was likely that it would be submitted

that a higher standard than that previously applied should now be applied. Shortcomings had been identified in the junket due diligence processes. A suspension of junket relationships was a prudent step to adopt in order to review all junket relationships and consider whether to continue dealing with junkets. It does not reflect an admission that the previous junket due diligence processes should be characterised as "not robust".

285. **CA [252]** summarises the views of various directors as to the reason for the suspension. Plainly, each could give evidence only of ***their*** reason for supporting a suspension. Those reasons might legitimately differ. It is not apparent why the views of Mr Poynton, Ms Halton and Ms Coonan "are contradictory". Nor is it apparent why those different views "reveal that some members of the board are reluctant to fully accept the past failings with respect to junkets". To the contrary, as noted in **CA [250(a)]**, Crown directors variously accepted that the processes had shortcomings of the kind identified by Deloitte, and that is not contested by Crown.

The period prior to September 2014

286. Save for one matter, Crown does not challenge the description at **CA [257]–[262]** of its junket due **diligence** process prior to September 2014.

287. The caveat is that the Inquiry should not accept the criticism of Crown's reliance, as one due diligence measure, on the fact that the junket operator had to secure a visa and travel to Australia (**CA [261]**). There was no "circularity" in Crown's reliance on this point simply because Crown supported, in a way Counsel Assisting accepts was entirely proper (**CA [343]**), the grant of visas to persons. The Department of Immigration made clear that these kinds of arrangements would "not circumvent our legislative requirement to be satisfied that each applicant is a genuine visitor to Australia, or the need for officers, where appropriate, to conduct thorough assessments prior to making a decision" (**ex S8**). Whatever support Crown offered, it was a relevant matter for Crown to take into account that the Department with the power to refuse a person a visa on character grounds[261] had not done so. That matter was, and remains, significant in circumstances where the Commonwealth Government will no doubt have access to sources of information which are inaccessible to a casino operator such as Crown.

288. In any event, as **CA [343]** accepts, this arrangement was only in place until October 2016. Accordingly, so far as Crown continues to rely, as a due diligence measure, upon the grant of

[261] See *Migration Act 1958* (Cth) s 501. See also s 116.

a visa and travel to Australia, that continued reliance is not open to the criticism of "circularity" made in **CA [261]**.

The period from October 2014 to October 2016

289. Save for one matter, Crown does not challenge the description at **CA [263]–[264]** of the processes in place from October 2014 to October 2016. The caveat is that Crown emphasises that, as recommended by Mr Theiler (see **CA [262]**), the breadth of databases checked was expanded. This is acknowledged but unfairly downplayed in **[264]**; it is not made clear why Counsel Assisting submit that the expansion occurred only "on some occasions".

The period from November 2016 to mid-2017

290. In response to **CA [265]–[269]** concerning the position from November 2016 to mid-2017, Crown makes four submissions.

291. *First*, those submissions minimise the extent of the review undertaken following the China arrests. From November 2016 there was an extensive review of all junkets with which Crown had been dealing, which led Crown to cease dealing with over 100 junket operators: see the statement of Michael Johnston dated 15 September 2020 (**ex CJ1**) at [96]–[99].

292. *Secondly*, the conclusion drawn in **CA [267]** from the VIP Committee minutes for 20 December 2016 (**ex BJ164** at .0065) is not correct. What is set out in those minutes is not a summary of Crown's then junket due diligence process for all junket operators. It is the procedure Crown was undertaking to verify whether each of Crown's junkets with a turnover of over $10 million over the previous three years (164 in number) had DICJ approval. That is evidenced by the heading "Junket DICJ Links Verification", the summary table which follows and the previous "follow up action" identified in the minutes of the 8 December 2016 meeting at .0067 item 3. That is why, as noted at **CA [268]**, no reference is made in the 20 December 2016 minutes to obtaining third party due diligence reports. They would not have been relevant to the task to which the minutes referred.

293. *Thirdly*, the conclusion drawn in **CA [269]** from the VIP Committee minutes for 20 December 2016 that "up to that point only a small percentage of the junket operators Crown Resorts dealt with held DICJ licences" must be qualified. The summary table in those minutes shows that, as at 20 December 2016, a large number of the verifications remained "in progress".

294. *Fourthly*, while it may be accepted from the reference in the 20 December 2016 minutes to preparing junket profiles that this ***form*** of record had not previously been kept, it does not follow that there was no record kept. To the contrary, as noted at **CA [258]** there are in evidence patron credit profiles which contain, among other things, due diligence information.

The period from mid-2017 to August 2020

295. In response to **CA [270]–[279]** concerning the junket due diligence process in its most recent form, Crown makes four submissions.

296. *First*, it is evident that from mid-2017 there was a substantial change in the systems Crown had in place for making decisions whether to enter into a commercial relationship with a junket operator or to continue such a relationship. Among other things, three senior Crown officers were tasked with making decisions about commencing or continuing a junket relationship, based on extensive due diligence material: see the statement of Joshua Preston dated 20 February 2020 (**ex F78**) at [58]–[89].

297. *Secondly*, it does not follow from the fact that annual reviews had only been escalated to Messrs Felstead, Johnston and Preston on five occasions since July 2017 that there was a lack of rigour in the annual reviews (cf **CA [273]**). That would be so only if there were more than five occasions in which material new information emerged or a material change had occurred since a junket operator was approved by Messrs Felstead, Johnston and Preston but the case was not escalated to them. That has not been demonstrated.

298. That said, as noted above, one of the shortcomings identified by Deloitte which Crown accepts is the need to have clearer defined escalation points and triggers for further investigation. Further, Crown accepts the need for the provision of clearer guidelines and education for persons responsible for collecting and collating relevant information from across the business, including those in sales and services roles.

299. *Thirdly*, **CA [275]–[278]** go too far in criticising reliance upon DICJ licensing of junket operators (referred to in Macau as "gaming promoters") as one factor relevant to Crown's due diligence. For one thing, it overstates the reliance placed upon DICJ licencing, which was one of a series of elements of the due diligence measures and checks relied upon by Crown in assessing the probity of its junket operators. Further, the submissions of Counsel Assisting do not make clear the improvements in the rigour with which the DICJ has conducted licence investigations in more recent times.

300. So much was explained by Mr Paul Bromberg in the evidence cited at **CA [275] fn 499**. Mr Bromberg's explanation that the only requirements for DICJ licensing were that an individual must not have a criminal record and that a Dun & Bradstreet report was conducted on the company applied to the situation in 2013 (**T 87.3–16**, **88.24–31**). He went onto explain that, while he did not have intimate knowledge of what had happened after 2013, things changed substantively from about 2016. The changes to which he referred were requiring an annual audit and real enforcement of rules and regulations, including in relation to existing gaming

promoters. He said that a number of gaming promoters refused to comply with the new requirements and, as a result, were not re-licensed (**T 87.30–38**, **88.35–40**, **89.34–90.39**). In light of the more recent changes in Macau, it is immaterial that in 2004 existing junket operators were "grandfathered", as they are now subject to annual audits. **CA [276]–[277]** state that Mr Bromberg agreed with the view expressed in the 2016 article there quoted. Mr Bromberg made clear that his agreement was at that point in time when this article was written" (**T 92.9**). That must be so, given his explanation of the changes subsequent to that date referred to above.

301. Mr Bromberg's understanding of the more recent situation in Macau is confirmed by the report of Scott Scherer dated 23 November 2020[262]: see his answers to questions 2.8 and 7.1. Among other things:

(a) The number of gaming promoters has declined significantly, as those who could not or would not comply have not been re-licensed.[263]

(b) Macau has significantly strengthened its anti-money laundering requirements in recent years. In a 2017 mutual Evaluation Report by the Financial Action Task Force, Macau received a "substantial" rating in the assessment of the effectiveness of its AML supervision.[264] In a follow-up Mutual Evaluation Report in 2019, Macau was found to be "compliant" in 22 and "largely compliant" in the remaining 18 of the 40 recommendations made by FATF.[265]

(c) Junket operators licensed in Macau are far less likely to be involved in activities such as prostitution, narcotics, loan-sharking and violent debt collection practices than they were before new competition and new regulations were introduced to the Macau market.[266]

(d) It is unwarranted to draw a conclusion about the situation in more recent years based on the statement of the former Chairman of the Nevada Gaming and Compliance Board in 2013 quoted at **172.34–45**. The regulatory regime in Macau has strengthened considerably in recent years, many of the bad actors have been weeded out and at least for the Macau casino operators affiliated with Nevada licensees there are substantial compliance departments conducting due diligence on the Macau gaming promoters with whom they contract.[267]

[262] (Confirm Ringtail ID) [Not currently tendered].
[263] Question 2.8, page 12.
[264] Question 2.8, page 12.
[265] Question 2.8, page 12.
[266] Question 7.1, page 25.
[267] Question 7.1, page 27.

302. Further detail of the changes in Macau since 2016 is provided in the report of Mr Pedro Branco dated 23 November 2020[268] see esp the answers to questions 1.1, 1.2, 2.3, 2.6, 2.11, 2.13, 2.14 [Cross-refs to be confirmed].

303. *Fourthly*, **CA [279]** submits that Mr Felstead and Mr Johnson had vested interests in driving the profitability of Crown. Mr Johnston gave evidence that his role was to apply an "independent mind" and he had no profit accountability for the results of Crown (**T 3125.17–19**). This was not challenged. In any event, the point made by Counsel Assisting could likewise be made about any Crown officer or employee, whenever they are called upon to make a decision which could affect the profitability of the company. Not all decisions must therefore be taken away from "people in the operational side of the business". It is a question of judgment whether, because of the circumstances, the final say on certain decisions should be left to others.

304. That said, another of the shortcomings highlighted by Deloitte and accepted by Crown is the need for greater input from Crown's compliance and AML teams into the due diligence for junkets. Further, subject to any regulatory licensing, approval or sanction regime, the final say as to whether Crown will begin or continue a relationship with a particular junket is now to be made by the new Head of Compliance & Financial Crimes.

305. *Fifthly*, the statement of issues and contentions at [17] states: "Crown's due diligence processes with respect to junkets have focussed exclusively on the 'frontman', that is, the junket operator." No submission is made to that effect in the written submissions of Counsel Assisting. In any event, the Inquiry should not make a finding in these terms.

306. The language of "frontman" is not appropriate if by that is suggested that in all cases the junket operator is merely a "front" for the "real" operator of a junket. That may or may not be the case in the case of a given junket.

307. In any event, it is not accurate to say that Crown's due diligence processes with respect to junkets focussed "exclusively" on the junket operator. While junket representatives were not subject to the same level of due diligence as the junket operator, they were nonetheless subject to ongoing monitoring, as explained in the statement of Joshua Preston dated 20 February 2020 (**ex F78**) at [91]–[92]. Further, as noted in paragraph 276 above, the insistence that junket operators be individuals was a measure directed to the risk that individuals might hide behind corporate "fronts".

[268] (Insert Document ID) [Not currently tendered]

308. That said, Crown accepts that, with the benefit of hindsight, the scope of its due diligence has been too narrowly focussed on the junket operator. That is one of the matters which will be addressed following the Deloitte review, subject to any regulatory licensing, approval or sanction regime.

C6. Allegations concerning junkets

The media allegations

309. **CA [49]–[279]** are structured around the media allegations identified in **CA [2]**. Having regard to the Inquiry's Terms of Reference, Crown understand why this is so. However, to a large extent the veracity or otherwise of the media allegations is beside the point. The critical point is what, in fact, has occurred and the extent to which, if at all, this is relevant to Crown's present suitability. That said, it is significant to bear in mind the following points.

310. *First*, the language and content of the media allegations may fairly be described as deliberately sensationalised. To take a number of examples:

(a) In "Gangsters, gamblers and Crown casino" (**ex G3**), published on 27 July 2019, the following language appears (emphasis added):

(i) "the strategy of the James Packer-backed company to ***lure*** high rolling gamblers from the Chinese mainland to Australia" (at .0691);

(ii) "Crown was prepared to ***get into bed with*** junket operators backed by Asian organised crime syndicates called 'triads', including the most powerful drug-trafficking syndicate in the world" (at .0693);

(iii) "the $8.6 billion Melbourne-based gaming company has ***helped bring criminals through the nation's borders*** in a way that raises serious national security concerns" (at .0693);

(iv) "these ***criminal ties pale in comparison*** with some of Crown's other junket partners" (at .0699);

(v) "Moo was ***licensed by Crown*** to work as a representative for an Asian junket operator" (at .0700);

(vi) "Moo was jailed in late 2013 but it was a pyrrhic victory for police. Multiple regional law enforcement sources say it prompted The Company to then rely on its own, in-house junket, named after a Macau hot pot restaurant chain. The Hot Pot junket was ***promptly licensed by Crown***. For every dollar the

junket arranged to be gambled over the casino's Australian tables, Crown would pay a commission. This arrangement represented an extraordinary truth: ***Crown was effectively making payments to an organised crime syndicate***" (at .0701); and

(vii) "… some of The Company's members and associates ultimately affiliated with Macau's biggest and most successful junket operator, SunCity. … Macau's largest junket was about to become Crown's business partner" (at .0701).

(b) In "Crown casino's links to Asian organised crime exposed" (**ex H1**), also published on 27 July 2019, the following language appears (emphasis added):

(i) "a criminal syndicate known as 'The Company' used Crown-linked bank accounts and high-roller rooms to launder its funds, ***with Crown licensing and paying syndicate members to generate turnover in its Melbourne and Perth casinos***" (at .0684); and

(ii) "to partner with junket operators with links to drug traffickers, money launders, human traffickers and Chinese government influence agents" (at .0684–5).

(c) In "Crown's unsavoury business links" (**ex T42**), published on 28 July 2019, the following language appears (emphasis added): "Triads are expert money launderers, have access to large pools of funds and are effective collectors of unpaid gambling debts because of their propensity to use violence and extortion. On Saturday, *The Age* and the *Herald* revealed how a powerful and dangerous triad drug syndicate known as The Company ***was able to do this work with Crown*** despite its deep criminal links" (at .0733).

(d) In the *60 Minutes* programme "Crown Unmasked" (**ex F63**), broadcast on 28 July 2019, the following language was used (emphasis added):

(i) "***courting people*** with ties to the criminal underworld was not only allowed but encouraged" (at .1074.1);

(ii) "***luring*** Chinese VIP gamblers to our shores" (at .1074.5);

(iii) "Crown's hunger for profits endangered its own people and ***exposed Australia's national security to grave risks***" (at .1075.21);

(iv) "[Crown] hired Macau agents known as junket operators ***to do its dirty business***" (at .0180.133);

(v) "What is the risk that Crown takes on when it ***gets into bed with*** junkets?" (at .1081.137);

(vi) "Crown's ***deep underworld connections***" (at .1082.156);

(vii) "Do you think ***Crown cares*** that some of its junket operators are known organised crime figures? The power of the dollar, ***no***" (at .1082.157–158);

(viii) "This man Roy Moo ***is a licensed junket operator*** at Crown casino ***which pays him to lure Asian VIP gamblers to its high roller rooms***" (at .1082.165);

(ix) "… ***Crown junket*** after ***Crown junket*** with ***underworld ties*** … Crown was either ***wilfully blind*** **or** ***recklessly indifferent***" (at .1083.179);

(x) "Crown's ***so-called due diligence*** is barely evident in its confidential company files" (at .1083.183);

(xi) "And what happens when one of your key junket partners is ***exposed as a crook***?" (at .1083.189);

(xii) "Crown has also ***jumped into bed*** with the Melbourne brothel boss with links to alleged sex trafficking" (at .1083.194);

(xiii) "I think it's extremely disturbing that the casino would have a ***contractual relationship with someone implicated in human trafficking***" (at .1084.197);

(xiv) "Do you think Crown's being ***silly*** or Crown just ***doesn't care***? I think it ***doesn't care***" (at .1085.218–219);

(xv) "And need an Aussie visa? Just call Crown" (at .1085.221); and

(xvi) "It seems ***corporate arrogance has hit a new low***" (at .1090.309).

311. The imputation conveyed by many of the allegations was knowing involvement by Crown in criminal activity carried out in concert with junket operators. Counsel Assisting does not suggest that such an imputation can be defended.

312. *Secondly*, as identified in the submissions made by Counsel Assisting, some of the most serious specific allegations are unsupportable:

(a) Insofar as there are allegations that Crown "got into bed with" The Company, or paid commission to The Company via the Hot Pot junket, these allegations are not supported by the evidence available to the Inquiry. They are not demonstrated by material suggesting that, without the knowledge of Crown, Roy Moo laundered money at Crown that was the proceeds of criminal activity by The Company. The material before the Inquiry does not support a link between the Hot Pot junket and The Company (**CA [109]**).

(b) Insofar as allegations are made about Suncity, it has not been established that Alvin Chau is or was a formerly a triad member. Nor has it been established that Suncity has connections to The Company (**CA [145]**). Alvin Chau had not been "banned from entering Australia" (**CA [144]**).

(c) Tom Zhou was not a junket operator at Crown (**CA [174]**).

(d) Simon Pan was not a junket operator at Crown (**CA [202]**).

313. In addition, a significant matter of context was either obscured or misrepresented in the media articles: in a number of cases, the allegations concerned matters from years previously. One example is the quote from the *60 Minutes* report: "This man Roy Moo is a licensed junket operator at Crown casino which pays him to lure Asian VIP gamblers to its high roller rooms" (**ex F63** at .1082.165). This was wrong not only because Roy Moo was never approved as a junket operator by Crown but was, to the contrary, only ever approved as a junket operator by the Victorian regulator (see paragraph 238 above and **CA [91]**). It was wrong because it implied that the circumstances referred to were continuing ("***is*** a licensed junket operator"): as noted in **CA [99]**, Crown issued Roy Moo with a withdrawal of licence on 23 March 2013 after he was charged (**ex BJ20**), which Crown has subsequently refused to revoke (**ex BF77, BJ21, BJ141**).

314. *Thirdly*, it was in this context that the Board thought it was both necessary and appropriate for Crown to respond swiftly and firmly to the media allegations. In particular, this was the context in which the Board thought it appropriate to defend the integrity of Crown's due diligence processes.

"Crown Resorts partnered with junkets that were backed by organised crime syndicates" (CA [2(a)])

315. ***"Partnering".*** **CA [52]–[66]** contend that "it should be found that Crown Resorts did '*partner*' with junkets in the sense that term was used in the relevant articles". That asserted sense is explained at **CA [54]**: "it is clear that the media used the term 'partnering' to connote a form of collaboration between Crown Resorts and junket operators for their mutual benefit, and a teaming together".

316. The focus on the word "partner" and the different meanings that it may have is largely unproductive. Plainly, there is no basis to find that there was a legal partnership between Crown and any of the junkets the subject of the Inquiry, though that is what unqualified references "partnership" in media publications would convey to the ordinary reader or viewer. Conversely, if "partnership" is defined simply as "collaborating with for mutual benefit" it is equally plain that Crown has collaborated for mutual benefit with all the junket operators who have ever conducted a junket programme at one of Crown's casinos. It might equally be said that Crown has collaborated for mutual benefit with every other contractor with whom it has contracted.

317. The different possible meanings which different people may attribute to the word "partnering" depends on context and whether there is anything about the context that would qualify the ordinary meaning of that word. That explains why different Crown directors and officers took different views in evidence about whether it could accurately be said that Crown "partnered" with junket operators (cf **CA [55]–[56]**). It likewise explains the use of that expression in various internal marketing and other documents concerning the Platform Junket Strategy and why it was entirely open to the witnesses to whom those documents were put to take different views about the correctness of the description (**CA [57]–[60]**). Contrary to **CA [56]** it should not be found that Mr Johnston was trying to minimise the relationships between Crown and junket operators: he accepted that there was "a collaboration" and accepted that Crown had a contractual relationship with junkets; he simply did not accept that it could be described as "partnering" (**T 3098.39–3100.30**).[269]

318. In any event, the media allegations went far further than suggesting merely an anodyne collaboration for mutual benefit (cf **CA [53]**). As set out in the extracts above, there were references to "getting into bed with" or "jumping into bed" with junket operators, Crown "hiring" junket operators "to do its dirty business", Crown "licensing" junket operators", Crown staff "embracing" junket operators, and there being "Crown junket operators". It was

[269] See similarly for instance Mr Poynton's evidence, accepting the language "teamed with" while resisting that of "partnering" (T 3401/11–30).

statements like this which conveyed the imputation of a joint criminal enterprise between Crown and junket operators. And it was in this context that the 31 July 2019 advertisement issued by Crown (**ex A219**) said:

> Much was sought to be made in the programme of the conduct of "Crown's junket operators". In fact the junkets are not Crown's. They are independent operators who arrange for their customers to visit many casinos globally. Crown deals with junkets and their customers in essentially the same way as other international casinos.

That statement was fair and accurate.

319. In particular, nothing in the statement is denied by any aspect of Counsel Assisting's submissions concerning the Platform Junket Strategy. The identification of large junkets, encouraging VIP players with a credit risk Crown was not willing to take on towards those junkets and identification within Crown of staff responsible for particular junket relationships (see esp **ex O4**) does not deny the fact that the junket operators were independent businesses. So much is evidenced by the fact that one of the platform junkets, Suncity, had a similar kind of exclusive room at one of Crown's key competitors, The Star, as it had at Crown Melbourne (**T 848.26–852.7**, **885.4–8**, **891.23–892.33**; cf **CA [63]**). Likewise, the fact that, in the case of Suncity, there was an arrangement involving commissions paid as rebates calculated based upon the win/loss amounts of their junket players with Crown does not contradict the statement in the advertisement. As Ms Jane Halton said: "we have a variety of people with whom we have a turnover relationship, for example, restaurants … They are not our partners; they are our tenants." (**T 4320.42–46**; cf **CA [64]**).

320. In any event, the relevant matter for Crown's suitability is not what meaning should be attributed to the allegations of "partnering" in the media. That issue bears on the meaning conveyed to the public by the media allegations and why Crown made the decision to publish its advertisement. But those matters do not go to suitability. What matters for Crown's suitability is what, in fact, occurred in relation to each of the junkets the subject of submissions by Counsel Assisting and how, if at all, that bears on the question of Crown's current suitability. Whether the relationship in any given case is capable of being described as a "partnership", in the manner defined by Counsel Assisting or otherwise, is immaterial.

321. ***"Backed by organised crime syndicates".*** As **CA [66]** observes, the second aspect of the media allegations concerning Crown's "partnering" with junkets is that some of those junkets were backed by or had links to organised crime. The media allegations were not cast in terms of "alleged links" or "suggested links". They asserted, in fact, that the junkets referred to were backed by or had links to organised crime. As explained below, Crown accepts that in the case

of a number of the junket operators the subject of the Inquiry, there is material which ***suggests*** a link to organised crime. But there is no basis upon the evidence before the Inquiry to describe those links as "probable" (**cf [282]**) or otherwise to conclude that the media allegations were, in this respect, correct.

322. In the course of addressing each of the junket operators below, the submissions of Counsel Assisting also contend in a number of cases that Crown could not have been satisfied that the operator was of good repute and should not have dealt with him as a junket operator. Crown's submissions likewise address that point with respect to each of the junket operators mentioned.

The Company / Roy Moo

323. ***Counsel Assisting's submissions.*** As noted in **CA [71]**, responding to the various media allegations that Crown had "gotten into bed with" The Company (see esp **ex G3** at 0693) Crown's 31 July 2019 release said: "Crown has had no dealings or knowledge of any organisation of that name or description" (**ex A219**). Counsel Assisting accept that:

(a) at the time of this release Crown had no records of an organisation called "The Company" (**CA [71]**); and

(b) it is not reasonable to expect that Crown, as at the date of this release, would have been able to identify that it had had dealings The Company (**CA [72]**).

324. Counsel Assisting submit that "things changed on 14 October 2019". To understand that submission and Crown's response to it, it is necessary to consider the circumstances and allegations concerning Roy Moo the subject of **CA [82]–[99]**. Counsel Assisting submits that a finding should be made that "Roy Moo, in his capacity as a junket representative, laundered the proceeds of crime at Crown Melbourne on behalf of The Company" (**CA [97]**).

325. ***The facts.*** The factual circumstances are as follows.

326. *First*, Roy Moo pleaded guilty to a money laundering offence in respect of $682,500 in cash. The offending involved four cash deposits into the ANZ Bank Crown Casino account between 28 March 2012 and 27 May 2012. This was the subject of facts agreed between Roy Moo and the prosecution dated 21 November 2013 (**ex F24**) following a plea of guilty. Roy Moo was sentenced in the County Court of Victoria on 16 December 2013 (**ex F25**).

327. *Secondly*, the agreed facts recorded that:

(a) the cash the subject of the offending had been derived from the drug importation and trafficking of Suky Lieu, who it was alleged was a principal Australian operative in an

international criminal syndicate involved in importing and trafficking significant quantities of narcotics in Australia (at [6]); and

(b) the cash had been supplied to Roy Moo by Minh Phat Truong (at [11]).

328. *Thirdly*, Suky Lieu was subsequently convicted of drug offences and Minh Phat Truong of money laundering. That is apparent from reasons of the Victorian Court of Appeal published on 21 September 2016 in relation to Minh Phat Truong (**ex G7**) and 23 November 2016 in relation to Suky Lieu (**ex J13**). In the reasons for judgment of the Court of Appeal in the former case (at [8]), there is an extract of the trial judge's reasons for sentence which described Suky Lieu as being the Melbourne-based principal of an international drug importation, money laundering and drug trafficking syndicate, and referred to his "Hong Kong drug business partners, John and Sam Gor".

329. *Fourthly*, a *Reuters* article called "The Hunt for Asia's El Chapo" published on 14 October 2019 (**ex A226**) stated that a multinational drug trafficking syndicate which its members call "The Company" was led by a man called Tse Chi Lop, one of whose nicknames is Sam Gor.

330. ***Crown's submissions.*** Against that background, Crown makes the following submissions.

331. *First*, the finding for which Counsel Assisting contends suggests knowing involvement by Roy Moo. That is not what was found in his criminal proceedings. To the contrary, the agreed facts summarised (at [57]) a statement made by Roy Moo to police which denied any such knowledge. The sentencing judge recorded (at [8]) that it was not said that Roy Moo knew the money came from drug trafficking. The mental element of the offence to which Roy Moo pleaded guilty was recklessness (agreed facts at [1(c)]). The sentencing judge also recorded (at [11]–[16]) the evidence of Roy Moo's previous good character, made a finding that he was unlikely ever to offend again, and recorded the assistance he had provided to police. Subsequent to his sentencing, Roy Moo in fact gave evidence at least at the trial of Minh Phat Truong (see **ex G7** at [21]).

332. In this light, Crown accepts that Roy Moo was involved in the laundering of funds derived from international drug trafficking activities of a syndicate referred to in the *Reuters* article as "The Company". However, that involvement is not accurately captured by the language of the finding sought by Counsel Assisting.

333. *Secondly*, while Crown accepts that, following publication of the *Reuters* article, it was ***possible*** for Crown to link Roy Moo to the syndicate referred to in that article as "The Company" in the manner described above, Crown does not accept that a failure to do so reflects a lack of diligence (cf **T 4998**). There are a number of steps required to draw that link, across multiple

types of documents, which were accessible by Crown at different times over a lengthy period. At least some of those documents — the agreed facts in Roy Moo's prosecution and, given the non-publication order evidently made, the sentencing judge's reasons — would not have been readily available to Crown, if at all. While drawing these kinds of links is a matter which, going forward, Crown would seek to do better in any junket due diligence process, Crown does not accept that a failure to do so previously can properly be characterised as a lack of diligence.

334. *Thirdly*, even drawing the links between Roy Moo and The Company, the suggestion that Crown had dealings with The Company of the kind alleged in the media articles is not established. Those articles went far beyond simply asserting that money had been laundered at Crown by Roy Moo at the behest of members of The Company. They asserted that Crown and The Company were collaborating in the operation of junkets. The incident involving Roy Moo does not establish this to be so.

335. In this light, even following publication of the *Reuters* article, it would have been entirely correct for Crown to maintain that it has had no dealings with The Company. In the context of the dealings alleged by the media, it would not be a fair description to say that the incident involving Roy Moo constituted dealings between Crown and The Company.

336. As accepted by Counsel Assisting, at the time of his offending Roy Moo was not a junket operator. There is therefore no submission by Counsel Assisting that Crown ought not to have done business with him. Indeed, as noted above Roy Moo had been approved as an junket operator and junket representative by the Victorian regulator (**CA [89]–[91]**).

337. Nor, save for one matter, is there any submission by Counsel Assisting that Crown acted too slowly or otherwise improperly upon learning that Roy Moo had been charged with his offending. As noted at **CA [99]**, Crown promptly issued him a withdrawal of licence and has repeatedly refused to revoke it. The Australian Federal Police thanked Crown for its assistance in relation to the affair.[270]

338. The exception is that Counsel Assisting implicitly suggest that there was some failing by Crown in relation to the much higher than usual buy-in recorded for Roy Moo in 2003 and, in particular, in its not being mentioned in the person of interest committee minutes from October 2014 relating to Roy Moo's request for revocation of his withdrawal of licence (**CA [98]–[99]**). It is not evident that at least the latter point is a failing, in circumstances where Crown ultimately determined not to permit Roy Moo to resume a relationship with Crown. Ultimately, his conviction was of itself sufficient to warrant rejection of that request, and any

[270] (CRL.500.003.2819). [Not currently tendered] [ME Note: This will have to be heavily redacted for SMR content]

additional material provided would serve only to bolster the foregone conclusion which was reached.

339. ***Criticism of Mr Preston.*** Finally, **CA [79]–[81]** criticise Mr Joshua Preston in two respects in relation to Roy Moo and the Company. Neither criticism should be accepted.

340. *First*, **CA [80]** criticises Mr Preston for not escalating the publication of the *Reuters* article and the results of the Crown database searches he had asked to be carried out to the Board. That criticism is unsound. Mr Preston did not draw the link between the article and Roy Moo (**T 552.44–553.4**); accordingly, he could not have appreciated that it might bear upon the content of the 31 July 2019 advertisement. For the reasons in paragraph 332 above, that did not reflect any lack of diligence on Mr Preston's part. The Crown database searches had not revealed anything of significance (**ex BL19**). In those circumstances, it would not have been reasonable to expect Mr Preston simply to draw a further media article concerning The Company to the Board's attention.

341. *Secondly*, **CA [81]** criticises Mr Preston for not making any reference in his March 2020 statement to becoming aware of the *Reuters* article. That criticism is also unsound. That statement was directed to the particular question asked by the Inquiry: "Details of any notifications received from law enforcement agencies or other informants, or investigations or reviews conducted, in relation to junkets operated by, or associated with" certain specified entities, one of which was "the syndicate known as the Company". The statement was not directed to identifying every piece of information held by Crown, or known by Mr Preston, concerning "The Company". The omission from the statement of Mr Preston's knowledge of the *Reuters* article should not be found to "reflect a lack of candour" on Mr Preston's part.

The Company / Hot Pot / Ng Chi Un

342. ***Link between Hot Pot and Ng Chi Un.*** **CA [100]–[111]** arise from the allegation that Crown had a junket relationship with The Company via a different junket known as the Hot Pot junket.

343. **CA [100]** submits that it should be found that:

> Crown Resorts did have a business relationship with the Hot Pot junket, which was in fact the junket operated by Ng Chi Un. That fact should have been obvious to Crown Resorts on the information available to it.

344. As explained in **CA [101]**, the only reference to the "Hot Pot" junket is in the article "Gangsters, gamblers and Crown casino" (**ex G3**) published on 27 July 2019. Crown accepts

that the junket operated by Ng Chi Un is in all probability the junket referred to in this article. Crown also accepts that, at the time of this article, it should have determined this to be so.

345. In due diligence material available to Crown at the time of the article, there are references to Ng Chi Un's ownership of "Meng Mun Seafood Hot Pot" and "Zhu Hai Ming Men Seafood Hot Pot Restaurant", which own hot pot restaurants in Macau and China (**ex BC6**, **BC7, BC14, BJ127, BJ128**). Crown does not accept that it can be concluded from these references alone that Ng Chi Un was the person referred to in the "Gangsters, gamblers and Crown casino" article as the "Hot Pot" junket. Hot pot is a common kind of Chinese cooking method. Hot pot restaurants are very common in Macau and a number of junket operators own hot pot restaurants (**ex BL37** at [10.6(c)]).

346. However, Crown accepts that there were two further pieces of information available to it at the time of the article.

347. *First*, in the course of conducting checks relating to Ng Chi Un's junkets at other casinos on 30 August 2010, his junket was referred to as the "Meng Mun Junket" (**ex BC3**). That provides a link to the company name referred to above.

348. *Secondly*, it was said in the article that the Hot Pot junket was paid $232,000 in commissions by Crown for organising trips to Crown in the 2016 financial year. The Crown Perth PAYG Withholding From Foreign Residents – Payment Summary for that period for Ng Chi Un records gross payments of $232,328 (**ex BC13**).

349. For the same reasons, Crown accepts that it should have been able to identify these links for the purposes of Mr Preston's 6 March 2020 statement (see **CA [102]–[107]**).

350. ***End of junket operator relationship.*** However, insofar as Counsel Assisting seek a finding that Crown continued to have a business relationship with the Hot Pot junket at the time of the article, or at the time of Crown's release of 31 July 2019, that finding should not be made. Crown Melbourne entered into a junket operator agreement with Ng Chi Un on 31 August 2010 (**ex BC2**) and Crown Perth entered into a junket operator agreement with Ng Chi Un on 17 February 2011 (**ex BC5**). His last junket programme was on 4 September 2015 (**ex BC23**). Crown thereafter decided not to carry on any further business with Ng Chi Un as a junket operator, following the non-payment of a debt in September 2015, and a subsequent dishonouring of a cheque in May 2016 (**ex BC19, BC23**; **T 711, 1858**).

351. No weight should be given to the submission by Counsel Assisting that **ex BC19** suggests that Crown had not made a decision to cease dealing with Ng Chi Un. Mr Preston gave evidence (**T 1858**) which confirmed that a decision had been made not to continue to deal with Ng Chi

Un. The reference in **ex BC19** was not put to him by Counsel Assisting. The reference is to Ng Chi Un's status being changed to "inactive" after a "visitation review". It is therefore not apparent that the reference is capable of confirming anything more than that Ng Chi Un had not visited in over four years, the natural consequence of Crown having determined no longer to do business with him.

352. In any event, it is not submitted by Counsel Assisting, and there is no basis to conclude, that the above matters concerning the Hot Pot junket render false anything in Crown's 31 July 2019 release. In particular, they do not contradict the statement that, apart from Suncity, "Crown does not now deal with any of the other junket operators or players mentioned in the programme, apart from one local player, and none of the international players mentioned have gambled at Crown venues for at least three years" (**ex A219**). On any view, at the time of the release, Crown no longer had any dealings with Ng Chi Un.

353. ***No link between Ng Chi Un and The Company.*** Further, as is accepted by Counsel Assisting (**CA [100], [109]**), and contrary to the media allegations, none of the available material links Ng Chi Un to The Company. Accordingly, none of the material identified contradicts the statement made in the 31 July 2019 release that "Crown has had no dealings or knowledge of any organisation of that name or description".

354. ***Should Crown have dealt with Ng Chi Un as a junket operator?*** Counsel Assisting further contends: "There are numerous indications within Crown Resorts' materials that Ng Chi Un was linked with organised crime" (**CA [100], [109]**). The material identified by Counsel Assisting comprises:

(a) a reference in a Crown Melbourne patron credit profile for Ng Chi Un dated 28 January 2014 being "associate[d] with Tam Yan Tak & Brother Ngau Gor who are associated with Water Room Group" (**ex BJ127**); and

(b) a reference in an internal Crown email from a Crown employee dated 10 December 2015 (**ex BA45, BK11**) to Ng Chi Un (as well as Pun Chi Man) being an influential

355. The employee explained the meaning of this reference in his email of 10 December 2015 upon further inquiries being made by Mr Preston during the course of the Inquiry (**ex BL37** at [10.7]–[10.8]). In short, he used the term to refer to "unsavoury" associates of Ng Chi Un. The context was that: Crown's Credit Control team had indicated to the employee that they proposed to bank cheques by Ng Chi Un (as well as Pun Chi Man); it was believed those cheques would have bounced; the team in Macau called the employee and expressed concern that a bounced cheque was a serious offence in Macau and that if the cheques bounced "unsavoury characters" from the networks of Ng Chi Un (as well as Pun Chi Man) might take

actions against employees of Crown in Macau. At the least, this is suggestive of "stand-over tactics"; it suggests organised crime links, though it is not definitive on this point.

356. Counsel Assisting submit that "on the information available to Crown Resorts referred to above, Crown Resorts could not have been satisfied that Ng Chi Un was of good repute. Crown Resorts should not have dealt with him as a junket operator" (**CA [111]**). Crown accepts that submission.

357. The email from the Crown employee dated 10 December 2015 was not simply in the nature of an allegation or rumour, or an unconfirmed recording in an international database. It was a report from Crown staff in Hong Kong and Macau of their belief as to the character of Ng Chi Un and his associates. Information of that kind should have been made known to those at Crown determining whether to enter a junket relationship with Ng Chi Un. With the benefit of that information, Crown could not have been satisfied that Ng Chi Un was of good repute having regard to his character, honesty and integrity. It should not have dealt with him as a junket operator.

Alvin Chau/Suncity

358. ***Counsel Assisting's submissions.*** In summary, Counsel Assisting submits (**CA [112]**) that on the due diligence that was available to Crown, it should not have had dealings with Alvin Chau, described by Counsel Assisting as the "front man" for the Suncity junket in Australia. For the following reasons, the Inquiry should not reach that conclusion.

359. ***"Front man".*** The submission that Alvin Chau was the "front man" for the Suncity junket suggests that he was not its ***real*** beneficiary. There is no basis to reach such a conclusion. While the 2014 *Four Corners* broadcast quoted at **CA [115]** suggested a different "ultimate beneficiary", this was presumably one of the matters investigated by ILGA without conclusive result. None of the other material before the Inquiry takes the matter further. To the contrary, due diligence material gathered by Crown and placed before the Inquiry all suggests that Alvin Chau is independently wealthy and in real control of Suncity (see the due diligence material referred to at **CA [127]**).

360. ***Due diligence reports.*** **CA [129]** contends that the information in the due diligence reports referred to at **CA [127]–[128]** ought to have been enough for Crown to conclude that it could

not be satisfied that Alvin Chau was a person of good repute.[271] Crown's response to that submission is as follows.

361. In the first place, it is necessary to approach the matter recognising that the relevant legislative schemes do not turn on reputation alone, and in the context of the contemporary regulatory expectations and industry practices. Included as part of this context is the fact that, following the 2014 *Four Corners* broadcast, ILGA investigated the allegations of Suncity's triad connections and did not direct The Star to stop dealing with Suncity. Those investigations must have included Alvin Chau, also referred to in the *Four Corners* broadcast. Given Mr Sidoti's evidence that inquiries were made in Hong Kong, the veracity of allegations such as those made in the 2011 *Apple Daily* article referred to in **CA [115]** concerning Alvin Chau's alleged 14k triad membership must have been investigated. They must also have involved investigation of the fact (if it be a fact) that "[i]n 2012, the US government reported that Mr Chau and two other individuals were involved in organized crime and were restricted to do business only in Macau and China" (see, eg, **ex BJ132** at .4918). There is nothing in the due diligence material referred to in **CA [127]–[128]** which in substance goes beyond these matters.

362. In this context, Crown does not accept that information of the kind in the due diligence reports at **CA [127]–[128]** ought, at the time, have caused it to conclude that it should no longer do business with Alvin Chau or Suncity. It is not submitted by Counsel Assisting that, at the time Alvin Chau first became a junket operator at Crown Melbourne in September 2009 and Crown Perth in June 2010 (**CA [119]**), that Crown knew any of the matters in the due diligence reports referred to. In any event, for the reasons just given, Crown submits that its decision to enter into that junket operator relationship ought not be criticised. Consistently with these submissions, it may be noted that Suncity has had, and continues to have, a junket operator relationship with The Star in both New South Wales and Queensland (see paragraph 252 above).

363. For the same reasons, the way in which this information was referred to in the AML risk assessment dated 20 November 2018 quoted at **CA [133]** is not a proper basis to criticise Crown (**cf CA [134]**). It may be noted that, as discussed further below, by this time AUSTRAC had queried Crown's relationship with Alvin Chau but, apparently, been satisfied by the explanation Crown provided.

364. It is a different question whether, going forward, material of the kind in the due diligence reports referred to at **CA [127]–[128]** ought to be sufficient to disqualify someone in the

[271] **CA [129]** is also critical of Mr Preston for not referring to a Wealth X Dossier dated 26 May 2016 (Exhibit BJ129) in confidential annexure 3 to his 6 March 2020 statement. That criticism is unjustified: confidential annexure 3 did not purport to list all of the due diligence information available to Crown (cf T763/32–34); subject to the limitations identified in the statement, it listed the occasions on which Crown had undertaken an investigation or a review.

position of Alvin Chau. To be clear, there are other matters below which are, in fact, relevant to the position of Alvin Chau. The point being addressed here is whether material in the due diligence material is, of itself, sufficient to disqualify someone in the position of Alvin Chau.

365. It is not a straightforward question whether that material is sufficient, of itself, to disqualify him as a person of good repute having regard not merely to reputation but to his character, honesty and integrity. Unlike some of the other junket operators the subject of the Inquiry, the material contains little in the way of verifiable material, for instance convictions or even charges. All of this being said, given the seriousness of the allegations, on balance — and, contrary to the submission of Counsel Assisting (**T 5843**), consistently with the balance of the evidence — Crown submits that material of this kind ought to be sufficient to disqualify a person in the position of Alvin Chau as a person of good repute, having regard to his character, honesty and integrity, subject to any further countervailing evidence of a more definitive kind.

366. ***AUSTRAC engagement.*** **CA [131]** draws attention to AUSTRAC's email of 8 June 2017. That email is at **ex BE82**. It forms part of a broader engagement between Crown and AUSTRAC concerning Suncity which is addressed in Crown's AML submissions at TBC. For present purposes, Crown draws attention to the fact that it is clear from the email chain that AUSTRAC's description of Alvin Chau as "a foreign PEP with a substantial criminal history" was drawn simply from the due diligence information provided to AUSTRAC by Crown. In any event, as explained in the memorandum from Mr Preston to Mr Felstead dated 3 March 2020, in conjunction with Mr Felstead Mr Preston had further written and oral engagement with AUSTRAC on this issue, following which AUSTRAC raised no further concerns about Alvin Chau (**ex BM8** at .0088; see also **T 767.18–44**).

367. **CA [131]** appears also implicitly to criticise Mr Preston for not escalating the request from AUSTRAC to the Board immediately. In the context of the matters above, that decision was not surprising. The position would have been quite different if AUSTRAC had raised further concerns. But in the face of its apparent satisfaction with Crown's position, it is unsurprising that it was not a matter raised with the Board at this point but, instead, Mr Preston drew the Board's attention to his overall engagement with AUSTRAC with respect to Suncity at a later point: see [AML submissions cross-ref].

368. ***Dealings with Suncity and the Suncity Room.*** **CA [122]–[123], [133]–[136]** and **[138]–[139]** make submissions concerning risks of money laundering in connection with the Suncity junket, including in the Suncity room. These are dealt with in detail in REDACTED - PRIVILEGE REDACTED - PRIVILEGE Those matters are addressed here to the extent that they are said to bear on the way in which Crown managed its junket operator relationship with Alvin Chau.

369. *First*, Crown accepts that over time there have been a number of issues identified with the conduct of the Suncity room. Crown imposed progressively more stringent controls in response to those issues, as detailed in the memorandum from Mr Preston to Mr Felstead dated 3 March 2020 (**ex BM8** at .0088–0090).

370. *Secondly*, it has not been suggested by Counsel Assisting that Alvin Chau himself had any knowing involvement in relation to those issues. On the other hand, Crown accepts that the conduct of those connected with the Suncity junket beyond Alvin Chau must be considered.

371. *Thirdly*, with the benefit of hindsight, Crown accepts that various incidents combined with the adverse due diligence in Crown's possession, should have caused Crown to reassess its relationship with Alvin Chau earlier than it did. As noted in **CA [141]**, that reassessment began in early 2020 and is reflected in Mr Preston's memorandum of 3 March 2020.

372. *Fourthly*, the history of Crown's dealings with Suncity serve to strengthen the position set out in paragraph 364 above that, going forward, a person in Alvin Chau's position ought to have been carefully and routinely scrutinised as information continued to come to light, and that information ought to have been assessed cumulatively to determine whether it was cumulatively sufficient, of itself, to disqualify him as a person of good repute having regard not merely to reputation but to his character, honesty and integrity.

373. ***Reviews.*** **CA [126]** and **[136]** are critical of the absence of escalation of any annual review of Alvin Chau to Messrs Johnston, Felstead and Preston. That criticism is overstated.

374. Crown reviewed its relationship with Mr Chau as part of it's across the board review of junket operators following the China arrests. At that time, Crown had in its possession each of the due diligence reports mentioned at **CA [127]**. As noted in **CA [128]**, allegations of triad connections are disclosed by all of those reports. Repetition of those allegations, without any new information, whether in the 2019 media allegations or otherwise, was therefore not a matter which required escalation to Messrs Johnston, Felstead and Preston at an annual review. Further, the Suncity relationship was under continued review of at least Messrs Felstead and Preston given the AUSTRAC query and the issues concerning the Suncity room referred to above. That said, Crown accepts that the allegations in **CA [113(a)], [113(c)]** and **[113(d)]** were new matters which ought to have triggered such escalation, albeit that those in **[113(a)]** and **[113(d)]** are unfounded.

375. ***The 31 July 2019 release.*** Crown accepts that the 31 July 2019 release did contain a factual inaccuracy concerning Suncity. The erroneous statement was that "the parent of the SunCity junket [with whom Crown deals] is a large company listed on the Hong Kong Stock Exchange, which operates globally". Crown in fact dealt with Alvin Chau, the Executive Chairman, and

a substantial shareholder, of the company listed on the Hong Kong Stock Exchange, not the corporate entity. He was and is a close associate of the listed SunCity entity, such that the erroneous statement would not mislead the reader of the release in any substantive respect. The statement was removed from the subsequent advertisement Crown published in response to the media allegations on 6 August 2020.

376. ***Triad connections.*** Finally, it is necessary to note that while the material before the Inquiry concerning Alvin Chau ***suggests*** triad connections, as accepted at **CA [145]** "it cannot be known with certainty that Alvin Chau is or was a former triad member". As is implicitly accepted by Counsel Assisting, the Berkeley Report (**ex AC28**) does not permit that conclusion to be reached. In that context, no criticism can be directed to Mr Preston for "maintaining doubts" on this point (**cf CA [141]**).

Neptune Group

377. ***Neptune Group as a junket operator.*** **CA [146]** submits that it is open to find that Crown has had dealings with the Neptune Group as a junket operator. Crown accepts that to be so. The list of junket operators linked to the Neptune Group at **CA [155]** is drawn from the statement of Joshua Preston dated 6 March 2020 (**ex J3)** at [31(b)] and confidential annexure 3 (**ex J2**). The details set out at **CA [155]** concerning those junket operators are correct.

378. Crown therefore accepts that it was dealing with Yan To Chan at the time of the 31 July 2019 release. However, that does not reveal any inaccuracy in that release. While the Neptune Group and Cheung Chi Tai were mentioned in "Gangsters, gamblers and Crown casino" published on 27 July 2019 (**ex G3**) (see **CA [147]**), neither the Neptune Group nor any of the junket operators with whom Crown has dealt that are associated with the Neptune Group were mentioned in the *60 Minutes* programme "Crown Unmasked" (**ex F63**). After naming Suncity, Crown's release relevantly said: "Crown does not now deal with any of the other junket operators or players mentioned in the programme".

379. ***Links to organised crime.*** **CA [146]** also submits that it is open to find that the Neptune Group is linked to organised crime. The Inquiry should not make that finding. Crown accepts that the material before the Inquiry ***suggests*** such a link. But the material is not sufficient for the Inquiry to find that there ***is*** such a link. That is consistent with the conclusion reached by ILGA following its investigation of the 2014 *Four Corners* report referred to at **CA [149]**, explained by Mr Sidoti in his evidence (**T 935–936**) and discussed in paragraphs 244–245 above.

380. ***Media allegations concerning the Neptune Group.*** **CA [147]–[153]** quotes from a series of media articles concerning the Neptune Group. **CA [156]** then contends that Crown should

not have dealt with any of the junket operators which Crown accepts were associated with the Neptune Group. Quite apart from any specific matters relating to each junket operator (addressed below), this is said to be because "there is longstanding media coverage to the effect that the Neptune Group is linked with organised crime".

381. Of itself, that is not a sufficient reason to conclude that Crown should not have dealt with these junket operators. As explained in paragraphs 229–233 above, the relevant statutory schemes do not depend on reputation alone. Still less did the way in which those schemes were applied by regulators and industry at the relevant time depend on reputation alone. In considering Crown's dealings with these junket operators, one cannot simply move from a survey of media reports over a number of years to a conclusion about Crown's dealings with a series of operators which span a period both before and after those reports.

382. This is graphically illustrated by the fact that, as noted above, following the 2014 *Four Corners* report referred to at **CA [149]**, ILGA evidently took no step to direct The Star — which was mentioned in that report — to stop dealing with Neptune. The submission of Counsel Assisting involves the assertion that Crown should have acted differently from ILGA (cf **CA [159]**).

383. Crown's more specific submissions on each of the junket operators associated with the Neptune Group are as follows.

384. ***Cheung Chi Tai.*** As noted at **CA [155(a)]**, Cheung Chi Tai made an application to be a junket operator in 2005. There is no suggestion in the submissions of Counsel Assisting that, at that time, there was anything to suggest to Crown that he ought not be approved as a junket operator.

385. Save for one exception, all of the material which is subsequently relied upon by Counsel Assisting was available to ILGA at the time it investigated the 2014 *Four Corners* report which specifically named Cheung Chi Tai (**CA [149]**). Applying the same standards as ILGA then applied, there is no basis to conclude that Crown should have terminated its junket operator relationship with him at that time. That is especially so since the evidence shows that that relationship was essentially dormant. A screenshot of a patron inquiry for Cheung Chi Tai, prepared in connection with Crown's own investigation of the *Four Corners* report (**ex BE53**, **BE58**), shows no activity on his account whatsoever.

386. The only new information which came to light after the *Four Corners* report was the *Reuters* report of 26 June 2015 quoted at **CA [151]**. Following that report, Crown moved promptly to put stop codes on Cheung Chi Tai's account on 2 July 2015 to prohibit further activity on that

account (**ex BA101** at .0008) and banned him from entering Crown Resorts' properties (**ex AC12** at .0008).

387. **CA [161]** focusses on Mr Felstead's response to an email dated 4 October 2015 (**ex S15**) which forwarded on a story mentioning that Cheung Chi Tai was facing money laundering charges. Counsel Assisting submit that since Mr Felstead's reply only raised a concern as to how much credit was to be extended to the junket, "the available inference is that he was not concerned with probity issues". That inference should not be drawn. Mr Felstead denied it (**T 1320.41–44**). The news article was almost entirely concerned with the Neptune Group's financial position. It mentioned the money laundering charge only in the final paragraph and referred to Cheung Chi Tai as a former major shareholder. Mr Felstead did not know Cheung Chi Tai was a junket operator at Crown (**T 1319.39–42**). In any event, as noted above by this time Crown had already put stop codes on Cheung Chi Tai's account.

388. It is a different question whether information of the kind available to Crown prior to the *Reuters* report of 26 June 2015 should, going forward, be sufficient to disqualify someone in the position of Cheung Chi Tai from being a person of good repute having regard to character, honesty and integrity. The information relied upon by Counsel Assisting comprises the following.

389. *First*, on 30 March 2010 a *Reuters* report (**ex A125**) stated that, during trial of four men in Hong Kong for conspiracy to commit bodily harm and a fifth for soliciting murder, a witness identified Cheung Chi Tai as a leader of the Wo Hop To triad and a senior inspector with the Hong Kong police called to testify because he is an expert on triads identified Cheung Chi Tai by name as someone who would commit crimes for money. The article said that Cheung Chi Tai's organised crime affiliation was corroborated in interviews for the article with law enforcement and security officials intimately familiar with the gaming industry in Macau. The article said that he did not appear in court and was not charged, and that Hong Kong police declined to answer detailed inquiries on why this was so and acknowledged only that a 49-year old man surnamed Cheung was arrested in connection with the case but released after legal advice was sought due to insufficient evidence. The information from that *Reuters* report was repeated in *The Sydney Morning Herald* on 24 February 2012 (**ex T10**) but with no new content. It appears that the same information was relied upon in the 15 September 2014 *Four Corners* report (**ex A144**) quoted at **CA [149]**.

390. *Secondly*, a *Reuters* report from 25 September 2014 (**ex A145**) quoted at **CA [150]** stated that Hong Kong local media reported that, in April 2014, the wife of Cheung Chi Tai was detained in Hong Kong along with HK$200 million. The report further stated that Cheung Chi Tai had been named as an alleged triad member at the money laundering trial of Carson Yeung.

However, an earlier article published on 7 March 2014 (**ex F29**) made clear that this was not evidence given in the case: the court had heard only that Cheung Chi Tai was reported by local media to be a local triad gang leader.

391. *Thirdly*, it is to be expected that the information contained in the 26 June 2015 *Reuters* report (**ex T11**) quoted at **CA [151]** was available prior to the date of the report, as it refers to events from November 2014.

392. Crown submits that, going forward, information of this kind should be regarded as sufficient to disqualify a person in the position of Cheung Chi Tai from being a person of good repute having regard to character, honesty and integrity. *Reuters* is a reputable news source. The information in the 30 March 2010 report included a credible report of expert testimony given by a senior member of the Hong Kong police that Cheung Chi Tai as someone who would commit crimes for money. The information in the 26 June 2015 report referred to Cheung Chi Tai's assets being frozen in connection with a money-laundering investigation.

393. ***Lin Cheuk Chiu.*** As noted at **CA [155(b)]**, Lin Cheuk Chiu was approved as junket operator by the then Victorian Office of Gaming Regulation in March 2003. That being so, Crown was entitled to assume that he was of good repute having regard to his character, honesty and integrity when it entered into a junket operator relationship with him in July 2004. Crown's internal records indicate that Lin Cheuk Chiu had not used his credit facility since 2011 and had not visited Crown since 2016 (**ex BJ106** at .004).

394. The earliest due diligence material held by Crown concerning Lin Cheuk Chiu dates from 20 November 2015. A Wealth Insight Report of that date (**ex BJ107**) states as part of his profile:

> Mr Lin was the real power behind Neptune group and he had helped numerous high-profile individuals in money laundering through underground banks. … In 2008, Mr Lin was arrested on suspicion of involvement in money laundering and bribes to government officials, but has not been formally charged. … In 2001, Mr Lin was implicated for an anti-smuggling crackdown led by Zheng Shaodong, according to a judgment from a court in China's southern Guangdong province. Mr Lin was using dummy companies in Hong Kong to move money across the border in an underground banking operation since 1999, according to the court judgment.

395. Again, having regard to the standards which were applicable at the relevant time, as evidenced by ILGA's investigation of Neptune following the 2014 *Four Corners* report, Crown submits that information of this kind was not sufficient to cause it to terminate its junket operator relationship with Lin Cheuk Chiu.

396. However, Crown also submits that, going forward, a search result of this kind should be regarded as sufficient to disqualify a person in the position of Lin Cheuk Chiu from being a person of good repute having regard to character, honesty and integrity, at least without further inquiry. The search result refers to a court judgment, meaning that steps could be taken to verify the report. While the judgment is from some time ago, it is coupled with a more recent reference to arrest on suspicions of involvement in money laundering.

397. ***Nicholas Niglio, Chi Hung Wang and Yan To Chan.*** The submissions of Counsel Assisting do not identify any specific adverse information in respect of Nicholas Niglio (**CA [169]–[170]**), Chi Hung Wang (**CA [171]**) or Yan To Chan (**CA [172]–[173]**). The due diligence conducted on each of these individuals does not identify any specific adverse information against any of them.[272]

398. The gravamen of the submissions by Counsel Assisting in respect of these three individuals is their association to the Neptune Group. It is important to consider their circumstances separately, as Crown had different information available to it at different times. However, in doing so, Crown accepts that throughout there was information available to it that Cheung Chi Tai and Lin Cheuk Chiu were owners or investors in the Neptune Group.

399. Chi Hung Wang applied to be a junket operator in October 2010 and July 2012 at Crown Melbourne and Crown Perth, respectively (**CA [155(d)]**). Consistently with the contemporaneous approach as evidenced by ILGA's approach to the 2014 *Four Corners* story, no criticism can be made of Crown for approving those applications. However, consistently with the position explained above, going forward, the connection with Cheung Chi Tai and Lin Cheuk Chiu should be regarded as sufficient to disqualify someone in the position of Chi Hung Wang.

400. Nicholas Niglio made an application to be a junket operator at Crown on 30 June 2015 (**CA [155(d)]**). Again, Crown submits that, going forward, his connection with Cheung Chi Tai and Lin Cheuk Chiu, as an Executive Director of Neptune Group, should be regarded as sufficient to disqualify someone in the position of Nicholas Niglio.

401. Yan To Chan's applications to be a junket operator were made in mid-2011 (**CA [155(e)]**). He was, at the time, a shareholder in the Neptune Group (**Exhibit AC28** at .0055–6). However, applying the approach applicable at the time, this would not have been sufficient reason to

[272] Nicholas Niglio: Exhibit BJ116 (CRL.579.011.3041); Exhibit BJ117 (CRL.579.011.3042); Exhibit BJ118 (CRL.579.011.3043); Exhibit BJ119 (CRL.579.011.3044). Chi Hung Wang: (CRL.732.001.1226) [***Not currently in evidence***]. Yan To Chan: Exhibit AC28 at .0055–6.

disqualify him from being a person of good repute having regard to his character, honesty and integrity.

402. Crown submits that his shareholding in the Neptune Group should, going forward, be the kind of matter which would disqualify a person in Yan To Chan's position for the same reasons above. However, according to the Berkeley Report, that shareholding ceased in 2017 (**ex AC 28** at .0055–6). It may be that, with sufficient time and investigation, Yan To Chan's previous connection to the Neptune Group would not be sufficient to disqualify him.

Chinatown

403. ***Counsel Assisting's submissions.*** The junket operators who Crown identifies as associated with the "Chinatown" brand or identifier are those set out at **CA [183]**, namely Zhou Qiyun, Liwen Yuan, Hui Ouyang or Jiucheng Liang. As noted in **CA [184]**, Crown did not carry on any further business with these persons as junket operators after November 2016, though there was a further financial transaction in January 2017 involving Zhou Qiyun discussed in paragraph 410 below and he has subsequently operated as a junket representative.

404. The statement of issues and contentions asserted at [39] that, on the material available to Crown, it could not have been satisfied that these men were persons of good repute and should not have entered into business relationships with them. No submission is made to that effect in the submissions of Counsel Assisting. In any event, the Inquiry should not make such a finding, for the following reasons.

405. ***Other junket operators and connections.*** **CA [185]** refers to the fact that Wai Keng Wan and Tim Fu Chong were referred to as associates of the Chinatown junket in a patron information document dated 2 August 2019 (**ex BB19** at.0370).

406. Crown maintains the position that that document was simply mistaken in respect of Wai Keng Wan, who was affiliated with the Meg-Star (Ngok Hei Pang) junket and not with the Chinatown junket (CRL.# [Not in evidence].

407. However, in relation to Tim Fu Chong, Crown accepts that there is credible evidence connecting him with persons formerly affiliated with the Chinatown junket. He should have been identified in Mr Preston's statement dated 6 March 2020 and it was an oversight in the preparation of that statement that he was not.

408. However, the criticism of Mr Preston at **CA [185]** for not identifying these individuals, along with the others there mentioned, in his statement dated 6 March 2020 and Confidential Annexure 3 to that statement is unfair. As already noted, his statement was expressly directed

to answering the Inquiry's request for: "Details of any notifications received from law enforcement agencies or other informants, or investigations or reviews conducted, in relation to junkets operated by, or associated with" a series of junkets including, relevantly, "Chinatown junket". Mr Preston's statement explained that, in order to answer that request, with the assistance of Crown's Legal Team and its Regulatory and Compliance Team (see at [18]), he had sought to identify which junket operators were associated with each of the junkets mentioned (at [31]).

409. It is therefore entirely unsurprising that his statement did not mention the "other connections", because they were not suggested to Mr Preston to be junket operators associated with Chinatown. For the same reasons, the criticisms of Mr Preston during his evidence for not identifying Tom Zhou and Tian Di as financiers in his statement are unjustified (**T 1778–1782**) (**cf CA [188]**). Mr Preston explained in evidence that he had been advised (evidently by the teams referred to above) that their inclusion in the 2019 patron information document was incorrect (**T 1782.1–5**). That remains Crown's position in respect of Wai Keng Wan. While there was an oversight in the preparation of Mr Preston's statement in respect of Tim Fu Chong, which Crown accepts should not have occurred, it is not a matter for which Mr Preston personally should be criticised given his reliance on the teams referred to above.

410. ***Liwen Yuan, Hui Ouyang, Jiucheng Liang and and Tim Fu Chong.*** No specific adverse information has been advanced by Counsel Assisting in respect of Liwen Yuan, Hui Ouyang, Jiucheng Liang or Tim Fu Chong. The sole submission with respect to them is based on their affiliation with the "Chinatown" brand or identifier. The submission about Chinatown turns upon specific submissions about Zhou Qiyun, one of the junket operators, and Tom Zhou and Tian Di, its financiers.

411. ***Zhou Qiyun.*** The only adverse submission about Zhou Qiyun is at **CA [199]**. It refers to a transaction which occurred in January 2017 on his junket account. That matter is responded to in detail in [***Insert cross reference to AML submissions***]. In short, [***insert summary***]. Accordingly, no adverse inference ought to be drawn regarding Zhou Qiyun from that transaction. There is therefore no specific adverse information about Zhou Qiyun advanced by Counsel Assisting.

412. **CA [184]** states: "Crown Resorts claims that it decided not to carry on any further business with these persons in November 2016, as a consequence of the review conducted following the arrests in China". The reference given is to Mr Preston's statement in the conclusion of [31(g)]. That is not what the statement said. It said that Crown decided not to carry on any further business with these persons ***as junket operators*** in November 2016, as part of the review. The statement was not directed to the question whether any of these persons were

subsequent junket representatives for other junket operators. The implicit criticism of Mr Preston in the second sentence of **CA [184]**, that his statement was inconsistent with the fact that Zhou Qiyun subsequently operated at Crown as a junket representative, is therefore without foundation.

413. Mr Preston's accepted that there ***was*** an error in his statement insofar as the transaction in January 2017 referred to above was after November 2016 (**CA [201]**). However, as he explained, that activity was related to funds sitting in the account from gaming activity prior to the November 2016 decision. His statement was accurate insofar as junket gaming activity is concerned.

414. ***Tom Zhou.*** Crown accepts that Tom Zhou was one of the financiers of the Chinatown junket (**cf CA [188]** "***the*** financier"). Crown also accepts that it knew this from around 2015 or 2016 (see esp O'Connor **T 1880.19–24**).

415. It is also not in dispute that from 28 July 2019 a series of media allegations emerged concerning Tom Zhou which are summarised at **CA [175]–[181]**. By this time Tom Zhou had been issued a WOL by Crown (issued on 11 February 2019) (**CA [195]**). There is no submission by Counsel Assisting that Crown could have learned of the matters the subject of the media allegations prior to their publication. To the contrary, as acknowledged in **CA [190]**, **[192]** and **[193]**, at all such times Crown's searches on international databases (including Interpol's public database) either produced no results at all for Tom Zhou or, at the least, no adverse entries.

416. Accordingly, at the time that Crown was dealing with each of the junket operators referred to in the submissions of Counsel Assisting in relation to Chinatown there was no way in which Crown could have known that Tom Zhou is not a person of good repute, having regard to his character, honesty and integrity.

417. ***Tian Di.*** Crown accepts that Tian Di was also a financier of the Chinatown junkets (**CA [197]**). Crown ceased to deal with him as a guarantor shortly after 7 November 2016, when it was reported he had been detained in China in connection with the arrest and detention of Crown's China staff.[273]

418. ***The 31 July 2019 release.*** Finally, while Tom Zhou was mentioned in the *60 Minutes* programme "Crown Unmasked" (**ex F63**), it was accurate for the 31 July 2019 media release to say that, apart from Suncity, "Crown does not now deal with any of the other junket

[273] Phillip Wen, " Crown's Chinese middleman to VIP high-rollers among those arrested in raids", *Sydney Morning Herald* (*Document ID*) [Not currently tendered]

operators or players mentioned in the programme". So far as Tom Zhou was mentioned as a player, he had been issued with a WOL in February 2019.

419. With the exception of Tim Chong Fu, who was not himself mentioned in the *60 Minutes* programme, Crown had stopped dealing with each of the junket operators it associated with the Chinatown brand over two years earlier, at least so far as they were acting as junket operators. It is true that it continued to deal with Zhou Qiyun, in his capacity as a junket representative. He was not himself mentioned in the *60 Minutes* programme. The statement in the media release was not in terms directed to junket representatives. In any event, if there is thought to be any error in what was said having regard to Zhou Qiyun's continued role as a junket representative or in respect of Tim Chong Fu, it is not an error that goes to the suitability of Crown or its Board.

Simon Pan

420. ***Simon Pan himself.*** Crown makes the following submissions in relation to Simon Pan.

421. *First*, as noted at **CA [219]** on 21 February 2019 Simon Pan was issued a 3-month WOL for inappropriate conduct towards staff and, following the media allegations in July 2019, Crown made the decision no longer to deal with him and issued him an indefinite WOL. Crown thus acted promptly in respect of Simon Pan following the media allegations.

422. *Secondly*, Crown accepts that he was at all relevant times a director of Triple 8 International Pty Ltd with a principal place of business at 39 Tope Street South Melbourne (**CA [206]**). *Crown also accepts that this is the site of a licensed[274] brothel. That fact, alone, would not have been sufficient to disqualify Simon Pan as a person of good repute, having regard to character, honesty and integrity.*

423. [redacted]

424. *Fourthly, Crown does not accept that it should have taken steps against Simon Pan earlier than it did. Crown does not accept that the mere fact of investigations by police of the kind referred to in CA [212]–[213] were*

[274] That it is licensed is evidenced by, eg, **ex BJ37** at .8490.

sufficient. It is true that the material which was ultimately the basis of Crown's decision as evidenced by ex BJ36, BJ37 and BJ99 in 2019 — in particular the County Court decisions showing money laundering occurred at the 39 Tope Street premises — was available to Crown earlier than this, by the end of 2015. However, access to this information required a targeted search of relevant legal databases to identify proceedings to which Simon Pan was not a named party. Crown conducted periodic searches of World Check, which was a reasonable action in the absence of any specific adverse information regarding alleged criminal activity by Simon Pan. No adverse information from World Check or otherwise, or any other media attention, suggested targeted searches of the kind required to identify the 2015 decisions were required prior to July 2019.

425. ***Kim Teng Jong. CA [208]–[211]*** *refer to Crown's dealings with junket operator Kim Teng Jong. Counsel Assisting makes no submission critical of those dealings.*

426. *Cheng Kang Pan. CA [218]–[220] refer to Crown's interactions with Cheng Kang Pan. Counsel Assisting makes no submission critical of those dealings* which is said to reflect in any way on Crown's decision to deal with Simon Pan.

Zezhai Song

427. *Zezhai Song. CA [239] submits that following receipt of a C6 Group "Enhanced Due Diligence" report on Zezhai Song dated 12 December 2016 (ex BJ29) Crown could not have been satisfied that he was of good repute, and should not have dealt with him as a junket operator after that time. Crown's submissions in response are as follows.*

428. *First, it may be noted immediately that Counsel Assisting makes no submission suggesting that Crown should not have dealt with Zezhai Song prior to this time. It therefore follows that no submission is made critical of Crown's entry into a junket operator relationship with him in May 2009 (Melbourne) and October 2010 (Perth).*

429. *Secondly, so far as the C6 Group Report referred to a 2003 conviction in China, it was suggested by Counsel Assisting (T 5034) that there was nothing to show that Crown sought to ask Zezhai Song about* it. The position is a little more complicated than this.

(a) [redacted]

(b)

(c)

(d)

430. It can thus be seen that while Crown did not speak directly to Zezhai Song about the allegation, it did make inquiries with his representative in Australia.

431. Crown accepts that more could have been done in relation to this matter. For one thing, it could have sought to address it directly with Zezhai Song. For another, as noted in **CA [238]** the Berkeley Report was able to obtain further confirmation of the matter by identifying the Court in which it was heard officially and confirming the sentence with inquiries from a "discrete source". These kinds of inquiries are ones which the Deloitte Report has recommended be undertaken when necessary.

432. *Thirdly*, so far as the C6 Group Report referred to the allegations about the purchase of a Lamborghini, again Crown accepts that more could have been done to investigate these allegations. In particular, the reasons for judgment identified at **CA [227] fn 418** (**ex T60**) could have been identified. They would have given further detail concerning the allegations made by the Australian Federal Police. Again, whether the person responsible for the transfer of funds was Pei Liang Zhang or Zezhai Song, and what their explanation may have been in response to the allegations of the Australian Federal Police, were matters that could have been raised directly with them.

433. *Fourthly*, had further inquiries of the kind above been made, Crown may nonetheless still have properly considered it appropriate to continue doing business with Song Zezhai. For instance, if he had admitted the illegal gambling conviction (which was many years previously) and explained the circumstances in which it occurred, and also explained the circumstances concerning the purchase of the Lamborghini, it may have been open to Crown to conclude that he was a person of good repute having regard to this character, honesty and integrity. Accordingly, Crown does not accept the submission of Counsel Assisting that, following

receipt of the C6 report, it was bound to conclude to the contrary. [redacted] However, Crown accepts that it should have made further inquiries of the kind mentioned above.

Pun Chi Man

434. ***Material available to Crown.*** **CA [241]–[243]** concern Pun Chi Man. The material available to Crown concerning Pun Chi Man was as follows:

(a) like Ng Chi Un, the email from a Crown employee dated 10 December 2015 (**ex BA45, BK11**) referred to Pun Chi Man as an influential character in Macau "particularly the underground network"; and

(b) a credit profile dated 20 November 2013 attaching the executive summary of a due diligence report of 9 September 2013 (**ex BK12**) referred to his being one of the central figures of Macau's Grand Palace VIP Club, located at a Macau casino, and continued:

> *From an unofficial website it stated that the owner of Macau Grand Palace VIP Club is owned by VONG Tat Hou, who was jailed for 10.5 years for being a senior triad gang member (14K), loan-sharking, money laundering and telephone tapping. VONG was released on 17 Jul 2009. VONG is also the real owner of Macau Lucky Star Group".*

435. ***10 December 2015 email.*** The 10 December 2015 email has already been addressed at paragraphs 353–356 above in relation to Ng Chi Un. The same submissions apply in relation to Pun Chi Man. In short, Crown accepts that, in light of that information, it should not have dealt with Pun Chi Man as a junket operator.

436. ***20 November 2013 credit profile.*** In relation to the 20 November 2013 credit profile, as explained further below Crown's due diligence processes for junket operators were then substantially different from those applicable from 2017 onwards. A difficulty with the information is that it is sourced "[f]rom an unofficial website". That said, Crown accepts that the information it contains about Vong Tat Hou is more than mere allegation: it refers to jailing and conviction, which are matters that presumably could be checked. So too, the suggestion that he is the real owner of the Macau Lucky Star Group, and the apparent connection between that and Pun Chi Man's junket (the Lucky Star junket), are matters which could be checked.

437. That being so, Crown accepts that information of this kind ought to have been sufficient even in 2013 to disqualify Pun Chi Man as a junket operator, unless it could be determined that the

information referred to above was false. There was a sufficient prospect that the junket was in fact owned or controlled by Vong Tat Hou, and sufficient material to disqualify him as a person of good repute having regard to his character, honesty and integrity.

438. ***15 June 2017 VIP Operations Team minutes.*** In response to **CA [243]**, Crown accepts that, especially in light of the matters above, more was required in June 2017 than to obtain a police clearance in order to be satisfied that it was appropriate to continue doing business with Pun Chi Man as a junket operator. That said, there is no evidence that the suspension of business with Pun Chi Man was ever lifted; there is thus no suggestion that further business was conducted with him after 2015.

Sixin Qin

439. ***Counsel Assisting's submissions.*** **CA [240]** describes as an "obvious due diligence 'fail'" the circumstances of Sixin Qin. It was asserted in the statement of issues and contentions at [30] that, on the material available to Crown, it could not have been satisfied that Sixin Qin was a person of good repute and should not have entered into a business relationship with him. That contention is not repeated in the submissions of Counsel Assisting. Crown submits such a conclusion should not be reached.

440. ***Evidence of Mr Mitchell and Ms Coonan.*** **CA [246]** states:

> Mr Mitchell agreed that Sixin Qin has links to money laundering or unsavoury activities and he is not the sort of person you would want to be dealing with. Ms Coonan also agreed that Sixin Qin is not a person of good repute.

This mischaracterises the evidence of Mr Mitchell and Ms Coonan.

441. Mr Mitchell's evidence is at **T 3852/37–45**. It followed Counsel Assisting putting to Mr Mitchell the content of a customer profile at **ex AG7**, which is the same profile as **ex AF44** mentioned in **CA [245]**. After putting the profile to Mr Mitchell, the examination continued:

> MR ASPINALL: Do you accept that based upon that, that this man appears to have significant links to money laundering or other unsavoury activities?
>
> MR MITCHELL: Well, significant or otherwise, but links certainly. Certainly.
>
> MR ASPINALL: And he is not the sort of person you would want to be dealing with, presumably?
>
> MR MITCHELL: No, no, no.

442. Ms Coonan's evidence was likewise premised upon the content of the customer profile (**T 4571/41–44**):[275]

> MS SHARP: There's nothing in this information that would give you comfort that Si Xin Qin is of good repute?
>
> MS COONAN: No, you'd certainly – you'd certainly not think that from this report.

443. The same point may be made about the submission at **CA [247]** that "Mr Mitchell also agreed that Crown Resorts' vetting procedures or the standards it accepted, in terms of dealing with junket operators, such as Sixin Qin, were not good enough". The question put to Mr Mitchell, and hence his answer, was premised on what was ***indicated*** by the customer profile (**T 3855/1–5**).

444. It is necessary to consider carefully what is contained in the customer profile and the material that lies behind it.

445. ***The due diligence material.*** The customer profile is dated 3 January 2017 (**ex AF44**). In summary, it records that global database and internet searches from the end of 2016 and the beginning of January 2017 state that Sixin Qin had been detained by Chinese authorities on suspicion of money laundering and illegal banking in 2012, but that this was not verified by official sources. The position is more complicated upon analysis of the underlying material. None of that underlying material was put to either Mr Mitchell or Ms Coonan.

446. One of the sources referred to was a Wealth-X dossier of the kind at **AF35**. The document records (at .4632):

> Native of China, Qin is one of the Partners at David Star, a Macau-based casino junket operator with presence in all six of Macau's casino operators, including properties owned by U.S. operators Wynn Resorts and Las Vegas Sands. David Star is said to be one of Macau's major casino junket operators. Some articles claim it is Macau's biggest casino junket group. In November 2012, Qin was detained in China on suspicion of money laundering. He name was reportedly listed in a Las Vegas Sands ledger, which showed records of intracompany transactions between Macau and Las Vegas. The ledger also showed that Qin received $1.65 million at The Venetian in Las Vegas in September 2009. Basis for the payment remains unclear, **and there was reportedly no evidence that the transaction contravened any laws**. Casino executives and U.S. authorities expressed concern that customers could exploit intracompany

[275] Mr Demetriou (T3953/5, 4074) and Ms Korsanos (T4096) were both similarly questioned in respect of Sixin Qin. In both cases, as with Mr Mitchell and Ms Coonan, the witness was not taken to material other than the customer profile.

> accounts to launder money through transfers across borders via casino accounts. [emphasis added]

447. The basis for this information is an article published in the *Wall Street Journal* on 4 December 2012 (**ex M26**), which included the following reporting (at .1769):

> Chinese police have also detained people on the mainland from at least four junket groups that operate in Macau in conjunction with their alleged illegal underground banking activities, said people familiar with the matter.
>
> Qin Si Xin, another partner of David Star, is among those who have been detained in China, these people say. Mr. Qin, a mainlander, is listed on a Las Vegas ledger viewed by the Journal that shows intracompany transactions between Macau and Las Vegas. In September 2009, he received $1.65 million at the Venetian in Las Vegas from a junket operator in Macau, according to the ledger. It is unclear what the payment was for, but there is no evidence that Mr. Qin's transaction violated any laws. He couldn't be reached to comment.

448. The *Wall Street Journal* article does not in fact suggest that Sixin Qin was implicated in money laundering.[276] To the contrary, it states expressly that there was no evidence that the transaction in which Sixin Qin was involved contravened any laws. Further, it is significant that the intercompany loans in question involved Las Vegas Sands Corp, a casino operator licensed and operating within Nevada, Singapore and Macau and the owner of The Venetian Resort Las Vegas.[277]

449. Crown had further information available to it, not in the public domain. Thus, in an email dated 26 March 2013 (**ex M30**) **Mr** Michael Chen wrote to Mr Felstead, copied to Mr Jason O'Connor and Mr Stefan Albouy, as follows:

> As you know, politically motivated detentions are common in China, dating back to the Mao Zedong days. Recently, 2 partners in the David Star group were detained and subsequently released after a few months of detention and after reportedly paying large for [sic] unformalized charges.
>
> …

[276] While underground banking networks are susceptible to money laundering, it does not follow that all underground banking is money laundering. See the discussion in the report of the Australian Institute of Criminology dated July 2005 entitled *Underground Banking: Legitimate Remittance Network Or Money Laundering System* (**ex C3**) at .1041: "It is important to achieve a balance between regulating the underground banking sector in an attempt to reduce the flow of illicit funds, and permitting its continued use as a legitimate, alternative remittance system."
[277] Las Vegas Sands 2019 Annual Report, page 3 [to be tendered].

> *Qin Xi Sin [sic], a customer of ours who turned $2B in Crown Melbourne last October was detained for nearly 3 months without every [sic] being formally charged for anything. He recently was released without any explanation of cause for detention. His supporters facilitated his release with very powerful leaders. This sounds like the stuff of fiction, but it is indeed true.*

450. It has been suggested on a number of occasions during the Inquiry that where a casino operator is unable to test the veracity of allegations made in respect of a person with whom it proposes to deal, it may be prudent to approach the operator directly and put the allegations to them. The source of the information in Mr Chen's email, which was not in the public domain, appears to be either Qin Sixin himself or one of the supporters referred to.

451. Further, the information available to Crown suggests a possible reason for Qin Sixin's detention. The *Wall Street Journal* article (**ex M26**) observed (at .1768–9):

> Displays of wealth, such as the increasing numbers of wealthy Chinese coming to gamble in Macau's casinos are of concern to the Chinese government amid heightened outrage corruption after the fall of former party high-flier Bo Xilai, who was ousted from his party posts in the spring and whose wife was convicted in August of murdering a British businessman.
>
> …
>
> *Last month at Wynn Macau, police detained a partner of one of Macau's major junket operators who has ties to Mr. Bo, the disgraced Chinese politician, said people familiar with the situation. The partner, Pang Yufeng, and his associates, including his driver, were taken to China at the request of Chinese authorities, the people said.*

452. Another media report dated 4 December 2012 linked Qin Sixin's detention to the same event (**ex AF54**):

> The Wall Street Journal reported that Pang Yufeng – one of four partners at junket operator David Star, which has relationships with all six of Macau's casino concessionaires – was detained at the Wynn Macau last month and brought back to China to answer questions on some unknown topic. Another David Star partner, Qin Si Xin, was reportedly detained in China, as were individuals connected to four other junket operators.
>
> …
>
> The impetus behind all these detentions may be Bo Xilai, the former Party chief in Chongqing who took a spectacular fall from grace earlier this year after his wife was charged with and convicted of the November 2011 murder of UK businessman Neil

> Heywood. Once a candidate for promotion to the Party's inner circle, Bo is now under investigation for "taking advantage of his position to seek profits for others and receive huge bribes personally or through his family." Sources told UK newspaper The Times that the recently detained junket operators were being questioned regarding a corruption case involving "a former senior Chinese official." Bo remains (for the moment) unindicted, and despite his troubles reportedly still retains some support within the Party, meaning that if/when the Party brass does put Bo on trial, their case against him better be rock solid. It will be interesting to see how tight they plan to squeeze the detained junket operators in order to get the info they need. You can't get blood from a stone, but junket operators are only human.

453. These reports, and Mr Chen's email, are consistent with the notorious fact that the People's Republic of China is a country in which the rule of law is inconsistently applied[278]. That is supported by expert evidence prepared for the purposes of the class action by Professor Margaret Lewis, a leading expert in Chinese criminal law.[279]

454. ***Should Crown have dealt with Qin Si Xin as a junket operator?*** In this light, it was well open to Crown to determine that Sixin Qin was, and remains, of good repute having regard to his character, honesty and integrity. The due diligence material evidences: (a) an arrest without charge a number of years ago; (b) express identification in the reports of the absence of evidence of illegality; (c) other likely reasons for the arrest; and (d) no subsequent information suggestive of poor character.

C7. Suitability questions said to arise from junket findings

Business relationships with persons not of good repute

455. **CA [282]** submits that "Crown resorts' conduct allowed or facilitated individuals of seriously questionable repute with probable links to organised crime, and/or with triad ***connections***, to enter into business relationships with it". That finding should not be made. For the reasons above, the material does not support a finding that the individuals in question had probable links to organised crime and/or triad connections.

456. Crown accepts that some of the junket operators the subject of the submissions above may fairly be described as having questionable reputations. Crown also accepts that in relation to Ng Chi Un and Pun Chi Man, it should not have entered into junket operator relationships with those individuals. However, putting aside these cases, it is not a basis to impugn Crown's suitability that other of the junket operators the subject of submissions above had questionable

[278] T 2948/23-44; T 4406/3-10; T 4653/28.
[279] (CRL.540.001.0006). See esp at [11], p 4, [2.7] – [2.7.1], p 46. [Not currently tendered]

reputations. As explained in detail above, that was not, at relevant times, the regulatory approach or industry practice to disqualification of junket operators. The same points may be made about the submission of counsel that these junket relationships "heightened the risks of Crown Resorts' casinos being drawn into money laundering through these business relationships" (**CA [282]**).

457. These submissions are not affected by a conclusion as to whether these relationships are accurately described as "collaborations for mutual benefit" or "partnering" (as to which Crown has made submissions in paragraphs 315–319 above) (**CA [282]**). The point is that entry into relationships of this kind was not, in general, regarded as inappropriate.

458. **CA [283]** asserts that the fact that Crown had business relationships with persons who were not of good repute means that Crown "breached a core obligation under the regulatory regime". For the reasons explained, that is not so. Having regard to the contemporaneous approach to junkets, it is not an accurate characterisation to say that Crown fails to satisfy the requirement of "being a casino operator of integrity with a commitment to preserving a crime-free environment" (cf **CA [283]**). And it fails to take into account all of the actions Crown has taken, and continues to take, directed towards preserving a crime-free environment which have gone entirely without criticism and are therefore not the focus of this Inquiry.

Asserted specific failings

459. **CA [285]** asserts a series of specific failings in Crown's systems with respect to the junkets it entered into business relationships with. As identified above, Crown accepts certain of these criticisms in particular instances. However, they are not a fair characterisation of Crown's approach to junkets as a whole. Nor do they take account of the way in which regulators and industry were likewise grappling with decision-making concerning junkets at the time.

460. Responding to each of those matters by way of summary, Crown's position is as follows:

(a) From 2017, very substantial improvements were made to Crown's due diligence process. Those processes involved collecting a broad range of due diligence material. However, Crown accepts that the range of material can be broadened still further, as recommended by Deloitte, and that will be so in any future junket due diligence process.

(b) There are instances in which information was not properly acted upon, or were not obtained by the parts of the business which was trained to address such information. But many instances relied upon by Counsel Assisting involve application, retrospectively, of a higher standard than that applied at the time.

(c) There are instances in which information in third party due diligence reports did not trigger further analysis or investigations. But, again, many instances relied upon by Counsel Assisting involve application, retrospectively, of a higher standard than that applied at the time.

(d) Crown's due diligence processes have been too narrowly focussed on the junket operator, albeit that obtaining "visibility" on others involved in the junket is not easy. This is a matter identified by Deloitte which will be addressed in any future junket due diligence process.

(e) The criticism that decision-makers too readily dismissed adverse information as "unsubstantiated allegations" must take into account the contemporary regulatory and industry approach. Further, it is necessary to recognise that the question posed by the regulatory regime is not merely based on ***reputation*** but upon an evaluation of repute in light of an assessment of the facts so far as they can be ascertained. This requires a judgment. There are instances where Crown accepts that the wrong judgments were made at the time. There are others where Crown accepts that different judgments should be made going forward.

(f) Crown accepts that there has not been formal documentation of the rationale for decisions to approve new junket operators or to continue to deal with existing operators upon review. That is a matter which Deloitte has recommended be addressed in any future junket due diligence process. That said, the absence of documentation is not, itself, a matter which is a mark of unsuitability.

(g) Clarifying the escalation points is a matter which Deloitte has recommended be addressed in any future junket due diligence process.

Remediation

461. **CA [290]** describes the improvements to Crown's junket due diligence processes summarised at **CA [289]** as "too little too late" and "tokenistic". That is not a fair description. On their terms, they are very substantial changes. In any event, the position is now that, subject to consulting with regulators, Crown has decided permanently to cease dealing with junket operators unless they are licenced, approved or otherwise sanctioned by those regulators. That is plainly a very substantial change.

462. The criticism of Mr Kaldas' engagement at **CA [291]–[293]** is simply that it is at an early stage and may encounter difficulties. That may be accepted, including because of COVID-19 related delays. Nonetheless, it is a marker of suitability, not unsuitability, that Crown has taken the

proactive steps to which those paragraphs refer. Indeed, it is to be noted that the idea of an Australian Casino Integrity Group predates Mr Kaldas' engagement, and owes its origin to a proposal made by Mr Preston in November 2019 (see the statement of Joshua Preston dated 20 February 2020 (**ex F78**) at [228]–[230]).

463. The limitations in the Deloitte review identified at **CA [295]** do not undermine either the cogency of Deloitte's proposals, or the extent to which Crown's engagement of Deloitte and decision to implement those proposals is a marker of suitability. In relation to the specific criticisms of the Deloitte report, Crown's submissions are as follows:

(a) To require a "root cause analysis" or review of Crown's decisions relating to junkets named in the media would have increased the scope of Deloitte's task and therefore reduced the speed with which its recommendations could be made, absorbed and implemented.

(b) It is not surprising that Deloitte was not asked to comment on how Crown could enable "a risk culture around junket operators". That is a difficult and diffuse question. So too the precise way in which Crown implements Deloitte's recommendation to gather information in relation to junkets from Crown employees.

(c) The "standard of proof" is something that is not a matter for an external consultant to determine. It is a matter for Crown and/or regulators to determine. As explained, it is not something which the legislative scheme prescribes. To the contrary, the legislative scheme requires a difficult evaluative decision. In any event, the more recent decision of Crown to cease dealing with junket operators unless licenced, approved or sanctioned by a regulator renders this otiose.

(d) The fact that Deloitte did not specifically refer to junket financiers or "front men" in its recommendations is immaterial. Deloitte did identify the absence of "additional investigation of companies that the operator is affiliated with or known associates" (**ex W67** at .0344). In any event, as Counsel Assisting accepts Crown has specifically committed to conducting due diligence on financiers (**Ex CB6** at .0024).

464. **CA [296]** states that there has been no indication from Crown as to what steps will be taken to implement the Deloitte recommendations. That is not correct. There was a work plan attached to Ken Barton's 10 September 2020 paper for the Board (**ex CB6** at .0025ff) and the current status of this is referred to in paragraph 217 above. That matter has, in any event, now been overtaken by the Board's decision to cease dealing with junket operators unless licensed, approved or sanctioned by a regulator.

465. **CA [297]–[298]** address the findings of, and responses to, the Berkeley Research Group's reports. Given their content, and the evaluative question required, it is not surprising that different directors had different views about the content of those reports. Significantly, any lack of clarity as to "what use Crown Resorts will make of the Berkeley Report and what weight will be placed upon it" is now resolved by Crown's decision to cease dealing with junket operators.

466. The submissions at **CA [299]–[300]** concerning the suspension have been addressed in paragraphs 215 and 284–284 above.

467. The uncertainty the subject of **CA [301]–[303]** is resolved by the decision made by Crown on 11 November 2020.

Asserted fundamental problems

468. **CA [304]ff** submit that the "junket failings" are a product of "more fundamental problems". That submission should not be accepted.

469. ***Risk management.*** **CA [306]** asserts that "Crown wholly failed to design and implement a risk management system that was commensurate with the level of risk that was apparent". The Inquiry should not accept that submission.

470. *First*, Crown's junket due diligence processes evolved over time and, in their most recent form, involved gathering considerable information and the involvement of senior officers.

471. *Secondly*, it has not been shown that the approach Crown took differed in any marked way from regulator expectations and industry practice. The fact that mistakes were made in some cases, or that with the benefit of hindsight different judgments should have been made, more inquiries should have been undertaken or better links should have been drawn, does not support the broad proposition for which Counsel Assisting contends.

472. The criticism of Ms Siegers at **CA [320]–[323]** is unjustified.

(a) Ms Siegers explained in the passage quoted at **CA [321]** why she has not sought to focus on an in dept investigation of past decision-making, prior to her joining Crown in December 2017. In any event, the utility of that course may be doubted in circumstances where there had been a substantial change in the due diligence processes only shortly before.

(b) The fact that she had no experience in casino operation prior to taking up her role does not disqualify her: she has experience at a major accounting firm, a bank, a

logistics and transport company, NRMA, a university and a building society (**T 2480/8–18**). That broad experience, including in financial services companies, admirably qualifies her to be the group general manager for risk and audit.

473. ***Governance.*** **CA [325]** submits that junkets "provide a good example of the Board's failure to provide active stewardship". That is not a fair characterisation. Junkets have been an accepted part of the Australian industry. The attitude taken to them by Crown has not differed markedly from regulators or the Australian industry standard. Moreover, the Board has clearly been very keenly engaged with respect to junkets in more recent times — and that is a marker of suitability.

474. ***Culture.*** **CA [326]** submits that "[t]he failure of Crown Resorts to meaningfully act on these long-standing allegations bespeaks both a culture of denial and an arrogant indifference to regulatory compliance". The Inquiry should not make such a finding.

475. *First*, it pays insufficient regard to the regulatory and industry context. For instance, it ignores the fact that Crown's response to the 2014 *Four Corners* allegations concerning Neptune and Suncity was no different to that of ILGA. It ignores the evident regulatory focus upon actual criminality rather than mere allegations. It ignores the generally sanguine approach of regulators to junket operator relationships of the kind the subject of the Inquiry. There is no basis to conclude that Crown was indifferent to the regulations to which it was subject.

476. *Secondly*, the analysis of the individual junket operators above does not demonstrate a "culture of denial". To the contrary, particularly in more recent times, the due diligence processes involved real attempts to identify, consistently with the regulatory scheme, those with whom Crown should not do business. A conclusion (if it be reached) that certain judgments then made were wrong does not carry with it a conclusion that there must have been a "culture of denial" or an "arrogant indifference" to regulatory compliance. Nor is that demonstrated by recognising that those responsible for assessing junket operators sought to go beyond rumour and allegation, to try to determine the actual nature of a junket operators character. To the contrary, that difficult task is precisely what has been required by the legislative scheme.

477. *Thirdly*, it is not right to assume that the "culture" of an organisation is homogeneous. It may be accepted that, prior to the China arrests, the international VIP team historically ran on a more aggressive sales culture than the rest of the business (**ex CD4** at .0029; Johnston **T 3088.3–13**; Coonan **T 4574.30–40**). It does not follow that this is an accurate characterisation of the culture of Crown as a whole at the time. Still less does it follow that it is an accurate characterisation of the culture of ***any*** part of Crown at present.

478. *Fourthly*, so far as this allegation rests upon the submission that "Mr Packer set a dubious tone from the top in relation to junkets", Crown adopts the submissions made by CPH.

D. ANTI-MONEY LAUNDERING

D1. Introduction

479. As set out above {#*cross-reference to introduction or suitability submission*#}, Counsel Assisting have submitted that adverse findings should be made with respect to suitability based on matters concerning Crown's anti-money laundering (**AML**) measures and controls.

480. In addressing the contentions advanced in the Counsel Assisting Submissions, these submissions are divided into four subdivisions:

First, an introductory division, which includes the relevant legislative and regulatory framework for money laundering together with the AML Framework and controls within Crown prior to 2020, including improvements to its framework since 2017;

Second, the Riverbank and Southbank accounts;

Third, Suncity and the other transactions;

Finally, Crown's reflection on and improvement to its AML frameworks. These changes demonstrate that Crown has implemented measures that provide the ability to mitigate and manage AML risks and it will be adequately resourced to vigorously enforce those measures. It is these changes which demonstrate current suitability.

481. These submissions are directed to Crown's suitability, which must be evaluated within the legal framework described at the outset of oral closing submissions and in paragraphs ## of these submissions. It must also be evaluated having regard to the present state of Crown's AML/CTF program and policies, and as demonstrated in part D below, significant enhancements have been made to strengthen Crown's AML functions and processes. The Licensee and Crown Resorts need to remain vigilant to the inherent risk that money laundering pose to a casino operator. The matters raised in this Inquiry regarding potential money laundering have been of great concern to Crown's directors and senior executives. These matters have been a catalyst for Crown broadening and, in some instances, accelerating, reforms to its AML/CTF Program, relating policies, and resourcing. Crown accepts that it has not previously done enough to proactively manage this complex risk. However, the Inquiry should now be satisfied that Crown's AML obligations and responsibilities are viewed with the utmost seriousness and that Crown has put in place strong AML functions to detect and to deter that the risk of money laundering.

482. One further point needs to be made, which is that the way in which Counsel Assisting have framed their contentions is a product of the Amended Terms of Reference. At the outset of

both its oral closing submissions and these written submissions, Crown made the point that the Amended Terms of Reference have been shaped by reference to a set of allegations made by the media, and that this circumstance should not be permitted to skew the Inquiry's suitability assessment away from its proper axis and orientation. The same issue arises in the context of AML, and similar care needs to be taken to ensure that the assessment of Crown's current suitability in light of the AML issues is properly directed.

483. The Amended Terms of Reference identify the relevant media allegation as being that "Crown Resorts or its agents, affiliates or subsidiaries … engaged in money-laundering". Money laundering is, of course, a criminal offence and it is defined that way in s 5 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**AML/CTF Act**). The elements of a money laundering offence cannot be satisfied unless, depending on the particular statutory offence in question, there is factual evidence establishing beyond reasonable doubt that the funds in question are either the proceeds of crime, or believed by the alleged offender to be the proceeds of crime, or are reasonably suspected by the alleged offender to be the proceeds of crime.[280] Counsel assisting have not contended that Crown or any of its subsidiaries, officers or employees have committed criminal offences amounting to money laundering. Nor is there any basis in the evidence for such a contention.

484. With respect to the range of particular transactions that have been the subject of evidence, counsel assisting have contended that, more probably than not, those transactions involved money laundering. Through its senior counsel in the course of the hearing, and in these submissions, Crown submits that caution needs to be exercised about the use of any such formulation. It does not conform with the legislative framework or the applicable legal standards, as it involves the proposition that a criminal offence should be regarded as having occurred by applying a civil standard of proof to the available evidence. A further difficulty in relation to particular transactions is that there was no evidence about the source of the funds, and the evidence, including expert evidence, about particular transactions did not go beyond accepting that there were indications of money laundering.

485. In making these submissions, Crown does not have its head in the sand. It has made all reasonable concessions that it feels able to make having regard to the evidence, including the concessions that were made in light of the recently completed review of transactions in the Riverbank and Southbank accounts.

486. There is, however, a wider point to be made which is of greater significance. In the end result, in terms of assessing suitability, it ought not to matter whether the Inquiry's conclusions about

[280] These features of the statutory offences are explained in more detail below.

the particular incidents that have been examined are expressed in terms of indications of structured transactions or cuckoo smurfing or money laundering, or as suspicious matters or activities within the meaning of s 41 of the AML/CTF Act, or as evidence of incidents or transactions that more probably than not involved money laundering activities. Mr Aspinall made the same point in submissions in the course of the hearing when he said that "… in terms of suitability … it makes no difference whether it was in fact the proceeds of crime. What was important was that it was suspicious …".[281] No casino can totally eliminate all suspicious transactions in its patron accounts, so that the important issues are what was done to address a continuance of suspicious transactions, and what remediations and ongoing improvements have been put in place to ensure that the best possible mechanisms are available to detect and prevent such activities. Crown is committed to applying those mechanisms, both proactively and responsively, to eliminate money laundering activities to the fullest extent possible. One illustration of this commitment is that Crown obtained the recent Grant Thornton and Initialism reports, late as they were, because of its commitment to do the right thing, both to ensure that it has the best possible AML systems and processes going forward, and to ensure that the Inquiry had full and complete information before it. As senior counsel for Crown submitted on 18 November 2020, providing those reports was the right and proper thing to do, even though their lateness was unsatisfactory.[282] Further, Crown unreservedly accepts that those reports and investigations should have been undertaken at a much earlier date.[283]

D2. Relevant legislative and regulatory framework

487. It is not in dispute that casinos, including the casinos operated by Crown, are vulnerable to money laundering activities. That is particularly so as casinos are cash intensive businesses.[284] Crown accepts that it must therefore take a proactive approach to identifying, mitigating and managing the risk that its casinos may be used for laundering money.[285]

Money Laundering

[281] T5077-5078.

[282] T5621.

[283] T5620.26

[284] Statement of Joshua Robert Preston (redacted) dated 20 February 2020 (**Preston 1**) [118], (CRL.577.001.0001 Ex F78); Statement of Ken McRae Barton dated 16 September 2020 (**Barton III**) [54] (CRL.697.001.0033 at .0042, Ex CB1)

[285] Barton III [13], [63] (CRL.697.001.0033, Ex CB1); Preston I [114], [118] (CRL.577.001.0001, Ex F78), Barton XN T.2760, Statement of Issues and Contentions in relation to Money Laundering (**SIC**) A.1

488. "Money laundering" is understood colloquially as the process whereby property derived from illicit origin is concealed or disguised in order to place it back into legitimate circulation.[286] Fundamental to the concept of "money laundering" is that the funds or the property have been used in or derived from committing crimes.

489. Crown accepts the characterisation of the stages of money laundering, and the means by which money may be laundered at casinos, as set out in the Counsel Assisting Submissions.[287]

490. The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**AML/CTF Act**) provides the foundation for the legislative anti-money laundering regime in Australia.[288]

491. Section 5 of the AML/CTF Act defines "money laundering" as follows:

> *Money laundering means conduct that amounts to:*
>
> *(a) an offence against Division 400 of the Criminal Code; or*
>
> *(b) an offence against a law of a State or Territory that corresponds to the offence in paragraph (a); or*
>
> *(c) an offence against a law of a foreign country or of part of a foreign country that corresponds to an offence referred to in paragraph (a).*

492. Division 400 of the Criminal Code[289] is headed *Money Laundering* and prohibits a range of criminal activity:

492.1 Sections 400.3 to 400.8 create offences of dealing in money or other property that is the proceeds of crime or that will become an instrument of crime. Penalties for these offences vary according to the threshold value of the money or property specified in the provisions (ranging from $1,000,000 in s 400.3 to any value in s 400.8). They also vary according to the mental element (ranging from belief to recklessness to negligence).[290] For each offence, it is necessary to identify the class of indictable offences from which the money or property is alleged to have been derived or realised (proceeds of crime) or as to which it was intended,

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[286] AUSTRAC, "Money laundering in Australia 2011" (INQ.220.001.0416 Ex A246)

[287] Counsel Assisting Closing Submissions, Schedule H [4]-[11]

[288] Ex A246 INQ.220.001.0416 at 0419

[289] *Criminal Code Act* 1995 (Cth), Schedule 1 – Criminal Code

[290] *Ansari v R* [2007] NSWCCA 204; 70 NSWLR 89 at [11]–[15] and [55]

or is alleged to have been at risk of, being used in the commission or facilitation of (instrument of crime).[291]

492.2 Section 400.9 creates an offence of a different character. Section 400.9 prohibits dealing in money or other property that is reasonably suspected of being proceeds of crime. Again, for such an offence to be committed, there would have to be factual evidence relating to the source of the funds in question which provided a factual basis for the existence of a reasonable suspicion that the monies being transacted were in fact the proceeds of crime; or to establish that one of the statutory presumptions set out in s 400.9(2) had been. The penalty for commission of this offence varies according to the value of the money or property involved.

493. The meaning of "reasonable suspicion" has been considered by the High Court in the context of a restraining order pursuant to s 19 of the *Proceeds of Crime Act 2002* (Cth). In that context the High Court found that a reasonable suspicion must have a factual basis.[292] In Crown's submission, the question of whether it is reasonable to suspect that property is proceeds of crime would have to be assessed in the context of the relevant transaction, and there would have to be an established factual basis relating to the source of the funds in question to ground such a reasonable suspicion.

494. "Proceeds of crime" is defined in s 400.1 as money (or other property) that is wholly or partly derived or realised, directly or indirectly, by any person from the commission of an indictable offence.[293] Money or other property is an "instrument of crime" if it is used it the commission of, or used to facilitate the commission of, an indictable offence.[294]

495. "Structuring" is not defined in the Criminal Code or in the AML/CTF Act, but is generally accepted to be a process whereby cash transactions are split to avoid the necessity to report a single large transaction as a threshold transaction.[295] For present purposes it is sufficient to note that that a threshold transaction includes the transfer of physical currency of not less than $10,000.

Anti-Money Laundering and Counter-Terrorism Financing Act and Framework

496. A stated objective of the AML/CTF Act is to provide for measures to detect, deter and disrupt money laundering: AML/CTF Act s 3(1)(aa). Another stated objective of the AML/CTF Act

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[291] *Chen v DPP (Cth)* [2011] NSWCCA 205 ; 83 NSWLR 224 at [28]

[292] *Lordianto v Commissioner of the Australian Federal Police* [201] HCA 39; 266 CLR 273 at 308 [89] citing *George v Rockett* (1990) 170 CLR 104 at 115.

[293] The offence may be against the laws of the Commonwealth, a State or Territory or a foreign country.

[294] Criminal Code, s 400.1. Again, the offence may be against the laws of the Commonwealth, a State or Territory or a foreign country.

[295] Financial Action Task Force, "Vulnerabilities of Casinos and Gaming Sector" (Ex A56 INQ.130.001.2034 at .2066)

is the creation of a framework pursuant to which AUSTRAC can be provided with the information it requires to investigate and prosecute offences, including money laundering offences: AML/CTF Act, s 3(1)(ab). These objectives are achieved by, among other things, requiring information to be given to AUSTRAC: AML/CTF Act, s 3 note 1.

497. "Reporting entities" are therefore required to implement a risk-based framework in relation to the identification and management of money laundering (and terrorism financing) risks, which is to include:

developing and maintaining an AML/CTF Program and framework which specifies appropriate risk-based controls;

conducting customer due diligence, which requires customers to be identified and verified, and in particular circumstances, enhanced customer due diligence to be conducted; and

reporting to AUSTRAC regarding suspicious matters, cash transactions of $10,000 or more (threshold transactions); international funds transfer instructions regardless of value, and in relation to annual compliance with the AML/CTF Act, regulations and rules.

498. A "reporting entity" is defined in section 5 to mean a persons who provides a "designated service". A "designated service" is defined in section 6 to relevantly include gambling services carried out in the course of carrying on a gambling business.[296] Casino operators are therefore reporting entities for the purposes of the AML/CTF Act.

499. Section 81 of the AML/CTF Act requires a reporting entity to have adopted an AML/CTF program prior to commencing to provide a designated service to a customer. Pursuant to section 85, the AML/CTF program is to be divided into Part A and Part B. The primary purpose of Part A is relevantly to identify, mitigate and manage the risk that the reporting entity may reasonably face that the provision of designated services in Australia might (inadvertently or otherwise) involve or facilitate money laundering.[297] The sole or primary purpose of Part B is to set out the applicable customer identification procedures.[298]

500. Part 11 of the AML/CTF Act is titled "Secrecy and access" and contains stringent and complex secrecy obligations in relation to information communicated to AUSTRAC.[299] Provisions in this Part, specifically s 123(1)-(3), prohibit Crown from disclosing certain information that has

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[296] AML/CTF Act, section 6 table 3

[297] AML/CTF Act, Section 85(2)(a)

[298] AML/CTF Act, Section 85(3)(a)

[299] The *Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Bill 2019* currently before the Senate proposes significant amendments to the operation of the secrecy provisions in Part 11, in particular to the operation of s 123 of the AML/CTF Act.

been reported to AUSTRAC, including information that it is obliged to report regarding suspicious matters.[300] Crown notes that given this prohibition, the Commissioner has indicated that it will be assumed that Crown has complied with its obligation to report suspicious matters to AUSTRAC.[301]

501. These submissions therefore proceed on the basis that the findings invited by Counsel Assisting in relation to suspicious matter reporting in paragraph [260] of the Counsel Assisting Submissions,[302] are not available.

In many places in Counsel Assisting's Submissions findings are invited that identified conduct, more probably than not, was money laundering.[303] These submissions appear to fall short of expressly inviting findings as to criminal conduct of the kind set out at paragraphs [245]-[246] of Counsel Assisting's Submissions. However Counsel Assisting's Submissions assert that an available finding "is that Crown … did engage in money laundering, in the sense that they became involved in, facilitated or enabled money laundering to occur within casinos or through the accounts of subsidiaries": see [6](a). Further, in paragraph [241] Counsel Assisting asserts that certain conduct by Crown (or its subsidiaries) in transferring funds from the Riverbank or Southbank accounts was "arguably dealing with the proceeds of crime", which appears to invite a finding as to criminal conduct. There is no evidence capable of supporting these findings.

Findings of criminal conduct are findings of the most serious kind, and should not be made lightly.[304] They are typically reserved for the judicial arm of the State, exercising its curial function in the criminal justice system, with its attendant safeguards. Any encroachment into that realm must be clear from the empowering instrument.[305]

Here, section 143 of the CCA provides that the Authority may arrange for the holding on an inquiry for the purpose of the exercise of *its* functions under that Act. Section 141 sets out the Authority's functions. Unremarkably, it is **not** a function of the Authority to make determinations as to whether industry participants have contravened anti money laundering laws.

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[300] Suspicious matters are reported to AUSTRAC under s 41 of the AML/CTF Act. In addition, Crown is prohibited from disclosing any information requests which AUSTRAC has made pursuant to s 49 of the AML/CTF Act and the assistance or information that has been provided in response to those requests.

[301] Johnston XN 29.09.2020 T.3164.36-32; see also Closing Submissions 9.11.2020 T.5128; T.5135; 18.11.2020 T5582.39-45

[302] See also Closing Submissions T.5082.23-25

[303] See for example at [20], [25], [28], [35], [115]

[304] *Briginshaw v Briginshaw* (1938) 60 CLR 336

[305] *Balog v Independent Commission Against Corruption* (***Balog***) (1990) 169 CLR 625 at 632; see also *Penrith Rugby League Club Ltd v Brown* (2004) 63 NSWLR 13 and *Brinsmead v Commissioner Tweed Shire Council Public Inquiry* [2007] NSWSC 246

The Amended Terms of Reference must be construed against that statutory regime. Paragraph [15] of the Amended Terms of Reference provides contextual background for the Inquiry and does not provide instructions as to what the Commissioner is to inquire into and report upon. Those instructions are exclusively contained in paragraphs [16] to [17], and ultimately [21] of the Amended Terms of Reference. The Commissioner should reject any invitation, implicit or express, to make findings in relation to money laundering. It is neither necessary nor appropriate to do so.

There are sounds reasons for this approach. As the High Court observed in *Balog* (at 635 – 636) (emphasis added):

> *Were the functions of the Commission* [ICAC] *to extend to the making of findings, which are bound to become public, that an individual was or may have been guilty of corrupt or criminal conduct, there would plainly be a risk of damage to that person's reputation and of prejudice in any criminal proceedings which might follow. If the legislation admits of a wider interpretation than that which we have given to it (and we do not think that it does), then the narrower construction is nevertheless to be adopted upon the basis that where two alternative constructions of legislation are open, that which is consonant with the common law is to be preferred…*

D3. Crown's previous AML/CTF framework

502. The history of Crown's AML framework and processes is important context which bears upon the submission of Counsel Assisting that Crown has failed to appreciate the vulnerabilities of casinos to money laundering and failed to implement and institute controls to respond to those vulnerabilities.[306]

503. Prior to 2020[307] both Crown Perth and Crown Melbourne were enrolled with AUSTRAC as reporting entities and as part of the Crown designated business group (also referred to as a **DBG**). Historically each property had adopted its own AML/CTF Program[308] and policies and procedures to support that program.[309]

504. Each of Crown Perth and Crown Melbourne had originally developed and approved an AML/CTF program in 2007, in response to the introduction of the AML/CTF Act. The

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[306] SIC at [37]-[39]

[307] The reason for the distinction before and after 2020 is that significant changes, commenced being made to Crown's AML framework in 2019, with the introduction of a joint AML/CTF program. However, the position before 2020 is set out as it is necessary to understand the AML framework at Crown's properties prior to this time in order to assess the submission put forward by Counsel Assisting that Crown was apathetic or reckless to managing and mitigating the risk of money laundering: **SIC B.9**.

[308] Ex F64 CRL.565.001.0012; Ex BA64 CRL.534.001.0275, CRL.533.001.3787 and CRL.554.001.0377; Ex BA87 CRL.554.001.0196; Ex BA98 CRL.566.002.0001; Ex BE93 CRL.612.001.0002; Ex CB23 CRL.554.001.0196

[309] Preston I [185]-[192]

AML/CTF programs were originally based upon a template AML/CTF program prepared by the Australian Casinos Association on behalf of casinos, which was tailored to reflect Crown's operating practices.[310]

505. At all times, Crown's AML/CTF programs have been designed to address the identification, mitigation and management of money laundering risk. The programs have dealt with the training of employees to identify, mitigate and manage money laundering risks; contained requirements for due diligence of employees; contained requirements for due diligence on customers (including a requirement to obtain know your customer (KYC) information and conduct enhanced customer due diligence (ECDD) in certain circumstances); required the monitoring of customer transactions; and contained reporting requirements in relation to threshold transactions, suspicious matters and international funds transfers.[311]

506. In November 2007, Mr Preston was appointed the AML/CTF Compliance Officer (as that term is defined in the AML/CTF Act) for Crown Perth.[312] An AML/CTF Compliance Officer was also appointed for Crown Melbourne at this time.[313]

507. Over time, a number of improvements were made to each of the AML/CTF programs to respond to legislative changes, feedback following compliance reviews conducted under the AML/CTF Act by AUSTRAC, internal AML reviews, external expert reviews of key parts of the Crown Perth and Crown Melbourne programs and reviews conducted by the VCGLR.[314]

508. In March 2017, AUSTRAC conducted a compliance review of the AML/CTF Program for Crown Melbourne. The compliance review focused on junkets and also included a review of the transaction monitoring program within Crown Melbourne's AML/CTF Program.[315] In late 2017, AUSTRAC [316] made recommendations for improvements each of which was implemented by May 2018.[317]

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[310] Preston I [185]-[187] Ex F78 CRL.577.001.0001 at 0034

[311] Preston 1 [138] Ex CB1 CRL.697.001.0033 at 0027

[312] Preston I [7] Ex F78 CRL.577.001.0001 at 0002

[313] Tegoni XN 09.09.2020 T.2264.29-47

[314] Preston I [187] Ex F78 CRL.577.001.0001 at 0035

[315] Preston I [177] Ex F78 CRL.577.001.0001 at 0033

[316] Preston I [178] Ex F78 CRL.577.001.0001 at 0033

[317] Preston I [177] Ex F78 CRL.577.001.0001 at 0033.

509. Also in 2017, following feedback from AUSTRAC,[318] Crown commenced the process of creating a "group" function for AML across its Australian properties and resorts. This process commenced with the appointment of a Group General Manager, Anti-Money Laundering in 2017, a role that was initially filled by Louise Lane and which is now filled by Nick Stokes.[319] In May 2017, Mr Preston was appointed the AML/CTF Compliance Officer for Crown Melbourne.[320]

510. In centralising the AML function and since 2017, Crown has:[321]

(a) introduced new transaction monitoring rules, which broadened the scope of the transactions that were monitored, commencing in 2017;

(b) developed a bespoke automated transaction monitoring system. This work has culminated, as set out in further detail below,[322] with the implementation of Sentinel, an automated transaction monitoring system;

(c) increased the resources in the AML function through the creation of new roles. Prior to 2017, the AML team across the two properties comprised two full time dedicated AML/CTF employees.[323] By September 2020, the AML team had eight full time employees.[324] Additional detail is set out below in relation to the significant improvements in resourcing that have taken place since 2019.

511. In November 2017, AUSTRAC conducted a further compliance review of Crown Melbourne's AML/CTF Program, with a particular focus on electronic gaming machines. No compliance issues were identified by AUSTRAC, but a series of recommendations were made, each of which was implemented by Crown by July 2018.[325]

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[318] Letter from AUSTRAC to Joshua Preston titled "AML/CTF assessment remediation – Crown Melbourne Limited" dated 26 September 2017 (Ex BE78 CRL.606.001.0184) {insert ev ref }

[319] Preston I [131]-[132] (Ex F78 CRL.577.001.0001 at 0026); Preston XN 27.07.2020 T392.13

[320] Preston I [108] Ex F78 CRL.577.001.0001 at 0022

[321] Preston I [188] Ex F78 CRL.577.001.0001 at 0035

[322] {insert cross-reference to suitability section}. See also Annexure A to these submissions.

[323] Statement of Ken McRae Barton dated 16 September 2020 Ex CB1 {CRL.697.001.0033}

[324] Barton III [59] Ex CB1 CRL.697.001.0033 at 0043

[325] Preston I [178] Ex F78 CRL.577.001.0001 at 0033

512. In December 2018, Initialism was engaged by Crown to conduct a review of its transaction monitoring program.[326] Initialism identified opportunities for enhancements with respect to the process for automation of the transaction monitoring program that was then underway.[327]

513. In 2019, Initialism was again engaged, to provide a report to Crown in relation to improvements to the internal control statements for Crown Melbourne that had been developed by Crown following a recommendation made by the VCGLR in its Sixth Review Report. Initialism confirmed, subject to some further revisions, that the internal control statements addressed VCGLR's recommendation.[328]

514. In September 2019, Crown Melbourne and Crown Perth adopted a joint AML/CTF Program.[329] An improved and enhanced tiered AML/CTF governance framework was also approved.[330] {CRL.565.001.0011}

515. In addition, Crown Melbourne has a Proceeds of Crime and Money Laundering Corporate Policy Statement {***ex BD3***} which sets out how Crown Melbourne assists law enforcement agencies in relation to the investigation of customers at Crown who are suspected of using proceeds or crime or laundering money; and how Crown meets its obligations under the AML/CTF Program.

516. This explanation of the progressive improvement of Crown's previous AML framework and processes demonstrates that Crown did have regard to the risk and vulnerabilities of casinos to money laundering and did put in place increasing controls to respond to those risks. However, Crown has acknowledged that in the past, its primary focus in responding to the risk that its casinos may be used for money laundering was ensuring compliance with the obligations imposed on its reporting entities by the AML/CTF Act and Rules, particularly:

    (a) the obligation to have an AML/CTF Program for each of Crown Melbourne and Crown Perth that complied with the requirements of the AML Act; and

    (b) the obligation of each of Crown Melbourne and Crown Perth to make reports to and provide information to AUSTRAC.

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326 Preston I [180] Ex F78 CRL.577.001.0001 at 0033

327 Preston I [180] Ex F78 CRL.577.001.0001 at 0022; ex W12 JEA.001.001.0280

328 Preston I [181]-[184] Ex F78 CRL.577.001.0001 at 0043; ex W20 JEA.001.001.0331

329 Ex BA 87 and Ex CB 25 {{fix}} Laos check W30 - what

330 Preston I [135] Ex CB1 CRL.697.001.0033 at 0027

517. Crown acknowledges that it should have done more by way of proactive steps to respond to the risk that its casinos may have been used for money laundering.

518. Further, as Mr Barton has expressly acknowledged in his evidence to this Inquiry,[331] although Crown's AML response has evolved and improved over time, further improvements were needed, including in relation to AML training, AML resourcing, AML reporting structures and in relation to continuous auditing and due diligence. [332]

519. As is explained in detail in Part # of these submissions, Crown has addressed, and is continuing to address, each of these issues.[333] The recognition and acknowledgement by the CEO of Crown, and its Board, that it should have done more to ensure Crown deterred money laundering activities and the significant improvements which have been put in place to strengthen Crown's AML processes tell against any finding that Crown is apathetic or reckless in its approach to managing and mitigating the risks to money laundering.[334] No such finding should be made.

520. Against that backdrop, Crown's response to each of the particular allegations made by Counsel Assisting follows below.

D4. Riverbank and Southbank accounts

521. Crown accepts that a full review of the Riverbank and Southbank bank accounts should have been undertaken at the time when ANZ first raised issues about the Riverbank account at the end of January 2014.[335] Mr Barton acknowledged this to be so on 16 September 2020, when he filed his third statement.

522. Crown did take some steps at the time that ANZ raised these issues in 2014. It obtained an expert assessment of the implementation of its AML/CTF program for its VIP International customer segment (including junket operators) from Promontory. This assessment concluded, inter alia, that Crown's implementation of AML/CTF controls for the VIP International customer segment met Crown's internal standards and that the compliance team had sufficient resources, technology and data to support an adaptable and competent AML/CTF program for a company in its position. Promontory also observed that Crown's monitoring and reporting process to AUSTRAC had been the subject of internal and regulatory audit with no

331 Barton III Ex CB1 CRL.697.001.0033, Barton V and Barton VI

332 Barton III [56] Ex CB1 CRL.697.001.0033 at 0042

333 Barton III [57]-[79] Ex CB1 CRL.697.001.0033 at 0042

334 SIC B.9

335 Barton III [39(a)], Barton IV [13], Barton VI [11]

significant adverse findings. However, as Mr Barton went on to observe in his third statement, the steps just described were inadequate and should have included a thorough review of the Riverbank and Southbank accounts.

523. Mr Barton also advised the Inquiry in his third statement that, for the purpose of preparing that statement, he had reviewed the nature and extent of cash deposits in these accounts, particularly between 2014 and 2016.[336] That review by Mr Barton was a genuine one, but as later events show, it was no substitute for a thorough expert review of the relevant accounts of the kind that Mr Barton initiated after the Inquiry revealed further potential issues about the Riverbank and Southbank accounts in July 2020.

524. In Mr Barton's fourth statement to the Inquiry, provided on 4 November 2020, Mr Barton advised the Inquiry that since preparing his third statement, he had caused further reviews of transactions in the Riverbank and Southbank accounts to be undertaken, and would provide an update to the Inquiry in relation to those reviews once Crown was in receipt of the relevant reports.[337] These reviews involved detailed forensic analysis conducted by Grant Thornton and an assessment by Initialism, based on that forensic analysis, of indications of money laundering within the accounts.[338] The preparation of those reports, particularly the forensic analysis, took substantial time.

525. The results of that review became available to Mr Barton on 16 November, and Mr Barton promptly provided the Grant Thornton and Initialism reports to the Inquiry by means of his sixth statement. Crown has apologised to the Inquiry for the late provision of the reports from Grant Thornton and Initialism. Crown considered that it was the right and proper thing to do to conduct that thorough review and to provide the reports from Grant Thornton and Initialism to the Inquiry because it is committed to implementing the best possible AML practices, precautions and pro-active approaches. Crown also wanted to ensure that the Inquiry had complete and up to date information.[339] This reflects Crown's recognition of the seriousness of the issues that have been identified with the Riverbank and Southbank bank accounts and the importance Crown places on addressing the issues.

[336] Barton III [39(a)]

[337] Barton IV [13] CRL.730.001.1547 at 1549 Ex AO76

[338] Barton VI [14]-[22] CRL.730.001.1547 at 1549 Ex AO76

[339] T5621.

526. The November reports from Grant Thornton and Initialism identify instances of potential transaction structuring in the accounts during the period from July 2013 to December 2019.[340]

527. With the benefit of the Initialism report, Crown accepts that there were funds deposited into the Riverbank and Southbank accounts during the period from 2013 to 2019 that Initialism has found to be indicative of cuckoo smurfing, a form of money laundering.

528. Cuckoo smurfing is a sophisticated money laundering typology whereby innocent parties make and receive legitimate payments, but illicit funds are inserted into the process of making the legitimate payment.[341]

529. The Initialism report provides a basis for the Inquiry to find that it is more probable than not that, at points during the period from 2013 to 2019, money laundering occurred in the Riverbank and Southbank bank accounts as a result of cuckoo smurfing activity. However, Crown submits that the evidence does not support a finding that any particular series or instances of transactions in these accounts involved the offence of money laundering. There is an insufficient evidentiary foundation for the Inquiry to be satisfied of this matter (either beyond reasonable doubt, or on the basis that it was more probable than not). As acknowledged by Counsel Assisting at [99] of the written submissions, the task of the Inquiry is not to conduct a comprehensive audit of the Riverbank and Southbank accounts. The task of the Inquiry is to consider questions of suitability.

530. Further detail of Crown's submissions in relation to the Riverbank and Southbank bank accounts is provided below.

Creation and establishment of accounts

531. Historically, the Southbank corporate entity sat within the corporate structure for Crown Melbourne and the Riverbank corporate entity sat within the corporate structure for Crown Perth.[342]

532. As set out in Counsel Assisting's Submissions at [72]-[77], the use of the Southbank bank account for the purposes of patron deposits was raised with the Victorian Office of Gambling Regulation in 2001 and 2002. Relevantly, Crown Melbourne told the regulator that they

[340] Memorandum from Claude Marais regarding Riverbank Investments Pty Ltd and Southbank Investments Pty Ltd dated 29 September 2020, Ex AJ50 CRL.719.001.0002

[341] Initialism Report Ex ATxx CRL.741.001.0666 at .0673-75

[342] Preston XN T370.5-11 {{**CHECK transcript ref**}}

proposed to allow funds to be deposited into the Southbank bank accounts because overseas players had expressed a desire for anonymity in their transaction dealings with Crown.[343]

Transactions in the bank accounts

533. As noted above, Crown has now conducted both an internal and external analysis of what occurred in the Riverbank and Southbank accounts.

534. Crown no longer has accounts in the name of Riverbank or Southbank and has not had accounts in those names since December 2019, when the CBA closed those accounts.[344] There is no intention to open any equivalent bank account for the Licensee and the Licensee's bank accounts will be onshore and in Crown's name.[345]

535. In addition, the AML team conducts weekly reviews of Crown bank account statements to determine if there are any transactions on those accounts that are of concern from a money laundering perspective.[346] As described in further detail below, a specific manual transaction monitoring process for reviewing Crown's bank account statements has been implemented, and Crown is also in discussions with ANZ about measures to allow bank statement data to be directly ingested into the Sentinel system so that automated transaction monitoring rules can also be used to monitor transactions in Crown's bank accounts.[347]

536. As set out in detail below {{ cross-ref}} Crown has taken significant and important steps not only to detect potential money laundering activities in its bank accounts, but also to disrupt and to deter transactions of this nature occurring in its accounts in the future.

537. Crown accepts that these steps should have been implemented from 2014, when ANZ first raised concerns about potential money laundering activities in the Riverbank account. Crown also accepts that it focused too heavily on reporting suspicious transactions in the accounts to AUSTRAC, rather than on taking steps to assess whether or not the risks of money laundering in these accounts necessitated their closure. Having regard to the systems and processes that are currently in place, the Inquiry can be confident that the Licensee, Crown Melbourne and Crown Perth are committed to deterring any money laundering activities in their bank

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[343] Preston XN T588; Exhibit BA.3 CRL.570.001.1798, with Mr Preston accepting that the Riverbank account was set up for the same purposes as the Southbank account, being to provide a deposit account for customers with privacy in respect of their gaming activities. See also Ex BA.2 {insert ref] at .1785.

[344] Letter from Commonwealth Bank to Southbank Investments Pty Ltd advising the account will be closed on 3 December 2019 (CRL.605.016.6607 Ex BK23); Letter from Commonwealth Bank to Riverbank Investments Pty Ltd advising the account will be closed on 3 December 2019 (CRL.605.016.6609 Ex BK24).

[345] Barton III [104]

[346] Stokes, [27]; CRL.742.001.0009

[347] Stokes [26]-[27]

accounts, that they will detect any potential money laundering activities in their bank accounts, and that in the event such activities are identified, they will respond swiftly and appropriately not only to report those activities to AUSTRAC, but to implement further anti-money laundering controls..

538. Against that background, the following further submissions are made in relation to the Riverbank and Southbank accounts.

Riverbank

539. Grant Thornton undertook a forensic data analysis in relation to the Riverbank accounts for the period from July 2013 to July 2014 (ANZ) and March 2014 to December 2019 (CBA), with a specific focus on identifying potential instances of structuring, namely instances where two or more cash deposits under the amount $10,000, totalling $10,000 or more, were made in an identified time period.[348]

540. Grant Thornton concluded that:

(a) there was a total of 117 potential instances of structuring in the relevant period; and

(b) the highest incidences of potential structuring were identified in the calendar years 2013, followed by 2014, followed by 2015. No potential instances of structuring were identified in 2018 or 2019 and only one instance was identified in 2017.[349]

541. Grant Thornton also identified, based on patron records provided by Crown, that the potential instances of structuring related to 52 individual patrons and approximately 19% of all cash deposits in that period.[350]

Southbank

542. Grant Thornton undertook a forensic data analysis in relation to the Southbank account held with CBA over the period from August 2013 until December 2019 (when the accounts was closed), again with a specific focus on identifying potential instances of structuring, namely instances where two or more cash deposits under the amount $10,000, totalling $10,000 or more, were made in an identified time period.[351] The report containing this analysis that is annexed to Mr Barton's sixth statement is in interim form, and a copy of the final version of the report is annexed to these submissions.

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[348] Grant Thornton report in relation to Riverbank Investments Pty Ltd, Barton VI [18] CRL.741.001.0536

[349] {{insert – riverbank report at 0537}}

[350] Grant Thornton Riverbank report at .0537 {{insert ev ref}}

[351] Grant Thornton report in relation to Southbank Investments Pty Ltd, Barton VI [18] CRL.743.001.0003

543. Grant Thornton concluded that:

(a) there was a total of 56 potential instances of structuring in the relevant period; and

(b) the highest incidences of potential structuring were identified in the calendar years 2014, 2015 and 2016. Only one instance was identified in each of 2018 and 2019.[352]

544. Grant Thornton also identified, based on patron records provided by Crown, that the potential instances of structuring related to 30 individual patrons and approximately 1.31% of all cash deposits in that period.[353]

Analysis by Initialism

545. With the benefit of the forensic data analysis conducted by Grant Thornton, Initialism considered whether there are indications of money laundering through the Riverbank and Southbank accounts.

546. Initialism's conclusions are set out from page 14 of the Initialism report and are to the effect that:

(a) there were 117 instances in the Riverbank bank accounts and 53 instances in the Southbank bank account (over the period from 2013 to 2019) that were indicative of potential structuring; and

(b) the activity in the Riverbank and Southbank accounts, including the indications of structuring, the large cash deposits and certain electronic funds transfers, was indicative of potential exploitation by cuckoo surfing activity as part of money laundering schemes.

547. Initialism also concluded that the indications of structuring in the accounts were unlikely to be smurfing activity (which differs significantly from cuckoo smurfing activity) given that the ownership and control of the Riverbank and Southbank accounts rested with Crown and the payments made to Crown appeared to be legitimate.[354]

548. However, the stated limitations in relation to the report must also be noted. Mr Jeans indicated that he had not conducted a "full end to end review of each payments" nor had he "investigated the circumstances and origin of each payment deemed indicative of money

[352] Grant Thornton Southbank Report at 0004 {{insert ev ref}}

[353] Grant Thornton Southbank report at .0004 {{insert ev ref}}

[354] Initialism Report, page 5 CRL.741.001.0666 at 0670

laundering".[355] Mr Jeans also indicated that his conclusions were indicative only, and that further information was required to be conclusive, including information about the purpose of the deposits, how the deposits came to be made, the location and timing of the deposits and whether the deposits were out of character for the customer based on previous transactional history and an understanding of the perceived money laundering risks identified.[356]

549. Noting these limitations, and having regard to the analysis in relation to the money laundering offences set out above, Crown submits the evidence before the Inquiry does not allow a conclusive finding that any particular series of transactions or individual transactions, involved money laundering. However, as noted above, Crown accepts that the Initialism report supports a finding that it is more probable than not that money laundering occurred in the Riverbank and Southbank accounts as a result of cuckoo smurfing activity.[357]

Timing of the concession

550. Significant criticism has been made of Crown for not conducting a review of the Riverbank and Southbank accounts in early 2014 when concerns were first raised by the ANZ, or at least from August 2019 when media allegations were raised. That criticism is fair and has been accepted by Crown.

551. Separately, Crown has been criticised for not conceding by at least the conclusion of the examination of Mr Preston in early August 2020 that it was more probable than not that, money had been laundered in the Riverbank and Southbank accounts.[358] That criticism is not warranted. As set out above, following Mr Preston's evidence, Crown commenced a process of reviewing (initially internally, and then with external assistance), the transactions in the Riverbank and Southbank accounts. That process included obtaining further data and information from Cage documents and further information from ANZ about certain transactions, including additional information about the way in which funds were deposited.[359]

552. The review process has taken time, but as soon as it was complete, Crown provided the results of the review to the Inquiry and made an appropriate concession about the probability that money laundering had occurred in the accounts. The late hour on 17 November 2020 at which

[355] Initialism Report, page #

[356] Initialism Report, page 12

[357] Crown does not concede the precise contentions put forward by Counsel Assisting, including those in SIC A.3 or [66] of Counsel Assisting's Submissions, but Crown does concede it is more probable than not that money laundering occurred in the accounts.

[358] Closing Submissions {{insert transcript ref to Aspinall's closing on Friday 20.11.2020}}

[359] Barton VI [16]

Mr Barton's sixth statement was provided to the Inquiry, annexing the results of the review, was the product of Crown's desire and commitment to provide this information to the Inquiry as promptly as it could.

553. Crown does not dispute that a review of this nature should have been conducted as early as 2014, following the concerns identified by ANZ. However, the timing of Crown's concession that it is more probable than not that money was laundered in the Riverbank and Southbank accounts ought not be the subject of separate criticism, because it was made as soon as Crown received the Initialism report.

Closure of HSBC accounts

554. Counsel Assisting's Submissions in relation to an "alleged culture of denial and lack of reasonable investigation" refer to the closure of accounts by HSBC "on the basis of concerns regarding money laundering".[360]

555. It is correct that in May 2013, HSBC advised that it had determined to close bank accounts held by Riverbank and Burswood Nominees and that in September 2013, HSBC advised that it would no longer provide Crown Melbourne with bank accounts and would close an account held by Southbank.[361] However, correspondence from HSBC[362] and internal HSBC documents[363] establish that the accounts were not closed because of "concerns regarding money laundering" in these accounts but because HSBC had decided to discontinue relationships with all customers in the "Money Services Business" following a strategic review of the gaming sector. There is no evidentiary foundation for any finding that the closure of the accounts was connected to any concerns about money laundering in the Riverbank or Southbank accounts, let alone that any such concerns were communicated to Crown.

556. In an internal memorandum in October 2013, HSBC recorded:[364]

> *Note Southbank have always complied with AML requirements to our knowledge. Their Compliance department is larger than HSBC's in Australia. They are heavily regulated and have previously provided a copy of their AML compliance documents.*

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[360] Counsel Assisting Submissions [265]

[361] Counsel Assisting Submissions [119]-[120]

[362] Letter from HSBC to Riverbank Investments Pty Ltd, Ex AO8, CRL.605.016.6595; Letter from HSBC to Crown Limited, Ex BA17, HSB.913.027.0002; Letter from HSBC to Crown Limited, Ex BA21 HSB.913.027.0003

[363] Document styled credit note dated 16 October 2013 Ex BA18, HSB.913.027.0021. In this respect Mr Barton's evidence that HSBC closed its accounts as it was "exiting the gaming sector globally and that it wasn't anything to do with Crown" was not challenged. Barton XN 23.09.2020 T.2770.45-46.

[364] Document styled credit note dated 16 October 2013 Ex BA18, HSB.913.027.0021

557. It is therefore not correct that at the time ANZ raised concerns in relation to the Riverbank accounts in January 2014, this was "the second time"[365] a bank had closed accounts associated with Crown because of concerns about money laundering within those accounts. HSBC did not raise any concerns in relation to money laundering within Crown's bank accounts.

Closure of ANZ Riverbank Account

558. In his third statement, Mr Barton provides a chronology in relation to his involvement in discussions with ANZ in 2014. Mr Barton has made frank and extensive concessions in relation to his failings in relation to the concerns raised by ANZ at this time. These concessions were not extracted in examination by Counsel Assisting, but in a statement that was volunteered to the Inquiry in September.

559. Mr Barton has conceded that in response to the concerns raised by ANZ, a review of the Riverbank and other patron bank accounts controlled by Crown should have occurred, and the concerns raised by ANZ should have been escalated to the CEO and the Risk Management Committee. These failings have been acknowledged and will not be repeated.

560. Counsel Assisting's submission that the failure to carry out a review of the bank accounts at this time speaks to a "reckless lack of concern"[366] should not be accepted. The response to the issues raised by ANZ does demonstrate concern on the part of Crown – Mr Costin made enquiries to determine what had occurred in relation to the deposits,[367] Mr Barton engaged an expert to review and report on Crown's AML processes[368] and Crown's AML officers met and discussed the issues with ANZ.[369]

561. However, Crown accepts that it did not do enough at this time. The inadequacies in Crown's response were no doubt influenced by the reporting focus in its AML control measures at this time. Mr Barton has expressly acknowledged that the external report that he obtained had the wrong focus, and that in addition to asking Promontory to review Crown's AML/CTF Program, he should have specifically asked Promontory to assess the issues which the ANZ had raised in relation to the Riverbank and Southbank accounts. However, this does not amount to a lack of concern and no finding of this nature should be made.

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[365] T.2270 at lines 19-20

[366] Counsel Assisting Submissions [148]

[367] {{Ev ref}}

[368] Engagement of Promontory, {{inert ev ref}}

[369] {{insert ev references}

562. Having regard to the extensive controls that have now been put in place in relation to Crown's bank accounts (detailed in part # below) and the improvements in risk management processes outlined elsewhere in these submissions, the inadequacies of Crown's response to the concerns raised by ANZ in 2014 should not bear on the present suitability of the Licensee or the associated Crown entities. Further, Mr Barton's proactive acknowledgement of these failings is a significant and powerful factor to be taken into account when assessing his current suitability to be a close associate of the Licensee.

563. Counsel Assisting also sought a finding that the communications with patrons about cash deposits after the closure of the ANZ accounts was motivated by a desire to avoid inconvenience.[370] The evidence does not support such a conclusion. Nor does this evidence demonstrate a "severely dysfunctional" [371] approach to dealing with suspected money laundering. Crown accepts that its AML focus was too heavily reliant on discharging its reporting obligations, and did not do enough to proactively prevent money laundering from occurring. Crown's direction to customers to not make multiple cash deposits below the reporting threshold was a genuine, but inadequate, response to the concerns raised by ANZ. In this regard, it is also relevant to note that the findings in Initialism report do not support any suggestion that the payments that patrons made into Crown accounts in this period were not legitimate. Instead, it appears that on occasion these legitimate transactions may have been intercepted with illicit funds.

Aggregation

564. The issue of aggregation concerns the way in which transactional information from the Riverbank and Southbank accounts was, on occasion, manually inputted into the SYCO system which was then subjected to Crown's AML monitoring and reporting processes. What occurred was that, on occasions, multiple deposits that were indicative of structuring transactions were aggregated into a single total transaction as they were being inputted into the SYCO system, and as a result the SYCO system did not reveal the structuring that had occurred on those occasions. This issue is addressed in [141]-[145] of Counsel Assisting's Submissions. It is there suggested that emails exchanged between Ms Brown of ANZ and Mr Costin of Crown between 31 March and 2 April 2014 demonstrate that aggregation did

[370] Counsel Assisting Submissions [150]-[155]

[371] Counsel Assisting Submissions [152]. There is also no basis to support a finding that a direction to customers not to make multiple deposits under the $10,000 threshold amounted to a tipping offence. There is no suggestion in the evidence that any patron was told that an SMR was lodged, which would be in breach of s 123(1) or that any patron was provided with information that could reasonably lead them to the conclusion that an SMR had been lodged in breach of s 123(2). An indication not to engage in behaviour that might break the laws cannot amount to a tipping off offence.

not occur because of an oversight, but because it was the practice at this time. Crown does not accept this characterisation of these emails.

565. The issue of aggregation arose in the period from 2013 to 2016 in relation to the entry of transactions into SYCO. An analysis of the instances of indicative structuring identified in the Grant Thornton reports, when compared against the internal memorandum prepared by Mr Marais, shows that not every occasion on which multiple deposits were received was entered as an aggregated deposit in SYCO.

566. Mr Preston's third statement to the inquiry set out what the monitoring requirements were in Perth and Melbourne at the relevant time.[372] Further the evidence of Mr Brown was that during the period 2013 to 2016, there was a practice in the Cage of reporting suspicious matters to the AML team by completing an internal AML report (in addition to entering information into SYCO).[373] Mr Brown's evidence was also to the effect that although the deposits were totalled and then the total amount was entered into the SYCO system, his belief was that Cage staff were aware of their obligation to monitor transactions from an AML perspective, although he conceded that they may not have been looking for structuring or smurfing.[374] This evidence is consistent with the evidence of Mr Howell that information in relation to possible concerns with structured transactions were escalated to him.[375]

567. The mistaken aggregation that did occur was identified as a result of questioning by Counsel Assisting that took place in July 2020. Crown commenced an internal investigation relating to the problem and Mr Marais made a progressive report about that investigation in his memorandum of **##**. [Insert reference] That whole area was then the subject of a thorough review by Grant Thornton and Initialism. As a result of that work which it initiated, Crown acknowledges that aggregation of certain transactions as they were inputted into the SYCO system did occur, that this compromised the review of information in the SYCO system by the AML team, and meant that the AML team was not made aware through SYCO reports of certain transactions that were indicative of structuring.

568. *Birch email regarding Promontory report*

[372] Statement of Joshua Robert Preston dated 28 August 2020 at [12]-(Ex BM29 CRL.666.001.0004)

[373] Brown XN 4.09.2020 (T.2139.1-30)

[374] Brown XN 4.09.2020 (.2132,13-#)

[375] Howell XN 4.09.2020 (T.2158.1-3)

569. Mr Barton has provided two statements to the Inquiry in relation to his response to Mr Birch's email to him of 5 March 2015. A number of factors bear on any assessment of Mr Barton's response to ANZ in 2015 and his fourth statement to the Inquiry.

570. *First*, Mr Barton was involved with ANZ at this time because of his position as Crown's relationship manager with ANZ. He did not have responsibility for AML/CTF matters. *Secondly*, the Birch email provided an indirect comparison of Crown's processes – that it, a comparison of what Promontory identified as Crown's AML controls for its VIP International Segment[376] and what ANZ described as its controls. Mr Barton has accepted that at the time he did not appreciate the seriousness of the issue to which the ANZ was referring and this was in part because he was not fully apprised of the AML requirements, particularly in relation to customer due diligence requirements. *Thirdly*, because the significance of the comparison between ANZ and Crown's AML processes was not apparent to Mr Barton on reading Mr Birch's email, Mr Barton asked Mr Birch to clarify whether any specific issues should be addressed. Mr Birch did not reply to that request for clarification. Mr Barton has accepted that, in hindsight, it was incumbent upon Crown to properly investigate the matters raised by Mr Birch. Mr Barton has acknowledged a different course should have been adopted. But a failure to apprehend or appreciate the significance of these matters in 2015, while Chief Financial Officer of Crown Resorts with no direct responsibility for AML/CTF matters, cannot be, and has not been, characterised as an issue going to Mr Barton's integrity.

571. As Mr Barton has made clear in his fifth statement, his fourth statement was the result of a misapprehension as to the question being put by the Solicitor's Assisting the Inquiry. Mr Barton focused narrowly on the manner in which the question was framed – "*very serious issues in respect of Crown's failures as outlined in the email*" - rather than looking more holistically at the matters identified by Mr Birch.[377]

572. As the clarification in Mr Barton's fifth statement made clear, Mr Barton accepts that the subject matter of Mr Birch's 2015 email concerned very serious matters. As Mr Barton observed in his fifth statement, each of the headings referred to in Mr Birch's email – KYC Information, EDD, and Transaction Monitoring – were (and remain) fundamental

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[376] Promontory Report CRL.501.057.5323

[377] In responding in his fourth statement, Mr Barton did not notice in the Promontory report any reference to convicted criminals where Crown had no record of conducting a review in relation to them. In this respect the ANZ email appears to be mistaken. The Promontory report, at 5335 says

> *"In some cases, such a patron may be escalated for review by the POI Committee; in other instances, the CTRM may simple review the email creating the designation if and when required. In most instances, the Company would continue to do business with the patron until such time as further information suggested a need to cease the relationship (eg if the patron is charged or convicted of an offence). In the two instances identified here, the SYCO file did not note whether the patrons had been reviewed by the POI Committee. Both of the junket operators with POI designations continued to be active after receiving the designation."*

Although serious in its own right, this does not equate to an indication that "In two instances a patron had been charged or convicted and here was no evidence of review by Crown of the client account".

components of Crown's AML/CTF Program. Mr Barton's third statement, the oral evidence he gave to the Inquiry, and the suite of AML reforms he is driving within Crown, clearly establish that he recognised both the seriousness of these matters and the necessity for Crown to improve in this area before receiving the request from the Solicitor Assisting the Inquiry which he addressed in his fourth statement. In evaluating the sequence of events it is necessary to bear in mind, as noted above, that the concessions and acknowledgments regarding Crown's past shortcomings on AML matters, and the recognition of the significance of these matters, which Mr Barton set out in his third statement, were given voluntarily, before he was asked any questions on these matters by those assisting the Inquiry. Misapprehending the request of the Solicitor Assisting the Inquiry in his fourth statement does not undermine Mr Barton's acknowledgments in this respect. To his credit, once the misapprehension under which he prepared the fourth statement was brought to his attention, Mr Barton immediately corrected it and clarified his position in his fifth statement.

573. Annexed to these submissions as **Annexure #** is a schedule which sets out each of the issues raised in the Birch email and explains the position under Crown's new AML framework. To the extent there were issues identified by the ANZ in 2015, having regard to the annexure, the Inquiry can be confident that those issues have been addressed.

Closure of ASB account

574. As set out in Counsel Assisting's submissions at [183], in July 2018, ASB contacted Crown Melbourne seeking due diligence information in relation an ASB bank account in New Zealand[378] that was held in the name Southbank.[379]

575. The nature of the enquiries made by ASB were different in nature to those made by ANZ in 2014. The initial enquiries by ASB had a clear AML focus, but can be described as due diligence queries in relation to the scope and extent of Crown's monitoring under the AML/CTF Act. There is no evidence before the Inquiry that the concerns by ASB were of the same nature as those raised by ANZ in relation to Riverbank in 2014. However, Crown does not make that submission to suggest that Crown's response to the enquiries from ASB was adequate. It was not.

[378] Emails between Tama Tauira of ASB Bank, Travis Costin and Louise Lane of Crown Resorts, titled "Warm introductions and Due Diligence requirements" ending in email dated 24 September 2018 (CRL.563.001.7842 Ex BA63)

[379] {{EV ref}}.

576. However, Counsel Assisting's submission that Crown's response to ASB (drafted by Ms Lane) lacked candour and was misleading should not be accepted. Ms Lane was not called to give evidence. This proposition was not put to her.

577. In addition, the submission that Ms Lane's explanation that the Southbank account was covered by Crown's AML/CTF Program was an "oversimplification" is not correct. The evidence establishes that the AML/CTF Compliance Officer held a genuine and honest belief at this time that:

(a) as Southbank provided a bank account into which funds could be deposited but conducted no further business;

(b) as Southbank was a wholly owned subsidiary within the Crown Melbourne group;

(c) as Southbank itself did not provide any designated service (in respect of which more is said below); and

(d) Crown Melbourne's transaction monitoring program required all of Crown's bank accounts to be reviewed and reports were lodged with AUSTRAC in relation to each of the bank accounts,

578. the Southbank bank account was covered by Crown's AML/CTF Program. It is accepted that the obligation to monitor those accounts was not unambiguously stated in Crown Melbourne's AML/CTF Program. However, that does not support the submission that Crown lacked candour in its dealings with ASB.

579. It is not clear what evidence is relied upon to support the contention in Counsel Assisting's submissions at [195] that Crown's procedures for identifying the source of cash deposits were minimal. None was identified. Nor is it clear whether this is intention to convey that Crown had negligible processes for seeking source of wealth information from a patron, or whether this is intended to convey that Crown did not seek to determine to whom the deposit belonged. The latter proposition must be rejected having regard to Mr Preston's evidence as to how the deposits into the account were reconciled.[380]

580. Crown accepts that the queries from ASB in relation to a particular patron should have triggered an internal review in relation to that patron. Crown also accepts that the queries raised by ASB in relation to the patron accounts and the way in which the patron accounts were captured by Crown's AML processes and the AML/CTF Program ought to have resulted in

[380] {{Insert ev ref – }} See also Letter from Louise Lane to Bart Oude-Vrielink (MinterEllison) requesting legal advice dated 18 February 2019 EX BA73 CRL.563.002.4024

Crown conducting additional internal assessments to determine if any money laundering risks presented by those accounts was being adequately detected and deterred. This did not occur. Crown, through Mr Barton, has accepted that it should have reviewed the ASB bank account at the time the concerns were raised by the ASB.[381]

581. However, those failings are historic. While Crown accepts that there have been repeated failings in connection with patron deposit accounts, these issues have been addressed in the current framework. As noted above, Crown has taken steps to minimise the potential for patrons to make cash deposits into its bank accounts. And as explained below, Crown now has diligent processes for ensuring any cash that is nevertheless deposited is detected.

Closure of CBA accounts

582. Mr Barton's third statement sets out at [45]-[47] his recollection of the meetings with the CBA in 2019. Again, the nature of the concerns raised by CBA were different to those raised by ANZ and those raised by ASB. However, Crown accepts that given the discussions around the article in The Age and Crown's AML controls, that it was on notice that the concerns raised by CBA were connected with AML considerations.

583. The CBA accounts were closed by CBA in December 2019. No accounts in the name Riverbank or Southbank have been opened since that time.

584. *Review of bank accounts in 2019*

585. The events in response to the media allegations about Riverbank and Southbank made in 2019 are explained in the third,[382] sixth[383] and seventh statements of Mr Barton to the Inquiry, together with the [insert number] statement of Ms Manos.

586. The evidence establishes that it has only recently become clear that in August 2019 when the media allegations broke, Crown's Group General Manager, AML, Ms Lane, commenced a review of the bank statements for the Southbank account, and possibly the Riverbank account. At the outset, Crown unreservedly accepts that Ms Lane's recommendation should have been acted upon with urgency at the time. It was the wrong decision to not proceed to engage external consultants to complete the review commenced by Ms Lane. The fact that Ms Lane had commenced this review, that she had recommended the engagement of external consultants to complete that review, and that Mr Preston did not accept that

[381] Barton III [52]

[382] Barton III [42]-[44]

[383] Barton VI [5]-[0]

recommendation(following advice from Minter Ellison) were not known by the board of Crown Melbourne (the relevant reporting entity), nor by the board of Crown Resorts and nor by Mr Barton.

587. The process that was undertaken is set out in Mr Barton's sixth statement (Barton VI [5]-[10]). The sequence of events and emails referred to in this statement is that:

(a) Mr Preston asked Ms Lane to carry out some investigative work in relation to the allegations. Barton VI [9a]

(b) Ms Lane commenced an investigative process by bringing in and analysing certain bank statements. In identifying potential suspicious transactions in the accounts, Ms Lane checked to see if SMRs had been lodged and it appeared that they had. [Barton VI (f)]

(c) Having appreciated the size of the task, Ms Lane recommended to Mr Preston that an external consultant be engaged to undertake a full review. {Barton VI 9(e)}

(d) Following advice from MinterEllison that there was a risk that the engagement of an external consultant would not be privileged, Mr Preston formed the view that that it was not necessary, at that point in time, to conduct the review, on the basis that the preliminary assessment of the Southbank account for the period referred to in the media allegations had not identified anything that could be specifically identified as matching the allegations, the transaction monitoring program was responding to the accounts in any event, and accordingly relevant information was being provided to the appropriate authorities. [Barton VI 9(f)]

588. The evidence establishes that Mr Barton was unaware of these events at the time.

589. The foregoing matters are the subject of a separate submission that Crown provided to the Inquiry on Monday 23 November 2020. A further submission in relation to the events in 2019 will be provided.

590. Crown unreservedly apologises for this course of events. As noted above, Crown has now completed a comprehensive external review of Riverbank and Southbank bank accounts of the kind that should have previously occurred and immediately upon receiving the results of that review, made appropriate concessions to the Inquiry about the probability that money laundering activities have occurred in the Riverbank and Southbank bank accounts.

Close associates

591. Counsel Assisting contends that the actions and omissions of Mr Barton and Mr Preston in respect of Riverbank and Southbank fall below the standard to be expected of a close associate of a casino licensee.[384]

592. It is difficult for Crown to meet a contention framed in such broad terms, when the asserted 'standard' is devoid of content and no attempt has been made to articulate precisely how Mr Barton and Mr Preston's conduct 'fell below' that standard.

593. As best Crown can apprehend the contention, it is presumed that the 'standard' is the standard required of a close associate of a licensee under the CC Act. That means, relevantly, that Mr Barton and Mr Preston must be of *"good repute, having regard to character, honesty and integrity"*.[385] Crown has addressed in its submissions on the framework for addressing suitability the manner in which it submits the construction of that composite phrase is to be approached.

594. The mistakes made by Mr Barton and Mr Preston in connection with Riverbank and Southbank were honest mistakes. It has not been suggested otherwise, nor could it be. A failure to appreciate at the time matters which, in hindsight, ought to have been appreciated and responded to differently, does not reflect adversely on either individual's character, honesty or integrity, particularly not as those concepts are to be understood for the purposes of a close associate's suitability under the CC Act (i.e., to ensure the Licensee can give effect to its licence and the objects of the CC Act). That is especially so when their subsequent actions to remediate shortcomings are taken into account.

595. Each of Mr Barton and Mr Preston was doing their job to the best of their ability. As noted, Mr Barton was Chief Financial Officer at the time and only became involved in these matters in 2014 and 2015 because he had the relationship with Crown's primary bank, ANZ. Mr Preston was, as has been acknowledged elsewhere in these submissions, wearing "too many hats" in his role as Chief Legal Officer – Australian Resorts.

596. Each made errors of judgement in relation to responding to money laundering red flags in the Riverbank and Southbank accounts. But those errors of judgement do not rise anywhere near the level of impugning, in a relevant sense, their character, honesty or integrity and therefore render them unsuitable to continue to be close associates of the licensee. Something more than a bona fide oversight or judgement error is required to contravene the 'standard' set by the

[384] SIC B.18

[385] Section 12 of the CC Act

legislation, and that something more does not exist in relation to Mr Barton and Mr Preston's conduct in connection with Riverbank and Southbank.

Criticism of AML/CTF Compliance officers

597. Counsel Assisting's submissions also contain more general criticism of the performance, role and the evidence of Crown's AML/CTF Compliance Officers. The criticism, in so far as it shows that the AML/CTF Compliance officers executed their functions with an undue focus on discharging reporting obligations, is fair. However, criticisms of recklessness, dysfunctionality, and other equivalent descriptors are not accepted. The Inquiry should not make findings in these terms.

(a) First, there is no utility in a finding in these terms against Crown's former AML/CTF Compliance Officers. Neither individual (Mr Preston or Ms Tegoni) remains in that role and in that respect neither has a bearing on the Licensee's suitability or the suitability of the other Crown entities as close associates of the Licensee.

(b) Secondly, neither Mr Preston nor Ms Tegoni was given an opportunity to respond in evidence to criticisms of this nature. In addition, a submission of the kind that has been made is based on a number of undisclosed propositions, and appears to be predicated on a particular but unarticulated standard of conduct.

(c) Thirdly, a finding of this nature is not available on the evidence. At its highest, the evidence indicates that both individuals laboured under a misapprehension as to the requirements of the role, informed by an honest, but mistaken, belief that the existence of a compliant AML/CTF Program and reporting pursuant to that program were sufficient to meet the requirements of the AML/CTF Act. This view cannot be said to amount to ineptitude or apathy.

598. Further, in the case of Mr Preston, there is evidence that is inconsistent with any suggestion that he acted in his role as AML/CTF Compliance Officer with bad faith or without integrity. Take, for example, the evidence about the Suncity Room. The evidence establishes that Mr Preston insisted on additional controls being put in place in relation to the activities in the Suncity Room, that he extensively engaged with the relevant regulator (AUSTRAC) in relation to the activities in the Suncity Room, that he updated the CEO in relation to events in the Suncity Room and that certain matters in relation to the Suncity Room were escalated to the Board. In [month] this year, Mr Preston made a series of recommendations to senior management in relation to the ongoing relationship with Alvin Chau and other junket operators, which led to extensive third party due diligence research being undertaken into their affairs.

599. While there have been plain and regrettable errors of judgment on the part of Mr Preston in his role as AML/CTF Compliance Officer, most notably the decision not to proceed with the recommendation of the Group General Manager, AML to commission an external review of the Riverbank and Southbank accounts in 2019, there is no evidence to support a finding that Mr Preston was indifferent to his role. There is therefore no basis to find that Crown was apathetic to money laundering.

600. Crown accepts that the AML/CTF Compliance officer should have had a stronger voice within the organisation. That concession has been acted upon, and is now reflected in the changes to the AML/CTF structure within Crown, which now provide the Head of Compliance and Financial Crime and the AML/CTF Compliance Officer with a direct line of communication with the various boards.

Alleged breach of Director' duties

601. The contention that the directors and company secretaries of Southbank and Riverbank failed to act with due care and diligence was not developed with any precision by Counsel Assisting in their Submissions, save that it was submitted, at [271]:

> *None of the directors or company secretaries took any part of the actual management of the businesses and satisfied themselves that the entities were not engaged in or facilitating money laundering. This is despite the only purposes of the companies was to hold these various bank accounts. What this demonstrates is a failure of the directors and company secretaries to appreciate that they owe separate duties to each of the companies of which they are an officer of…*

602. For the following reasons, no generalised findings of any breach of directors' duties against any of Riverbank or Southbank's company officers should be made.

603. *First*, Counsel Assisting have not identified:

603.1 the directors and officers of Southbank and Riverbank against whom findings should be made;

603.2 any specific conduct on the part of the directors and officers sought to be impugned;

603.3 any applicable time period; or

603.4 the fact that these officers relied on the Group's AML compliance team to apply all of their processes and controls to transactions going through the Riverbank and Southbank accounts, as they were entitled to do.[386]

604. To make serious findings of breaches of directors' duties in those circumstances would be unfair and unjustified. That is particularly so in circumstances where there have been a variety of directors and company secretaries of each of Riverbank and Southbank since 2013 (not all of whom gave evidence); and the allegations of breaches of duty were not directly put by Counsel Assisting to any of the company officers that did give evidence. {{ev ref}}

605. *Second*, the allegations of breaches of directors' duties misunderstand the role and function of directors of wholly owned subsidiaries within a corporate group. The content of a director's duty to act with reasonable care and diligence is informed by the circumstances of the particular company concerned, including the size and type of company, the nature of the business it carries on; the terms of its constitution; and the composition of the board of directors. Other relevant factors in determining the scope and content of the duty to act with reasonable care and diligence include the distribution of responsibilities within the company; the director's position, responsibilities, experience and skills; the knowledge of the director; and the informational flows and systems in place and the reporting systems and requirements within the company.

606. Significantly, the content of the duties owed by the directors and officers of Riverbank and Southbank must be understood in the context of Crown's group structure. At all relevant times, Riverbank and Southbank were small proprietary companies within the meaning of s 45A of the Corporations Act and members of the Crown group of companies. {{Ev ref}} Neither company was required to prepare financial reports or appoint an auditor, and consideration of their activities formed part of the audit of Crown group of companies. Further, as wholly owned subsidiaries of Crown Resorts and members of the Crown group of companies, Riverbank and Southbank were not required, either by reason of their constitution or legislative requirement, to hold periodic Board meetings to consider the business of each company. Rather, the principal obligation of the directors was to consider the solvency position of the company on an annual basis and consider any other matters which could not be validly delegated within the Group structure. Evidence to this effect was given by both Ms Manos and Mr Craigie.[387]

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386 S.189, *Corporations Act*, 2001.

387 {Ev ref}

607. *Third*, it is reasonable for a director in discharging his or her duties to rely on the advice of management and other officers within the corporate group, without independently verifying the information, where there is no cause for suspicion nor circumstances demanding critical and detailed attention. With the exception of Mr Barton (whose conduct is addressed in detail above), there is no evidence that the directors or company secretaries of Southbank or Riverbank had reason to be concerned from an AML perspective about the transactions occurring through the bank accounts prior to the media allegations in August 2019 {{confirm}}. On the contrary, the directors and officers were entitled to rely on the fact that:

607.1 there were dedicated AML/CTF compliance officers in place at each of Crown Melbourne and Crown Perth who had overall responsibility for AML compliance;

607.2 there were processes and procedures in place for monitoring and reporting on transactions occurring through the bank accounts of Riverbank and Southbank;

607.3 they were not otherwise made aware of the deficiencies in the manual process of aggregation when information was entered into SYCO; and

607.4 Crown was subject to regular AML compliance assessments from AUSTRAC and other regulators, such as the VCGLR.[388]

608. In respect of the failure to conduct a review of the bank accounts in period after the media allegations concerning Southbank and Riverbank in August 2019, the directors and company officers were entitled to rely on the actions being taken across the Group in investigating and responding to the various media allegations.

Southbank and Riverbank as reporting entities

609. Counsel Assisting advance the contention in SIC B.1 that:

> *Crown Melbourne gave inappropriate and inadequate consideration of the questions raised by AUSTRAC as to whether Southbank should be registered as a reporting entity and the consequences of that in terms of criminal liability of Riverbank and Southbank.*

610. Before addressing this proposition it is necessary to note the following matters:[389]

[388] See s 189, Corporations Act, 2001.

[389] Letter from Louise Lane to Bart Oude-Vrielink (MinterEllison) requesting legal advice dated 18 February 2019 EX BA73 CRL.563.002.4024

610.1 As noted above, Southbank and Riverbank were wholly owned subsidiaries of [insert]. In the case of Southbank, it was part of the Crown Melbourne corporate group and in the case of Riverbank, it was part of the Crown Perth corporate group.

610.2 Neither Riverbank nor Southbank held a casino licence. As a fact, neither was registered with AUSTRAC as a reporting entity.

610.3 Other than the operation of the bank accounts, neither Riverbank nor Southbank carried on any other form of business.

610.4 Neither Southbank nor Riverbank accepted instructions from customers (this function being performed by Crown Melbourne and Crown Perth respectively) and neither made funds available to patrons at either casino (again, that function being performed by Crown Melbourne and Crown Perth).

611. Further, as set out above, the Crown AML team, including the relevant legal officers that provided support to the AML function, at the relevant times monitored the transactions on the Riverbank and Southbank accounts under Crown Melbourne and Crown Perth's existing transaction monitoring programs, such that there was no need for Riverbank or Southbank to be enrolled as reporting entities. {{ insert evidence references}} To the extent that transactions were missed because of the mistaken aggregation of a set of transactions when inputting data into SYCO, or for any other reason, there is no reason to doubt that the members of the Crown AML team had an honest belief that transactions going through the Riverbank and Southbank accounts were being monitored and were the subject of reporting.

612. Whether Riverbank or Southbank ought to have been enrolled as reporting entities hinges on whether each provided a "designated service" as defined under the AML/CTF Act. As acknowledged by Counsel Assisting, it may be accepted that neither Riverbank nor Southbank provided "gambling services", as that term is used in section 6 of the AML/CTF Act.

613. Counsel Assisting has suggested that "there is a seriously arguable question as to whether Southbank (and Riverbank) were designated remittance agents": see at [235]. The resolution of this issue is *firstly* outside of the scope of the terms of reference; and *secondly* does not appear to have any bearing upon suitability and therefore is not necessary to determine. Further, given the complexity of the issue, it ought not be determined in this forum. If it is nevertheless considered necessary to give consideration to this issue. The following matters ought be noted:

613.1 Riverbank and Southbank are non-financiers as defined in s 5 of the AML/CTF Act;

613.2 As neither Riverbank nor Southbank make money available to the "*transferee entity*"[390] (that is the customer), they are unlikely to fall within the ambit of s 10(1) of the AML/CTF Act;

613.3 With the exception of maintaining a bank account, it is unlikely that either Riverbank or Southbank "carr[ied] on a business" for the purposes of items 31 and 32 of table 1 in section 6 of the AML/CTF Act.

614. Having regard to these matters, the evidence before the Inquiry does not enable any final findings in relation to this issue to be made. In any event, the issue of whether Southbank and Riverbank were reporting entities is, in Crown's submission, not material to the question of Crown's suitability to be a close associate. Crown transactions in the bank accounts were captured by the transaction monitoring programs of Crown Melbourne and Crown Perth, and appropriately so, as those transactions were ones in relation to which Crown Melbourne and Crown Perth respectively proposed to provide a designated service. Additionally, as submitted above, to the extent that certain transactions were missed because of the aggregation issue, the Crown AML team honestly believed that all transactions were being monitored, and their state of mind is relevantly the state of mind of the licensees. Further and in any event, these matters do not have any bearing on whether Crown is of *"good repute, having regard to character, honesty and integrity"*.[391]

615. However, if it is intended to be asserted that Crown was not of good repute as in failing to enrol Riverbank and Southbank as reporting entities, it has exposed those entities in some way to criminal sanctions, that analysis is not correct.

616. That is firstly because, as Riverbank and Southbank (for the reasons explained above) did not provide designated services they did not fall within the definition of a reporting entity. Second, Counsel Assisting's submission in [241] operates on the assumption that "transfers from Southbank and Riverbank … were directed from … staff of" Crown Melbourne and Crown Perth. There is no evidentiary support for that proposition. The evidence that is before the Inquiry does not permit any findings to be made in relation to the transfer of funds – that issue not having been the subject of either oral or documentary evidence. Third, if that assumption is right, there is a complex question as to whether or not either Riverbank or Southbank have engaged in any positive or overt act to which attribution of liability could affix in a criminal context.

[390] See sec 10(3) AML/CTF Act

[391] Section 12 of the CC Act

617. Further, having regard to the qualifications in the Initialism Report, there is insufficient evidence before the Inquiry to determine whether in transferring funds from the Riverbank and Southbank accounts there has been the commission of a criminal offence – namely dealing with proceeds of crime.

618. In relation to an offence under s 400.9 of the Criminal Code, in particular, there is insufficient evidence to determine whether it could be concluded of any particular transaction or series of transactions that there is an established factual basis for a finding that a particular person or entity held a reasonable suspicion that the money was proceeds of another class of crime. This is particularly so where the Initialism Report does not support any suggestion that the payments that patrons made into Crown accounts were not legitimate (rather it appears that on occasion legitimate transactions may have been intercepted with illicit funds), and no explanation has been proffered by Counsel Assisting. The Inquiry should not proceed to make any determination in relation to this issue.

619. Further, Counsel Assisting's submission in [241] is prefaced on an assumption, "if the deposits ….were proceeds". In those circumstances, having regard to the fact that the allegation is a series criminal offence; and considering the uncertainties in the evidence noted above, it is not open to the Inquiry to make findings of the kind set out in [241] of the submissions or contention **SIC B.2**.

D5. Other transactions and dealings

Whye Wah (Roy) Moo

620. Submissions in relation to the history and context of Crown's relationship with Mr Moo, together with the veracity of the media allegations in relation to Mr Moo are set out in Crown's submissions in relation to junkets and are not repeated here.

621. After identifying certain of the facts relevant to Mr Moo's conviction for dealing in proceeds of crime, Counsel Assisting has invited the Inquiry to make a finding that "money was laundered through Crown Melbourne".[392] Having regard to Mr Moo's conviction and the findings made in the court proceeding,[393] it is not in dispute that money was laundered through

[392]Counsel Assisting submissions [9]-[13]. No contention is advanced in the SIC concerning Mr Moo. Agreed Summary of Facts for the prosecution of Mr Moo (INQ.130.003.1803, Ex F24) and the sentencing remarks *Director of Public Prosecutions v Whye Wah Moo* [2013] VCC 9 (INQ.130.003.1815, Ex F25).

[393]It was admitted and the court noted that the offending conduct related to four transfers of funds from an ANZ Crown account to a Bank of China account. There is nothing in the Agreed Statement of Facts or the Sentencing Remarks to indicate that Crown was aware that, or reckless to, the fact that the transfers were of proceeds of crime.

Crown Casino. However, that conclusion depends on facts proved in the criminal case that were beyond Crown's knowledge at the time of the transaction.

622. It is accepted that Mr Moo utilised a Crown account and in that way Crown's premises and processes were exploited. However, there is no suggestion that Crown was knowingly involved in the illegal conduct engaged in by Mr Moo, or by the syndicate that was said to be the source of the laundered funds.

623. No submission is made (and there is no basis for any finding) that any of these matters mean that *Crown* engaged in money laundering.

624. Crown submits that the matters set out by Counsel Assisting in relation to Mr Moo therefore have little bearing on the question of Crown's current suitability to be a close associate of the Licensee, or on the suitability of the Licensee to hold the casino licence. No submission is made by Counsel Assisting that the events concerning Mr Moo have any bearing on suitability, and correctly so. Nor is it submitted that the events concerning Mr Moo demonstrate any failure by Crown Melbourne to have in place appropriate AML controls and processes.

625. However, to the extent that this matter is to be taken into account in relation to the question of suitability, the following additional facts, demonstrate that Crown acted promptly to address the risk posed by Mr Moo once aware of the allegations against him:

625.1 *Firstly*, Crown co-operated and provided assistance to the AFP in securing the conviction of Mr Moo, including by the provision of witness statements and information.[394]

625.2 *Second*, as noted in Counsel Assisting's submissions, Mr Moo was issued with a withdrawal of licence in March 2013 when Crown was notified that Mr Moo had been charged with money laundering offences[395] and Crown's POI Committee resolved for his withdrawal of licence to remain in place indefinitely.[396]

625.3 Despite subsequent correspondence and requests from Mr Moo, Crown has not revoked his withdrawal of licence.[397]

Third party transfer involving Veng Anh

[394] Patron Information – Roy Moo (CRL.579.001.3152, Ex BB32), see 8(d); Gaming records bundle for Lian Ping Ang CRL.500.002.3405 at .3447 and .3449, Ex BG4.

[395] See CRL.500.002.3232 Ex BJ20; CRL.500.002.3240 at .3242 Ex BF76.

[396] POI Committee Minutes October 2014, CRL.500.002.3335 Ex BF77; see also Letter from Crown Melbourne to SDR Law dated 9 March 2016 CRL.500.002.3283 Ex BJ21.

[397] CRL.500.002.3240 Ex BF76; CRL.500.002.3283 ExBJ21

626. Counsel Assisting accept that the media allegation that Veng Anh:

> *"directed casino staff to send [$500,000] … to a convicted drug trafficker"*

has not been established on the evidence.[398]

627. However, Counsel Assisting submit that the transfer of $500,000 from Zhou Qiyun's patron account to a third party in January 2017, which Mr Anh requested his supervisors to approve, "was probably money laundering".[399] Crown submits that the evidentiary foundation is inadequate to support any such finding.

628. At the outset, Crown submits that it is neither necessary nor desirable for the Inquiry to make any findings as to whether particular conduct constituted (or probably constituted) a criminal offence. The outcome of the Inquiry does not depend on any judgement as to whether any person has, beyond reasonable doubt, committed an offence or engaged in criminal activity. To the extent that the Terms of Reference require the Inquiry to investigate media allegations to determine suitability, they do not, in Crown's submission, require or invite findings as to whether criminal offences have been committed.

629. Putting to one side the standard of proof that would attend such an exercise (which is addressed in further detail below), Crown notes that in his report under s 143 of the *Casino Control Act* conducted in 2000 in relation to Star City Pty Ltd (as it was then called), Mr McClellan QC said[400]

> *The outcome of my inquiry does not depend on a judgment as to whether any person has, beyond reasonable doubt, committed an offence or engaged in criminal activity. I must consider and form a view as to whether illegal or undesirable activity occurs in or is associated with the casino. However, this is for the purposes of assessing one of many matters relevant to the question of the suitability of Star City to hold the licence and the public interest in the licence continuing.*

630. In any event, Crown submits that the evidence does not support any such finding.

631. The evidence is that funds were received into Zhou Qiyun's patron account at Crown from The Star in October 2016.{{ev ref}}. After some of the funds were used for the purposes of gambling at Crown, there remained a positive balance in Mr Qiyun's patron account.{{ev ref}}

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[398] Counsel Assisting Submissions [15]

[399] Counsel Assisting Submissions [20]

[400] INQ.080.050.0286 at .0305 Ex A47.

At Mr Qiyun's request, in January 2017 the remaining funds were transferred to Mr Hu, who was not a patron of the casino but who Mr Anh understood to be a friend of Mr Qiyun.[401]

632. There is no evidence that the funds transferred to Mr Hu from Mr Qiyun's patron account were the proceeds of a crime or an instrument of a crime.[402]

633. Nor is there a basis to find, as Counsel Assisting submits, that the transfer to Mr Hu demonstrates that Crown had, in 2017, "either an ignorance or a reckless disregard"[403] to the risks of its processes being exploited for money laundering.

634. To the contrary, the evidence establishes that processes and controls were in place (and were followed) to mitigate the risks of money laundering in connection with a transfer to a third party.

(a) Mr Brown gave evidence that in January 2017, before third-party transfers under $5 million could be completed, a member of the Cage and a member of the relevant gaming department were required to sign off on the transaction.[404]

(b) Details of the third party's name, address, date of birth and relationship to the patron were required to be obtained.[405]

(c) Mr Anh gave unchallenged evidence that he escalated the transaction to his superiors, including Jacinta McGuire, who asked questions about the transaction prior to approving it.[406]

635. However, Crown accepts that its processes and controls in relation to third party transfers at this time could (and should) have done more to respond to the risk of money laundering. Crown could (and should) have conducted further investigations into this transaction, which may have resulted in approval for this transaction not being granted.

636. The media allegations in relation to this transaction in February this year prompted further consideration within Crown of the money laundering risks posed by transfers to third parties. Barry Felstead, Nick Stokes and Scott Howell met and discussed the risks in relation to third

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401 Anh XN 4.09.20 T2096.37-2097.8

402 The evidence of Mr Brown is that the funds were received from the Star Casino in October 2016, Statement of David William Brown 28 August 2020 (**Brown**) [16] Ex BM26 CRL.664.001.0001.

403 Counsel Assisting submissions on Money Laundering [20]

404 Brown Statement [11] Ex BM26 CRL.664.001.0001; Brown XN 4.9.2020 T.2120.29-40.

405 Brown Statement [12] Ex BM26 CRL.664.001.0001

406 Anh XN 4.09.2020 T.2097.29-2098.3.

party transfers at length. These discussions culminated in a direction being issued by Mr Felstead, which created further controls in relation to third party transfers.[407] Since 8 April 2020, Crown has not permitted customers to direct Crown to transfer funds from their patron account to a third party, except with prior written approval from both the Chief Operating Officer and the Group General Manager, AML.[408]

City of Dreams deposit service

637. At [54]–[60] of their submissions, Counsel Assisting contend that a service whereby Crown customers could deposit front money at the City of Dreams casinos in *Macau* and Manila, for use at Crown's Australian and London properties, is evidence that Crown either failed to appreciate the risks of money laundering or did not care about those risks. The nub of the contention appears to be that Crown had no way of satisfying itself as to the source of funds deposited through the service or as to the identity of the persons who were making deposits.[409]

638. This contention assumes that there were no processes in place at the City of Dreams casinos in Macau and Manila directed to verifying the identity of persons making deposits or examining the source of funds deposited. However, there is no sound evidentiary foundation for that assumption. It certainly cannot be concluded from generalised statements about Macau and the Philippines that there were no processes in place at the City of Dreams casinos directed to those matters.[410] Counsel Assisting rely on comments made by Mr Barton in his evidence.[411] However, Mr Barton had no knowledge of the service or how it interacted with Crown's AML program.[412]

639. Such evidence as there is as to the nature of the service is that it was available to "our customers".[413] Thus, it appears that a person making a deposit at the City of Dreams casinos in Macau and Manila had to be a Crown customer. It is not the case, on the evidence, that any person could enter those casinos and deposit front money for use at Crown's Australian and London properties. As to what processes were followed, at the City of Dreams end, to confirm that the person was indeed a Crown customer, and to examine the source of the funds deposited, there is simply no evidence.

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[407] Stokes XN (4.09.2020) T.2176.20-25;

[408] Brown Statement Ex BM26 CRL.664.001.0001 at .0005 [25], Brown XN (4.09.2020) T.2134.9-20.

[409] See Counsel Assisting Submissions [57].

[410] Compare Counsel Assisting Submissions [56].

[411] Counsel Assisting Submissions [57].

[412] T2796/19-32; T2797/28-29.

[413] Ex BJ164; CRL.613.001.0018 at 0078.

640. However, it is apparent from the one document[414] in evidence that refers to the deposit service that there was a legal and compliance team at the City of Dreams, and that team was alive to the existence of the service and was making recommendations as to it. That tends to undermine the proposition, implicit in Counsel Assisting's submissions, that the service was free from oversight at the City of Dreams end.

641. Further, it should be remembered that Crown was at the time in a joint venture with Melco International, pursuant to which the City of Dreams casinos were operated. Mr Barton referred in his evidence to a cooperative relationship.[415] That being so, it cannot be assumed that Crown had no visibility, or ability to satisfy itself, as to the processes in place at those casinos. Nor can it be assumed that Crown took no steps to satisfy itself as to the processes in place at those casinos.

642. As to the criticism that Crown has not investigated the service, which ended in 2016, Mr Barton said in his evidence that it would be appropriate for Crown at some point to examine it, but added that the priority at present was on prospective arrangements.[416] Further, Counsel Assisting's criticism about not investigating the service is premised on an assumption that the service did indeed suffer from the vices suggested by Counsel Assisting. For the reasons identified above, that is a premise for which there is no sound evidentiary basis.

643. In short, Counsel Assisting's submissions about the deposit service at the City of Dreams casinos stray too far from what the evidence (such as it is) fairly supports. Those submissions should not be accepted.

Proposed Macau bank account

644. At [61]–[62] of their submissions, Counsel Assisting contend that the mere contemplation, in 2017, of the possibility of opening a bank account in Macau, into which patron deposits could be made, speaks to a lack of concern about money laundering risks.

645. There is an air of substantial overreach to this contention. The bank account was never opened. Counsel Assisting's contention assumes that Crown would not have been concerned, had the bank account been opened, to have in place processes by which money laundering risks were appropriately managed. There is no evidentiary basis for that assumption.

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[414] Ex BJ164; CRL.613.001.0018 at 0078.

[415] T2798/36.

[416] T2796/37-43.

646. As to the suggestion that the Riverbank corporate entity was selected on the footing that it would be subject to "the lightest regulation", that is contrary to the evidence. Ms Williamson rejected that proposition.[417] She explained that the contemplated use of Riverbank was "purely a timing administrative type scenario".[418] That evidence was not challenged.

647. For these reasons, Counsel Assisting's submissions concerning the proposed Macau bank account should not be accepted. In any event, the submissions are somewhat tangential. That is because Mr Barton was clear in his evidence that Crown is now of the view that patron deposit accounts should not be operated overseas.[419]

D5. The Suncity Room

648. The history of Crown's relationship with Cheok Wa (Alvin) Chau is set out detail in Crown's submissions in relation to junkets {check}. It is also summarised in the memorandum from Mr Preston to Mr Felstead dated 3 March 2020.[420]

649. Mr Chau's junket was branded as the Suncity junket. From 2014 until 2019, Suncity operated a dedicated room at Crown Melbourne's casino, located initially in Pit 86 and then subsequently relocated to Pit 38. Pit 86 was set up in the Teak Room and Pit 38 in the Mahogany Room.[421]

650. Players on a Suncity junket were not permitted to gamble without being identified by Crown.[422] They were required to have Crown Rewards Membership, which required two forms of identification to be provided to Crown and retained on file.[423] Further, players could only gamble with specially marked "commission" or "non-negotiable" chips, which are different from the standard chips used elsewhere in the casino. At the end of a junket program, all gaming activity was recorded onto a settlement sheet, capturing turnover, wins and losses, expenses deducted, expenses reimbursed and commissions or rebates.[424]

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[417] T2247/41-45.

[418] T2249/12.

[419] T2788/19.

[420] Memorandum from Joshua Preston (Ex BE72 CRL.606.001.0084)

[421] Preston XN T784

[422] Preston I [24] Ex F78 CRL.577.001.0001 at 0004

[423] CRL.500.005.6185 at .6186

[424] Preston I [25] Ex F78 CRL.577.001.0001 at 0005 }

651. Crown surveillance cameras operated in the Suncity Room.[425] Gaming tables in the Suncity Room were staffed by Crown dealers. Pit 86 had its own entrance which was manned by Crown security.[426]

Cash transactions at Suncity cash desk

652. The Suncity Room included an administration or "cash" desk, which was staffed by Suncity staff members. At the desk, Suncity staff members would dispense non-negotiable or commission chips in exchange for cash.[427] The Suncity staff members were identified by Crown Melbourne Security and provided with a card and lanyard for identification purposes.[428]

653. The Inquiry has examined:

a. video footage of two transactions where cash was exchanged for chips at the Suncity cash desk in 2017 (**Willkie Footage**)[429] being:

i. $100 bricks brought into the casino in a black shopping bag (around Christmas); and

ii. $50 bricks brought into the casino in a blue cooler bag (which has been referred to as the blue cooler bag footage); and

b. closed circuit television (CCTV) images of two transactions where cash was exchanged for chips at the Suncity cash desk in 2018, being

i. an exchange of $50 bricks for casino chips in January 2018;[430]

ii. an exchange of $100 bricks for casino chips in February 2018.[431]

654. These four cash transactions are hereafter referred to as the **Suncity desk cash transactions**.

[425] Preston XN 3.08.2020 T.733.38-45

[426] Letter from Joshua Preston to AUSTRAC titled "Suncity" (EX BE89 CRL.609.007.8721 at 8724)

[427] Preston XN T736.36-40

[428] ML/TF Risk Assessment Review (Ex BH6 CRL.500.005.6185 at .6816)

[429] Crown Casino Footage (Andrew Wilkie) Ex F93 INQ.800.001.0010

[430] Stills from footage of Suncity Service Desk Ex BE93 CRL.611.001.0056

[431] Stills from footage of Suncity Service Desk Ex BE98 CRL.611.001.0108

655. Counsel Assisting submit that it is more probable than not that each of the Suncity desk cash transactions involved money laundering.[432]

656. For the reasons noted above, it is neither necessary nor desirable for this Inquiry to make a judgment about whether a criminal offence has been committed. However, even if the Inquiry considered it appropriate to do so, Crown submits that the evidentiary foundation is inadequate to demonstrate that any of the Suncity desk cash transactions involved money laundering.

657. It is not in dispute that each of the Suncity desk cash transactions:

657.1 gave rise to indicia of money laundering;[433] and

657.2 required further investigation by the AML team.[434]

658. The additional investigations could have included obtaining information about the patron or the junket's gaming activity while at Crown on that occasion; a search of past gaming activities to determine whether the buy-in was unusual; and investigations to determine if the buy-in was followed by rated play.

659. The submissions that follow are not intended to detract from the seriousness of the money laundering risk that transactions at the Suncity desk presented. That risk and the steps now in place to mitigate that risk are addressed further below.

660. As set out above, money laundering is defined in the AML/CTF Act as conduct that amounts to an offence against Division 400 of the Criminal Code or the State, Territory and foreign jurisdiction equivalents. Each of those offences is serious, carrying significant terms of imprisonment or financial penalties if established beyond reasonable doubt. Counsel Assisting does not proffer an explanation as to what burden is required to be satisfied in order to find that the transaction were, more probably than not, money laundering. Having regard to the way in which that term is used in the AML/CTF Act, Crown submits that this must amount to a requirement to find that a jury would, more probably than not, find that the evidence established that each of the elements of an offence against Division 400 of the Criminal Code has been proved beyond reasonable doubt.

661. Having regard to the elements of the money laundering offences in the Criminal Code, undertaking that analysis and arriving at that finding would require the evidence to establish,

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[432] SIC A.2.

[433] Closing submissions 9.11.20 T5094.7-43; Cohen XN 5.8.20 T988.39; Preston XN 3.8.20 T725.33-37

[434] Horvath XN 14.10.2020 T.4202.30-33; Coonan XN 20.10.2020 T.4535.1-2

in the context of offences against ss 400.3-400.8[435] that the money observed in the transactions is the proceeds of a crime or an instrument of crime. It appears that in describing the Suncity desk cash transactions as "placement"[436] Counsel Assisting has accepted that the funds involved in the Suncity cash transactions are not an instrument of crime. As to whether the funds were the proceeds of crime, there is no evidence before the Inquiry that could satisfy that element, nor is there evidence of any class of crimes from which these funds could have been derived. There is no evidence before the Inquiry as to the requisite mental state of the person shown in the video footage and CCTV images with the money and whether, for example, the person believed the money to be proceeds of crime,[437] was reckless as to the fact that the money was proceeds of crime,[438] or was negligent as to this fact.[439] Proof of both the physical and fault aspects of this offence would need to be established beyond reasonable doubt for any criminal prosecution.[440] Even if it be suggested that the Inquiry is considering whether those elements have been established to a civil standard, there is simply no evidence as to several critical elements.

662. In reply submissions, Counsel Assisting also made submissions in relation to s 400.9 of the Criminal Code, and correctly identified that in respect of that offence, what needs to be established is that there is a reasonable suspicion that the money or property was the proceeds of crime. As set out above, a reasonable suspicion must have a factual basis. Counsel Assisting relied upon cash being brought into a casino in a shopping bag, , wrapped in cellophane and "handed over in wads". There is no doubt that is unusual in the context of ordinary commercial dealings for an individual to present with a significant amount in cash, but the full circumstances need to be considered.

663. The relevant context for each of the transactions is as follows: as accepted by Counsel Assisting[441] patrons may legitimately bring cash into casinos. The fact that each of the transactions involved large amounts of cash is not, of itself, demonstrative of money laundering. It is relevant that each of the transactions occurred in a private gaming room that was, at that point in time, dedicated to international VIP players. In addition, it is relevant that

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[435] For the purposes of these submissions, it is not proposed to conduct an assessment of each of the elements of the offence, but rather the substantive element that Crown submits is not made out on the current evidence.

[436] Closing submissions 20.11.2020 T5797.33-34

[437] Criminal Code, ss 400.4(1)(b)(i); 400.5(1)(b)(i); 400.6(1)(b)(i); 400.7(1)(b)(i); 400.8(1)(b)(i).

[438] Criminal Code, ss 400.3(2)(c); 400.4(2)(c); 400.5(2)(c); 400.6(2)(c); 400.7(2)(c); 400.8(2)(c).

[439] Criminal Code, ss 400.3(3)(c); 400.4(3)(c); 400.5(3)(c); 400.6(3)(c); 400.7(3)(c); 400.8(3)(c).

[440] For any prosecution proof as to the amount of money would also be required. However, at the bottom end of the range of offences is an offence of dealing with money of any value, so it is not in dispute that this element would be made out in any criminal prosecution.

[441] Closing submissions 6.11.20 T5075.46-5076.2

the Suncity room was subject to security surveillance 24 hours a day and was manned by Crown security staff.[442] Those attending the Suncity Room were required to enter and walk through the casino in order to reach the Suncity Room.[443] There were Crown staff present in the room during each of the transactions and there was nothing secretive about, nor any haste to, any of the transactions. There is no evidence as to the source of the funds. There was nothing in the body language of the individuals involved that suggested a consciousness of guilt. In this context, without any evidence as to the source of the funds, the details of the patron that was buying in, the gambling activities that followed the buy-in or whether that amount of money was unusual for that player, it is questionable whether there is sufficient information before the Inquiry to find, even to a lesser civil standard of proof, that there is a reasonable suspicion that the funds involved in each of the transactions were proceeds of crime.

664. This position is consistent with the evidence given by the independent witnesses. The evidence of Ms Skye Arnott, the AML compliance officer for the Star, about the "blue cooler bag footage" was in the following terms (emphasis added):[444]

> *MS SHARP: Would that ring any alarm bells for you as an AML compliance officer?*
>
> *MS ARNOTT: In terms of someone appearing at a cage window with a bag with large amounts of cash in it, would that raise alarm bells?*
>
> *MS SHARP: Yes.*
>
> *MS ARNOTT: Yes, it can do. There are – yes, it's something that we would certainly be looking into.*
>
> *MS SHARP: So if somebody turned up with a grocery bag and dispensed on the table from that bag, say, $300,000 in cash, would you be* ***immediately suspicious that there was a real prospect of money laundering****?*
>
> *MS ARNOTT:* ***Not necessarily.*** *There is – we would certainly take time to make sure that we did our research into that transaction, but there are a number of different factors that can be considered as part of such a transaction that may mitigate it. On the surface it certainly looks suspicious, but you would do some research to make sure that that – that was the case in the individual transactions.*

[442] Preston XN 3.8.20 T733.32-734.12; Preston XN 3.8.20 T758.41-759.6.

[443] Preston XN 3.8.20 T784.5-32 ***[OD note: could not find better reference]***

[444] Arnott XN 3.08.2020 T.824.28-47

665. The evidence of Mr Cohen, the former Chair of the VCGLR, was to the following effect:

> *MR ASPINALL: Having seen those – having made those assumptions, what are the risks you see associated with the video behaviour that we see in that video?*
>
> *MR COHEN: There is the potential for the person handing over the cash to be laundering that money. There is a responsibility on Crown to report that transaction to AUSTRAC and for AUSTRAC to investigate that. There's a responsibility for Crown to know who the customer is that is spending that amount of money. It may be that it's – and I don't know who the player was. It may be a well-respected international player who has – that transacts in cash a lot. I don't know.* ***There's a lot more that I don't know than I do know, which makes it difficult to explain what might have happened in this set of circumstances.***

666. Mr Cohen placed the possibility that the Suncity cash desk transactions involved money laundering as no higher than a potential possibility. Having regard to the evidence of Ms Arnott and Mr Cohen, the Inquiry cannot not be satisfied that the funds involved in the Suncity desk cash transactions were proceeds of crime, or that those funds were "more probably than not" proceeds of crime. At most, there were grounds for a "reasonable suspicion" that the funds were proceeds of crime.

667. For these reasons, there is inadequate evidence to find, as put by Counsel Assisting, that:

a. the probability is that the Wilkie Footage "shows money laundering occurring": see [26];

b. the transactions depicted in the CCTV footage were, in all probability "further instances of money laundering": see [27];

c. money laundering occurred in or through the Suncity Room on multiple occasions between 2017 and 2018: see [35].

668. It cannot be said that by virtue of the Suncity desk cash transactions that Crown engaged in money laundering. This proposition has not been put against Crown and there is no basis for any such finding.

669. However, it is not in dispute that the Suncity cash desk transactions were transactions that required further investigation by the AML team to determine whether they were suspicious.

670. In relation to the date of the blue cooler bag footage, Mr Preston was heavily criticised in questioning before the Inquiry for not promptly conceding, without further information, that

one of the transactions shown in the video footage occurred on 5 May 2017, as had been suggested by the VCGLR.[445] The Inquiry should not that on 9 October 2020, the VCGLR sent an email to Mr Preston, in which it advised that its previous indication that the footage depicted events on 5 May 2017 was incorrect, and that the incident likely occurred on a different date in May 2017.[446]

671. An additional event in the Suncity Room that has been referred to in Counsel Assisting's Submissions involved a backpack containing approximately $250,000 in cash, which was taken from the Suncity Room in December 2018, leading to the arrest of two individuals while seeking to deposit the cash from the backpack at a bank branch: see [34]-[35] Counsel Assisting's Submissions. Crown accepts that this event grounds a reasonable suspicion of money laundering. However, the evidence before the Inquiry is insufficient to find that by reason of this transaction money laundering "occurred in or through the Suncity Room". Having regard to the seriousness of the allegation, additional information, beyond that which is known, would be required for such a finding.

672. What is not set out in Counsel Assisting's submissions is the response by Crown to this event and the assistance that Crown provided to police in connection with it.[447] There are important matters in the context of a suitability assessment. Further, there was no evidence that Crown was involved in that transaction[448] and there is no basis (and it has not been put) that Crown engaged in, facilitated or allowed money laundering on the basis of this incident.

Controls in the Suncity Room

673. It has been put by Counsel Assisting that Crown lacked:[449]

a. a sufficient level of "alertness and vigilance" to matters that might suggest money laundering; and

b. the will and conviction to enforce controls that responded to the threat of money laundering and reacted to any breach of those controls,

which submission is supported by reference to events in connection with the Suncity Room.

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[445] See e.g. TR1816/9-47; TR1827/24-45 and TR1828/7-20.

[446] CRL.743.001.0001 Note that document has not yet been tendered.

[447] Memorandum from Joshua Preston to Barry Felstead and Kem Barton dated 3 March 2020 CRL.606.001.0084 at .0089 Ex BE72

[448] The memorandum sent from Joshua Preston to Barry Felstead noted that "*there was no evidence of the cash being cash provided by Crown to CCW or his representatives or junket players*" CRL.060.001.0084 at .0090 Ex BE 72. This evidence was not challenged by the Inquiry.

[449] Counsel Assisting Submissions [37]-[40]

674. The evidence establishes that Crown had processes in place for monitoring what was occurring in the Suncity Room, and for responding to and addressing the money laundering risks that were presented by the Suncity Room. A chronological history of the introduction and escalation of those controls is set out in additional detail below. Counsel Assisting said in reply submissions that Crown did not, in its closing, address the issue of controls. This position is not correct. Controls in relation to the Suncity Room were addressed in closing: see T.5609-5613. Those submissions are elaborated below.

675. There is no evidence before the Inquiry as to whether large cash transactions did, or did not, occur in the Suncity Room prior to 2017. With the exception of **SIC B.8** there is nothing identified in the contentions that relates to controls within the Suncity Room. SIC B.8 does not identify any time period in which the alleged failure is said to have occurred. The submissions in relation to the failure to enforce anti-money laundering controls refer to events in 2017 and 2018. Further, there was no examination of any Crown witnesses as to events in the Suncity Room prior to 2017.[450] For this reason, it is assumed that the allegation is that Crown failed to enforce anti-money laundering controls in relation to the Suncity Room during the period from 2017 onwards.

Events in 2017

676. As noted above, in early 2017, AUSTRAC commenced a compliance assessment of Crown Melbourne, with a particular focus on junkets.[451] During this compliance assessment, AUSTRAC requested an onsite assessment of Crown Melbourne in May 2017.[452] During that assessment AUSTRAC toured Crown's junket facilities, including the Suncity Room, and observed how the Suncity Room operated.[453] AUSTRAC was also provided with an overview of the junket operations and procedures in the Suncity Room.[454]

[450] Mr Preston was asked about whether Crown turned a blind eye to money laundering in the Suncity Room in the period from 2014 to 2017, however Mr Barton was not aware of the events in the Suncity room at that time: see Barton XN 23.9.20 T2804.22-27 .

[451] Preston 1 [177]; (CRL.606.001.0186 Ex BE79)

[452] Confidential Annexure 3 to the Confidential Statement of Joshua Preston, page 2 (CRL.577.002.0001_R Ex J2)

[453] Preston XN 3.08.2020 T.764.22-35, Although Mr Preston indicated he could not recall if there were cash transactions occurring at the desk at the time of the inspection, he did indicate that AUSTRAC were able to see the Suncity staff at the cash desk. There is no indication and it was not put to Mr Preston that the cash counting machine was not on the Suncity cash desk during the inspection. It is therefore open to the Inquiry to infer that AUSTRAC would have been able to view the cash desk and cash counting machine in a similar way to how it was depicted in the Wilkie footage.

[454] Confidential Annexure 3 to the Confidential Statement of Joshua Preston, page 2 (CRL.577.002.0001_R Ex J2)

677. On 1 June 2017, AUSTRAC contacted Crown Melbourne in relation to Mr Chau,[455] and requested documentation. Crown Melbourne provided documentation and information to AUSTRAC in relation to Mr Chau.[456]

678. On 8 June 2017, AUSTRAC again contacted Crown Melbourne, requesting that Crown outline its reasons for continuing a business relationship with Mr Chau.[457]

679. On 22 June 2017, Mr Preston and a representative from AUSTRAC met to discuss Mr Chau.[458] The discussion included discussion of cash being provided at the cash desk within the Suncity Room.[459]

680. Following the meeting with AUSTRAC, AUSTRAC continued to engage with Crown regarding arrangements concerning cash in the Suncity Room, but there were no further questions sent through by AUSTRAC regarding Mr Chau personally.[460]

681. On 29 June 2017, AUSTRAC emailed Mr Preston in relation to the cash that was "being provided over the desk within the Suncity Room at Crown". [461] AUSTRAC sought confirmation from Crown in relation to the monitoring and oversight Crown had in place in relation to these transactions.[462] Mr Preston responded by engaging with AUSTRAC over a lengthy period of time in relation to its queries about Suncity. This process of engagement is described in Mr Preston's email report to John Alexander, c.c. Barry Felstead, dated 21 May 2018.[463] The enquiries by AUSTRAC appear to have been connected with a junket review carried out by AUSTRAC which was closed off without any adverse report being made, as noted in the minutes of the Board of directors of Crown Resorts on 20 June 2018.[464]

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455 Confidential Annexure 3 to the Confidential Statement of Joshua Preston, page 2 (CRL.577.002.0001_R Ex J2); Email from AUSTRAC to Joshua Preston titled "AUSTRAC - follow up from May visit" (CRL.606.001.0096 Ex BE73).

456 Email from AUSTRAC to Scott Howell titled "RE: AUSTRAC - follow up from May visit - Mr. Cheok Wa CHAU" (Ex BE82 CRL.606.001.0211 at 0211)

457 Confidential Annexure 3 to the Confidential Statement of Joshua Preston, page 2 (CRL.577.002.0001_R Ex J2); Email from AUSTRAC to Scott Howell titled "RE: AUSTRAC - follow up from May Visit - Mr Cheok Wa Chau" (CRL.606.001.0211 BE82)

458 Email from Mark Crawley to Joshua Preston titled "AUSTRAC meeting follow up" (CRL.606.001.0097 Ex BE74).

459 Email from AUSTRAC to Joshua Preston titled "AUSTRAC meeting follow up" (CRL.606.001.0097 Ex BE 74).

460 Memorandum from Joshua Preston to Barry Felstead and Ken Barton titled "Review of Junket Operators - (Alvin) Chau Cheok Wa and Zezhai Song (CRL.606.001.0084 BE72).

461 Email from AUSTRAC to Joshua Preston titled "AUSTRAC meeting follow up" (CRL.606.001.0097 Ex BE 74).

462 Email from AUSTRAC to Joshua Preston titled "AUSTRAC meeting follow up" (CRL.606.001.0097 Ex BE 74).

463 Exhibit AE49 (CRL.501.039.5141).

464 Exhibit BJ60 and Exhibit AK3 (CRL.506.006.5485 at pinpoint 5490).

682. By letter dated 26 September 2017, AUSTRAC sent correspondence to Crown in relation to the Compliance Review and in that letter encouraged Crown Melbourne to submit a suspicious matter report:[465]

> *...when it observes unusually large cash transactions being processed over the cash desk in the Suncity Room, or other suspicious activity.*

683. That same day, Mr Preston had discussions internally with relevant senior management and reiterated the existing requirement to file suspicious matter reports when observing suspicious matters, including persons dealing in large sums of cash, and in particular asked that the teams capture activity in the Suncity Room.[466]

684. On 26 October 2017, Crown advised AUSTRAC that it had: [467]

> *… been reiterated to staff (gaming and cage) working in the [Suncity] room and surveillance that the observation of … unusually large cash transactions should result in the submission of a suspicious matter report.*

685. Counsel Assisting's submission that there is an inference available that the Suncity Room operated as "an island of immunity"[468] is flawed in light of the above evidence. Having regard to the above evidence and to the reviews in relation to Mr Chau which are set out in the annexure to Mr Preston's statement dated 6 March 2020,[469] and in his memorandum to Mr Felstead in relation to Mr Chau,[470] there is no basis to find that the Suncity Room operated as an "island of immunity". In Crown's respectful submission, the Inquiry should not make such a finding.

Events in 2018

686. In March 2018, the AML team received a report from the business regarding large amounts of cash being stored in the Suncity Room.[471] This fact alone, that the AML team was provided

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[465] Letter from AUSTRAC to Joshua Preston titled "AML/CTF Assessment Remediation - Crown Melbourne Limited (CRL.606.001.0184 Ex BE 78).

[466] Confidential Annexure 3 to the Confidential Statement of Joshua Preston, page 3 (CRL.577.002.0001_R Ex J2); Preston XN 3.08.2020 T.731.

[467] Letter from Joshua Preston to AUSTRAC titled "AML/CTF Compliance Assessment - Crown Melbourne Limited" (CRL.606.001.0190 Ex BE 81 at .0198).

[468] Counsel Assisting submissions [51]

[469] Confidential Annexure 3 to the statement of Joshua Preston dated 6 March 2020 Ex J2 CRL.557.002.0001

[470] Memorandum from Joshua Preston to Barry Felstead and Ken Barton titled "Review of Junket Operators – (Alvin) Chau Cheok Wa and Zezhai Song" 3 March 2020 Ex BE 72, CRL.606.001.0084

[471] Email from Jacinta Maguire to Ricky Lee 24 March 2018 (CRL.615.001.0486 BJ166); Confidential Annexure 3 to the Confidential Statement of Joshua Preston, page 4 (CRL.577.002.0001_R Ex J2).

information in relation to the activity in the Suncity Room, refutes the allegation that Crown turned a blind eye to events in the Suncity Room.

687. In response to this report, Crown resolved to implement additional controls in relation to the Suncity Room. By 17 April 2018, Crown had determined that the following additional controls were to be implemented in the Suncity Room:[472]

a. all customer deposits were to take place at the Mahogany Cage; and

b. cash of up to $100,000 could be held in the Suncity Room for petty cash purposes and not for the purposes of gambling.

688. Crown representatives met with Suncity staff and informed them that these new controls were to be in effect from 20 April 2018.[473]

689. Counsel Assisting in closing submissions and in the line of questioning directed to a number of witnesses asserted that the controls were not enforced.[474] The evidence does not support a finding that the control on the cash amount at the Suncity desk was not enforced by Crown. To the contrary, it supports the proposition that the control was enforced.

a. On 17 April 2018, Crown Melbourne told Suncity about the new cash limit controls that were put in place for the Suncity Room, which would come into effect on 20 April 2018.[475]

b. On 20 April 2018, Crown Melbourne conducted an audit of the Suncity desk following the implementation of the additional controls referenced above.[476] During the audit, Crown was advised by Suncity staff that there was an amount of $5.3 million held at the Suncity desk.[477] Crown staff, including Cage, surveillance and security staff, counted the money which had been provided by Suncity and inspected the various

[472] Email chain between Jacinta Maguire and Joshua Preston 16 May 2018 (CRL.609.007.8703 EX BJ160); Confidential Annexure 3 to the Confidential Statement of Joshua Preston, page 4 (CRL.577.002.0001_R Ex J2).

[473] Handwritten notes of Joshua Preston titled Handwritten notes titled "Agenda AUSTRAC/Crown"18 May 2018, Ex BE 88 CRL.609.007.8690; Letter from Joshua Preston to AUSTRAC titled "Suncity" 25 May 2018, Ex BE 89 CRL.609.007.8721 at .8755 (item 13)

[474] Counsel Assisting Submissions [42]

[475] Email chain between Jacinta Maguire, Joshua Preston, Indran Subramanium and others 16 May 2018 (CRL.609.007.8703 BJ 160); Confidential Annexure 3 to the Confidential Statement of Joshua Preston, page 4 (CRL.577.002.0001_R Ex J2).

[476] Ibid.

[477] Ibid.

drawers and cupboards in the Suncity Room, at which time an additional $300,000 was located.[478] The note counting machine at the Suncity desk was removed at this time.[479]

c. On 5 May 2018, a further audit was conducted in the Suncity Room and no additional cash was located.[480]

690. Counsel Assisting Submissions in [31] and [42] mischaracterise this interaction – it is asserted that the audit was conducted on 20 April and the presence of the $5.6 million in the Suncity Room is said to demonstrate the control not being enforced. On the proper characterisation of the evidence, the control was implemented and enforced from 20 April 2018. The further audit conducted on 5 May 2018 was an additional step taken to enforce the control.

691. By 11 May 2018, Crown Melbourne had implemented an additional control in relation to the Suncity Room, which required any Suncity patron deposit above the amount of $300,000 to be approved by senior VIP business executives.[481] While this was an additional control measure, Crown accepts that this approval ought not to have rested solely with the VIP business. For this reason, the current controls and processes outlined below require significant cash buy-ins to be approved by management of Crown other than from within the VIP business.[482]

692. A further control measure implemented in May 2018 was the decision to relocate the Suncity Room to Pit 38.[483] The relocation occurred in July 2018.[484] Pit 38 was within the Mahogany Room, at a location where enhanced access controls were in place to ensure that all persons entering the Suncity Room were identified and recorded in Crown's system.[485] Suncity no longer had a private entrance and every person entering the room was required to provide identification.[486] No cash counting machine was allowed in the Suncity Room. Again, in the face of this evidence, a finding should not be made that Crown failed to enforce anti-money laundering controls in the Suncity Room.

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[478] Ibid.

[479] Letter from Joshua Preston to AUSTRAC titled "AML/CTF Compliance Review & Junkets Discussion - Crown Melbourne Limited Ex BE 80 at .8725).

[480] Email chain between Jacinta Maguire, Joshua Preston, Indran Subramanium and others 16 May 2018 (CRL.609.007.8703 Ex BJ160 at .8704).

[481] Email chain between Jacinta Maguire, Joshua Preston, Indran Subramanium and others 16 May 2018 (CRL.609.007.8703 Ex BJ160 at .8704).

[482] For example, transactions require approval of the cage supervisor or AML

[483] Ev ref

[484] Ev ref

[485] Preston XN T.784. See also CRL.500.005.6185 at .6187. All entrants to the room were required to be identified and registered to enter Pit 38. This information was then recorded within Crown's systems.

[486] Preston XN T.784.

693. On 15 May 2018, AUSTRAC wrote to Crown, requesting that Crown provide information regarding Suncity, including the circumstances in which the $5.6 million had been located at the Suncity cash desk.

694. On 18 May 2018, Mr Preston met with AUSTRAC to discuss the finding of the $5.6 million and to provide information about the controls that had been implemented in the Suncity Room.[487]

695. Mr Preston reported the events in the Suncity Room to Mr Felstead and Mr Alexander by email on 21 May 2018.[488]

696. On 25 May 2018, Crown wrote to AUSTRAC in response to further queries and confirming the controls implemented in the Suncity Room, as communicated during the 18 May 2018 meeting.[489] The letter to AUSTRAC said:[490]

> … *Crown Melbourne is committed to, and actively pursuing, risk-mitigation measures which are properly attenuated to the nature of the business and the commercial relationship with the CCW junket. As always, Crown Melbourne welcomes any input from AUSTRAC in relation to the nature of these measures and any additional measures which AUSTRAC considers appropriate having regard to the relevant circumstances.*

697. After the 25 May 2018 letter was sent, Crown did not receive any further response from AUSTRAC in relation to the Suncity Room.[491]

698. In the course of his discussions with AUSTRAC, Mr Preston was informed that AUSTRAC had no objections to Crown electronically transferring the $5.6 million found in the Suncity Room to Suncity's bank account. Explicit permission was sought by Crown, and granted, by the money laundering regulator for Crown to transfer the funds to Suncity.[492]

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[487] Memorandum from Joshua Preston to Barry Felstead and Ken Barton titled "Review of Junket Operators - (Alvin) Chau Cheok Wa and Zezhai Song (CRL.606.001.0084 BE72); Handwritten notes titled "Agenda AUSTRAC/Crown" 18 May 2018 (CRL.609.007.8721 BE88).

[488] Email from Joshua Preston to John Alexander titled "Confidential and Legally Privileged" 21 May 2018 (CRL.501.039.5141 Ex AE 49).

[489] Letter from Joshua Preston to AUSTRAC titled "Suncity" 25 May 2018 (CRL.609.007.8721 BE89); Memorandum from Joshua Preston to Barry Felstead and Ken Barton titled "Review of Junket Operators - (Alvin) Chau Cheok Wa and Zezhai Song (CRL.606.001.0084 BE72).

[490] Letter from Joshua Preston to AUSTRAC titled "Suncity" 25 May 2018 (CRL.609.007.8721 BE89 at .8722

[491] Memorandum from Joshua Preston to Barry Felstead and Ken Barton titled "Review of Junket Operators - (Alvin) Chau Cheok Wa and Zezhai Song (CRL.606.001.0084 BE72).

[492] {ev ref}

699. In the board papers for the Meeting of the Board of Directors of Crown Resorts on 20 June 2018, the "Regulatory Update" included information in relation to the AUSTRAC enquiry in the following terms:[493]

> *On 15 May 2018, Crown Melbourne received an enquiry from AUSTRAC in relation to a large cash transaction involving the Suncity Room (Chau Cheok Wa junket (CCCW)).*
>
> *AUSTRAC's enquiry addressed, amongst other matters, Crown's relationship with Suncity, details as to CCW's junket representatives and what steps Crown had taken to address the suspicious activity in the room.*
>
> *Crown has over a period of time and more recently implemented a number of additional controls in respect of the Suncity Room, including all cash to be deposited at the Mahogany Cage, no more than $300,000 cash per day to be deposited in the Cage on behalf of the CCW junket and the proposed relocation of the CCW junket to Pit 38 in the Mahogany Room.*

700. In the board papers for the Meeting of the Board of Directors of Crown Resorts in August 2018, an update was included in relation to the AUSTRAC enquiries concerning the Suncity Room and Mr Chau, in the following terms:[494]

> *As previously reported, Crown Melbourne received a enquiry from AUSTRAC in relation to a large cash transaction involving the Suncity Room (Chau Cheok Wa junket (CCCW)). It should be noted that AUSTRAC has previously (early to mid-2017) made enquiries regarding Suncity and CCW which we have responded to.*
>
> *AUSTRAC's enquiry addressed, amongst other matters, Crown's relationship with Suncity, details as to CCW's junket representatives and what steps Crown had taken to address the suspicious activity in the room.*
>
> *Crown has over a period of time and more recently implemented a number of additional controls in respect of the Suncity Room, including all cash to be deposited at the Mahogany Cage, no more than $300,000 cash per day to be deposited in the Cage on behalf of the CCW junket and the relocation of the junket from Pit 86 to Pit 38, a salon within the Mahogany Room.*
>
> *We have had no further correspondence with AUSTRAC on this matter.*

701. In addition, from at least November 2018, the risks associated with the Suncity Room were expressly reflected in the Crown Melbourne AML/CTF Program and risk register, as were the

[493] Board papers for the meeting of the board of directors on 20 June 2018, (Ex AK3CPH.001.658.3597_H at .3910

[494] Board papers for meeting of the board of directors on 8 August 2018, Ex O49 CRL.506.007.7553 at .7597.

controls to address those risks.[495] The specific controls in the relation to the Suncity Room were noted in the risk register as follows:

All staff trained to identify large cash transactions and Crown Melbourne staff Representatives or Junket staff members (not Crown suspicious behaviour in respect thereto.

Cap on cash transactions by Junket Operators, Junket property. Representatives and Key Players of A$300,000 in any 24 hour period.
No cash transactions are permissible in Pit 86 (other than for petty cash transactions up to A$100,000).

CCW Junket relocated from Pit 86 to Pit 38, with additional identification controls including the requirement to be identified upon entry (thereby removing the risk of third parties unknown to Melbourne being involved in behaviour of this nature).

Junket Operator, Junket Representative and Key Play behaviour monitored by the AML Team and by the Credit Control GM (in identified circumstances). Any unusual patterns of behaviour are reported in the form of an SMR.

Surveillance and security staff trained to identify and report suspicious behaviour. Surveillance monitors activity across the floor on a 24/7 basis and has been advised to monitor for this form of behaviour.

702. As noted above, in December 2018, a backpack which contained cash was taken from the Suncity Room. There was no indication that this currency had been obtained from Crown. However, to further mitigate risks in relation to the Suncity Room, an additional control was implemented in relation to the Suncity Room following this incident. Specifically, only transparent bags were permitted to be taken into the Suncity Room, so that security and surveillance could monitor what was being taken into the Suncity room.[496]

703. SIC B.8 is to the effect that Crown failed to take adequate steps to protect the Licensee against money laundering in the Suncity Room. It is assumed, as the contention is not clear, that the alleged failure is to protect Crown Melbourne as against the risk of money laundering and not the Licensee (Crown Sydney) in the period from 2017 to 2020.

704. In any event, there is no basis to find that Crown failed to take reasonable and adequate steps to protect the Crown Melbourne against money laundering. Having regard to the additional controls which were implemented in relation to the Suncity Room, this finding should not be made.

[495] Crown Melbourne AML/CTF Program and Risk register, 23 November 2018, Ex BA66 CRL.532.001.0355 at .0431

[496] Memorandum from Joshua Preston dated 3 March 2020 (Ex BE72 and BM8 CRL.606.001.0084 at 0090)

705. In August 2019, Suncity ceased to operate a dedicated room at Crown Melbourne.[497]

706. On 3 March 2020, Mr Preston conducted a detailed assessment of Crown's relationship with Mr Chau.[498] The assessment included an assessment of the money laundering risk presented by the Suncity Room. Mr Preston identified a range of options to address the risks posed by Mr Chau and the Suncity Room, including the engagement of an external expert to conduct further due diligence on Mr Chau. That further due diligence was ultimately carried out.[499] Mr Preston also recommended that additional controls be imposed in relation to Mr Chau and the Suncity Room, which included further enhancements to surveillance and supervision in the room, an additional gaming inspector in the room to monitor cash transactions, increased live surveillance of the Suncity Room, additional restrictions on cash deposits for junkets in connection with the Suncity Room and additional reporting.[500]

707. As events transpired, the COVID-19 pandemic ground initially all of Australia, but more intensely Victoria, to a forced shut down. This included the operations at Crown Melbourne, which ceased on 29 March 2020.

708. As set out in Crown's junket submissions, on 17 November 2020, the Board of Crown Resorts resolved that each of Crown Melbourne, Crown Sydney and Crown Perth would:

708.1 Permanently cease dealing with all junkets; and

708.2 Only recommence dealing with a junket operator if that junket operator is licensed or otherwise approved by the gaming regulator in the State in which it operates. [501]

709. In that respect, the risk of cash transactions at a Suncity cash desk or any other junket room have been eliminated. To the extent it is said that this will only provide a limited amount of comfort, as an AML control, Crown has set out below the additional AML policies and processes which have been put in place to effectively detect and manage the AML risks presented by large cash buy-ins at the casino, with the anticipated effect that these processes will deter the risk of money being laundered in this way.

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[497] Preston XN 3.8.20 T788.8-15.

[498] Memorandum from Joshua Preston dated 3 March 2020 CRL.606.001.0084 ex BM8 and BE72

[499] Berkeley Report AC28 CRL.703.001.0001; Memorandum from Joshua Preston dated 3 March 2020 Ex BE72 and BM8 CRL.606.001.0084 at .0093

[500] Memorandum from Joshua Preston to Barry Felstead and Ken Barton titled "Review of Junket Operators –(Alvin) Chau Cheok Wa and Zezhai Song" (CRL.606.001.0084 at.0093 Ex BM8).

[501] ASX Release, "Future junket relationships – update", 17 November 2020.

710. Analysed in this way, the evidence does not support any finding that AML controls in relation to the Suncity Room were not enforced. Crown imposed and enforced multiple control measures designed to respond to that risk, which increased over time. However, Crown accepts that additional measures, such as those identified by Mr Preston in his 3 March 2020 memo, should have been implemented at an earlier time. Further, Crown should not have permitted a cash desk at which a junket player or representative could buy-in or provide cash in exchange for commission chips within the Suncity Room. An arrangement of this nature did not have the same level of controls as the Mahogany cage for the purposes of buying-in, and Crown should have been alert to that risk.

711. As these measures were not implemented at an earlier time, Crown accepts that there were shortcomings in the controls that were put into place. However, Crown was not turning a blind eye to money laundering or knowingly facilitating it. It was actively seeking to respond to the risk of money laundering, by implementing and enforcing a range of controls designed to respond to evolving risks. The evidence therefore does not support a finding that Crown did not rigorously enforce AML controls.

Alleged Breach of Internal Control Statement

712. Counsel Assisting submits at [49] that it is open to the Inquiry to find that the exchange of "*the large amounts of cash for casino chips at the Suncity Desk"* was *"in breach of the core principles of"* Crown Melbourne's Internal Control Statement in respect of Cage Operations (**ICS**).[502] Crown submits that no such finding is open on the evidence before the Inquiry.

713. In inviting this finding, Counsel Assisting relies on the evidence of Mr Cohen and Mr Bromberg.

714. Mr Cohen was not taken to the ICS, nor asked any questions about it. As Counsel Assisting's submissions properly acknowledge, Mr Cohen's evidence goes no higher than adopting an assumption that the Blue Cooler Bag Footage *appeared* to indicate that Suncity was operating a Cage within the Suncity Room.[503] Indeed, Mr Cohen gave evidence that he did not know what controls were in place in relation to the Suncity Room.[504] Mr Cohen was asked by Counsel Assisting to assume that (1) what was taking place was that a junket representative was exchanging large quantities of cash from a cooler bag for Crown plaques and (2) whatever control was in place had not prevented that occurring.[505] Mr Cohen went on to reiterate that,

[502] Crown Melbourne Limited Internal Control Statement - Cage Operations Version 2015.1 (Ex BE105 CRL.612.001.0117

[503] Cohen XN 05.08.2020 T.987.17-47

[504] Cohen XN 05.08.2020 T.988.16-27

[505] Cohen XN 05.08.2020 T.988.29-32

having made those assumptions, there was "a lot more" that he did not know, making it difficult for him to explain what might have happened in this set of circumstances.[506]

715. The reliance on Mr Bromberg's evidence is misplaced. Mr Bromberg's account of VIP rooms in Macau has no probative bearing on whether Crown Melbourne breached the ICS. It should be disregarded.

716. What the Crown Melbourne witnesses might have been able to say about the ICS and the notion that the exchange of cash for chips at the Suncity cash desk, is at this point, unclear. However, it is clear that the Crown witnesses disagreed with Mr Cohen's somewhat high-level characterisation of the cash desk as a Cage.[507] Relevantly, Counsel Assisting has offered no basis for accepting Mr Cohen's characterisation over the other witnesses' denials.

717. It follows that the lack of evidence on the ICS is as unremarkable as it is problematic. What does not follow is that there has been a breach of the ICS.

718. In any event, it is clear from the face of the ICS that its focus was to ensure that transactions are accounted for through the implementation of standard operating procedures (**SOPs**), coupled with associated audit processes. The Inquiry did not examine any of the witnesses about the interplay of the Cage ICS with any other ICS in operation at Crown Melbourne, or in relation to any other procedure underlying the ICS. The submissions appear to be advanced on an assumption that the Cage was the only place at which cash transactions or buy-ins could permissibly occur. That position is plainly not correct, there being both ICS and SOPs directed towards procedures for cash buy-ins at buy in booths and at the tables.[508] Further, the submission ignores the detailed evidence given by Mr Preston about the processes that were in place for recording buy-ins and win/losses on junket programs.[509] As such, the invitation to find a breach of the ICS is without foundation and should be rejected.

AUSTRAC enforcement investigation not a basis for no confidence

719. Counsel Assisting has submitted that [63]:

> *"[t]he fact that there is an extant indication from the anti-money laundering regulator that it proposes to pursue enforcement action against a casino operator cannot give a NSW regulator any confidence that Crown Resorts has the ability to operate a casino suitably resistant to exploitation for the purpose of money laundering."*

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[506] Cohen XN 05.08.2020 T.988.44-47

[507] Preston XN 3.8.20 T.737.18-9

[508] Table Games Operations ICS (version 2016.1) Ex BF25 CRL.604.001.0260); Table Game Operations ICS (version 9.0) Ex BF26 CRL.604.001.00270

[509] Preston XN 30.7.20 T461.38-462.39.

720. That submission should be rejected:

720.1 *First*, it is not Crown Resorts that holds the casino licence.

720.2 *Secondly,* the submission places the obligation too highly. Casinos by their very nature are vulnerable to exploitation for the purposes of money laundering.[510] The obligations under the AML/CTF Act require reporting entities to take steps directed identifying, mitigating and managing the risk that they may reasonably face that the provision of designated services in Australia might (inadvertently or otherwise) involve or facilitate money laundering.[511]

720.3 *Thirdly*, the submission misstates the AUSTRAC announcement. AUSTRAC has informed Crown of potential non-compliances by Crown Melbourne, which have been referred to the AUSTRAC enforcement team for a formal enforcement investigation into Crown Melbourne's compliance with ongoing customer due-diligence requirement and adopting, maintaining and complying with an AML/CTF Program.[512] Unless "enforcement action" is a reference to "enforcement investigation", the submission mis-states the position announced by AUSTRAC.

720.4 *Finally*, an indication as to an investigation for compliance breaches, while serious and not to be understated, cannot remove "confidence" that Crown has the ability to operate a casino. This is particularly so having regard to the additional controls which have been introduced and which are explained below.

REMEDIATION AND ONGOING IMPROVEMENTS

721. This section of the submissions addresses the remediation steps that Crown has already taken in relation to AML, and the ongoing improvements in AML that Crown is currently implementing. These submissions are ultimately directed towards a submission that Crown's remediations and its ongoing improvements in AML should give the Commissioner confidence that the Licensee is suitable, or with the further steps in train can be rendered suitable, to operate the Restricted Gaming Licence.

722. The ultimate contentions advanced as requiring determination as set out in the SIC in relation to money laundering are:

722.1 whether Crown's conduct renders the Licensee unsuitable to hold a licence: SIC C.1;

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[510] AUSTRAC, "Money Laundering in Australia 2011" <https://www.austrac.gov.au/business/how-comply-guidance-and-resources/guidance-resources/money-laundering-australia-2011> (INQ.220.001.0416 at .0427) Ex A246.

[511] Section 85(2)(a).

[512] Crown Limited ASX / Media Release entitled "AUSTRAC Enforcement Investigation" 19 October 2020 (INQ.010.006.0801) Ex AK14.

722.2 whether Crown's conduct with respect to the Southbank and Riverbank accounts renders it unsuitable to be a close associate of the Licensee: SIC C.2;

722.3 whether Crown's proposed remediation of issues identified with respect to money laundering is sufficient to give ILGA confidence that the Licensee is suitable to hold the Restricted Gaming Licence: SIC C.4; and

722.4 if Crown and/or the Licensee are unsuitable, what steps or action are required to render them suitable?

723. As set out above, since 2017 Crown has made significant improvements in relation to its AML controls and processes. Further improvements have been made throughout the course of this Inquiry. Crown submits that having regard to the AML controls and processes that are now in place, the Inquiry should not find that the Licensee is unsuitable to hold the Restricted Gaming Licence, nor that Crown is unsuitable to be a close association of the Licensee. Crown submits that the Inquiry should instead regard the current AML controls and processes, together with the remediation of issues identified with Crown's previous AML controls and processes, as demonstrating that the Licensee is suitable to hold the Restricted Gaming Licence and that Crown is suitable to be a close associate of the Licensee.

724. Counsel Assisting's submissions address Crown's culture in relation to AML. Crown accepts that its culture in relation to AML was unduly focused on compliance with the obligations imposed under the AML/CTF Act, particularly the reporting requirements imposed by that legislative regime, and there was an insufficient focus on proactively seeking to deter and disrupt money laundering activities.[513]

725. Counsel Assisting's submissions also direct attention to a number of specific money laundering risks identified during the course of the Inquiry. Each of those risks, together with a reference to the part of these submissions that explain how that risk is addressed in the current Joint AML Program, is identified below:

725.1 the risk that a significant cash transaction at the casino premises may involve money laundering (the controls directed to responding to this risk are addressed in section # below);

725.2 the risk that a transfer to or from a third party may involve money laundering or may be intercepted for the purposes of money laundering (the controls directed to responding to this risk are addressed in section # below);

[513] Barton XN 23.9.2020 T.2774.40-2775.23

725.3 the risk that money may be laundered through the bank accounts of the casino (the controls directed to responding to this risk are addressed in section # below);

725.4 the risk that transactions would not be monitored appropriately from an AML perspective because of an imprecise articulation of transaction monitoring obligations in relation to transactions on Crown's bank accounts (the controls directed to responding to this risk are addressed in section # below);

725.5 the risk of exploitation that certain customers present (the controls directed to responding to this risk are addressed in section # below); and

725.6 the risk that the Board would provide insufficient oversight in relation to AML compliance, in circumstances where certain money laundering matters were not escalated to the board (the controls directed to responding to this risk are addressed in section # below).

726. A series of questions was also posed by the Commissioner during closing submissions as to how various aspects of the new framework operate. Those questions, and the specific responses to each of those questions, are set out **Annexure #** to this submission. There is necessarily some duplication between the matters set out below and the information included in Annexure #.

AML culture and board oversight

727. Crown has been criticised in relation to the level of oversight that the Crown Resorts board had in relation to the AML functions and processes within Crown's casinos in the past. This issue has arisen, in part, as a consequence of the historical corporate structure and AML function within the Crown group of companies. Prior to 2017, Crown had no group AML function[514] and prior to 2019, Crown had no joint AML Program or framework that applied across its properties.[515] However, since 2017, Crown has introduced a group AML function and has been in the process of implementing a joint AML program.

728. On 2 November 2020, Crown Resorts, Crown Melbourne, Crown Perth and the Licensee at a joint board meeting were presented with updated and revised joint AML/CTF program documents comprising:

[514] Preston I [131] EX BA95 and F78 CRL.577.001.0001

[515] Preston I [127]-[128] EX BA95 and F78 CRL.577.001.0001

728.1 Crown Resorts Limited Joint Anti-Money Laundering and Counter-Terrorism Financing Program Part A (**Part A**);[516]

728.2 Crown Resorts Limited Joint Anti-Money Laundering and Counter-Terrorism Financing Program Part B (**Part B**);[517] and

728.3 Crown Resorts Limited Joint Anti-Money Laundering and Counter-Terrorism Financing Policy and Procedures (**AML Policies**),[518]

729. together referred to as the **Revised AML Program**. The Revised AML Program was endorsed by the Crown Resorts board for adoption by each of the group's reporting entities. {{Ev ref – 2 Nov minutes}} Part A was approved by each of the reporting entities.[519]{{Ev ref - 2 Nov minutes}}

730. Part A sets out the role of the board of Crown Resorts and that of the reporting entities in relation to the governance and oversight of the Revised AML Program. Clause 7 provides for significantly greater board oversight than the previous iteration of the Joint AML Program (or the previous individual Crown Melbourne or Crown Perth AML Programs). Clause 7.1 of Part A is in the following terms (emphasis added).[520]

7.1 [redacted]

[redacted]

(a) [redacted]

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[516] Crown Resorts Limited Joint Anti-Money Laundering and Counter-Terrorism Financing Program Part A 4 November 2020 EX AO79, CRL.728.001.0001

[517] Crown Resorts Limited Joint Anti-Money Laundering and Counter-Terrorism Financing Program Part A 4 November 2020 Ex AO80, CRL.728.001.0036

[518] Crown Resorts Limited Joint Anti-Money Laundering and Counter-Terrorism Financing Policy and Procedures Ex AO81, CRL.728.001.0054. Although the Crown AML Policy is marked with a draft watermark it is the version of the policy which is currently in force.

[519] Noting that it is only Part A of an AML/CTF Program that is required to be approved by the board of the reporting entity.

[520] Ex AO 79 CRL.728.001.0001 at .0009

(b) [redacted]

(c) [redacted]

(i) [redacted]

(ii) [redacted]

(iii) [redacted]

(iv) [redacted]

(d) [redacted]

(e) [redacted]

(f) [redacted]

(g) [redacted]

(h) [redacted]

(i) [redacted]

> *The Board and Senior Management of each of the Crown Entities (and any other Crown Entity which becomes a reporting entity under the AML/CTF Act and elects to join the Crown DBG) will have ongoing responsibilities in relation to this Part A Program as set out in the remainder of this section 7.*

731. This clause requires greater involvement of the Crown Resorts board in relation to AML matters, and creates a prescriptive framework for both formal reporting and informal escalations of AML related matters.

732. In addition to the ongoing oversight of AML measures by the Crown Resorts board, Part A of the Revised AML Program requires the board of each reporting entity to have oversight of the implementation of, and compliance with, the Revised AML Program across that entity.[521] The Board and Senior Management of each reporting entity are also responsible for leading and driving a positive culture of AML/CTF compliance, including by "engaging with, questioning and challenging the state and effectiveness" of AML and risk management processes.[522] These requirements are directed to ensuring that the Revised AML Program is responsive to the evolving AML challenges that participants in the casino industry face.

733. The AML Policies make clear that the board and senior managers of Crown Resorts and each reporting entity are the overall owners of ML/TF risk.[523]

734. These clear statements within Part A of the Revised AML Program and the AML Policies are consistent with the statement of Mr Barton in his oral evidence that Crown is committed to changing the emphasis that it has put on compliance.[524] They are designed to ensure that Crown's change in focus from reporting incidents that give rise to a risk of money laundering, to actively seeking to disrupt and deter money laundering, is enduring and successful.

Head of Financial Crime and a stronger AML team

[521] Clause 7.2 Ex AO 79 CRL.728.001.0001 at .0010

[522] Clause 7.3 Ex AO 79 CRL.728.001.0001 at .0011

[523] See section 2.2.1 of the Crown AML Policies; Ex AO 81 CRL.728.001.0054 at .0061

[524] Barton XN T.2859.20

735. Crown has also separated the AML function from other functions within the business.[525] A new Financial Crimes team is being created. Mr Barton explained the function of the team will be to focus on: [526]

> … *not just at AML and not just at compliance, but more broadly thinking about financial crimes and thinking about how we are proactively looking to address criminal risks in – in our financial transactions. … So I'm looking for a head of financial crimes and compliance. That person would be the person who would have the reporting line through to the board.*

736. A new Head of Compliance and Financial Crime position has been created within the organisational structure, which will ensure that AML priorities are brought to the forefront of Crown's operations. Crown has been recruiting to fill this role.[527] Ms Halton indicated that the qualifications for the role require the individual to have a broad understanding of financial crime, the use of data in analysing patterns of behaviours and an understanding of the criminal context.[528]

737. Mr Barton's sixth statement to the inquiry confirms that the proposed appointee to the position of Head of Compliance and Financial Crimes (officially titled Chief Compliance and Financial Crimes Officer) has been issued with a contract of employment.[529] As at the time of finalising these submissions the appointee has accepted the offer and Crown anticipates the appointee will start by 1 March 2021. Crown will provide an update to the Inquiry, including details of the appointee, when it is able to so having regard to the position and confidentiality of the appointee's current employer.

738. In addition to the separation of the AML function from business units and the recruitment of a Head of Compliance and Financial Crime, Crown has also been improving the resources within its AML team. New roles within the AML team have been approved and are reflected in a new organisational chart.[530]

739. To date, the process of strengthening the AML team has resulted in:

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[525] Presentation slides entitled "Crown Resorts Limited, Board Discussion Materials" prepared by Ken Barton EX CB 4 CRL.682.001.0001 at .0005. Barton III [91] EX CB1 CRL.697.001.0033

[526] Barton XN 24.09.2020 T.2851.39-2852; see also Minutes of Crown Resorts Limited Board of Directors meeting held on 10 August 2020 EX AE17 CRL.689.001.0001 where the Board of Crown resolved to commence the recruitment campaign for the Head of Financial Crime

[527] Mitchell XN 9.10.20 T3877.19-24; Demetriou XN 12.10.20 T3931.1-6 and T3955.1-9; Coonan XN 20.10.20 T4558.16-28

[528] Halton XN 15.10.2020 T.4372.21-31

[529] Barton VI [33] EX AT1 CRL.744.001.0001

[530] AML Team Organisation Chart Ex AT22 CRL.728.001.0197

739.1 the recruitment of Nick Stokes into the position of Group Manager, AML in November 2019. Mr Stokes has significant experience in AML/CTF roles, including within AUSTRAC, and has specific AML qualifications.[531] On 2 November 2020, Mr Stokes was appointed the AML/CTF Compliance Officer for each of the reporting entities;[532]

739.2 an expansion in the number of members of the AML team. There are currently 15 approved positions in the AML team. Seven of these positions are currently filled, three additional team members are due to start during December 2020[533] and another team member has been selected for one of the vacant roles. Two of the three team members that will be starting in their positions during December 2020 will be dedicated to the Licensee.[534]

740. The role and responsibilities of the AML/CTF Compliance Officer is articulated in clause 7.5 of Part A of the Revised AML Program. The AML/CTF Compliance Officer has express responsibility for the continued compliance of each of the reporting entities with the requirements of the AML/CTF Act and the AML/CTF Rules, as well as the Revised AML Program.[535] To this end, the AML/CTF Compliance Officer is given access to all relevant areas of each of the reporting entity's operations and to all relevant staff members, and is given the power to address any issue arising in relation to AML compliance by any of the reporting entities.[536] The AML/CTF Officer has responsibility for reporting to the Crown Resorts board, the boards of each of the reporting entities and to Crown's senior management, on matters relevant to the performance and effectiveness of the Revised AML Program.[537] The AML/CTF Compliance Officer is also charged with the development of internal policies, procedures, manuals, systems and rules referable to each of the reporting entities' compliance with the Revised AML Program, the AML/CTF Act and the AML/CTF Rules.[538]

741. Counsel Assisting has criticised Crown's resourcing and submitted that ILGA could have no confidence in Crown's personnel to administer and monitor the AML system.[539] This cannot

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[531] Stokes XN 4.09.2020 T.2162.37ff Mr Stokes qualifications include a Master of Laws and Legal Practice to a Juris Doctor, ACAMS certification and membership of ACAMS until 2013/14, qualifications with the Association of Certified Financial Crime Specialists. Mr Stokes was also previously a member of the ACAMS board for the Singapore chapter.

[532] Statement of Nick Stokes dated 17 November 2020 [10] Ex AT20 CRL.744.001.0193

[533] Statement of Nick Stakes dated 17 November 2020 [13] Ex AT20 CRL.744.001.0193; Organisational chart Ex AT22 CRL.728.001.0197

[534] Statement of Nick Stokes dated 17 November 2020 [13] Ex AT20 CRL.744.001.0193

[535] Part A, clause 7.5(f) Ex AO79 CRL.728.001.0001 at .0012

[536] Part A, clause 7.5(d) Ex AO79 CRL.728.001.0001 at .0012

[537] Part A, clause 7.5(g) Ex AO79 CRL.728.001.0001 at .0012

[538] Part A, clause 7.5(i) Ex AO79 CRL.728.001.0001 at .0012

[539] Counsel Assisting Submissions [308]

be interpreted as a suggestion that the Inquiry should not have confidence in the capabilities of Mr Stokes. As noted above, Mr Stokes is highly experienced and qualified in AML matters.[540] He does not have any role within Crown beyond his roles as Group General Manager, AML and AML/CTF Compliance Officer, which will address any issues that have arisen in the past as a consequence of the AML/CFT Compliance Officer "wearing too many hats".[541]

742. The appointment of Mr Stokes to the position of AML/CTF Compliance Officer, as well as the newly created and resourced Financial Crimes department and the dedicated resources in the Crown Sydney AML team, should provide the Inquiry with confidence in Crown's ability to administer and monitor its AML systems and controls. Crown is now strongly and appropriately resourced in its AML function, with direct reporting lines from that function to the board of Crown Resorts.

743. Questions were asked by the Commissioner in relation to the AML qualifications of relevant employees within Crown. Crown will ensure that each member of its AML team has appropriate AML qualifications, that at least one member of its AML team has current membership to ACAMS and that the Group General Manager for Cage, Legal and Security and Surveillance each complete external courses in relation to AML.

A superior AML Framework

744. Following his commencement as Group General Manager AML, one of the key tasks allocated to Mr Stokes was a detailed review of the joint AML Program that had been approved by Crown Melbourne and Crown Perth.[542] At the meeting of the Risk Management Committee of Crown Resorts held on 10 June 2020, Mr Stokes gave an AML presentation, in which he explained the work that he and Crown were in the process of doing to enhance the AML/CTF framework.[543]

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[540] Siegers XN 14.9.20 T2593.38

COMMISSIONER: I said, if this document is recorded accurately, Ms Hamilton- Jewell, this organisation is very lucky to have Mr Stokes. He seems to be candid and careful and, notwithstanding, his background with financial institutions, he's obviously able to get across what is happening in the casinos. And this is the sort of approach that inquiries such as this see as totally and utterly refreshing"

[541] Preston XN 31.7.20 T612.27-30;

[542] Barton IV [14] (WIT.CRL.001.0022; CRL.730.001.1547 Ex AO76)

[543] Exhibit X.11, CRL.642.001.0054

745. Mr Stokes identified improvements to the Joint AML Program and, in conjunction a review of Part A of the Program by Initialism, those improvements were implemented in the Revised AML Program. On 30 October 2020, Initialism sent a letter to Crown which stated:[544]

> *We have worked with Crown and its legal representatives to develop a Part A AML/CTF Program and the supporting Policy and Procedures and, based on our work, we are of the opinion that the revised documented Part A AML/CTF Program as drafted complies with the relevant AML/CTF Rules, and is appropriately designed to identify, manage and mitigate the money laundering and terrorist financing risks faced by the Reporting Entities that are part of the Crown DBG.*

746. With the benefit of external review and the enhancements identified by Mr Stokes, the Inquiry can be confident that the Revised AML Program provides a stronger AML framework than that which was previously adopted by Crown.[545]

Tools for monitoring risk and improved analytical capability through automation

747. The Revised AML Program includes a revised transaction monitoring program, which has been implemented across Crown's properties. A significant part of this transaction monitoring program is the automated data analytics monitoring tool, Sentinel.

748. Since 2017, Crown has been developing an automated transaction monitoring tool to enhance its ability to detect and monitor transactions from an AML compliance perspective.[546] Sentinel will provide for sophisticated analysis of data ingested from multiple sources, in order to detect unusual gambling or transaction patterns and assist in the detection of changing money laundering typologies.[547]

749. Sentinel will automatically monitor and alert in relation to transactions (including bank transactions) at Crown. Senior Management at Crown will have access to the Sentinel dashboard to provide greater ongoing oversight and review of AML monitoring and reporting.[548]

750. At Crown Sydney, the Sentinel system will interact with the IGT Advantage casino management system, which will also replace the SYCO casino management system at Crown

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[544] Barton IV [17], Ex AO76 WIT.CRL.001.0022, Ex AO82 CRL.728.001.0192

[545] That is not to say that the previous AML/CTF Programs were inadequate or deficient, however, the now centralised AML function and the enhancements to the Revised Program provide a stronger foundation for Crown's AML function and processes.

[546] Preston 1 [188] EX BA95 and F78 CRL.577.001.0001, Barton III [63]-[67] EX CB1 CRL.697.001.0033

[547] Barton III [63]-[68] EX BA95 and F78 CRL.577.001.0001

[548] Barton III [67] EX BA95 and F78 CRL.577.001.0001

Melbourne and Crown Perth in coming years.[549] Whilst the IGT Advantage casino management system has greater tracking and reporting capabilities than the SYCO system.[550] Counsel Assisting's criticism of the SYCO system is unfounded.[551] The issue which was identified in connection with the use of the SYCO system at Crown Melbourne and Crown Perth during the course of the Inquiry was a manual process of aggregating information from the Riverbank and Southbank bank account statements when the information was entered into SYCO. That issue was an historical one, and there is no evidence that it affected any other accounts. It is also relevant to note that such information is but one source of the information entered into SYCO. The additional information in SYCO [redacted].[552] Other than the instances of manual aggregation that occurred during the period from 2013 to 2016,[553] no other deficiencies have been identified in relation to the SYCO system.

751. In any event, the [redacted].[554] This eliminates both the risk of human error and the risk of any future issues arising from transactions being entered into SYCO (or any other casino management system) in an aggregated form from bank account statements. [redacted]

752. Further details about the Sentinel data analytics tool are set out in **Annexure {##}** to these submissions, including further detail about its capabilities and the data it will utilise in its functionality. Having regard to that Annexure, Crown submits that it is clear that it now has added significantly enhanced data analytics capabilities to the manual transaction monitoring processes that were in place prior to the introduction of Sentinel.

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[549] Counsel Assisting Submissions [315]

[550] Barton III [107] EX BA95 and F78 CRL.577.001.0001

[551] Counsel Assisting Submissions [315]

[552] Preston III [16] EX BM29 CRL.666.001.0004

[553] Preston XN 1.09.2020 T.1733.16-24

[554] Barton III [66] EX BA95 and F78 CRL.577.001.0001

[555] Statement of Nick Stokes dated 17 November 2020 [26] Ex AT20 CRL.744.001.0193

753. Crown has also implemented an improved escalataion system to enhance the documentation and processing of incidents which present a risk for money laundering. Crown has developed Unusual Activity Reports which are submitted internally for review by the AML team pursuant to the AML Policies.[556] An employee of any Crown Entity is required to submit an Unusual Activity Report to the AML team for review in certain prescribed circumstances.[557] Following this review, the AML team will determine if the Unusual Activity Report requires further investigation.[558]

Transaction Monitoring Program

754. Crown's transaction monitoring program is explained in both Part A of the Revised AML Program and in the AML Policies.

755. Clause 12.3 of Part A is headed "Transaction Monitoring Program" and requires that each of the Crown reporting entities implement a transaction monitoring program (**TMP**) with appropriate risk-based systems and controls to scrutinise customer transactions. Each TMP is to take into account the specific nature, size and complexity of the reporting entity and include automated transaction monitoring using both Sentinel and manual transaction monitoring processes.

756. Clause 6 of the AML Policies provides that in accordance with the Part A Program, Crown has put in place a transaction monitoring system that is both manual and automated.

757. 

758. Clause 6.2.1 of the AML Policies provides for the establishment of rules that, where triggered, will be investigated by the AML team (**Alert Rules**).[560] The Alert Rules are maintained by the

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[556] See 10.1.3 and 6.2 of the Crown AML Policy.

[557] {confirm and ev ref}

[558] Barton III [69]-[70]

[559] Ex AO79 CRL.728.001.0001 **[Needs to be checked]**

[560] Draft Crown Resorts Limited Joint Anti-Money Laundering and Counter-Terrorism Financing Policy and Procedures (CRL.728.001.0054 Ex AO81)

AML team and [redacted] The current iteration of the Alert Rules is contained in the confidential annexure to Mr Stokes' statement.[561]

759. Mr Stokes has also confirmed that the previous manual monitoring rules which were set out in Annexure F of the Crown Melbourne AML/CTF Program and in the Crown Perth Standard Operating Procedures are being reviewed to determine which of those rules should also be automated in Sentinel.[562]

760. Clause 6.2.3 of the AML Policies provides that Crown may determine, having regard to the money laundering risk of a designated service, that manual monitoring is also required. In that case, specifically trained employees will manually monitor transactions for unusual activity. Any manual rules will be maintained by the AML team.

761. Set out below is an explanation in relation to how the revised TMP responds to the particular money laundering risks that have been identified in the course of the Inquiry.

Cash deposits into bank accounts

762. A number of significant money laundering risks have been identified in relation to cash deposits in the Riverbank and Southbank accounts. Each of these risks is addressed in turn below.

763. **Opportunity to obscure purpose of the deposit**: As set out above, Crown accepts that operating bank accounts in the name of Riverbank Investments and Southbank Investments into which patrons could deposit funds or direct the transfer of funds from their gaming activities created an opportunity for the purpose or source of those funds to be obscured. This risk has been addressed in the following ways:

763.1 Since CBA closed the Riverbank and Southbank bank accounts in December 2019, neither Riverbank or Southbank has operated a bank account;[563]

763.2 Crown is deregistering Southbank and Riverbank;[564]

763.3 the only patron accounts for Crown Sydney will be onshore bank accounts in the name of Crown Sydney Gaming.[565]

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[561] {{Insert ev ref}}

[562] Statement of Nick Stokes dated 17 November 2020 [24] Ex AT20 CRL.744.001.0193{{ev ref to TMP}}

[563] Barton XN 23.9.20 T2791.43-26

[564] Barton XN T.2766

[565] Barton III [104] EX BA95 and F78 CRL.577.001.0001; Barton XN T.2766

764. **Reduction in cash deposits:** Crown accepts that permitting patrons to deposit funds into its bank accounts (rather than to bring those funds to the casino premises) creates a risk of money laundering. Steps have therefore been taken to reduce the prevalence of cash deposits into Crown's bank accounts and Crown has been actively engaged with ANZ in relation to this process.[566] The steps Crown has been taken are summarised in Counsel Assisting's Submissions at [316]. Additional matters relating to cash deposits and how they are being addressed in the TMP are noted below.

764.1 *Discussions with ANZ:* as set out in the [24]-[25] of Mr Barton's sixth statement to the Inquiry, Crown has been informed by ANZ that it cannot prevent patrons from making cash deposits into Crown's bank accounts at this stage. However, Crown and the ANZ continue to work towards the elimination, to the extent possible, of patron cash deposits into Crown's bank accounts.[567]

764.2 *Transaction Monitoring Bank Rules:* as it has not been possible to totally eliminate patron cash deposits, Crown has also implemented processes to ensure that any cash deposits which are made into Crown's bank accounts are appropriately monitored.

(a)

(b) [redacted]

[566] Barton XN 24.9.20 T2850.37-2851.5

[567] Barton XN 24.9.20 T2850.37-2851.5;Barton VI [23]-[25] EX AT1 CRL.744.001.0001

[568] Stokes [27] EX AT20 CRL.744.001.0042; AML/CTF Manual Rule for Bank Account Monitoring EX AT28 CRL.742.001.0009

[569] AML/CTF Manual Rule for Bank Account Monitoring EX AT28 CRL.742.001.0009at 2.1

Any transaction identified as suspicious as part of this monitoring process will necessitate additional consideration being given to the AML risk posed by the customer connected with that transaction. The oversight arising from the failure of the previous transaction monitoring program to reference the Riverbank and Southbank bank accounts, or to unambiguously articulate responsibilities for review of the physical (be they electronic or hard copy) bank account statements, has been rectified in the current framework.

764.3 *Communications with patrons*: Crown has communicated with local and international patrons who have deposited cash in Crown's accounts within the preceding 18 months to alert them that Crown now has a policy of not accepting cash deposits.[570]

Transfers to third parties

765. Crown accepts that third party transfers (both into and out its bank accounts) present an increased risk in relation to money laundering. That is because there is a risk that a third party transfer arrangement can be used to disguise the true beneficial owner or the source of funds, in order to evade anti-money laundering controls.

766. Crown has implemented the following additional controls to address that risk:

766.1 *Third Party Transfer prohibition:* from 8 April 2020, Crown determined that it would no longer make or receive payments from third parties without prior notice and written approval from the Chief Operating Officer and the Group General Manager of AML.[571]

766.2 *Remitter prohibition*: on 1 October 2020, Crown determined that it would no longer permit junkets or patrons to utilise money changers or remitters to pay debts to Crown.[572]

767. These prohibitions have been articulated by Mr Stokes into an AML/CTF Policy Statement, entitled "Third Party Transfers and Money Remitters Policy".[573] Pursuant to this Policy

[570] Barton VI [26] EX AT1 CRL.744.001.0001

[571] Barton III [72] EX BA95 and F78 CRL.577.001.0001, Statement of David William Brown dated 25 August 2020 [25] Ex BM26, CRL.664.001.0001

[572] Stokes [28] EX AT20 CRL.744.001.0042

[573] AML/CTF Third Party Transfers and Money Remitters Policy EX AT29 CRL.742.001.0101

Statement, Crown will not accept or make payments to or from third parties without prior notice and written approval from the Chief Operating Officer **and the** Group General Manager of AML. The Current Chief Operating Officer for Crown Melbourne is Xavier Walsh; for Crown Perth is Lonnie Bossi and for Crown Sydney is Peter Crinis.

768. Approval to make or receive a third party transfer (including a money changer/remitter) will only be provided in circumstances where the AML team has received [redacted][574] If the AML team recommends that the transfer not proceed, the transfer must not proceed.[575] This policy ensures that AML considerations are fully considered prior to any third party transfer being approved.

769. Addressed in this way, Crown's policy on third party transfers and money changers/remitters will ensure that the risk of money laundering posed by such transactions is addressed, as details as to the bona fides of such transactions will be explored in detail before they can proceed.

Cash transactions in the casino

770. During the Inquiry, evidence of significant cash transactions within the casino premises, and the risks such transactions present, have also been examined. Crown has implemented additional controls which will mitigate the money laundering risks associated with transactions of this nature. These controls include a Significant Cash Policy direction which was issued by Mr Barton on 16 November 2020, and is explained in [28]-[31] of Mr Barton's sixth statement.

771. The Significant Cash Policy contains the following restrictions in relation to cash deposits by patrons at the Cage:[576] {{*CJH note: the next subparagraphs need to be marked as confidential*}}

771.1 [redacted]

771.2 [redacted]

(a) [redacted]

[574] See clause 3

[575] Clause 3.4

[576] Barton VI [30] EX AT1 CRL.744.001.0001

(b) [redacted]

771.3 [redacted]

(a) [redacted]

(b) [redacted]

Critical risk Customers

772. This part of the submissions addresses how the issue presented by a person who may be of questionable repute is now dealt with under Crown's Revised AML Program.

773. [redacted]

773.1 [redacted]

(a) [redacted]

(b) [redacted]

[577] Crown Resorts Joint AML Policies and Procedures (**Crown AML Policies**), Ex AO 81 CRL.728.001.0054 at .0063.

[578] Crown Resorts Joint AML Policies and Procedures (**Crown AML Policies**), Ex AO 81 CRL.728.001.0054 at .0063. AS set out in sec 3.1.3 other factors will also give rise to a high risk rating.

[579] Crown Resorts Joint AML Policies and Procedures (**Crown AML Policies**), Ex AO 81 CRL.728.001.0054 at .0064.

[580] Crown AML Policies Ex AO 81 CRL.728.001.0054 at .0063. AS set out in sec 3.1.4 other factors will also give rise to a high risk rating

773.2 [redacted]

773.3

774. *Secondly,* where the AML Policies require the AML Team to escalate a critical risk customer to the POI Committee or senior management, the Escalation of Critical Risk Customers AML Policy Statement operates.[584] Pursuant to this policy, when a customer is assessed as critical risk and escalated to the POI Committee or Senior Management, the AML Team must prepare a written recommendation about the customer.[585] [redacted][586] {{*Note – this subparagraph is confidential*}}

774.1 [redacted]

774.2

774.3

774.4

[581] Sec 3.1.4. Crown Resorts Joint AML Policies and Procedures (**Crown AML Policies**), Ex AO 81 CRL.728.001.0054 at .0064

[582] See section 3.1.3 Crown Resorts Joint AML Policies and Procedures (**Crown AML Policies**), Ex AO 81 CRL.728.001.0054 at .0063

[583] Section 3.1.4 Crown Resorts Joint AML Policies and Procedures (**Crown AML Policies**), Ex AO 81 CRL.728.001.0054 at .0064

[584] Stokes [30]

[585] Crown Resorts AML/CTF Policy Statement Escalation of Critical Risk Customers Clause 2.3 EX AT30 CRL.742.001.0101

[586] Crown Resorts AML/CTF Policy Statement Escalation of Critical Risk Customers Clause 2.4 EX AT30 CRL.742.001.0101

775. If the AML Team's recommendation identifies that the ML/TF risks presented by the customer cannot be adequately mitigated and managed, neither the POI Committee nor Senior Management can make a determination under clause 3.1.4 of the Crown AML Policies that there is a clear rationale for retaining the customer.[587]

776. In those circumstances, the customer must be exited in accordance with clause 3.1.4 of Crown's AML Policies.

777. The introduction of the "critical risk customer" risk rating is a significant enhancement in Crown's AML framework. Although Crown has made a determination not to conduct business with junkets, [redacted] Critical risk customers will be exited by default, unless, having regard to the AML risks posed by the customer, and whether those risks can be appropriately mitigated and managed, the AML team supports the continuation of the relationship.

Training

778. Issues have been raised in this Inquiry in relation to the adequacy of Crown's internal AML training.[588]

779. Part A of the Revised AML Program articulates the obligations on each of the reporting entities in relation to AML Training. Relevantly, clause 10.2 prescribes the frequency and mode of delivery of AML training. All new employees who will be involved in the provision of designated services are required to complete AML training before commencing employment.[589] Further, targeted business units, such as Table Games, Cage and Security and Surveillance, are required to undertake specific AML training.[590]

780. Crown's directors are also expressly required to undertake AML training within 4 weeks of their appointment.[591]

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[587] Crown Resorts AML/CTF Policy Statement Escalation of Critical Risk Customers Clause 2.5 EX AT30 CRL.742.001.0101

[588] Closing submissions 9.11.20 T5139.13-15

[589] 10.2.b.1. All other employees are to conduct this training within 8 weeks of commencing employment.

[590] Stokes [20] Part A 10.2. C (at .0016)

[591] Clause 10.3 at 0017

781. In advance of the Crown Resorts board meeting of 2 November 2020, Mr Stokes and Mr Walsh, Chief Operating Officer, Crown Melbourne, provided a memorandum regarding the implementation of the Revised AML Program.[592] In relation to the training of staff, the memorandum prepared by Mr Walsh and Mr Stokes noted that:[593]

a. Revised AML/CTF induction training has been introduced at both Crown Perth and Crown Sydney (and will be introduced at Crown Melbourne upon reopening). The induction training slides are attached to Mr Stokes' statement.[594]

b. Revised AML/CTF awareness training had been made available online and employees at all three Crown properties have commenced undertaking the training. As at 28 October 2020, 95% of the Crown Sydney staff had completed the training.

c. It is intended that business unit specific training in the Revised AML Program, comprising face-to-face sessions, will be completed by November 2020. The training slides for particular business units that have a heavier focus on AML issues are more detailed than the general AML training provided to the board and senior management. A copy of the targeted session slides presented by Mr Stokes to the Business Operations Team at Crown Perth on 4 November 2020 and Crown Sydney on 10 November 2020 is annexed to the statement of Mr Stokes.[595]

782. Mr Stokes has also provided an update in relation to the rate of completion of AML training for Crown Sydney staff. As at 17 November 2020, 85% of Crown Sydney employees had completed AML training.

Strong AML Culture

783. Counsel Assisting's Submissions at [319] pose questions as to whether the culture within Crown has undergone the necessary shift from reporting to proactively addressing money laundering. Counsel Assisting submit that in assessing suitability, the following factors are of particular importance:

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[592] Memorandum from Xavier Walsh and Nick Stokes to the Crown Resorts Limited Board, Crown Melbourne Limited Board, Crown Sydney Gaming Pty Ltd Board and Burswood Limited Board entitled "Implementation of AML Joint Program" dated 30 October 2020, Ex AO83 CRL.728.001.0193

[593] AO83

[594] Stokes [18] CRL.741.001.0566

[595] Stokes [20] CRL.741.001.0576

a. the extent to which customers with two or more SMRs have been reviewed and the customer relationship discontinued;

b. whether a process has been implemented for a regular review of SMRs by the AML/CTF Committee or the Risk Management Committee to implement improvements to the compliance program on an ongoing basis; and

c. whether mandatory training and external accreditation has been implemented to create AML training that provides role specific and enhanced training for senior management and the board as well as transactional and AML roles.

784. Crown does not accept that these three matters provide the framework for assessing the suitability of the Licensee. Rather, what bears upon suitability is the extent to which the Licensee has in place processes to detect, deter and disrupt money laundering. Those are the clear objects of the revised AML Program implemented by Crown. Those clear objectives have been met as is clear from the detailed processes set out above.

785. However, in answer to those particular concerns:

a. **Customer with two or more SMRs:** The new customer risk assessment criteria set out in paragraph 773 above will result in [redacted][596] The AML team has a central role in assessing the ongoing relationship with any customer in respect of whom an SMR has been lodged. In addition, customers connected [redacted] This increased escalation of risk and the critical role of the AML team in the processes demonstrates Crown's new culture of prioritising measures designed to deter money laundering activities.

b. **Reporting SMRs to the board:** Unfortunately, having regard to the constraints imposed by s 123 of the AML/CTF Act, there is no mechanism, nor lawful means of putting before the AML/CTF Committee or the Risk Management Committee of the Crown Resorts board suspicious matters reports that have been lodged by a reporting entity.[597] However, the Revised AML Program **expressly** contemplates that the

[596] 3.1.3(d) AML Policies at 0063

[597] This is noted in the Joint Program Part A, see section 4.2. Crown Resorts Limited Joint Anti-Money Laundering and Counter-Terrorism Financing Program Part A, clause 16.2 Ex AO79 CRL.728.001.0001 at 0008. In this respect there is a bill currently before parliament seeking to amend s 123, which will provide for greater communications within DBGs.

Crown DBG will share information in relation to suspicious matters.[598] In addition, there is an express requirement for the AML/CTF Committee to report quarterly to the Crown Resorts board on the adequacy of Part A of the Program and the state of each reporting entity's compliance with the Program.[599] Such reports are also required to be provided to senior management on a monthly basis.[600] This will ensure that critical information in relation to AML is escalated, despite the current prohibition on the fact of an SMR being lodged being provided to the Board.

c. Mandatory training has been carried out. Specific and detailed training tailored to particular business units has been carried out.

786. In considering the Licensee's suitability, the different structure of the operations at Barangaroo is a matter of significance. Importantly, the restricted gaming facility will not be accessible by the general public. The restricted gaming facility will only be open to current VIP Casino Members and Guests. Under Crown Sydney's VIP Casino Membership Policy,[601] in order to become a VIP Casino Member, a person must go through an application process which involves collection of KYC information (if the person is not already a Crown Rewards Member) and separate security checks. The security checks comprise internal screening for persons who are banned or excluded from Crown, as well as external screening against the Dow Jones database and the Casino, Racing and Investigations Unit of NSW Police. Under Crown Sydney's VIP Guest Policy,[602] Guests will be subject to the same security checks as VIP Casino Members.

787. Having regard to the detailed steps that Crown has taken to improve its AML processes and frameworks, the Commissioner ought to find that Crown is suitable to hold and operate the Restricted Gaming Licence.

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[598] Crown Resorts Limited Joint Anti-Money Laundering and Counter-Terrorism Financing Program Part A, clause 16.2 Ex AO79 CRL.728.001.0001 at .0026

[599] See clause 7.1(a), Part A Program Ex AO79 CRL.728.001.0001 at 0009

[600] See clause 7.2(a), Part A Program Ex AO79 CRL.728.001.0001 at 0009

[601] Under cl 6.2 of the Restricted Gaming Licence (insert exhibit reference and pinpoint), Crown Sydney is required to have a VIP Membership Policy which (among other things) incorporates the principles which have been agreed between Crown Sydney and ILGA. Schedule 7 to the VIP Gaming Management Agreement (Ex Y17 / CRL.500.001.0514, .0587-.0090) sets out those principles, which include that applicants must consent to security checks and that self-excluded, excluded or banned persons will have their application refused. While the VIP Membership Policy has not yet been formally approved by ILGA, it has been through multiple rounds of comment and is close to final.

[602] Under cl 6.2 of the Restricted Gaming Licence (insert exhibit reference and pinpoint), Crown Sydney is required to have a VIP Guest Policy which (among other things) incorporates the principles which have been agreed between Crown Sydney and ILGA. Schedule 7 to the VIP Gaming Management Agreement (Ex Y17 / CRL.500.001.0514, .0587-.0090) sets out those principles. While the VIP Guest Policy has not yet been formally approved by ILGA, it has been through multiple rounds of comment and is close to final.

E. THE MELCO TRANSACTION AND THE INFLUENCE OF CPH

E1. Introduction

788. These submissions address the following topics:

(a) whether Crown breached any regulatory agreements by reason of the share sale by CPH Crown Holdings Pty Ltd (**CPH Crown**) to Melco Resorts and Entertainment Ltd (**Melco Resorts**) in May 2019; and

(b) Crown's relationship with Consolidated Press Holdings Ltd (**CPH**) and Mr Packer, and the influence of CPH and Mr Packer over Crown's affairs.

E2. The sale of Crown shares by CPH to Melco in May 2019

789. For the following reasons, the sale of Crown shares by CPH Crown to Melco Resorts in May 2019 did not cause Crown to breach any of its obligations under the VIP Gaming Management Agreement dated 8 July 2014 (**VIP Agreement**) or the Crown Group Consents and Approvals Deed dated 10 May 2013 (**Crown Approvals Deed**). That is so for three reasons:

(a) Great Respect Ltd (**Great Respect**) did not acquire, directly or indirectly, an interest in Crown by reason of the Melco transaction;

(b) Crown did not have knowledge of the transaction (or of any ramifications under the VIP Agreement or the Crown Approvals Deed) and there is no basis for attributing the knowledge of the CPH nominee directors or Mr Packer to Crown; and

(c) in any event, Crown did not have the power to prevent the transaction from occurring.

Background to the Melco transaction

790. Under the terms of the VIP Agreement, Crown provided a series of undertakings to ILGA regarding its gaming operations in foreign jurisdictions.[603] Relevantly, pursuant to clause 2.4 of Schedule 1 of the VIP Agreement, Crown undertook that:

> *To the extent to which it is within its power to do so, Crown will ensure that it prevents:*
>
> …
>
> *(b) Stanley Huang Sun Ho or a Stanley Ho Associate [as defined] from acquiring any direct, indirect or beneficial interest in:*
>
> *(1) Crown;*

[603] Clause 5.3 and Schedule 1 of the VIP Agreement: Exhibit Y-17 (CRL.500.001.0514).

(2) …

(emphasis added)

791. There is a clause in the same terms in Schedule 2 of the Crown Approvals Deed.[604]

792. Clauses 2.5 and 2.6 of Schedule 1 of the VIP Agreement impose various monitoring and reporting obligations on Crown with respect to its compliance with its obligations in clause 2.4. For example, under clause 2.6(b), Crown is required to "*inform the Authority of any con-compliance with clause 2.4 promptly following Crown becoming aware of that non-compliance*".

793. In May 2017, Crown sold its interest in Melco Crown Entertainment Ltd (**Melco Crown**) and, accordingly, did not have any ownership interest in Melco Crown or any joint venture with Melco International. Commencing in June 2017, there were discussions between Crown and representatives of ILGA and the New South Wales Government regarding amendments to Schedules 1 and 2 of the VIP Agreement and the Approvals Deed, including because Crown did not have any rights to make requests for information of Melco Crown and Melco International pursuant to clauses 2.5(b) to (d) of Schedule 1. By 1 March 2019, Crown and Liquor & Gaming NSW had reached an in-principle agreement, which remained subject to formal approval and Ministerial consent, to amend Schedule 1 and to suspend the reporting and monitoring obligations in clauses 2.5 and 2.6 of Schedule 1 pending the finalisation of the amendments.[605] The amendments to Schedule 1 that were agreed in principle deleted the entirety of clauses 2.4, 2.5 and 2.6; and the entirety of Schedule 2.[606] Whilst Crown accepts that the in-principle agreement to amend the VIP Agreement or the Approvals Deed did not become binding, it forms part of the relevant context in which the Inquiry must assess whether there was a breach of any regulatory obligations by Crown and any broader questions of suitability.

794. On several occasions, Counsel Assisting have advanced the proposition that the NSW government was very sensitive about Dr Stanley Ho or entities associated with him acquiring any interest or "foothold" in Crown or other casinos in NSW.[607] That may be so at the time the Crown Approvals Deed and VIP Agreement were entered into, but it is inconsistent with the position taken by Liquor & Gaming NSW during the discussions with Crown from June 2017 about the amendments to Schedule 1 and 2 of the VIP Agreement. As referred to above, those discussions led to an in-principle agreement to remove clauses 2.4 and 2.6 of Schedule

[604] See clause 2.1(a) of Schedule 2.
[605] Email dated 1 March 2019: Exhibit Y-43 (CRL.500.001.2451). See also the evidence of Ms Manos given in private session on 24 July 2020 at T74/1-18 and T75/17-38 and the chronology of in the letter from Minter Ellison to ILGA dated 22 August 2019: Exhibit Y-24 (CRL.506.003.4226).
[606] Ibid. See also CRL.500.001.2422; CRL.500.001.2426 and CRL.500.001.2438. This is accepted by Counsel Assisting: see paragraph 27(l) of their closing submissions.
[607] See T3224/20-23, T3248/6-8; T3262/9-12; T3357/18-20. See also CPH closing submissions: T5252/15-22 and T5264/11-13.

1 and there was no particular opposition to that course by the representatives of Liquor & Gaming NSW at any time during the discussions that occurred between 2017 and 2019.

795. Further, in 2008, the VCGLR concluded in its fourth review of Crown Melbourne's casino operator licence that, following careful consideration, there was no reason to object to the business association with Melco and that Dr Ho did not have any ongoing influence over Melco or the new Chair Melco, Lawrence Ho.[608]

There was no acquisition by Great Respect, directly or indirectly, of an interest in Crown

796. Crown does not accept that, by reason of the Melco transaction, Great Respect acquired an indirect interest in Crown within the meaning of clause 2.4 of Schedule 1 of the VIP Agreement.

797. For the reasons submitted by CPH, the phrase "indirect interest" in clause 2.4 extends to, but not beyond, the circumstances where a shareholding is held through a group of companies which are wholly or majority owned by Dr Stanley Ho or a Stanley Ho Associate. Crown respectfully adopts the submissions advanced by CPH in this regard, including because that construction of "indirect interest":[609]

(a) is consistent with the evident purpose of the prohibition in clause 2.4, which seeks to prevent Dr Stanley Ho from asserting influence over Crown either directly or via entities he owns or controls;

(b) accounts for that the fact that clause 2.4 expressly prohibits Dr Stanley Ho and his designated associates from acquiring an indirect interest in Melco Crown in circumstances where, at time that the relevant agreements were entered into, the parties knew that Great Respect held 19.5% of the shares in Melco International, which in turn held shares in Melco Crown as Crown's joint venture partner in Melco Crown; and

(c) accords with the analysis and reasoning that judges of high-standing have applied to the construction of a similar phrase in other legislation, including the former s 50 of the *Trade Practices 1974* (Cth).[610]

798. Objectively, it is clear that no reasonable person reading the provisions of clause 2.4 in their context and aware of the relevant surrounding circumstances would understand the phrase

[608] Exhibit AB-56 (CRL.713.001.0001).
[609] See CPH's submissions at T5252/22 – T5254/11.
[610] Section 50 prohibited, in certain circumstances, a corporation from acquiring, directly or indirectly, any shares in the capital, or any assets, of a body corporate: see *Trade Practices Commission v Gillette Co* [1993] 45 FCR 366, 373; *Trade Practices Commission v Australian Iron & Steel* (1990) 22 FCR 305, 316-318; *Australia Meat Holdings Pty Ltd v Trade Practices Commission* (1989) 11 ATPR 50,082 at 50,094. See also Commissioner of *State Revenue v Politis* [2004] VSC 126, [22] - [24] which considered the construction of s 31 of the Duties Act 2000 (Vic).

"indirect interest" to extend beyond the circumstances where a shareholding is held through a group of companies which are wholly or majority owned by Dr Stanley Ho or a Stanley Ho Associate.

Crown's knowledge of the Melco transaction

799. On its plain meaning, the relevant obligation in clause 2.4(b) of Schedule 1 applies only to the extent that Crown has the power to prevent a Stanley Ho Associate from acquiring an interest in Crown. The unchallenged evidence of Crown's non-CPH nominated directors and its company secretary was that they were not informed of the sale to Melco until after CPH had entered into the relevant sale agreements at approximately 6pm Sydney time on 30 May 2019.[611]

800. It was only after the relevant sale agreements had been executed that Mr Johnston, in his capacity as a director of CPH, sought to contact Crown's independent directors, the executive Chairman and the company secretary. Mr Johnston subsequently sent an email to the directors of Crown at 8.13pm on 30 May 2019 which enclosed a copy of CPH's media release announcing the transaction.[612] Having been notified of the sale, Crown was required to prepare an ASX announcement at short notice in accordance with its disclosure obligations as a publicly listed company. Crown's announcement was released to the ASX at 8.15am on 31 May 2019.[613]

801. Accordingly, the only Crown directors who had prior knowledge of the Melco transaction were the CPH nominated directors on the Crown Board, Messrs Johnston, Jalland and Poynton. In their capacity as directors of CPH, Mr Johnston and Mr Jalland were aware of the negotiations with Melco, but did not inform any of the other directors of Crown of the transaction prior to CPH's entry into the agreement.[614] In the case of Mr Poynton, he was first informed of the fact of transaction by Mr Packer in a brief telephone call at approximately 11.30am Sydney time on 30 May 2019. Mr Poynton was informed only that Mr Packer "had agreed to make a sale to Lawrence Ho" and that the sale would be announced later that morning.[615] Mr Poynton did not recall being provided with any other information about the acquirer of the shares. The

[611] Witness statement dated 6 March 2020 of Helen Coonan: Exhibit CD-2 (CRL.581.001.0040); witness statement dated March 2020 of John Horvath: Exhibit CG-2 (CRL.581.001.0030); witness statement dated 6 March 2020 of Antonia Korsanos: Exhibit CK-2 (CRL.581.001.0021); witness statement dated 5 March 2020 of Sarah Jane Halton: Exhibit CF-2 (CRL.581.00); witness statement dated 6 March 2020 of Andrew Demetriou: Exhibit CE-2 (CRL.581.001.0019); witness statement dated 5 March 2020 of Harold Mitchell: Exhibit CL-2 (CRL.581.001.0025); witness statement dated March 2020 of John Alexander: Exhibit CA-2 (CRL.581.001.0027); and witness statement dated 8 March 2020 of Mary Manos: Exhibit AA247 (CRL.581.001.0032). Mr Dixon's evidence was that he first learned of the transaction in media reports: T4665/12-20.

[612] Manos witness statement dated 8 March 2020, [8]: Exhibit AA247 (CRL.581.001.0032). The media release is at CRL.500.001.0120.

[613] Manos witness statement dated 8 March 2020, [16]: Exhibit AA247 (CRL.581.001.0032). The ASX announcement is at CRL.500.008.6375.

[614] See e.g. T3056/41-47 (Mr Johnston) and T3262/21-46 (Mr Jalland).

[615] Poynton witness statement dated 6 March 2020, [8] (CRL.581.001.0057). See also T3357/34-T3358/12.

information was also provided confidentially to Mr Poynton in his capacity as a CPH nominated director on the Crown Board and in circumstances where he was told that the transaction would be publicly announced later that day.[616] That communication did not provide Mr Poynton with any fact that is capable of engaging clause 2.4 of Schedule 1 of the VIP Agreement or providing Crown with any power to prevent the transaction. Mr Poynton was not aware that Dr Ho held any interest in Melco and nor was he aware of the specifics of the VIP Agreement or the Crown Approvals Deed.[617] In the circumstances, there was no entitlement or occasion for Mr Poynton to inform his fellow directors on the Crown Board of the transaction and he did not do so.[618]

802. Counsel Assisting accepted in closing submissions that if Crown was not aware that the share sale agreement existed then it must follow that it did not have the power to prevent the transaction from occurring.[619] In view of the above, Crown did not have any actual knowledge that would enable the board to consider taking any action.[620] It follows that Crown did not breach clause 2.4 of Schedule 1 of the VIP Agreement.

Attribution of knowledge of CPH nominated directors and Mr Packer to Crown

803. Counsel Assisting submitted that Crown may be taken to be aware that the Share Sale Agreement was being negotiated if the knowledge held by one of more of Mr Johnston, Mr Jalland, Mr Poynton or Mr Packer is attributed to Crown. However, in the case of Mr Jalland and Mr Poynton, Counsel Assisting accepted that based on their knowledge of the Melco transaction, there is no basis for attributing their knowledge to Crown.[621]

804. The question of whether the knowledge of a particular officer or employee of a company should be attributed to the company depends on the particular context in which the question of attribution arises.[622] In the context of directors of multiple companies, where a person is a director of each of Company A and Company B, information obtained by the director in the course of acting for Company A will only be attributed to Company B where the director is:[623]

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[616] Poynton witness statement dated 6 March 2020, [8]-[9] (CRL.581.001.0057).
[617] T3350/33-37 and T3351/40-T3352/31.
[618] At T3359/33-39 and T3360/16-22 Mr Poynton rejected with the proposition that he should have informed the other directors of Crown of the transaction following his conversation with Mr Packer.
[619] T4947/4-7.
[620] As Counsel Assisting put in cross-examination to Mr Johnston (at T3059/14-18): MR BELL: And you understood that Crown Resorts had not had the opportunity to consider its position, as a corporation, to obtain its own legal and commercial advice on the propriety of the transaction?
MR JOHNSTON: That's right.
[621] T4961/41-46 (Mr Poynton) and T4961/41-46 (Mr Jalland).
[622] *Commonwealth Bank of Australia v Kojic* [2016] FCAFC 186; 249 FCR 421 [100] (Edelman J); *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 2 AC 500, 507 (Lord Hoffman).
[623] *Ford, Austin and Ramsay's Principles of Corporations Law* (16th ed, 2015) at [16.220] citing *Re Fenwick Stobart & Co Ltd* [1902] 1 Ch 507; *El Ajou v Dollar Land Holdings Plc* [1994] 2 All ER 685; [1994] 1 BCLC 464; [1994] TLR 1.

(a) under a duty to Company A to communicate the knowledge to Company B; and

(b) under a duty to Company B to receive the knowledge.

805. The following observations of Barrett J in *Tim Barr Pty Ltd v Narui Gold Coast Pty Ltd* [2008] NSWSC 1070, [104] are relevant in this respect:[624]

> *A company does not automatically possess the knowledge of each or all of its directors; nor does a single-director company automatically possess the knowledge of its sole director. Imputation may be appropriate where the director possessing the knowledge can be seen to be under a duty to communicate it to the company: see, for example, Re David Payne & Co Ltd [1904] 2 Ch 608 at 611, Re Fenwick, Stobart & Co Ltd [1902] 1 Ch 507 at 511, Belmont Finance Corporation Ltd v Williams Furniture Ltd (No 2) [1980] 1 All ER 393 at 404.*

806. Moreover, and significantly for the purposes of this case, where a director receives information confidentiality in the course of acting for Company A, his or her duty of confidentiality to Company A subsumes, that is to say negatives, any duty he or she may owe to Company B to receive the information.[625] In reply submissions,[626] Counsel Assisting relied on *Fitzsimmons v R* [1997] 23 ACSR 355 (***Fitzsimmons***) in support of a submission that "modern authorities" have rejected the proposition that a directors duty of confidence to company A subsumes his or her duty to disclose information to company B. *Fitzsimmons* does not stand for that proposition. *Fitzsimmons* concerned a criminal contravention of s 229 of the Companies Code by a director for failing to act honestly. The case did not involve a question of attribution arising from a director's alleged failure to disclose confidential information; and nor did the Court refer to, or disapprove of, *Harkness v Commonwealth Bank of Australia Ltd* (1993) 32 NSWLR 543. *Fitzsimmons* stands only for the proposition that the duty to act honestly for the purposes of s 229 of the Companies Code can require disclosure of information known to the director which is material to issues being decided by the company (at 363).

807. Having regard to the above principles, for at least the following reasons, the knowledge of Mr Johnston, Mr Jalland, Mr Poynton and/or Mr Packer in connection with the Melco transaction cannot be attributed to Crown.

808. *Firstly*, there is no suggestion – and nor could there be – that any of Messrs Johnston, Jalland, Poynton or Packer obtained information regarding the Melco transaction whilst acting with the authority of Crown or in circumstances where they owed any duty to Crown.

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[624] See also *LMI Australasia Pty Ltd v Baulderstone Hornibrook Pty Ltd* [2001] NSWSC 886 at [84]-[88] (Barrett J).
[625] *Harkness v Commonwealth Bank of Australia Ltd* (1993) 32 NSWLR 543, 555D.
[626] At T5767/6-8.

809. *Second,* there was no duty imposed upon any of the individuals (by either CPH or Crown) to communicate their knowledge of the prospective Melco transaction to Crown. The information received by Mr Johnston and Mr Jalland about the Melco transaction was received confidentiality in their capacity as CPH directors and in circumstances where they each owed obligations of confidentiality to CPH. Mr Packer also owed obligations of confidence to CPH in respect of the information he received regarding the Melco transaction. In case of Mr Poynton, he received only the barest of details about the transaction in his capacity as a nominee director of CPH on the Crown Board and in circumstances of implied confidentiality where he was told that the transaction would be announced later that morning.

810. The observations of Young J (as his Honour then was) in *Harkness v Commonwealth Bank of Australia Ltd* (1993) 32 NSWLR 543 (***Harkness***) are apposite in this respect. In *Harkness,* Young J considered whether the knowledge of a senior bank officer, acquired in his role as officer of another corporation, could be attributed to the bank, thereby satisfying the relevant knowledge requirements for the preference claim brought by the liquidator, Harkness. The liquidator asserted that where a person was on a board or committee of one company (X) as a representative of another company (Y), the information which comes to the person from X should be attributed to Y. Relevantly, Young J held: (emphasis added):[627]

> *While ordinarily there will be a duty to communicate knowledge received, where the director is functioning within another corporate organisation and information comes to the director in the course of that work with the other organisation, his duty of confidentiality to that other organisation will subsume any duty he might otherwise owe to the company which appointed him to that organisation*

811. *Third*, none of Messrs Johnston, Jalland, Packer or Poynton were actually aware of any risk of harm to Crown arising from the Melco transaction. In those circumstances, no duty to disclose the information to Crown information arose. In closing submissions, Counsel Assisting accepted that in order for a duty to disclose to arise, the director must have actual knowledge that the information might cause Crown harm; and that constructive knowledge is insufficient.[628] On that basis, Counsel Assisting accepted that the knowledge held by Mr Jalland and Mr Poynton about the risks of the Melco transaction to Crown was insufficient to give

[627] At 555D.

[628] T4958/41-44. See also the exchange at T4966/6-15: MR BELL: If you found on the facts that Mr Johnston and Mr Jalland knew that there was a prospect of harm to Crown Resorts by the entering into this agreement, that would be enough, actually knew there was a prospect of harm, that would be enough to attribute their knowledge to Crown.
COMMISSIONER: What about if they should have known?
MR BELL: If they should have known then that is not so much a question of attribution but a question of whether they properly performed their duties as a director.

rise to a duty to communicate and, on that basis, their knowledge should not be attributed to Crown.[629]

812. Contrary to the submissions advanced by Counsel Assisting, Mr Johnston and Mr Packer are in the same position as Mr Jalland and Mr Poynton. Each of Mr Johnston and Mr Packer gave clear evidence that they were not aware of any risk of harm to Crown. Mr Johnston's evidence was that he was not aware that Stanley Ho or any entities associated with him had an interest in Melco Resorts.[630] Mr Johnston said that he had dealt with Melco for many years and he was not aware that Stanley Ho had any interest or involvement in Melco.[631] It was put to Mr Johnston that he failed to check whether Stanley Ho did in fact hold an interest (which he accepted), but Mr Johnston maintained that he was not aware of the risk of harm to Crown.[632] Likewise, Mr Packer's evidence was that, at the time of Melco transaction, he was not aware that Great Respect had any interest in Melco International, that he did not turn his mind to whether the transaction might harm the interests of Crown,[633] and that he regard Melco Resorts as Lawrence Ho's company.[634]

813. *Fourth*, in relation to Mr Packer, for the reasons explained below, Mr Packer was not a de facto director of Crown. That fact alone means that his knowledge cannot be attributed to Crown because he was under no obligation to disclose information to Crown.

Crown did not have the relevant power to prevent the acquisition of an indirect interest

814. Even if, contrary to the submissions advanced above, Great Respect acquired an indirect interest in Crown and the knowledge held by CPH nominated directors (or Mr Packer) is attributed to Crown, Crown still did not have the relevant power to prevent the Melco transaction within the meaning of clause 2.4 of the VIP Agreement.

815. The obligation in clause 2.4 requires Crown, to the extent it is within its power to do so, to "prevent" the acquisition of any direct, indirect or beneficial interest by Stanley Ho or a Stanley Ho Associate in Crown.

816. It does not follow from a finding that the knowledge of one or more of the CPH nominated directors is to be attributed to Crown that Crown had the necessary power to prevent the Melco transaction. Attribution is a legal concept which fixes a party (usually a company) with knowledge or a state of mind known or possessed by a particular individual (such as an

[629] T4961/41-46 (Mr Johnston) and T4961/41-46 (Mr Jalland).
[630] T3056/46 – T3057/16. See also T3058/4-13 and 2987.
[631] T3058/4-13.
[632] T3055/21-45.
[633] T3671/22 – T3672/5.
[634] T3670/1-2.

employee of a company), usually for purposes of imposing a legal liability where the liability of the company requires it to have that kind of knowledge or state of mind. That is a different situation to the present.

817. In order to have the necessary power within the meaning of clause 2.4, it must be established that Crown actually had both sufficient knowledge of the transaction and an ability to prevent it from occurring. Crown had no such power available to it in the circumstances. As a listed company, Crown is generally restricted from preventing or interfering with share transfers;[635] and nor are there any provisions in Crown's constitution which permit it to prevent a sale of its securities.

818. Moreover, and contrary to the submissions advanced by Counsel Assisting,[636] clause 2.4 does not require Crown to take reasonable steps which *might* prevent the transaction. The plain words used in clause 2.4 do not permit that construction. The obligation on Crown is to actually prevent a breach of clause 2.4 where it is within its power to do so. If it has no such power to prevent a breach, as was the case in respect of the Melco transaction, then there can be no breach of clause 2.4.

E3. CPH's influence over Crown

819. Crown does not accept that the totality of the evidence provides any basis for a finding of unsuitability by reason of CPH's influence over Crown.

820. Crown has taken steps to adjust the following aspects of its relationship with CPH:

(a) the provision of services to Crown by CPH executives under the Services Agreement, including services provided at a managerial level by CPH nominated directors;

(b) the provision of information to Mr Packer and CPH under the Controlling Shareholder Protocol; and

(c) the workload of Mr Johnston as director, including the number of committees he is a member of.

821. Crown has terminated (after a period of suspension) each of the Services Agreement and the Controlling Shareholder Protocol on 21 October 2020.[637] As a result, CPH's only influence over Crown going forward will be via its nominee directors on the Board. This is the standard situation for publicly listed companies in Australia with a major controlling shareholder. In

[635] ASX Listing Rule 8.10 provides that "an entity must not in any way prevent, delay or interfere with the registration of a transfer document relating to quoted securities…".
[636] T5778/15-18.

[637] Crown ASX announcement dated 21 October 2020.

those circumstances, the question of CPH's influence over Crown is ultimately only of historical relevance and has no bearing on Crown's present suitability.

The Services Agreement

822. On 1 July 2016, the working relationship between CPH and Crown was formalised in a Services Agreement.[638] Crown's entry into the Services Agreement was approved by the Crown Board after receiving external legal advice as to the fees to be charged under the agreement.[639] As recorded in the recitals to the Services Agreement:

(a) up until the date of the Services Agreement, CPH had permitted Crown to have access to certain CPH executives for the purposes of assisting Crown at no charge; and

(b) from the date of the Services Agreement, CPH would continue to allow Crown to access CPH executives at the rates specified in the Services Agreement and otherwise subject to its terms.

823. Ms Manos, Ms Halton, Ms Coonan, Mr Mitchell, Professor Horvath and Mr Brazil all gave evidence that CPH executives, including Mr Johnston and Mr Jalland, have provided valuable services to Crown on a project specific basis both before and after the Services Agreement and that Crown had benefited substantially from CPH's expertise.[640] Mr Johnston, for example, has provided very valuable to services to Crown under the Services Agreement in respect of complex tax and financial projects.[641] As Mr Brazil observed in his evidence, the Services Agreement enabled Crown to access to the expertise of CPH's executives when services from people of that experience and calibre would not otherwise have been available on a part-time or ad-hoc basis.[642]

824. Moreover, the Services Agreement contained a number of safeguards to ensure that the interests of Crown were protected. For example, CPH and each CPH executive providing services to Crown undertook that they would (inter alia):[643]

(a) act in accordance with reasonable requests and directions from Crown;

(b) comply with all applicable laws and requirements including all applicable licences, permits, authorisations and accreditations;

[638] Exhibit Y-13 (CRL.525.001.001).
[639] Johnston statement dated 15 September 2020, [10] (WIT.CPH.006.0003).
[640] Coonan, T4499/3-5; Halton, T4235/14-23; Manos, private hearing, T19/10-20; Mitchell: T3882; Brazil, T3813/10-40.
[641] See e.g. Coonan, T4499/3-5; Halton, T4235/14-23.
[642] Brazil, T3813/10-40.
[643] Clause 7.

(c) comply with all standards, policies and procedures notified by Crown; and

(d) not act in any way which to the CPH executive's knowledge risks a breach of probity of failure to satisfy the regulatory requirements of any gaming regulatory authority or body.

825. The Services Agreement also contained provisions for resolving conflicts of interest and the use of Crown's confidential information. Under clause 11.1, CPH and CPH executives were required to notify Crown if they perceived any actual or potential conflict of interest;[644] and under clause 14, CPH was permitted to receive and use Crown's confidential information for its own purposes in the following circumstances:

(a) while CPH is the major shareholder of Crown;

(b) for the purposes of providing services to Crown; or

(c) while a CPH executive is a director of Crown or a committee member of any Crown executive committee.

826. There is nothing improper or inappropriate in the concept of a services agreement with a major controlling shareholder who provides assistance from time to time; and nor is there any particular problem with the provisions of this particular Services Agreement. It is an arrangement that has delivered substantial benefits to Crown, as referred to above. However, notwithstanding the protections provided for in the Services Agreement and the benefits Crown has received pursuant to it, with the benefit of hindsight, Crown recognises that there were potential difficulties associated with its use as the framework under which CPH nominated directors provided ordinary day-to-day or week-to-week managerial services to Crown. That is very different to services performed on a project-by-project basis, which sit outside the ordinary managerial processes.

827. In that regard, Crown accepts that the provision of services by Mr Johnston to Crown under the Services Agreement in connection with the VIP International business and the junket approval process after October 2016 was undesirable insofar as it required him to perform a management role within the business. This is no criticism of Mr Johnston. Mr Johnston was asked to provide assistance to the VIP International team on specific issues where he had expertise by the then Chairman, Mr Packer. He became involved in the junket approval process after the China arrests at the request of the then CEO, Mr Craigie.[645] However, the extent of Mr Johnston's involvement in these areas was not appreciated or understood by all

[644] Clause 11.1.
[645] Johnston, T3158/31-47.

members of the Board;[646] and accordingly, the Board did not have the opportunity to consider whether the services performed by Mr Johnston were conformable with his role as a non-executive director of Crown.

828. In recognition of the above matters, after a period of suspension,[647] Crown terminated the Services Agreement on 21 October 2020.[648]

CPH's influence over the VIP International Business

829. In Crown's submission, a finding that the VIP International team operated outside of Crown's normal management structures or was otherwise unduly influenced by CPH representatives (including Mr Johnston) is not open on the evidence.

830. Rowen Craigie and Barry Felstead were the two most senior executives responsible for the VIP International business in the period up to October 2016.[649] Mr Felstead was clear in his evidence that he reported to Mr Craigie and he firmly rejected the suggestion that his loyalties were to Mr Packer and the CPH Group.[650] Mr Felstead also rejected the proposition that there were two separate management oversight structures in the VIP international business operating below board level – an official structure reporting into the CEO group and Mr Craigie and an unofficial structure reporting into the VIP working group and Mr Johnston.[651]

831. Whilst Mr Johnston regularly attended meetings of the VIP Working Group in 2013 and 2014, he did so at the request of Mr Packer (then the Chairman) and Mr Craigie (then the CEO). Mr Johnston was asked to assist the VIP business with issues relating to debtors, currency controls, pricing and tax standardisation between jurisdictions.[652] Mr Craigie's evidence was that Mr Johnston's role in the VIP International business was to offer advice to Mr Felstead and Mr O'Connor and that he did not have a management oversight role.[653] Mr O'Connor's evidence was that, because of his financial and analytical skills, Mr Johnston provided a sounding board and counsel on issues affecting the VIP International business.[654] Each of Mr Johnston and

[646] Coonan, T4451/7-11; Halton, T4328/4-7; Brazil, T3812/32-35.
[647] Coonan, T4447/17-32; Halton T4235/40-45.
[648] Crown ASX announcement dated 21 October 2020.
[649] Packer, T3590/8-20.
[650] Felstead T1227/19-26: MR BELL: And did you see your loyalties, in respect of the VIP international business, as being primarily owed to Mr Packer and the CPH group, rather than to the board of Crown Resorts Limited?
MR FELSTEAD: No. My focus has, in terms of reporting, in terms of VIP and every business unit, has always been to Mr Craigie. There were instances where I should have told him things, I completely accept that, but I was under no illusion that Mr Craigie was my boss at all times.
[651] Felstead T1226/9-38.
[652] Johnston statement dated 15 September 2020, [14] (WIT.CPH.006.0003).
[653] Craigie, T1460-1461.
[654] T1989/37-42.

Mr Packer rejected the proposition that they were meaningfully involved in setting the strategy for the VIP International business.[655]

832. The VIP working group was not a formal Crown committee and nor was it a decision-making body.[656] It was established at the request of Mr Packer and Mr Craigie to consider options and make recommendations;[657] and it operated as an advisory group.[658] The attendees at the meetings of the VIP working group varied. The regular attendees included executives in the VIP business (Messrs Felstead, Chen, O'Connor, Theiler, Harding). Mr Johnston attended meetings in the period April 2013 to December 2014, and intermittingly after that date.[659] Mr Craigie and Mr Barton attended some of the meetings. Other CPH executives (Brad Kady and Steve Bennett) also attended some meetings at the earliest stages, as did other external consultants. The work performed by Mr Johnston and other CPH executives for the VIP working group was provided for the benefit of Crown under the Services Agreement.[660]

833. Issues raised at the VIP working group were, on occasion, reported to the Crown CEO meetings.[661] At those meetings, Mr Felstead and Mr O'Connor provided updates on the VIP International business.[662] The attendees included senior executives from Crown Melbourne and Crown Perth, such as Mr Felstead, and certain directors of Crown, including Mr Packer, Mr Alexander and Mr Craigie.

Controlling Shareholder Protocol dated 31 October 2018

834. On 23 August 2018, CPH proposed amending the Services Agreement to enable Crown to continue to provide confidential information to Mr Packer following his resignation as a director of Crown and CPH in March 2018.[663]

835. Ultimately, Crown determined that it was preferable to enter into a standalone Controlling Shareholder Protocol which did not link the sharing information with the provision of services by CPH.[664] The Controlling Shareholder Protocol was considered by the Nomination and

[655] Johnston T3092/32-43; Packer, T3718/1-13. See also Jalland. T33075-8.
[656] Whilst the group is described in an internal Crown document as the "CPH VIP working group" (Exhibit M-109 CRL.527.001.1826), Mr Craigie and Felstead explained the group was not known by this name: T1121/30-32 (Felstead) and T1460/5-13 (Craigie).
[657] Johnston statement dated 15 September 2020, [18] (WIT.CPH.006.0003).
[658] Felstead T1226/15-16.
[659] Johnston statement dated 15 September 2020, [21] and [25] (WIT.CPH.006.0003). See also T2934/41-48.
[660] Johnston statement dated 15 September 2020, [18] (WIT.CPH.006.0003).
[661] Johnston statement dated 15 September 2020, [15] (WIT.CPH.006.0003).
[662] Craigie, T1448/14-46; Johnston statement dated 15 September 2020, [16] (WIT.CPH.006.0003).
[663] See letter from CPH to Crown dated 23 August 2018: Exhibit Y-7 (CRL.501.050.8325).
[664] Minutes of the Nomination and Remuneration Committee dated 19 September 2018: Exhibit Y8 (CRL.501.034.9912). See also Manos, private hearing, T19/10-20.

Remuneration Committee at a meeting on 19 September 2018.[665] At that meeting, the Committee noted that the Controlling Shareholder Protocol included:

(a) detailed provisions requiring shared information to be kept confidential;

(b) a requirement that CPH procure the adherence to strict confidentiality requirements;

(c) an indemnity by CPH in favour Crown for any loss suffered by way of breach of the agreed arrangements; and

(d) a provision for CPH, CPH executives and James Packer to agree to abide by insider trading laws.

836. On 31 October 2018, in accordance with the recommendation from the Nomination and Remuneration Committee, Crown's entry into the Controlling Shareholder Protocol was approved by the Crown Board on the basis that the agreement was in the best interests of the company.[666] Crown formed that view having regard to Mr Packer's long experience and track record with the company, including as a director and chairman.[667] As Mr Barton explained, Crown has received significant benefits from CPH and Mr Packer's involvement in the business. Mr Packer identified the opportunities in Macau and in Barangaroo and both of those transactions, over time, have proven to be extremely valuable for the company.[668] Mr Alexander gave evidence to similar effect.[669]

837. The Controlling Shareholder Protocol provided for confidential information to be shared with CPH and Mr Packer by certain authorised representatives of Crown where it was Crown's interests to do so and for advice to flow back from Mr Packer to Crown. Before sharing confidential information under the Protocol, each Crown authorised representative was required to consider, among all other relevant matters:[670]

(a) whether the disclosure was in the best interests of Crown;

(b) whether the disclosure would be to Crown's detriment or someone else's benefit;

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[665] Exhibit Y8 (CRL.501.034.9912).
[666] Board minutes dated 31 October 2018: Exhibit Y6 (CRL.506.006.550).
[667] See e.g. Demetriou, T4018/34-41: "Well, given that Mr Packer wasn't going to be on the board any more, it was agreed that we would – we would formalise an arrangement that provided for information flow to Mr Packer, who has all been a valuable contributor to the growth of Crown. And his input, again, in my experience, has always been in the best interests of Crown as a whole. I've always regarded Mr Packer as somewhat of a visionary. And any information that could be provided to Mr Packer under the protocol that would see Crown benefitting, whether it be in Barangaroo or whether it be in how our finances should be structured, and the like, I felt it was advice that was invaluable to the – to Crown as a whole."
[668] Barton, T2882. See also Johnston T3200.
[669] T3471/38 – T3472/9.
[670] Clauses 2.3 and 2.10: Exhibit Y5 (CRL.509.014.8430).

(c) whether the disclosure was improper; and

(d) whether disclosure would breach any obligation of confidence.

838. Controlling Shareholder Protocols (although sometimes referred to by different names such as Major/Majority Shareholder Protocols or Nominee Director Protocols) are not unusual for ASX listed entities and have been used by large, listed entities (having a market capitalisation of more than $2 billion).[671] Similarly, agreements like the now terminated Services Agreement are not without precedent.

839. The sharing of confidential information with Mr Packer under the Controlling Shareholder Protocol occurred on a regular basis and was not formally documented or recorded. In hindsight, Crown accepts that this fell short of best practice, because there was an absence of records regarding when, by whom and in what circumstances information was shared with Mr Packer and CPH under the Protocol.

840. Crown also accepts that at the annual general meeting of shareholders on 23 October 2019, Mr Barton provided an incomplete answer in response to a question from Stephen Mayne regarding the extent of information that was provided to Mr Packer.[672] Mr Barton answered Mr Mayne's question by reference to publicly available information and in the broader context of the Services Agreement and Crown's relationship with CPH. Mr Barton recognised that, in failing to mention that information was also shared with Mr Packer under the Controlling Shareholder Protocol, his answer was incomplete and that he should have answered it differently.[673]

841. Crown does not accept, however, that the Controlling Shareholder Protocol was "hidden" from the market or from shareholders, as suggested by Counsel Assisting.[674] The Protocol contained confidentiality provisions and there is no evidence that Crown was required to disclose it to the market (and the contrary was not put to Mr Barton or any of the other directors).

842. Following a careful review by the Board (including at its meeting on 16 June 2020) and the subsequent suspension of the Protocol,[675] the Crown Board resolved to terminate the Controlling Shareholder Protocol following an in-camera meeting on 21 October 2020.[676]

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[671] Three examples of listed companies with similar protocols include Yancoal Australia Ltd, STW Communications Group Limited, Board Limited.
[672] See e.g. Coonan , T4456/10-35 and Barton T2747/16-2749/30.
[673] Barton, T2750/43-47.
[674] T5756/5-10.
[675] Coonan, T4447/17-32; Halton T4235/40-45. See Board minutes of the meeting of 20 June 2020 at CRL.696.001.0052.
[676] Crown ASX announcement dated 21 October 2020.

The contention that Mr Packer's was a *de facto* director in the period November 2018 to May 2019

843. An objective test is applied in determining whether a person is a de facto director.[677] There is no single test decisive test of when a person will be found to be a de facto direction.[678] Rather, whether a person acts as a director is a question of degree, and requires a consideration of the duties performed by that person in the context of the operations and circumstances of the particular company concerned.[679] A necessary, but not necessarily sufficient, condition for so finding is that the individual exercises "top-level management functions".[680]

844. The range of factors to be considering in determining whether a person is a de facto director include:[681]

(a) the duties that would be expected to be performed by a director in the relevant company - noting that this will vary according to matters such as the size of the company and the allocation of the responsibilities within the company;[682]

(b) the internal practices or structure of the company in that certain work given to an individual may be of such a type that it is more appropriate to classify that work as being undertaken by the individual in the capacity as an expert employee or consultant rather than as a director;[683]

(c) the duties actually performed by the person, including whether the duties can be characterised as "top-level management functions";[684]

(d) whether others in the company considered the person a director;[685]

(e) whether the company held out the person as a director;[686]

(f) whether the person held themselves out as a director;[687] and

(g) whether those outside the company considered the person to be a director.[688]

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[677] *Smithton Ltd v Naggar* [2014] EWCA Civ 939 at [39]; *BCI Finances Pty Ltd (in liq) v Binetter (No 4)* (2016) 117 ACSR 18 at [241] (Gleeson J).
[678] *Grimaldi v Chameleon Mining NL (No 2)* (2012) 200 FCR 296, [60] (***Grimaldi***).
[679] *Taxation v Austin* (1998) 28 ACSR 565, at 569; *Grimaldi*, [71].
[680] *Taxation v Austin* (1998) 28 ACSR 565, at 569; *Grimaldi*, [71].
[681] *Ford, Austin and Ramsay's Principles of Corporations Law*, (16th ed, 2015), [8.055.3] as cited in *BCI Finances Pty Ltd (in liq) v Binetter (No 4)* (2016) 117 ACSR 18; [2016] FCA 1351 at [244] (Gleeson J).
[682] For example, in a large and diversified company, great discretion to deal with significant matters may be given to employees: *Deputy* Commissioner *of Taxation v Austin* (1998) 28 ACSR 565 at 570.
[683] *Deputy* Commissioner *of Taxation v Austin* (1998) 28 ACSR 565, at 570.
[684] *Grimaldi*, [70]-[71]; Austin, 569-570.
[685] *Smithton Ltd v Naggar* [2014] EWCA Civ 939, [39].
[686] *Grimaldi*, [74].
[687] *Forkserve Pty Ltd v Jack and Aussie Forklift Repairs Pty Ltd* (2000) 19 ACLC 299.
[688] *Grimaldi*, [75] and [130]-[131].

845. There is no basis for finding that Mr Packer was a de facto director of Crown in the period after November 2018.

846. *Firstly*, there is no evidence that Mr Packer held himself out as a director either to third parties or internally within Crown.

847. *Second,* there is no evidence that any persons outside of the company perceived that Mr Packer was a director of Crown, as opposed to the representative of its controlling shareholder.

848. *Third,* as Counsel Assisting accepted, there is no evidence that Mr Packer participated in any decision-making processes of the Board; and nor is there any evidence that the Board were informed of, or had regard to, Mr Packer's views when making decisions. Indeed, the proposition that Mr Packer acted as a de facto or shadow director was not put to any of Crown's independent directors. In view of the above, Counsel Assisting fairly acknowledged in closing submissions that there is no basis for finding that Mr Packer was a "shadow director".[689] Counsel Assisting's recognition of that reality is significant; as the authorities recognise that there is no rigid distinction between the concept of a shadow and a de facto director.[690]

849. *Fourth*, Mr Packer did not perform top-level management functions in the period after November 2018, such as the negotiation of agreements on behalf of Crown. Rather, Mr Packer's involvement largely consisted of receiving information to enable him to monitor Crown's financial position, financial performance and budgeting, and provide helpful suggestions or advice to assist Crown. Mr Packer had an obvious and legitimate interest in the performance of Crown as the representative of the controlling shareholder.

850. *Fifth*, the extent of Mr Packer's involvement must be assessed having regard to the internal practices and structures then in place at Crown. Relevantly, the practices and structures at Crown at that time included the Services Agreement, pursuant to which services were periodically provided to Crown by CPH executives. It also included the Controlling Shareholder Protocol, pursuant to which Mr Packer was authorised to receive confidential information where it was in the best interests of Crown to share that information. The provision of confidential information to Mr Packer under the Protocol recognised the reality that as a former longstanding director and executive chairman and the representative of the

[689] T4934/32-40: "Commissioner, it's not apparent that a governing majority of Crown Resorts' appointed directors received and accepted Mr Packer's instructions or wishes concerning Crown Resorts' affairs over the period. On that basis we don't submit that Mr Packer was a shadow director of Crown Resorts."
[690] See e.g. *Grimaldi*, [69].

controlling shareholder, it was in Crown's best interest to keep Mr Packer informed so that he was in a position to offer insights that would benefit the company.

851. In view of the above, Crown submits that there is no basis for any finding that Mr Packer was a de facto director of Crown in the period after November 2018. However, as explained above, Crown does accept that the manner in which information was provided to Mr Packer under the Controlling Shareholder Protocol was problematic, including because it was not properly documented or recorded. For that reason, the Controlling Shareholder Protocol has been terminated.

The independence of Crown's Board from Mr Packer and CPH

852. Each of Crown's independent non-executive directors are cognisant of their important role and duties as independent directors, including their obligation to act in the best interests of all shareholders.[691] An examination of the Board minutes reveals that the independent directors have acted with care and diligence in considering a range of matters across a large and complex business.

853. The fact that the independent directors appointed prior to 2018 knew Mr Packer or had a historic connection to the Packer family, and in the case of Mr Demetriou and Mr Mitchell were approached by Mr Packer about joining the Board, does not undermine their status as independent directors. Mr Packer was the chairman of Crown at the time of the appointment of each of Professor Horvath (September 2010), Mr Mitchell (February 2011), Ms Coonan (December 2011) and Mr Demetriou (January 2015).[692] The current chair of the Nomination and Remuneration Committee, Mr Mitchell, said that the Chairman was and remains instrumental in the nomination of independent directors, and that the appointment of a director remains subject to consideration and approval by the full Board.[693]

854. In relation to the two most recent independent directors appointed to the Crown Board, Ms Korsanos and Ms Halton (both appointed in May 2018), they have no prior relationship with Mr Packer or the Packer family and nor did Mr Packer instigate their appointments. Ms Korsanos has never met Mr Packer;[694] and Ms Halton was not asked about her relationship (if any) with Mr Packer or about who approached her to join the Board.

[691] See e.g. Halton, T4236/35-40; Horvath, T4160/5-44; Demetriou T3994/8-11 and T3996/44 – 3997/2; Mitchell T3900/20-21.
[692] Mr Packer was Chairman of Crown between 6 July 2007 and 12 August 2015: Packer statement dated 13 September 2020, [2] (WIT.CPH.005.0002).
[693] Mitchell, T3827/43-3828/16.
[694] Korsanos, T4081/21.

855. The Chairman, Ms Coonan, gave evidence that Crown has embarked on a process of Board renewal.[695] Mr Alexander retired as a director with effect from 22 October 2020 and Professor Horvath announced his retirement from the Board at Crown's annual general meeting on 22 October 2020. The Chairman has commenced discussions regarding succession planning and Board renewal and has plans to commence a recruitment process for new independent directors.[696]

856. In relation to Mr Johnston's role as a non-executive director, the Chairman has recognised that Mr Johnston's workload will be reviewed, including by reducing the number of committees of which he is a member.[697] Crown has recently determined that Mr Johnston's only committee role will be on the Audit and Corporate Governance Committee.

[695] Coonan, T4457/1-27. See also Horvath, T4161, 12-13.
[696] Coonan, T4457/1-27.
[697] Coonan, T4448/17-32: "He's wearing a lot of hats, as he – as, I understand, he has acknowledged. And I plan to relieve him of some of his hats. He is a nominee director and, of course, nominee director or directors are – and appointment and removal of directors is a matter for the shareholders."

F. THE ADVERTISEMENT

857. Crown submits that, when the ASX release of 31 July 2019 (**Advertisement**) is viewed in its proper context, the Board's decision to publish it should have no bearing on the assessment of suitability. This is because, on the question of suitability, it is necessary to analyse the Advertisement by asking the following question:

> *"What, if anything, does the decision to publish the Advertisement say about the suitability of the Licensee or Crown Resorts?"*

858. For the reasons set out in this section, Crown respectfully submits that it is wrong to contend, as Counsel Assisting did, that the decision to publish the Advertisement bespeaks a defect in culture at Crown or indicates that governance failings made in relation to China before October 2016 subsist today.[698]

F1. The media allegations and the evidence as to how Crown decided to respond

859. On the weekend of 27 and 28 July 2019, and in the days which followed, Nine Entertainment Co (**Nine**) newspapers and the television program '60 Minutes' published several stories containing allegations of serious and conscious wrongdoing by Crown. The article published the morning of Saturday, 27 July 2019, titled *"Gangsters, gamblers and Crown casino: How it all went wrong"*, alleged, among other things, that:

(a) "*The investigation shows Crown was prepared to get into bed with junket operators backed by Asian organised crime syndicates called "triads", including the most powerful drug-trafficking syndicate in the world*".

(b) "*[Crown] has helped bring criminals through the nation's borders in a way that raises serious national security concerns*".

(c) "*Crown was effectively making payments to an organised crime syndicate*".

(d) "*[Crown] was effectively giving its staff incentives to break Chinese gambling laws on an industrial scale*".

860. These themes were picked up, and expanded on, in the 60 Minutes story which ran on the evening of Sunday, 28 July 2019, titled *'Crown Unmasked*`. The program alleged, among other things, that:

[698] Cf: Submissions of Counsel Assisting: Closing Remarks on 9 November 2020, [6]; Counsel Assisting Written Submissions, "China Arrests", [361].

(a) "*[G]ambling promotion … was the unlawful activity at the very heart of Crown's secretive China operation*".

(b) *"[T]he lie* [that Crown was not doing anything illegal in China] *finally caught up with Crown…".*

(c) *"[A] number of the entities that Crown Casino are dealing with are very clearly linked to transnational crime entities and syndicates*".

(d) "*Do you think Crown cares that some of its junket operators are wanted criminals, known organised crime figures*?" - - "*… no*".

(e) "*Crown has also jumped into bed with a Melbourne brothel boss with links to alleged sex trafficking*".

861. Allegations of this character, and a perceived sensationalism in the style of the reporting, captured the immediate attention of Crown's directors. The impression that Crown's directors were left with upon reading the articles and watching the 60 Minutes program was that the reports alleged that Crown knowingly broke the law,[699] knowingly dealt with criminals,[700] and turned a 'blind eye' to money laundering.[701] The directors also generally viewed the reporting as being sensationalist and lacking fairness.[702] Some Crown directors felt as though the company was under *"attack"*.[703] Another saw it as a crisis for the business.[704] Several held concerns about the impact the reporting would have on Crown's employees, shareholders and other stakeholders.[705] These opinions and concerns were all genuinely held.[706]

862. Notwithstanding these initial impressions, the directors recognised the importance of having the allegations investigated so as to ascertain whether there was substance to them. Management, and specifically the Australian Resorts Division, led by Mr Felstead and Mr Preston, were charged with this task with the assistance of Crown's external legal advisors,

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[699] See, eg, Second statement of John Alexander, [23] (**Second Alexander statement**); Second statement of Helen Coonan, [18] (**Second Coonan statement**); Second statement of Guy Jalland, [18] (**Second Jalland statement**); Third statement of Michael Johnston (**Third Johnston statement**), [33].

[700] Second Alexander statement, [23] Second Coonan statement, [18]; Second Jalland statement, [18]; Second statement of Sarah Jane Halton (**Second Halton statement**), [9]; Second statement of Andrew Demetriou (**Second Demetriou statement**), [7]; Third Johnston statement, [33]. T.3423.25 – 30 (Poynton XN).

[701] Second statement of John Horvath (**Second Horvath statement**), [12]; Second Halton statement, [9]; Second Alexander statement, [23]; Third Johnston statement, [33]. T.3423.30 – 35 (Poynton XN); T.3974.20 – 25 (Demetriou XN).

[702] Second Coonan statement, [18]; Second statement of Antonia Korsanos (**Second Korsanos statement**), [11]; Second Halton statement, [9]; Second Demetriou statement, [7] and [10]; Second statement of Harold Mitchell (**Second Mitchell statement**), [9]; Second statement of John Poynton (**Second Poynton statement**), [8]; Second Alexander statement, [23]; Third Johnston statement, [33]. T.3177.38 – 40 (Johnston XN).

[703] Second Coonan statement, [18]; T.3418.15 – 20 (Poynton XN).

[704] Second Korsanos statement, [11].

[705] Second Coonan statement, [18]; Second Horvath statement, [9]; Second Demetriou statement, [7]; T.4100.16 – 22 (Korsanos XN).

[706] No director was challenged on their reaction to the reporting and whether they genuinely held these views at the time the media reports were published.

Minter Ellison. Some directors understood that this work of investigating the allegations had commenced before the media allegations broke because earlier that week Crown had received a long list of questions from the Nine journalist, Nick McKenzie, foreshadowing the allegations.[707] Those directors who were not aware that management had been looking into the allegations for some days were made aware of this work by the evening of Monday, 30 July 2019, when they received a paper prepared by management titled 'Internal Report on Media Allegations' (**Internal Report**).[708]

863. The Internal Report was provided in advance of a Board meeting convened for 1pm on Tuesday, 30 July 2019. The meeting was arranged for the purpose of discussing the media allegations and what Crown should do in response.[709] The directors read the Internal Report in advance of the Board meeting.[710] The key conclusions which Crown's directors drew from the Internal Report were that:

(a) the allegations that Crown courted and continued to court underworld figures and was either complicit in or otherwise turned a blind eye to criminal activity were false;[711] and

(b) Crown had ceased dealing with a number of the individuals and junkets referred to in the 60 Minutes program many years ago.[712]

864. At the Board meeting on 30 July 2019, following a discussion of the media allegations, the key conclusions from the Internal Report, and how Crown should respond, the Crown Board resolved that management, in consultation with the Board, prepare a full page newspaper advertisement for publication within 48 hours which responded to the Nine allegations and which highlighted the factual inaccuracies in the central allegations, the sensationalised nature of the reporting and the unsupported connections.

865. The directors received a draft advertisement at 11.05am 31 July 2019.[713] In the email sent to directors, Ms Manos noted that the draft had been prepared by Karl Bitar, Mark Arbib and Richard Murphy at Minter Ellison, and that the statements in the letter would be subject to a verification process co-ordinated by Karl Bitar. Each of Crown's directors relied on this verification process being undertaken by management,[714] and a number drew comfort from the

[707] Second Alexander statement, [16] – [21]; Third Johnston statement, [28] – [29] and [35]. T.3178.28 - 45 (Johnston XN).
[708] CRL.501.011.4394.
[709] Second Alexander statement, [24].
[710] Second Horvath statement, [11]; Second Korsanos statement, [10]; Second Halton statement, [12]; Second Demetriou statement, [8]; Second Mitchell statement, [12]; Second Poynton statement, [7]; Second Coonan statement, [23];; Second Alexander statement, [28]; Third Johnston statement, [38].
[711] Second Halton statement, [14]; Second Korsano statement s, [10]; Second Horvath statement, [12]; Second Coonan statement, [25].
[712] Second Halton statement, [14]; Second Korsanos statement, [10]; Second Demetriou statement, [10]; Second Horvath statement, [12]; Second Demetriou statement, [10]; Second Poynton statement, [8]; Second Coonan statement, [25].
[713] CRL.501.011.4479.
[714] See, eg, T.3559.10 – 20 (Alexander XN); T.4100.05 – 07 (Korsanos XN).

fact that Richard Murphy, Crown's external legal adviser, was involved in the Advertisement's preparation. Further, as is apparent on the face of the Advertisement, and as was apparent to Crown's directors at the time they received the draft, the Advertisement drew heavily on the content of the Internal Report.[715]

866. The foreshadowed verification process was undertaken. Mr Bitar co-ordinated the process, which consisted primarily of obtaining verbal confirmation from Mr Felstead and Mr Preston as to the accuracy of the factual statements in the draft advertisement over two telephone calls on 31 July 2019.[716] The second telephone call was attended by a number of Crown's senior executives and involved working through each paragraph of the draft advertisement and, where the paragraph contained a factual statement, confirming with those with knowledge of the underlying subject matter (in most instances, Mr Preston and Mr Felstead[717]) that the factual assertion was accurate. Several changes were made to the draft advertisement following this verification call.[718]

867. Final changes were made over the course of the afternoon of 31 July 2019 with the final Advertisement lodged with the ASX at around 6pm that evening ahead of publication in newspapers the following morning.[719]

F2. The relevance of the Advertisement to the Inquiry's terms of reference

868. For the following reasons, the decision of the Crown Resorts Board to publish the Advertisement in order to refute false allegations that Crown was consciously involved in criminal activities should not be weighed adversely in the analysis as to Crown Resorts' suitability.

869. *First*, as the evidence summarised in the previous section demonstrates, the decision to publish the Advertisement was made in circumstances where Crown's directors felt the company was 'under attack' and in 'crisis'. Deciding how to respond to high profile allegations of this kind, causing serious reputational damage, requires the exercise of business judgement. Reasonable minds may differ as to the correct judgement call to make in such circumstances, or as to the choice of words and tone. The Crown Resorts Board is an experienced board. The decision to publish the Advertisement was driven by a view amongst Crown's directors that a strong public response was necessary to protect the company's interests.[720] That decision should be assessed

[715] See, eg, Second Horvath, [18]; Second Korsanos, [16]; Second Halton, [18]; Second Demetriou statement, [13].
[716] Statement of Karl Bitar (**Bitar statement**), [23].
[717] Bitar statement, [27].
[718] Bitar statement, [27] and [28].
[719] Bitar statement, [27] and [28].
[720] See, eg, Second Horvath, [13] – [16]; Second Mitchell statement, [13]; Second Demetriou statement, [9] and [10]; Second Poynton statement, [10]; Second Coonan statement, [26]; Second Alexander statement, [31]; Third Johnston statement, [39].

at the time it was made and on the information on which it was made.[721] At that time, the information which has come to light in this Inquiry in respect of Crown's dealings with junket operators and individuals, and money laundering concerns, was not known (or at the very least not known to any significant extent) by Crown's directors.

870. *Second*, the Advertisement was primarily a response to the central allegations in the media reports that Crown had knowingly acted illegally, immorally or unethically. These were the allegations that the Crown Board felt it needed to respond to and respond to quickly. And a close reading of the Advertisement demonstrates that these were the allegations to which the Crown directors were responding. The Advertisement did not purport to be exhaustive.[722] The Advertisement was primarily a response to the most serious allegations made. Crown Resorts maintains, and the evidence before the Inquiry shows, that the most serious allegations that were refuted in the Advertisement were false, viz:

(a) that Crown knowingly dealt with junket operators backed by organised crime syndicates, or did not care that some of its junket operators were 'known organised crime figures';

(b) that Crown knowingly assisted or turned a 'blind eye', to money laundering;

(c) that Crown knew the conduct of its staff in China constituted an offence and that Crown deliberately flouted the law;

(d) Crown sought to circumvent visa requirements or compromise any process of identification or verification for immigration purposes.

871. Indeed, Counsel Assisting have now acknowledged that several allegations had no basis in fact, including, by way of example:

(a) that Crown knowingly breached gambling laws in China;[723]

(b) that Crown continued dealing with Alvin Chau when he had been banned from entering Australia;[724]

(c) that Crown Resorts had dealings with Simon Pan (also known as Zhao-Yuan Pan) as a junket operator;[725]

[721] T.3181.03ff (Johnston XN).
[722] Crown was entitled to focus on the most egregiously false allegations, and to refute them; cf T4842.45 and T 4843.23. It was under no obligation to address other media allegations; cf T4842.44.
[723] T4844.20. T 4885.44, T 4913.15.
[724] Submissions on Media Allegations on Junkets and Visa Allegations, [144].
[725] Submissions on Media Allegations on Junkets and Visa Allegations, [202].

(d) that Crown dealt with Tom Zhou as the operator of the "Chinatown junket";[726]

(e) the allegations that Crown circumvented or compromised proper visa processing.[727]

872. The evidence also establishes that other allegations in the media made were false, including that:

(a) Crown helped bring criminals through Australia's borders in ways that raised serious national security concerns.[728]

(b) The allegation that Crown brought the Chinese President's cousin, Mr Ming Chai and Mr Tom Zhou on a Crown private jet to Coolangatta was a false allegation.[729]

873. The gravity and falsity of the foregoing allegations of criminal conduct by Crown underscore the fact that the interests of the company and its shareholders demanded action by the Board and the Board needed to act with urgency.

874. *Third*, as to the central allegations, these have largely been addressed in the submissions that have already been made about the China Arrests, junket operators and anti-money laundering. However, something further needs to be said concerning the way in which the parts of the Advertisement under the heading Junket Operators and Anti-Money Laundering have been criticised.

875. In relation to junkets, Crown appreciates that the Amended Terms of Reference require an investigation of the allegations that Crown Resorts "*partnered with junket operators with links to drug traffickers, money launderers, human traffickers and organised crime group*s". However, the media allegations about Crown's involvement with junkets went far beyond this. They made serious allegations that Crown was "in bed" with junkets or engaged with junkets in a joint partnership enterprise to carry out criminal activities. The thrust of the allegations, and certainly the imputation or insinuation, was that Crown was acting in concert with junkets in carrying out a joint enterprise that involved, or was likely to involve, criminal activities to the knowledge of Crown. Further, the allegations were made in media statements published to the public at large. So an important question is what the media allegations would convey, by way of implication, imputation, insinuation or direct allegation, to an ordinary reader or viewer of the allegations.[730] In Crown's submission they would convey the most serious allegation that Crown was

[726] Submissions on Media Allegations on Junkets and Visa Allegations, [174].
[727] Submissions on Media Allegations on Junkets and Visa Allegations, [341].
[728] Counsel Assisting accepted that this allegation was false): see Submissions on Media Allegations on Junkets and Visa Allegations, [342].
[729] Second Jalland statement, [49] to [55].
[730] See, by way of analogy to the law of misleading or deceptive conduct: *Parkdale Custom Built Furniture Pty Ltd v Puxu Pty Ltd* (1982) 149 CLR 191, 199 (Gibbs CJ), 209 (Mason J); *Tobacco Institute of Australia Ltd v Australasian Federation of Consumer Organizations Inc* (1992) 38 FCR 1, 48; *TPC v Optus Communications Pty Ltd* (1996) 64 FCR 326, 336 (Tamberlin J); *Campomar v Nike International* (2000) 202 CLR 45 at 85.

knowingly involved in criminal activities by persons with whom it was acting in concert or in partnership.

876. Contrary to the approach adopted by Counsel Assisting, there is a world of difference between public allegations of this kind expressed in the language that the media did, and internal marketing jargon found in Crown's confidential business records that referred to "partnering with junkets". In the latter context, it is clear that all that was being referred to was the existence of a business contract or business arrangement that would provide, like any such contract or arrangement, benefits to each of the contracting parties. On the other hand, the media allegations and the extreme language that was used conveyed very different things to the public, including the allegation that Crown was acting in concert with junket operators, or in some sort of joint enterprise, that involved criminal activities. In the context of the public media allegations, references to a business partnership would necessarily convey to ordinary readers a joint enterprise, sharing objectives, assets and liabilities, within which Crown was acting as the junket's agent and vice versa for the achievement of partnership purposes.

877. In these circumstances, it was both understandable and reasonable for Crown to set out in the advertisement under the heading Junket operators, the actual facts as to the nature of its relationship with partnerships, i.e., "*the junkets are not Crown's. They are independent operators who arrange for their customers to visit many casinos globally. Crown deals with junkets and their customers in essentially the same way as other international casinos*." The Advertisement did not use the word "partnering". Moreover, there is and was no basis for the allegations that Crown had knowingly joined together with junkets to engage in criminal activities as part of some kind of joint enterprise.

878. As to the balance of the section of the Advertisement dealing with junket operators, those further statements were based on the material that the Board had before it. One can argue about the choice of the adjectives, and with the benefit of hindsight Crown directors conceded that there were shortcomings in the junket vetting process that directors were not apprised of when they made the decision to publish the Advertisement. But that is an entirely different thing from the suggestion that Crown was acting improperly or unsuitably by deciding to refute the way in which its relationship with junkets had been falsely described in the public media.

879. As to AML, the context of the media allegations is that money laundering is a criminal offence. That offence requires proof that the money in question does in fact constitute the proceeds of crime, or is believed to constitute the proceeds of crime, when it is dealt with. The Amended

Terms of Reference rightly say that the allegations were to the effect that Crown Resorts had engaged in money laundering, that is that it had committed criminal offences.

880. The statements in the Advertisement under the heading Anti-Money Laundering were directed to refuting the allegation that Crown was knowingly involved in or knowingly assisting money laundering. In the context of allegations of money laundering to which Crown was responding, both the reference to Crown facilitating it or turning a blind eye to it were references to forms of actual knowledge of criminal conduct that were levelled against Crown.

881. Crown maintains that there is and was no basis for the allegations that Crown was engaged in money laundering, or was knowingly involved or knowingly assisted money laundering. Given the seriousness of the allegation and the material that was before the directors, their decision to refute allegations of knowing involvement were reasonable and understandable. The allegations were rightly refuted.

882. *Fourth,* the Advertisement contained a factual inaccuracy. The erroneous statement was that *"the parent of the SunCity junket* [with whom Crown deals] *is a large company listed on the Hong Kong Stock Exchange, which operates globally"*.[731] Crown dealt with Alvin Chau, the Executive Chairman, and a substantial shareholder, of the company listed on the Hong Kong Stock Exchange, not the corporate entity. Mr Chau was and is a close associate of the listed SunCity entity, such that the erroneous statement did not mislead the reader of the Advertisement in any substantive respect. The statement was removed from the subsequent advertisement Crown Resorts published in response to the media allegations on 6 August 2020.

883. *Fifth*, there was a suggestion from Counsel Assisting that there was also an error in paragraph (e)(ii) of the Advertisement because there was one person whom it is said that Crown continued to deal with – Zhou Qiyun - who had a connection with what was known as the Chinatown Junket. However, paragraph (e)(ii) was directed only to the junket operators or players mentioned in the 60 Minutes program. This particular individual was not mentioned in the program. The only person mentioned in connection with something called the Chinatown Junket was Tom Zhou. The Advertisement was accurate in stating that Crown did not deal with Tom Zhou. Further, the statement that was made in paragraph (e)(ii) was supported with the material that was provided to the directors. If there was an error in what is said in paragraph (e)(ii) for the reasons advanced by Counsel Assisting, it is not an error by the directors that goes to the suitability of Crown Resorts or the suitability of the Board of directors.

884. *Sixth*, in relation to visa processing, Counsel Assisting have conceded that the allegations were "largely incorrect" and that there was nothing improper in the arrangement that Crown

[731] See, eg, T.4174.15 – 34 (Horvath XN); T.3424.01 - 03 (Poynton XN).

negotiated with the Department of Immigration. Further, the allegation that Crown shopped around for the most favourable consulate official was found to be unsupported by any evidence. The expression "largely incorrect" seems to be based on the proposition that the Department invited Crown to indicate whether it supported the visa application in accordance with a checklist supplied by the Department. This was not an endorsement of the applicant. Nor did the inclination of support say anything about matters of probity or integrity which the Department had made very clear were matters about which it alone would make a judgement.

885. *Seventh*, the balance of the matters which particular directors have conceded in respect of the Advertisement are hindsight reflections relating to inapposite use of language,[732] insufficiently contextualised statements, or statements that some directors now think should not have been included (ie, the paragraph concerning the former Crown employee in China),[733] rather than factual inaccuracy.[734]

886. *Eighth,* faced with media allegations,[735] Crown determined that it needed to act very quickly. Rather than take time to fully investigate the July 2019 allegations, in circumstances where similar media allegations suggesting the company had associations with criminal elements had been made and had not "gone away",[736] Crown decided to forcefully respond. A different view could have been taken, as one director observed in his evidence. However, this was a hindsight reflection and the circumstances that led the Board to act as it did cannot be understated.[737] In any event, as noted elsewhere in these submissions, this Inquiry has already led, and will continue to lead, to a range of changes in how Crown operates. Important among those changes is the process Crown applies to determining the individuals or groups with whom it decides to do business. Crown will in the future treat allegations that patrons or counterparties have criminal connections by reference to a different standard than it has in the past.

887. Another critical area of improvement is the manner in which Crown's risk management processes are engaged so as to ensure that the Crown Board, or at least the Risk Management Committee, are properly informed. These improvements are addressed in detail in the final section of these submissions. It is trite to observe that the decisions of the Board of a large

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[732] See, eg, T.3980.01 – 17 (Demetriou XN).
[733] T.4284.01 – 34 (Halton XN).
[734] The statement in the Advertisement that *"Crown does not now deal with any of the other junket operators or players mentioned in the programme, apart from one local player"* was correct insofar as the 60 Minutes programme was concerned. Properly construed, the statement was confined in its reference to the 60 Minutes programme, rather than the media publications more broadly (the opening paragraph of the Advertisement draws a clear distinction between the 60 Minutes programme and 'related media articles'. Crown accepts, however: (a) that there was reference made to the Neptune Group in an article published in the Nine press on 27 July 2019. The Neptune Group was a junket with whom Crown dealt at the time of the Advertisement; and (b) there is work that can be done to better understand the relationships between junket operators and individual patrons, and who stands behind a particular junket, and this work will form part of the global review of junkets which Crown will undertake under the supervision and direction of the Board.
[735] See, eg, T.3374.24 (Poynton XN).
[736] See, T.3144.06 – 07 (Johnston XN).
[737] See, eg, T.4100.25 – 35 (Korsanos XN).

publicly listed company such as Crown depend heavily on the quality of the information on which those decisions are based. The passage of time has shown that the Board's decision to publish the Advertisement was based on imperfect information.[738] The work that is being done to improve the informational flows within Crown, and in particular information in relation to compliance and financial crime risk, will ensure that the decision-making of the Crown Board when faced with similar circumstances in the future will be based on better information.[739]

888. *Ninth,* Crown accepts that the opening section of the Advertisement adopted a very strong tone. A number of directors observed that with hindsight they would have adopted a different tone in the advertisement. Other directors observed that the tone of the advertisement was proportional to the nature of the attack which had many false elements to it. In retrospect, the same points about the false allegations could have been made without the strong tone in the opening section of the Advertisement.

889. *Tenth*, and relatedly, another criticism suggested by Counsel Assisting was that the Australian Resorts business, and in particular Mr Felstead and Mr Preston, were not the appropriate people to be investigating the allegations.[740] To the extent that there is substance to this criticism, then it too is something that will be remedied by the organisational restructuring within Crown and the creation of the new Compliance and Financial Crimes Department. The separation of this compliance function from the business will ensure that there is a distance between the profit-generating operation and the compliance function in a way that did not exist previously and did not exist within the Australian Resorts division at the time the media allegations were published and investigated.

890. Crown accepts that the media allegations were wider and more nuanced than allegations of conscious wrongdoing and that, with the benefit of hindsight, Crown could have responded differently to the allegations than through publishing a strongly worded refutation in the form of the Advertisement.[741] But the decision to publish the Advertisement must be viewed in its particular context, and by reference to the most serious allegations to which the Advertisement was responding, none of which, Crown respectfully submits, have been made out. In those circumstances, it is wrong to suggest that this decision reflects poorly on the culture at Crown, or that the governance failings which occurred in relation to Crown's business in China before

[738] See, eg, T.3143.35 – 43 (Johnston XN); T.3417.33 – 40 (Poynton XN); T.3443.11 - 40 (Alexander XN); T.3974.25 – 30 (Demetriou XN); T.4126.10ff (Horvath XN); T.4375.36 – 41 (Halton XN); T.4500.36.45 (Coonan XN).
[739] T.4337.42 – T.4338.12 (Halton XN)
[740] T.3418.25 – 45 (Poynton XN); T.4173.18 – 45 (Horvath XN)
[741] See also, eg, T.4500.36.45 (Coonan XN); T. 4376.42 – T.4377.01 (Halton XN); T.3418.01 - .05 (Poynton XN).

October 2016 remain relevant to the assessment of current suitability because of the decision to publish the Advertisement.[742]

[742] Cf: Submissions of Counsel Assisting: Closing Remarks on 9 November 2020, [6]; Counsel Assisting Written Submissions, "China Arrests", [361].

G. NO ADVERSE FINDING SHOULD BE MADE AS TO CROWN'S SUITABILITY

G1. Summary of submissions on the evidence insofar as it relates to suitability

891. The foregoing submissions, and the evidence that it has described, should lead to the conclusion that the Licensee is a suitable entity to give effect to the Barangaroo Restricted Gaming Licence and the CC Act, and that Crown Resorts is a suitable entity to remain as a close associate of the Licensee.

892. So far as the impact on suitability is concerned, the foregoing submissions about the China arrests, junkets, anti-money laundering, and CPH can be summarised as follows.

China Arrests

893. Crown accepts that its risk-management structures were not engaged in the conduct of its business in China, and that this non-engagement led to significant mistakes being made, including the Board being denied control of the risk appetite of the company in relation to China. The failure to escalate important developments in the operating environment in China to board-level committees and to the wider board meant that a small group of individuals made the decisions about how to respond to those risks. The Board should have made those decisions and remained in control of the risk appetite.

894. Further, the management of the external advice obtained in connection with the China operations was inadequate. All of that advice as it came in should have been provided to, assessed, and considered by Crown's internal lawyers. That Crown's internal lawyers obtained copies of much of the advice only after the China arrests was a failing.

895. But these mistakes and failures do not reflect dishonesty or a lack of integrity. To the extent that the China arrests were the result of a failing of culture at Crown, those cultural failings did not encompass deceptive or dishonest conduct. The mistakes made in China were honest mistakes. The overwhelming evidence is that members of senior management who decided to manage risks "on the ground" without engaging the company's risk management processes and committees did so in reliance on the advice they received. In the aftermath of the China arrests, Crown took conscientious steps to address the failures that had occurred.

896. Notwithstanding the length of Counsel Assisting's submissions on the China arrests, there is little analysis in support of the ultimate contention that conduct which occurred four years ago, in relation to a jurisdiction where Crown ceased operating shortly thereafter, *"can lead only to a conclusion of* [present] *unsuitability"*.[743] The connection sought to be drawn by Counsel Assisting is

[743] Counsel Assisting Written Submissions, "China Arrests", [365].

that the China Arrests were the result of "*extensive risk management failures, corporate governance failures, cultural failures and ethical failures*" and that those failings .[744] That submission overlooks many things, including:

(a) The unique circumstances attending Crown's operations in China which created risks that were not representative of Crown's business operations generally.

(b) The fact that mistakes and failings in China were genuine mistakes and were not failures the result of dishonest conduct or conduct that was indicative of a lack of integrity.

(c) The immediate cessation of all operations in China by early 2017[745] and the changes and substantial improvements Crown has implemented since the China arrests occurred in late 2016, including improvements in connection with its risk management frameworks, corporate governance and culture (as described further below).

(d) The Crown Resorts Board's authorisation of a full review of all other overseas operations by Crown. That review was undertaken in the first part of 2017.[746] The Board agreed that there should be a post-mortem investigation of what had gone wrong that lead to the China Arrests, but on legal advice it considered that the investigation should be undertaken by the legal team conducting the Class Action, with the assistance of company representatives, as the Class Action traversed the same factual issues.[747]

(e) The implementation of organisational changes at the highest level of the company. The CEO, Mr Craigie, departed by agreement. Mr Rankin also stood down as Chairman.[748]

(f) In mid-2017, Ms Siegers was engaged to carry out a complete overhaul of the risk management processes and structures within Crown. She directed particular attention to the steps that could be taken to embed a culture whereby all significant events and risks were brought to the attention of the relevant risk management processes and committees.[749]

(g) The board implemented new processes relating to the review of junket relationships. All existing junket relationships were reviewed and many were terminated. Further due diligence measures were put in place together with new approval and review processes.

897. Counsel Assisting's attempt to contemporise the so-called governance and cultural failings

[744] Counsel Assisting Written Submissions, "China Arrests", [360].
[745] Witness statement of John Alexander, [63].
[746] Ex BJ58 (CRL.506.006.5405 at 5412).
[747] T4397/20-29; T4407/4-9; T4604/34-4605/19.
[748] From the evidence given by Mr Packer, it can be inferred that this was caused by the fact that the major shareholder had lost confidence in his stewardship as Chairman, and his lack of oversight and involvement in relation to matters that transpired in China: T3602/39-43; T3609/6-9.
[749] T2489/3-16.

which led to the China Arrests is grounded in the current Board's decision to publish the Advertisement in response to the media allegations in July 2019. Counsel Assisting submit that "*[a]lthough the China Arrests occurred four years ago, the flawed response by the board to the media allegations in 2019 by its published advertisement indicates that the cultural issues giving rise to unsuitability are not merely historical*".[750] For the reasons set out in the preceding section of these submissions addressing the Advertisement, the decision to publish the Advertisement in response to the media allegations should have no bearing on the question of whether the Licensee or Crown Resorts is suitable. That is particularly so in relation to the China Arrests, in respect of which the advertisement was a direct response to the allegation that Crown knew that the conduct of its staff constituted an offence in China and that it deliberately flouted the law. The Advertisement stated that this allegation was wrong. Counsel Assisting has accepted that the allegation was baseless. It was rightly refuted by the Crown Resorts Board. With the benefit of hindsight, Crown could have been responded to allegations of criminal conduct differently than in the form of the Advertisement as published. But it is incorrect to submit that the decision to respond to the allegations about knowingly breaking the law in China was itself *"flawed"* and the contention that this *"indicates that the cultural issues giving rise to unsuitability are not merely historical"* in the context of the China arrests is misconceived.[751]

898. The lessons learned from the China arrests have underpinned reforms Crown has made in relation to its risk management and governance processes, as well as work to improve the organisation's culture. These are canvassed in the section headed 'Assessing Current Suitability' below. Those measures, coupled with the passage of time since the China arrests occurred, the nature and cause of the mistakes in China, and the specific lens through which suitability is to be assessed – present suitability to operate the restricted gaming facility at Barangaroo – all weigh strongly in favour of a conclusion that the China arrests do not impact on the assessment of suitability under Part A of the Amended Terms of Reference.

Junkets

899. In relation to junkets, on 17 November 2020 the Board of Crown Resorts resolved that each of Crown Melbourne, Crown Sydney and Crown Perth would:

(a) permanently cease dealing with all junkets; and

(b) only recommence dealing with a junket operator if that junket operator is licensed or

[750] Counsel Assisting Written Submissions, "China Arrests", [361].

[751] Counsel Assisting also endeavour to make the China arrests relevant to the assessment of current suitability by alleging that Crown Resorts did not in fact rely on the legal advice it received in relation to the legality of its operations in China. Despite overwhelming evidence that management relied on the advice that the operations were legal, Counsel Assisting asserted there was no reliance by Crown because all board members were not aware of a particular piece of advice about taking staff out of China (See T 4912.25). This contention is specious.

otherwise approved by the gaming regulator in the State in which it operates.[752]

900. Thus, to the extent that it could be said that Crown's previous dealings with junket operators created an unacceptable risk that the management and operation of the Restricted Gaming Facility would not remain free from criminal influence or exploitation, then that risk has been removed by the Board's decision. That decision was a momentous one, both because it has very significant financial implications for the income stream that will be generated by the operation of the Barangaroo Facility, and also because the decision may place Crown at a significant disadvantage if its competitor, The Star, continues to deal with the same range of junket operators that Crown has been criticised for dealing with.

901. This resolution is the final step in a re-evaluative process Crown has been undertaking on junkets for some time. As the ultimate question for the Inquiry is whether Crown is *presently* an unsuitable person to be concerned in the operation of the Barangaroo restricted gaming facility, this re-evaluative process, and its conclusion provides a basis for answering the ultimate question of suitability favourably to Crown, at least insofar as it relates to Crown's dealings with junkets.

902. In addition to Crown's resolution to permanently cease all dealings absent licensure or approval or sanctioning of a junket by Crown's gaming regulators, the following matters are also relevant:

(a) As accepted by Counsel Assisting,[753] Crown's due diligence processes with respect to junkets have evolved and improved over time. From 2017, very substantial improvements were made to Crown's due diligence process. Those processes involved collecting a broad range of due diligence material. However, Crown accepts that the range of material can be broadened still further, as recommended by Deloitte, and that will be so in any future junket due diligence process.

(b) In August 2020, Crown decided to suspend all of its junket relationships until 30 June 2021 to allow for a comprehensive review.[754] This was a genuine step, even though it has in practice been impossible since March 2020 for junkets to operate at Crown Melbourne or Crown Perth.

(c) As Ms Coonan made clear in her evidence[755] the period of the suspension was also to allow a decision to be made as to whether Crown wished to continue dealing with

[752] ASX Release, "Future Junket Relationships – Update", 17 November 2020.
[753] Counsel Assisting Submissions on Junkets, [255]–[279].
[754] The statement of issues at [20] appeared to cast doubt on whether this was, in fact, the purpose of the suspension. No submission is made to that effect in the submissions of Counsel Assisting. There is no basis for the doubt suggested in the statement of issues: see, eg, ex AE17 at .0003; ex AE18 at .0017; ex AB58 at .0002; statement of Guy Jalland dated 14 September 2020 (ex CH1) at [88]; Jalland T 3328; Coonan T 4557, 4562–4563.
[755] T.4557–4559.

junkets at all; and only if the answer was affirmative, how to best structure Crown's future due diligence, approval and review processes.

(d) In parallel with these steps, Crown was undertaking a thorough consideration of how to improve its junket (and persons of interest) processes. Notwithstanding the decision taken above, this work will continue and will still have practical value because it may assist regulators in considering the course they want to take in the future. The Deloitte Junket Due Diligence and Persons of Interest Process Review that Crown commissioned has identified a series of matters which Crown accepts have been shortcomings in its junket due diligence and persons of interest review processes.[756] In accordance with Deloitte's recommendations, among other things, Crown will adopt the stance that any future process that might be worked out with regulators should include these features:

(i) due diligence would expand to those who finance, guarantee, represent and otherwise participate in the management or profits of a junket;

(ii) Crown would seek to improve its ability to recognise patterns and associations, and draw together connective threads, including by seeking declarations from junkets, increasing the sources of due diligence material, better cross-referencing information against internal databases, improving training and guidance (including defined escalation points and triggers for further investigation), engaging third party investigation support in appropriate cases, and improving the systems for retention and recording of due diligence decisions;

(iii) Crown's compliance and AML teams will have greater input into any due diligence process for junkets; and

(iv) Crown would seek to engage more proactively with law enforcement and other agencies as part of its due diligence processes.[757]

(e) If Crown does indeed deal with any junket operator in the future under new regulatory arrangements, the ultimate decision as to whether Crown would begin or continue a relationship will be made by the new Head of Compliance & Financial Crimes.[758] In the new organisational structure to be implemented by Crown, that position will have

[756] Exhibit BM9.
[757] The limitations in the Deloitte review identified at CA [295] do not undermine either the cogency of Deloitte's proposals, or the extent to which Crown's engagement of Deloitte and decision to implement those proposals is a marker of suitability.
[758] See the statement of Ken Barton dated 16 September 2020 (ex CB1) at [80] and Mr Barton's 10 September 2020 board paper (ex CB6); see also Barton T 2861–2.

a direct reporting line to the Board.[759]

903. It is unfair to characterise these conscientious attempts to improve and remediate as "*too little too late*" and "*tokenistic*".[760] It is a strong marker of suitability, not unsuitability, that Crown has taken these proactive steps *vis a vis* junkets.

904. As to the evidence regarding Crown's past dealings with junket operators, and the impact those dealings have upon the question of the Licensee and Crown Resorts' suitability, Crown's position can be summarised as follows:

(a) the evidence does not support a finding that individuals with whom Crown Resorts dealt had probable links to organised crime and/or triad connections;

(b) Crown accepts that some of the junket operators with whom it dealt may fairly be described as being of questionable repute. But that was not, at relevant times, the regulatory or industry standard according to which the question of disqualification of junket operators was assessed. The fact that, consistently with that standard, Crown entered into junket relationships with them is not a basis to conclude that it is presently unsuitable.

(c) The criticism that decision-makers too readily dismissed adverse information as "unsubstantiated allegations" must take into account the contemporary regulatory and industry approach. Further, it is necessary to recognise that the question posed by the regulatory regime is not based on *reputation* but upon "repute having regard to character, honesty and integrity". There are instances where Crown accepts that the wrong judgements were made at the time in its assessment of particular junket operators. There are other instances where Crown accepts that different judgments should be made in the future, and where it made the correct decision.

(d) Crown accepts that historically there was not any formal documentation of the rationale for decisions to approve new junket operators or to continue to deal with existing operators upon review. Crown also accepts that its due diligence processes have been too narrowly focussed on the junket operator, albeit that obtaining "visibility" on others involved in the junket is not easy. These are matters identified by Deloitte which

[759] See Ken Barton statement dated 16 September 2020 (ex CB1) at [80] and Mr Barton's 10 September 2020 board paper (ex CB6); see also Barton T 2861–2.

[760] CA, [289] and [290]. The criticism of Mr Kaldas' engagement is simply that it is at an early stage and may encounter difficulties (CA [291]–[293]). That may be accepted, including because of COVID-19 related delays (Indeed, it is to be noted that the idea of an Australian Casino Integrity Group predates Mr Kaldas' engagement, and owes its origin to a proposal made by Mr Preston in November 2019 (see the statement of Joshua Preston dated 20 February 2020 (ex F78) at [228]–[230])).

will be addressed in any future junket due diligence process.

905. In sum, the evidence in relation to Crown's past historic dealing with junkets does not reflect dishonesty on the part of Crown, or a lack of character or integrity. The essential criteria for assessing suitability requires reference to Crown Resorts' actual character, honesty and integrity (cf: reputation of those with whom it has previously had dealings). None of the shortcomings that have been identified in Crown's past junket processes, given the applicable regulatory or industry standards prevailing at the time, provides a sound basis for impugning *Crown's* character, honesty or integrity in such a manner as to render it unsuitable.

Anti-money laundering

906. Crown recognises that casinos are a target for money laundering.[761] Crown accepts, as set out in detail in the AML submissions, that certain transactions examined by the Inquiry raise money laundering concerns. And Crown accepts that its AML systems and processes at Crown Melbourne and Crown Perth have not, in the past, been effective to adequately manage the risk that money laundering poses to a casino operator. Crown has, however, for some time been in the process of strengthening and enhancing its approach to AML risk. Again, *present* suitability must be evaluated having regard to the *present* state of Crown's AML/CTF program and policies, and its *present* resourcing, as distinct from what existed at some prior point in time. While past conduct is, of course, relevant, the weight to be given to it must be evaluated having regard to what, if anything, has changed in terms of Crown's appreciation of money laundering risk and its response to that risk. Recent improvements to Crown's AML system and processes, and the expansion of its AML resourcing, have been significant. Crown has also engaged expert consultants to conduct reviews, both in relation to past AML failings, as well as for the purposes of strengthening its AML response in the future.

907. As set out in the AML submissions, since 2017 Crown has made significant advancements in relation to its AML controls and processes. Further significant steps have been undertaken in response to concerns raised in this Inquiry. Broadly stated, those steps reflect a shift in Crown's approach to AML, away from an overt focus on compliance with the obligations imposed under the AML/CTF Act, particularly the reporting requirements, toward supplementing compliance with a risk-based focus aimed at proactively trying to prevent money laundering from occurring in Crown's casinos.[762] This shift is being implemented through various measures, including:

    (a) Separating the AML function from compliance and other functions within the business,[763] including through the establishment of a new Financial Crimes and

[761] See, eg, Third Barton Statement, [54].
[762] Barton XN 23.9.2020 T.2774.40-2775.23.
[763] Presentation slides entitled "Crown Resorts Limited, Board Discussion Materials" prepared by Ken Barton EX CB 4 CRL.682.001.0001 at .0005. Barton III [91] EX CB1 CRL.697.001.0033.

Compliance department.

(b) The recruitment of Nick Stokes into the position of Group Manager, AML, combined with a significant increase in the number of members within the AML team. Recruitment for the various roles within the AML team are underway and includes two dedicated AML employees located in Sydney. On 2 November 2020, Mr Stokes was appointed as the AML/CTF Compliance Officer for each of Crown Sydney, Crown Melbourne and Crown Perth.[764]

(c) A review and amendment to the AML/CTF Program and the policies and procedures in support of that Program. On 2 November 2020, the Part A Program joint program was approved by the board of each of Crown Sydney, Crown Melbourne and Crown Perth and was endorsed by the board of Crown Resorts.[765]

(d) Transitioning from a manual to an automated transaction monitoring and related systems. Since 2017 Crown has been developing, with external parties, the automated transaction monitoring system AML Sentinel to enhance its ability to detect and monitor transactions for an AML compliance perspective.[766] Crown is also introducing a new casino management system, IGT Advantage, to replace SYCO[767] (and which will be introduced for Crown Sydney), which has greater tracking and reporting capabilities.[768] Crown has also implement an improved case management system to improve the documentation and processing of incidents which present a risk for money laundering. Crown has developed Unusual Activity Reports which are submitted internally for review by the AML team.

(e) The introduction of additional controls to mitigate the money laundering risks associated with cash transactions This includes requiring that all cash gaming transactions occur at the Cage.

(f) A change in approach to third party transfers. Crown has developed a Third-Party Transfer Policy which sets out that Crown will not accept or make payments to or from third parties without prior notice and written approval from the Chief Operating Officer and the Group General Manager of AML. Under its Money Remitters Policy, Crown will only deal with money remitters in exceptional circumstances.

(g) Eliminating or reducing cash deposits into Crown's bank accounts. Crown accepts that

[764] Third Barton Statement, [105].
[765] Fourth Barton Statement; Ex AO76.
[766] Preston 1 [188], Barton III [63]-[67].
[767] Counsel Assisting Submissions [315].
[768] Barton III [107].

permitting patrons to deposit funds into its bank accounts creates a risk of money laundering. Steps have been taken to reduce the prevalence of cash deposits into Crown's accounts and Crown has been actively engaged with ANZ in relation to this process, as set out in detail in Crown's AML submissions.

(h) Strengthening the way in which 'high' or 'critical risk patrons are dealt with under Crown's AML framework, including formal escalation of the patron's circumstances to the Group General Manager, AML. In the case of high risk customers, the relationship will be reviewed; the relationship with critical risk customers will be terminated unless there is a clear rationale for retaining the customer (and documented by the POI Committee or senior management).

(i) Improving and expanding the AML training offered to all Crown staff.[769]

908. These measures have been devised and implemented, and further improvements will be devised and implemented, having regard to the expert advice and assistance of external consultants, including Initialism, Promontory and Grant Thornton.

909. The Licensee and Crown Resorts will, of course, need to remain vigilant to the inherent risk that money laundering poses to a casino operator. The matters raised in this Inquiry regarding potential money laundering have been of great concern to Crown's directors and senior executives. These matters have been a catalyst for Crown broadening and, in some instances, accelerating, reforms to its AML/CTF Program, relating policies, and resourcing. Crown accepts that it has not previously done enough to proactively manage this complex risk. The Inquiry should be satisfied, in light of the evidence of the current CEO, Mr Barton, the Chairman, Ms Coonan, the Chair of the Risk Management Committee and Crown Sydney, Ms Halton, and the balance of Crown Resorts' directors, that the evidence in this Inquiry in relation to money laundering risks in Crown's casinos – including through the (now closed) Riverbank and Southbank patron accounts – has served as a reckoning for the company. It is being taken with the utmost seriousness. The company accepts that in the past it did not always act with sufficient insight or urgency when faced with deficiencies in its AML processes or indications of money laundering in the past. Further, Crown, its Board of directors and its senior management are determined to implement the best possible AML practices and procedures, and it is taking steps to that end as quickly as possible. The Inquiry can proceed on the footing that the company's appreciation of the risk, and its capability to address that risk, has fundamentally changed for the better. For these reasons, Crown respectfully submits that concerns arising from the AML evidence in this Inquiry do not justify a finding of unsuitability on the part of

[769] Memorandum from Xavier Walsh and Nick Stokes to the Crown Resorts Limited Board, Crown Melbourne Limited Board, Crown Sydney Gaming Pty Ltd Board and Burswood Limited Board entitled "Implementation of AML Joint Program" dated 30 October 2020, Ex AO83 CRL.728.001.0193.

either the Licensee or Crown Resorts.

The Melco transaction and the influence of CPH

910. For the reasons set out in the section addressing these matters in detail, neither the evidence in relation to:

(a) the share sale by CPH Crown Holdings Pty Ltd (CPH Crown) to Melco Resorts and Entertainment Ltd (Melco Resorts) in May 2019; nor

(b) Crown's relationship with CPH and Mr Packer, and the influence of CPH and Mr Packer over Crown's affairs,

provides any basis for a finding that the Licensee or Crown Resorts are unsuitable.

911. So far as the sale by CPH Crown to Melco Resorts is concerned, that sale did not place Crown in breach of any its obligations under its regulatory agreements and, even if it had done (which is denied), Crown did not have knowledge of the transaction or the power to prevent the transaction from occurring. It follows that it can have no bearing at all on the Licensee's or Crown Resorts' character, honesty or integrity, or any other matter relevant to an assessment of suitability.

912. As to the influence of CPH and Mr Packer, the evidence, evaluated in its proper context and as a whole, does not provide any basis for a finding of unsuitability. That said, Crown recognises that, in all the circumstances, its best interests would be served by taking steps to adjust certain aspects of its relationship with CPH, namely:

(a) the provision of services to Crown by CPH under the Services Agreement, including services provided at a managerial level by CPH nominated directors;

(b) the provision of information to Mr Packer and CPH under the Controlling Shareholder Protocol; and

(c) the workload of Mr Johnston as director, including the number of committees of which he is a member.

913. Crown has addressed each of the above issues. Crown has already taken the step of terminating the Controlling Shareholder Protocol and Services Agreement with CPH. There are clear limitations as to what Crown, as a company, can do in relation to its shareholders. This was exemplified by the Melco transaction in which no Crown Resorts director, save for the CPH appointees Mr Johnston, Mr Jalland and Mr Poynton (the latter on the morning of the day the transaction was finalised), and no Crown Resorts senior executive, had any knowledge of the sale to Melco before it had been finalised. By terminating the Controlling Shareholder Protocol

and Services Agreement, Crown has taken a significant step of limiting the influence of its major shareholder by eliminating the mechanism through which that shareholder received information not available to all shareholders. Whether or not CPH are willing to provide the enforceable undertakings suggested by Counsel Assisting is a matter for that company.[770] Counsel Assisting's proposals for addressing Crown's relationship with CPH are addressed in detail below.

G2. Assessing current suitability

914. As just outlined, the evidence of past conduct of Crown Resorts in relation to the risk of money laundering, junkets, the China arrests and CPH must also be viewed in its full and proper context. And the relevance of past conduct to the assessment of *present* suitability will vary according to the particular circumstances and the nature of the past conduct. It is respectfully submitted that the weight to be attached to evidence of past failings on a suitability review must be influenced by what, if any, measures have been taken by the licensee or close associate to remedy those failings, and by the commitment demonstrated by the company, through its Board of directors and CEO, to continue to implement all necessary improvements. This must follow because the statutory enquiry is whether or not the Licensee is currently and prospectively suitable to give effect to the Restricted Gaming Licence and the CC Act, rather than whether *it was* suitable at any previous point of time.

915. As outlined, Crown has taken specific remedial action in relation to each of the topics inquired into for the purposes of Part A of the Amended Terms of Reference. Crown submits that these specific measures are appropriately tailored to the specific past failing or mistake such that the Authority can proceed with confidence that such failings or mistakes won't reoccur in the context of the Licensee's operation of the restricted gaming facility at Barangaroo.

916. Perhaps because of the manner in which these specific issues have been addressed, and are no therefore no longer relevant to an assessment of *present* suitability, Counsel Assisting's closing remarks sought to emphasise *general* 'problems' of risk management, governance and culture at Crown that are said to subsist today and require rectification before the Licensee and Crown Resorts can be found suitable.

917. There is a notable lack of specificity in Counsel Assisting's submissions regarding the so-called 'fundamental' problems that, it is said, continue to affect Crown Resorts' risk management, governance and culture today. The only specific submission made in this respect is that Crown

[770] T.4979.25 – 43.

Resorts has a 'dysfunctional' culture which includes:

(a) an arrogant indifference to regulatory and compliance risk;

(b) a culture of denial and unwillingness to examine and address past failings; and

(c) a culture which prioritised the pursuit of profit above all else.[771]

918. This submission is incorrect at several levels.

919. *First*, the evidence does not establish that Crown Resorts had a 'dysfunctional' culture. The approach of Counsel Assisting miscarries in this regard because it assumes that the "culture" of an organisation is homogeneous. It may be accepted that, prior to the China arrests, the international VIP team historically had aggressive sales targets with a higher risk appetite than the rest of the business.[772] But it does not follow that this is an accurate characterisation of the culture of Crown as a whole, much less an accurate characterisation some four years on from the arrests and the cessation of operations in China.

920. *Secondly*, and in a similar connection, the contention conflates past culture, which influenced past mistakes, with the question of Crown Resorts' organisational culture today. This conflation occurs because Counsel Assisting decide to ignore, or minimise, the substantial steps Crown has taken to look at, and address, matters of risk management, governance and culture. Crown respectfully submits that the seriousness with which Crown Resorts has taken matters of concern which have emerged in this Inquiry, the immediate and conscientious steps taken to address those concerns, the manner in which each individual Crown Resorts director, and multiple members of senior management (including the CEO), appeared and gave evidence to the Inquiry, and the commitment to engage with the Authority in relation to operations at the restricted gaming facility in a comprehensive way (as addressed further below), are all inconsistent with Counsel Assisting's submission that Crown Resorts continues to exhibit a culture of arrogant indifference to regulatory and compliance risk, is unwilling to examine and address past failings, and which continues to prioritise profit above all else.

921. Crown has conceded mistakes and failings throughout these submissions. Those failings extend, in part, to culture. Crown accepts that repeated failures to draw matters to the attention of the risk-management committees can be properly characterised as involving a cultural failing. Again, however, that failing has been clearly identified and will not be repeated. In the aftermath of the China arrests, Crown engaged Anne Siegers to overhaul the company's risk management policy, processes, and structures to ensure they represented best practice. Part of the risk-management training she designed and has delivered is directed to emphasising the importance of drawing to

[771] Counsel Assisting, 'Closing Remarks', [5].
[772] Ex CD4 at .0029; Johnston T 3088.3–13; Coonan T 4574.30–40)

the attention of the risk-management committees anything that is potentially a risk – whatever view a particular individual might take of it. That training recognises that the breadth of perspectives brought to bear though engagement of the risk-management structures may well identify risks not perceived by a particular individual.[773]

922. In short, to the extent that past cultural, risk management or governance failings were causative of issues that have emerged in this Inquiry, those failings are historical and do not render the Licensee or Crown Resorts unsuitable. The steps taken by Crown to grapple with the issues the subject of this Inquiry demonstrate the seriousness with which they are being taken and reflect a corporate mindset which is the obverse of arrogance or denial.

923. Because of Counsel Assisting's tendency to ignore dismiss, or minimise, the improvements Crown has implemented, or is in the process of implementing, to strengthen its risk management frameworks, corporate governance, and culture, it is necessary to list them compendiously. They are as follows:[774]

(a) Implementing an organisational restructure, including through the establishment of a new Compliance and Financial Crimes department which is independent of Crown business units and which has a direct reporting line to the Board. In addition to the new role of Head of Compliance and Financial Crimes, Crown has committed to creating new heads of Culture and Human Resources, Internal Audit, and VIP Operations (and removing the roles of CEO – Australian Resorts and Chief Legal Officer – Australian Resorts).

(b) Reviewing Crown's legal entity structure and the maintenance of subsidiary Boards with committees.

(c) Embarking on a process of Board renewal and succession planning so as to maintain appropriate experience, expertise and diversity.

(d) Deciding to appoint external consultants to undertake a review of Crown's organisational culture.

(e) Developing measures to better monitor and measure Crown's culture and to report that information to the Crown Resorts Board so as to ensure the company's culture is

[773] Mr Felstead explained the importance of the risk management changes that followed the China Arrests: see T1244/9-22.
[774] See Presentation to ILGA dated 9 November 2020 (CRL.743.001.0021); Exhibited to Sixth Barton Statement dated 17 November 2020, [13].

being regularly assessed and measured.

(f) Revising Crown's remuneration structures in relation to short term incentives.

(g) Developing a strategy to clearly communicate Crown's risk appetite and expectations regarding risk and compliance to all Crown staff.

(h) Enhancing risk reporting to Crown's executive management and the Crown Resorts Board (including through the implementation of a standardized enterprise risk management system to collate risk information and facilitate risk reporting).

(i) Introducing Executive Risk and Compliance Committee meetings to coincide with Risk Management Committee meetings as well as establishing monthly Compliance Officer Meetings.

(j) The CEO, Mr Barton, directly engaging with the 20 most senior executives at Crown to drive the standard for the business and, in particular, set clear expectations on the fact that compliance comes before profit at all times.

924. As already noted, these recent initiatives build on improvements Crown has been undertaking over an extended period of time. These improvements have been assisted by reviews in other regulatory contexts, including the VCGLR Sixth Review which occurred in 2019. As part of that review, the VCGL engaged PwC to provide it with a report advising of any material matters of a risk systems nature the VCGLR should take into account in determining whether Crown Melbourne was still a suitable person to continue to hold the licence in accordance with section 25 of the Act. PwC concluded that while the core fundamentals of a risk management framework were in place and were applied across the business, there were areas of enhancement possible to ensure Crown Resorts met best practice. These matters were reflected in the updated Risk Management Strategy which was approved by the Crown Resorts Board on 12 June 2019. That strategy included a section (s 7.4) which addressed how a risk was managed once it was identified, and included a requirement that, once the risk emerges, its rating is reviewed and consideration of the relevant control framework takes place. In addition, the specific risk will be managed either by management, or by the risk management committee and the Board, depending on where the risk falls relative to the Crown Resorts' Board's stated risk appetite.

925. *Fourth*, the Commission should not draw any adverse conclusion as to the character of any Crown director or senior executive, and therefore no adverse finding about the character of the Licensee or Crown Resorts by extension. As the Commissioner observed, no challenge to the integrity or honesty of any of Crown's current directors or its Chief Executive Officer, Mr

Barton, has been made.[775] So far as the assessment of the character of individuals within Crown can rationally affect the assessment of the character of the company, which in turn is relevant to the assessment of suitability, Crown makes the following points.

926. The first is that the notion of character is not at large. It must be construed by reference to the particular statutory context in which it appears. Here, the question concerning the character of Crown's directors and officers is whether there is a basis in the evidence to draw an adverse conclusion as to their character which is relevant to the suitability of the Licensee (and Crown Resorts) to give effect to the Restricted Gaming Licence and the CC Act. That, in turn, must be answered by reference to the primary objects of the CC Act, and whether the character of Crown Resorts' close associates, including its directors and officers, raises a concern as to whether: (a) the Restricted Gaming Facility will remain free from criminal influence or exploitation; (b) gaming at that facility will be conducted honestly; (c) the facility will harm the public interest.

927. This approach finds support in authority.[776] None of the criticisms made by Counsel Assisting of any Crown director, or of Mr Barton, impugn the character of those individuals in a relevant sense for the purposes of reviewing suitability under the CC Act.

928. All directors of Crown, along with Mr Barton, did their best to assist the Commission through their evidence. They gave honest and forthright evidence. It is clear that each director, and Mr Barton, provided their own honest opinions and account of matters to the best of their recollection. The manner in which Crown's directors attended to give evidence, and sought to assist the Commission to the best of their ability, reflects positively on their character and the character of Crown Resorts.

929. The Commission should find that Mr Barton is of good character. He gave frank, honest and credible evidence. He acknowledged mistakes and errors that he had made. The matters submitted by Counsel Assisting to adversely affect his credit primarily concern Riverbank and Southbank. As a result, they are addressed comprehensively in the AML section of these submissions. In brief summary, Mr Barton has made concessions in relation to the way in which the concerns raised by Mr Birch and ANZ were handled. These concessions are principally set out in the third and fifth statements of Mr Barton. Crown, through Mr Barton, has accepted that Crown's response in relation to the concerns that were raised by Mr Birch and ANZ was inadequate.[777] Those concessions demonstrate that there has been a recognition of the issues that were raised. The frank and forthcoming concessions made by Mr Barton and Crown bear

[775] T.5674.37 – 40.
[776] *Prothonotary of the Supreme Court of NSW v Alcorn* [2007] NSWCA 288 at [57] – [60]; *Wang v Australian Securities and Investments Commission* [2019] FCA 1178 at [73]; *McBride v Walton* (NSWCA unreported, 15 July 1994 at [15] per Kirby P.
[777] See in particular Barton III at [39]–[40] and Barton V.

favourably on their honesty and integrity and their preparedness to work with the Inquiry and the Authority to proactively address concerns that have been raised. As to Mr Barton's fourth statement, his responses in that statement were the result of a misapprehension of the question that was being asked by Solicitors Assisting. There ought be no suggestion that these matters weigh against Mr Barton in terms of character or honesty or integrity, in the sense of a knowing disregard of what he recognised to be serious issues. Mr Barton's conduct, both in relation to the 2015 email from Mr Birch and in relation to the query from the Inquiry, was the result of a misapprehension on his part. He focused narrowly on the manner in which the question was framed – "*very serious issues in respect of Crown's failures as outlined in the email*" - rather than looking more widely at the matters identified by Mr Birch. As Mr Barton's fifth statement made clear, at a general level he accepts, and always accepted, the subject matter of Mr Birch's 2015 email concerned very serious issues. The extensive concessions and acknowledgments he made concerning AML matters in his third statement, volunteered by Mr Barton in advance of attending to give evidence, make that plain. There should be no adverse finding because Mr Barton misapprehended the nature of the question he was being asked by Solicitors Assisting in correspondence. To his credit, once that misapprehension was brought to his attention, he immediately corrected it and clarified his position.

930. Andrew Demetriou gave honest evidence and assisted the Inquiry to the best of his ability. As to his preparation of a few brief notes in advance of his examination, the preparation of such notes by a witness ahead of a lengthy examination represents careful and diligent conduct, including because it assists the witness in gathering his or her thoughts on key concepts and issues they are likely to be examined about. Mr Demetriou immediately accepted that the existence of the notes should have been disclosed to the Inquiry. However, it should be borne in mind that Mr Demetriou was giving evidence in a remote location without the presence of his counsel and instructing solicitors, and that he had not been informed by his legal team that he should not have notes with him. The challenges presented by the lockdown in Melbourne while Mr Demetriou and other Melbourne-based Crown witnesses were giving evidence is not to be underestimated.

931. In any event, Mr Demetriou was clear in his evidence that, other than in respect of one answer he gave in respect of the definition of independent directors, he did <u>not</u> read from his notes and that his answers represented his own beliefs.[778] Counsel Assisting challenged Mr Demetriou on this point, including by showing Mr Demetriou video footage of the evidence he gave in respect of an answer he gave in regarding culture of compliance. That footage only shows that Mr Demetriou looked down at his desk – and it does not show that Mr Demetriou was reading

[778] T4038/31-33.

from his notes at that moment. Mr Demetriou denied that he read from his notes,[779] and consistently maintained, in the face of persistent questioning from Counsel Assisting, that the answers he gave in relation to culture reflected his own beliefs.[780] The Commissioner should find that Mr Demetriou gave his evidence honestly, and that his conduct is not worthy of disapprobation and should have no bearing on the assessment of the character or suitability of Crown Resorts.

932. The orders recently made by the Federal Court in proceedings brought by the Australian Securities and Investments Commission against Harold Mitchell do not in any way reflect on his character and therefore have no relevance to the suitability review. That is so for at least the following reasons:

(a) The proceeding in which those orders were made related exclusively to Mr Mitchell's conduct as a director of Tennis Australia (**TA**) some 8 years ago. Character is to be assessed as at the date of the hearing or, in this case, the date of the Inquiry, not at some prior time.[781] The conduct giving rise to the breaches occurred in December 2012. The evidence at trial, accepted by the judge, was that the conduct ceased in December 2012, after an intervention by TA's Chairman,[782] and Mr Mitchell did not involve himself in the negotiations from then until the contract in question was finalised in July 2013.

(b) While Mr Mitchell was a director of Crown Resorts Limited at this time, it was never alleged by ASIC that Mr Mitchell was acting in any capacity other than as a director of TA in relation to the events the subject of the Proceeding.

(c) The declaration of contravention refers to three instances in December 2012 where Mr Mitchell disclosed information to Bruce McWilliam of the Seven Network, Tennis Australia's broadcast partner, during the course of broadcast rights negotiations. The Court's declaration[783] states that Mr Mitchell breached s 180(1) by failing to exercise his powers and discharge his duties with reasonable care and diligence by:

(i) forwarding an email to Mr McWilliam on 1 December 2012;

(ii) telling Mr McWilliam on 2 December 2012 that he had "jumped on" TA's CEO, Mr Wood, for appointing an agent to sell TA's domestic broadcast rights; and

[779] T4059/20-24.
[780] T4036/29/30; T4036/29/45; T4038/5.
[781] *Ex parte Tziniolis; Re The Medical Practitioners Act* (1966) 67 SR (NSW) 448 per Holmes JA at 475
[782] *Australian Securities and Investments Commission v Mitchell (No 2)* [2020] FCA 1098 at [49].
[783] *Australian Securities and Investments Commission v Mitchell (No 3)* [2020] FCA 1604 (**penalty judgment**).

(iii) sending Mr McWilliam an email on 13 December 2012 to hold off on sending points relating to Seven's negotiating position to Mr Wood in advance of a proposed meeting.

(d) In each instance, the declaration expressly notes that this conduct gave rise to reasonably foreseeable harm to TA – a necessary ingredient of the cause of action – although this was not Mr Mitchell's purpose.

(e) Importantly, at paragraph [14] of the penalty judgment, Beach J notes: *"I found that none of the conduct giving rise to Mr Mitchell's three contraventions caused any actual damage to TA. I accepted that the contraventions were each predicated upon reasonable foreseeability of harm, but not actual harm. Further, I found that Mr Mitchell was motivated at all times by a belief that he was acting in the interests of TA*". As this makes clear, the findings of breach in no way reflect on Mr Mitchell's character, honesty or integrity, either in December 2012 or, more importantly, now.

933. There being no question of Mr Mitchell's character, honesty and integrity being impugned, either generally or in the specific sense relevant to the CC Act, and no relevant nexus between Mr Mitchell's conduct while a director of Tennis Australia and Crown Sydney's Licensee's ability to give effect to the Licence and the objects of the CC Act, the Federal Court's orders have no relevance to this Inquiry.

934. The critique of Jane Halton's evidence can be dealt with in short compass. The highest the critique can be put is that Ms Halton gave lengthy answers to questions that, on occasion, were not directly responsive to the question asked. While Crown does not accept that any critique about non-responsiveness should be accepted, the length of some of Ms Halton's answers, for which she apologised, in no way reflect on character. Ms Halton was an honest witness who did her best to try and assist the Commission.

935. As for the CPH nominated directors of Crown Resorts, Mr Johnston and Mr Jalland, Crown adopts the submissions of CPH as to why no adverse conclusion should be drawn from the evidence about the character of either director.

936. In reply submissions, Counsel Assisting contended that the 'candour and insight' of Crown Resorts is relevant the assessment of current suitability.[784] submits that an application of those factors to the evidence before the Inquiry supports a finding of current suitability. This is based not only on the fact that Crown has taken significant steps in direct response to matters of concern which have emerged in the Inquiry by excising the source of the concern from its business (eg, termination of junket relationships, termination of the controlling shareholder

[784] T.5828.15ff.

protocol), but it is also apparent in the frank and honest concessions made by Mr Barton and Crown's directors in giving evidence to the Inquiry, and in the conscientious and extensive remediation program that Crown has been implementing in response to matters raised in this Inquiry over a number of months.

G3. Comparative and contextual matters relevant to the assessment of suitability

937. Crown notes that Part B of the Amended Terms of Reference require the Commissioner, in inquiring and reporting in respect of the regulatory framework and settings, to take into account international best practice with respect to gaming operation and regulatory frameworks. Crown has informed the Authority that it supports regulatory reform and wishes to engage with the Authority constructively on this question.[785] Crown submits that matters going to the regulatory framework and settings, including the experience in international jurisdictions, can also be instructive in addressing the suitability review required by Part A of the Amended Terms of Reference.

938. To this end, Crown has obtained reports from independent experts on gaming law in Nevada, Massachusetts, Macau, and Singapore. Crown has also obtained a report from an independent expert focusing on the regulatory settings in New South Wales. The following submissions are limited to highlighting some particularly pertinent features of the expert evidence and approaches to addressing questions of suitability in other jurisdictions. In doing so, Crown does not intend to limit or to derogate from any further submissions Crown seeks to make in response to Part B of the Amended Terms of Reference. Crown otherwise commends the expert evidence to the Inquiry in its entirety. Each report is comprehensive in respect of the jurisdiction it addresses.[786] Crown notes the following features, in particular, which emerge from this expert evidence and material from foreign jurisdictions.

939. *First*, notions of suitability, and objects analogous to those underpinning the CC Act, are

[785] Presentation to ILGA dated 9 November 2020, (CRL.743.001.0021).

[786] The expert reports which Crown seeks to rely on are as follows: New South Wales: expert report of Paul Newson dated 15 November 2020 (**Newson Report**); Nevada: expert report of Scott Scherer dated 23 November 2020 (**Nevada Report**); Massachusetts: expert report of David J Apfel dated 23 November 2020 (**Massachusetts Report**); Macau: expert report of Pedro Banco dated 23 November 2020 (**Macau Report**); Singapore: expert report of Lau Kok Keng dated 17 (**Singapore Report**).

features of the regulatory landscape applying to casino operators in most jurisdictions.[787] In each of those jurisdictions, suitability is assessed on a holistic basis that gives full weight to the circumstances in which relevant events occurred and also full weight to any remedial actions that have been undertaken to address any identified shortcomings.

940. As Mr Newson opines, suitability is assessed holistically. In considering matters of suitability, it is also important to take a proportionate approach.[788] Mr Newson observes, by reference to case studies in the UK:[789]

(a) "It is instructive to look at some case studies which illustrate the enforcement approach in response to compliance failures in comparable jurisdictions to assist with some comparisons around proportionate regulatory action and holistic consideration of suitability. In my experience, serious compliance failures can be cured with robust remediation supported by intensive regulatory assurance, provided the regulated entity acknowledges concerns and is dedicated to addressing past shortcomings and commits to an agreed remediation plan."

(b) The approach adopted by the UK Gambling Commission is to investigate "serious deficiencies with gambling operators' AML compliance, over multiple years … with ongoing supervision and inspections to test compliance and the adequacy of the operators' remediation".

(c) For the Gambling Commission, "the most serious potential sanctions, including adverse suitability findings and licence revocation are only contemplated when confronting the most severe examples of compliance failures, occasioning intensive regulatory intervention over extended periods, aggravated by recidivism and repeated failure to implement agreed improvements in accordance with an approved

[787] For example, with respect to Nevada, Mr Scherer highlights that to grant a licence or make a finding of suitability, the Nevada Gaming Commission must be satisfied that (NRS 463.170(2)) the applicant is: (a) a person of good character, honesty and integrity; (b) a person whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest of this State or to the effective regulation and control of gaming …, or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming … or in the carrying on of the business and financial arrangements incidental thereto; and (c) in all other respects qualified to be licensed or found suitable consistently with the declared policy of the State." (Nevada Report (Mr Scott Scherer), answer to Q 5.1). With respect to Massachusetts, Mr Apfel observes that the Massachusetts legislation and implementing regulations "out a number of animating principles, including a transparent and competitive licensing process designed to protect the public from potential negative social impacts, the institution of rigorous public safety, regulatory and enforcement mechanisms, and ensuring that casinos deliver the desired economic benefits to Massachusetts citizens" (Massachusetts Report (Mr David Apfel), answer to Q 1.1). With respect to Macau, Mr Branco observes that Macau has the following fundamental regulatory principles: (a) the exploitation and operation of casino games of fortune and chance are made appropriately; (b) that those who are involved in the supervision, management and operation of games of fortune and chance in a casino are suitable for the exercise of these functions and the assumption of these responsibilities; and (c) that the exploitation and operation of games of fortune and chance in a casino are carried out fairly, honestly and free from criminal influence. (Macau Report (Mr Pedro Branco) at [221], answer to Q 5.2).

[788] Newson Report at [5.80]-[5.81], [5.84], [5.86]-[5.87], [5.92].

[789] Newson Report at [5.80]-[5.81], [5.84], [5.92].

remediation pathway".

941. Similarly, as Mr Apfel opines, "the Commission has routinely shown that it will hold gaming licenses and prospective licenses to 'the highest standards – on a continuing basis,' but that it will also be fair and give strong consideration to good faith efforts at remediation in making its suitability determinations" … "the Commission always recognizes and takes into account the positive actions of the licensee when confronted with problems, even systemic ones. In this regard, the Commission has never revoked any license it has issued, and to the best of my knowledge it has never withdrawn a finding of suitability that it has made".[790]

942. *Second*, the manner in which the responsibility of ensuring regulatory compliance and monitoring is shared between the regulator(s) in each of the jurisdictions varies. However, on balance, the manner of regulation is skewed in favour of a "risk-based" approach, rather than a prescriptive approach. This is particularly so with respect to the UK, and Nevada (and Australia). Mr Newson opines:[791]

> In my experience effective contemporary regulatory frameworks are underpinned by risk-based and intelligence led approaches. This is to ensure limited resources are effectively targeting the most serious risks and to enable government and regulatory interventions to better manage the competing tensions between de-risking an environment and facilitating commerce or industry and the associated social and economic activity and benefits.
>
> …
>
> A difficulty with prescriptive approaches is they are often unsophisticated and blunt and are prone to repeat inefficient and unproductive regulatory activities and cultivate tedious adherence manifested as a 'tick and flick' mentality or a de minimis approach within industry of regulators irrespective of the risk
>
> …
>
> Risk based approaches rely on effective interrogation of data and careful assessment of intelligence and target the most serious risks and escalate interventions proportionate to the materiality of the matters/s being investigated or the severity of the identified risks, while attempting to minimise intervention and burden on lower risk activity.

943. Mr Newson also observes that this approach is consistent with that adopted in the UK, quoting from the UK Gambling Commission's 2018-19 Annual Report, which he commends as a model of international regulatory best practice. The Report states:[792] "*More than anything, over the next 12 months and beyond, we have to ensure that our regulatory regime and processes are fit for purpose – and are risk-based, automated, efficient and transparent*."

944. In Nevada, an approach that is predominantly "risk-based" in nature is adopted. Licensed

[790] Massachusetts Report (Mr David Apfel), [9], [12].
[791] Newson Report at [5.18], [5.20], [5.22].
[792] Newson Report at [5.22].

casino operators in Nevada are monitored by the Nevada Gaming Control Board (**NGCB**), but are expected to ensure regulatory compliance and report violations to the NGCB. Nevada is a large state geographically and casinos are located throughout the state. It would be difficult and expensive for the NGCB to constantly monitor all of the casinos in Nevada. Self-reporting is a significant mitigating factor in most disciplinary actions. As a result, Nevadan casinos typically report any violations they uncover, including through their internal audits. Self-reporting is likely the single greatest source of violations addressed by the NGCB, followed by independent and NGCB audits and then patron complaints.[793]

945. In Macau, the Macau Gaming Law applies (and the gaming concession contracts specify) a comprehensive set of diversified obligations to the concessionaires, the breach or non-compliance of which, particularly of fundamental or material obligations, may be a cause for the casino's termination by the Government, depending on its seriousness or repetition. Within the legal and regulatory framework there is small margin for self-regulation of the casinos in ensuring regulatory compliance, for instance, concerning the conceptualization and implementation of standard operating procedures, internal control systems, protocols, policies or manuals etc. These however, on the one hand, must comply with extensive minimum requirements set out by the DICJ (by way of guidelines or instructions) and, on the other, they must be subsequently approved by the regulator, who may determine or impose all kind of adjustments. It is relevant to note that there is a constant interaction between the casinos and the DICJ regarding all relevant aspects of gaming, particularly operations and AML/CFT compliance.[794]

946. In Singapore, the Casino Regulatory Authority (**CRA**) is the key regulator of casino operations and has oversight over most aspects of a casino's business including its dealing with third parties, the gaming equipment and machines used, junket arrangements, licensing of casino employees and on-going monitoring of the associates of, and shareholdings in, a casino operator. The Casino Crime Investigation Branch, a specialised crime division of the Criminal Investigation Department of the Singapore Police Force is responsible for detection, investigation and enforcement of criminal offences that relate to casino operations. The casino operators themselves are responsible for ensuring that they conduct their operations in compliance with all applicable laws and regulations however, a degree of self-regulation is permitted, namely with regards to the development and implementation of a system of internal controls and frameworks for preventing money-laundering and terrorism financing (although the CRA may conduct audits on the effectiveness of these internal systems and frameworks). The casino operator also undertakes due diligence on, and providing an endorsement of, junket

[793] Nevada Report (Mr Scott Scherer), answer to Q 1.2.
[794] Macau Report (Mr Pedro Branco), answer to Q 1.2.

operators and "special employees" for consideration by the CRA in relation to applications by a junket operator / special employee for a licence.[795]

947. In Massachusetts, an approach is adopted which provides for an "active oversight role on the part of the Commission" whilst imposing "extensive self-reporting and self-regulatory obligations on licensees".[796]

948. *Third,* the approach taken by gaming regulators to investigating allegations of misconduct by casino operators in a context akin to a 'suitability review' is informative. There are two relatively recent case studies in Nevada that are relevant to remediation of money laundering issues, which bear some (although not precise) resemblance to matters arising in this Inquiry:

(a) In 2013, Caesars Entertainment Corporation (**Caesars**) admitted to wilfully violating anti-money laundering laws and suspicious activity reporting requirements under US legislation, which in turn constituted a violation of the Nevada Gaming Commission Regulations. In addition to paying substantial pecuniary penalties, Caesars agreed to:[797]

(i) conduct periodic external audits and independent testing of its AML compliance program;

(ii) report to the Financial Crimes Enforcement Network of the United States Department of the Treasury on mandated improvements;

(iii) adopt a rigorous training regime; and

(iv) engage in a "look- back" for suspicious transactions.

The admission of wilful violation of AML laws by Caesars puts this case, Crown respectfully submits, in a more extreme category than what the evidence in this Inquiry has demonstrated. Notwithstanding a finding of wilful breach, however, there was no finding of unsuitability or sanction affecting the operator's licence.

(b) Also in 2013, the Las Vegas Sands Corporation (**The Sands**) was found to have committed AML breaches in Las Vegas. In addition to substantial pecuniary penalties, The Sands agreed to, among other things:[798]

(i) restructure its compliance and legal branches. At the time of the allegations, the company's compliance function was shared with the legal function. The Sands committed to a restructure such that its compliance function became a

[795] Singapore Report (Mr Lau Kok Keng), answers to Q 1.1 and 1.2.
[796] Massachusetts Report (Mr David Apfel), answer to Q 1.2.
[797] NGCB complaint 11.09.2015, paras 53 and 5; FinCEN Assessment of Civil Money Penalty page 11.
[798] Department of Justice Press Release, 27 August 2013.

free-standing function with enhanced financial controls, an independent global controller, a larger internal audit program, and a newly created board compliance committee;

(ii) no longer employ or have any affiliation with any of the individuals implicated in the offending conduct, and to make significant resourcing changes, particularly in connection with compliance, by appointing as members of senior management people to head the company's legal, compliance, internal audit and financial gatekeeper functions.

949. Neither of these cases resulted in a finding of unsuitability on the part of the casino operator, consistently with Mr Scherer's observation that "Revocation [of a licence] is very rare".[799]

950. The Sands was also investigated in relation to its marketing operations in China. Unlike Crown, The Sands devised elaborate structures to encourage customers in mainland China to gamble at casinos owned and operated by The Sands outside of mainland China, as well as to generate political support or favour in China. This included the de-facto purchase of a basketball team in China, and the establishment of a business centre (the Adelson Centre) in Beijing, purportedly for the purpose of developing a centre for American companies seeking to do business in China, but was ultimately found to be for political purposes. The Sands were investigated by the Securities and Exchange Commission (**SEC**) and were found to have breached provisions of the *Securities Exchange Act* 1934 (US) concerned with maintaining accurate books and records and maintaining a reasonable system of internal accounting controls.

951. The Sands were fined by the SEC, the Department of Justice and the NGCB. The NGCB did not find The Sands to be unsuitable by reason of this conduct. However The Sands did commit to undertake a number of concrete remedial steps, including:[800]

(a) hiring a new general counsel and new heads of internal audit and compliance functions;

(b) establishing a new Board of Directors Compliance Committee and increasing compliance and accounting budgets;

(c) updating its Code of Business Conduct, Anti-Corruption Policy and guidelines regarding comps for government officials;

[799] Nevada Report (Mr Scott Scherer), answer to Q 1.1.
[800] *In the Matter of Las Vegas Sands Corp.*, File No. 3-17204, paragraph 50; Department of Justice Press Release, 19 January 2017.

(d) developing and implementing enhanced anti-corruption training and an electronic procurement and contract management system;

(e) implementing enhanced screening of both third parties and new hires and its contracting process;

(f) terminating the employment of all employees implicated in the conduct described above; and

(g) retaining new leaders of its legal, compliance, internal audit and financial gatekeeper functions.

952. The NCGB also recently investigated the licensee of the Wynn Las Vegas (**Wynn**) casino as to whether it remained suitable to hold its licence following allegations of sexual misconduct by one of its close associates, co-founder Steve Wynn.

953. On 26 January 2018, The Wall Street Journal (**WSJ**) published an article making allegations of serious workplace sexual misconduct and sexual harassment by Mr Wynn. Mr Wynn, along with his now ex-wife, Elaine Wynn, was a co-founder of Wynn Resorts and, at the time of the WSJ article, was the CEO and Chairman of the Board of Directors of Wynn Resorts.

954. Both the Massachusetts Gaming Commission (**MGC**) and the NGCB investigated the allegations outlined in the WSJ article. Through the investigations, the MGC and NGCB discovered multiple allegations of sexual misconduct and harassment against Mr Wynn dating back to 2005.[801] The MGC and NGCB found that senior executives at Wynn Resorts, including the Senior Vice President, Chief Human Resources Officer and General Counsel knew about most of these allegations but failed to initiate investigations.[802]

955. Notwithstanding a finding that Mr Wynn was unsuitable, neither the MGC nor the NGCB found Wynn Resort or its current employees unsuitable and neither regulator sought to revoke Wynn Resorts' casino licence. As Mr Apfel observes:[803]

> [W]here the [Massachusetts Gaming] Commission has found lapses or worse in matters of probity, it has acknowledged and given strong weight in its suitability determinations to pro-active steps taken by licensees and prospective licensees to admit mistakes and do better. Even in cases such as the Wynn Matter where the Commission has found "systemic corporate failures," it has not revoked the

[801] NGC 18-15 Nevada Gaming Control Board Complaint, 25 January 2019, para 36; In the matter of Wynn MA, LLC 30 April 2019, page 4. As to the MGC investigation, see Massachusetts Report (Mr David Apfel), answer to Q 4.1.
[802] NGC 18-15 Nevada Gaming Control Board Complaint, 25 January 2019, paras 41 – 43, 49 – 50, 58 – 59, 66, 79
[803] Massachusetts Report (Mr David Apfel), [10], see also [55]-[57].

company's license. Rather it has recognized that alongside the "significant breadth in . . . decision-making" authority that it has, "comes an equally significant duty of fairness," and it has sought to strike the "correct balance" between the two. Id. That balance, without exception, has recognized that licensees and prospective licensees, who are otherwise suitable, will be given a second chance particularly when they have taken steps to separate and distance themselves from individuals and entities whose probity has been called into question.

956. In response to the investigation, Wynn committed to a number of changes, including:

(a) appointing a new Chief Executive Officer and General Counsel;

(b) a commitment to refresh the board;

(c) refocusing efforts on the company workplace culture; and

(d) a 'separation agreement' with Steve Wynn, which required him to step down as an executive/director.

957. The consequence of the findings made as a result of these investigations was as follows:

(a) the MGC imposed a fine of US$35 million on Wynn Resorts;

(b) the MGC required a series of licence conditions, including an independent monitor to review and evaluate Wynn Resorts' adherence to policies and organisational changes;

(c) the MGC imposed a US$500,000 fine on Wynn Resorts CEO Matthew Maddox as well as licence conditions; and

(d) the NGCB imposed a fine of US$20 million on Wynn Resorts.

958. The MGC's condition that an independent monitor be appointed to review and evaluate Wynn Resorts' adherence to policies and organisational changes is addressed further below in connection with the possibility of a similar appointment being made in relation to ensuring the ongoing suitability of the Licensee and Crown Resorts' to operate the Barangaroo restricted gaming facility.

959. Crown submits that these examples provide a useful demonstration as to the approach that gaming regulators in the United States take to findings of misconduct or failings by licensed casino operators. They demonstrate, Crown respectfully submits, a practical implementation of the principle that a finding of unsuitability is the weapon of "last resort" in the regulator's armoury, and why it is appropriate for caution to be exercised before drawing any conclusions

as to unsuitability in this Inquiry.

960. In Singapore, neither of the two casino operators have been met with findings of unsuitability. Both casino operators have been censured and/or fined for breaches such as failing to display an accurate winning message on an electronic gaming machine, failing to prevent the persons without valid entry levies from entering and/or remaining on their casino premises, failing to prevent persons covered by exclusion orders or minors from entering the casinos, failing to keep surveillance footage for the required time period, and reimbursing the entry levies payable by Singapore citizens and permanent residents to a group of reporters covering an event at a casino.[804]

961. *Fourth*, as the comprehensive report of Mr Pedro Branco illustrates, Macau has at all relevant times had a comprehensive and rigorous regulatory regime governing the licensing and operation of casinos, junkets, and junket players. In Macau, gaming business is a highly regulated activity in all aspects.[805] The relevant regulator is known as the Gaming Inspection and Coordination Bureau or DICJ. The following features of the Macau regime warrant express mention.

962. A licence to operate a casino is only awarded to a prospective casino found suitable after an intensive probity vetting process. That process involves consideration of: the experience and reputation of the bidder, the nature, character and reputation of the companies belonging to the same group as the bidder and closely associated entities.[806]

963. The Gaming Law in Macau stipulates as well as a casino being subject to licensing and supervision, junkets are also subject to licensing and supervision. A fundamental requirement for the licensing of a junket is that the junket and its shareholders, directors and key employees must be considered suitable for their duties.[807]

964. The DICJ is an operator with a considerable ambit and powers. The DICJ's role and duties include overseeing, supervising and monitoring the activity of casinos, junkets and other relevant entities, regarding the fulfillment of their legal, regulatory and contractual obligations, and the exercise of other responsibilities provided for in the applicable legislation.[808]

965. The activity of junkets is regulated specifically by the Gaming Promoters Regulation and, when expressly authorized by a concessionaire to extend credit to patrons, by the Gaming Credit Law. In particular aspects of their activity, junkets are also subject to DICJ instructions,

[804] Singapore Report (Mr Lau Kok Keng), answer to Q 4.1.
[805] Macau Report (Mr Pedro Branco), answer to Q 1.2. Note that in Macau, junkets are known as "gaming promoters", a casino licence is known as "concession", and an applicant for a licence is known as a "bidder".
[806] Macau Report (Mr Pedro Branco), answer to Q 1.1.
[807] Macau Report (Mr Pedro Branco), answer to Q 1.1.
[808] Macau Report (Mr Pedro Branco), answer to Q 1.1.

orientations or guidelines, the majority of which are not made public by the regulator.[809] This matter highlights an important feature of the Macau regime, namely the confidentiality of various instructions, orientations or guidelines. The result is that whilst it is clear from the publicly available materials that the regulatory regime is comprehensive, it is necessary to appreciate that there is a further layer of regulation beyond that.

966. Noting that Macau has had a rigorous regulatory regime at all relevant times, it has in recent years taken steps to further increase scrutiny and regulation. Notably, these steps were largely taken in 2016 onwards – that is, following or towards the end of the late 2013 to 2016 period that has been a focus of the Inquiry's attention. In particular:[810]

(a) in 2016, strict accounting rules were imposed on gaming promoters with the expressed intention of improving the transparency of the gaming sector. Subsequently, the DICJ made public remarks that 35 junkets had failed to meet the new standards and therefore their licenses were not renewed;

(b) in May 2016, the DICJ issued the DICJ AML/CFT Instruction which redefined the duties, rules and minimum mandatory procedures applicable to the gaming industry in Macau, including casinos and junkets, for the prevention of the crimes of money-laundering and terrorism financing;

(c) this Instruction was subsequently amended in January 2019, by (i) introducing the definition of Foreign Politically Exposed Persons, (ii) enlarging the reporting scope of suspicious transactions for the purpose of including transactions and transactions attempts regardless of their value, and (iii) setting out an exception to the confidentiality obligation imposed on the recipients of the Instruction aimed at allowing the transfer of information concerning the report of suspicious transactions between companies of the same economic group subject to approval of the regulator.

967. Mr Branco observes, in light of the above steps: "*I would agree with the perception that the rules and regulations in relation to gaming promoters have become stricter in recent years*".[811]

968. To similar effect, Mr Scherer opines that both Nevada and Macau have strengthened their integrity measures, and:[812]

> [The compliance of Nevada casinos] with FinCEN expectations is much more uniform and robust today than it was in the 2013-2016 time period. Similarly, Macau strengthened its AML requirements and enforcement beginning in 2016, ahead of a FATF Mutual Evaluation Report in 2017. As a result, Macau junket operators have

[809] Macau Report (Mr Pedro Branco), answer to Q 2.2.
[810] Macau Report (Mr Pedro Branco), answer to Q 2.3.
[811] Macau Report (Mr Pedro Branco), answer to Q 2.3.
[812] Nevada Report (Mr Scott Scherer), answer to Q 2.10.

> much better AML compliance today than they had between 2013 and 2016. There has been an evolution leading to stronger AML programs and compliance throughout the global gaming industry over the course of the past 5 to 8 years.

969. As noted above, in 2016 there was a significant bolstering and tightening up of the regulatory regime in Macau, and 35 junkets lost their licenses. Suncity was not one of those junkets. That is significant. It also emphasises the desirability of assessing issues of suitability based on standards applicable today, applied to contemporaneous events, rather than assessing suitability by adopting today's more rigorous standards and applying them to a historical period.

970. As the foregoing illustrates, the fact that a junket is certified in Macau is important. It means that the junket has satisfied the various stringent requirements outlined above, many of which are ongoing. This is a matter that carries weight, and is not to be readily dismissed. Indeed, this matter is material to considerations in other jurisdictions. As Mr Scherer opines:[813]

> As a matter of deference to another government, the NGCB would consider the fact that a junket operator has been licensed in Macau and their record of compliance in Macau in making the registration determination, but licensing in Macau would not automatically result in registration in Nevada. A positive report from DICJ with regard to the junket operator's record of compliance would be a substantial positive.

971. Mr Scherer's opinion is not an outlier. To the contrary, it is widely supported, including by the Financial Action Task Force, which is the global money laundering and terrorist financing watchdog which sets international standards that aim to prevent these illegal activities and the harm they cause to society.[814] In a 2017 Mutual Evaluation Report, the Task Force gave Macau a "substantial" rating in the assessment of the effectiveness of its AML supervision. In a follow-up Mutual Evaluation Report in 2019, Macau was found to be "Compliant" in 22 and "Largely Compliant" in the remaining 18 of the Task Force 40 Recommendations. Mr Scherer observes:[815]

> These significant improvements in the regulation of junket operators and AML procedures has given the NGCB and Commission greater comfort in the involvement of Nevada-licensed companies in Macau gaming operations and relationships with Macau-based junket operators.

972. The evidence demonstrates that, in assessing whether to do business with a particular operator or patron (which category junket operators or patrons fall within), the mere fact that that operator or patron may have been subject to sustained media speculation or rumour that calls their character into question would generally not require a casino to cease doing business with

[813] Nevada Report (Mr Scott Scherer), answer to Q 2.8.
[814] See https://www.fatf-gafi.org/about/whoweare/.
[815] Nevada Report (Mr Scott Scherer), answer to Q 2.8.

that operator or patron. Rather, more commonly, such speculation or rumours:

(a) may prompt enhanced customer due diligence issues, as is the case in Singapore;[816]

(b) may be a matter for a casino to take into account in complying with the relevant regulations. In Nevada, a casino is required to "exercise discretion and sound judgment to prevent incidents which might reflect on the repute of the State of Nevada and act as a detriment to the development of the industry".[817] However, this Nevada regulation and other associated regulations are somewhat general and allow for subjective application. As a result, they are typically applied only where the potential damage to the State of Nevada or its gaming industry are clear;[818] and

(c) may be a matter for a casino to otherwise take into account. In Macau, besides the exercise of a *right of admission* by a casino or the DICJ AML/CFT Instruction's rules, there are no specific regulatory standards or vetting requirements that would require the casino to cease doing business with an operator or patron subject to sustained media speculation or rumour that calls their character into question. Consequently, it will be at the casino's discretion, pursuant to its own SOPs, internal controls or compliance programs or otherwise, to decide whether to exclude, to continue or to cease doing business with that operator or patron.[819] In Massachusetts, the MGC maintains an exclusion list, requiring casinos to exclude any person from a casino on the list. The language used by the Commission to describe the list suggests that the threshold for a person to be placed on the list is very high: "the list consists of persons who have violated or conspired to violate laws related to gaming, cheats, willful tax evaders, individuals whose presence in a licensed gaming establishment would adversely affect public confidence and trust in the gaming industry, and persons whose presence in a licensed gaming establishment poses the potential of injurious threat to the interests of the Commonwealth."[820]

G4. Paragraph 16(c) of the Amended Terms of Reference: changes to convert a finding of unsuitability into suitability

Framing the question under paragraph 16(c)

973. In considering the further measures, by way of practical and implementable steps, that the Licensee and Crown Resorts could take to address a finding of unsuitability, it is important to

[816] Singapore Report (Mr Lau Kok Keng), answer to Q 5.3.
[817] Nevada Report (Mr Scott Scherer), answer to Q 5.3.
[818] Nevada Report (Mr Scott Scherer), answer to Q 5.3.
[819] Macau Report (Mr Pedro Branco), answer to Q 5.4.
[820] Massachusetts Report (Mr David Apfel), [39].

keep sight of two things. First, the statutory criterion of suitability – addressed in detail in the opening section of these submissions – which is focused on character, honesty and integrity. Second, suitability must be informed by the objects of the CC Act identified in s 4A; that is, keeping gaming operations free from criminal influence, conducting gaming honestly, and controlling gaming operations so as not to cause harm to the public interest.

974. Counsel Assisting has put forward a specific suite of proposals to address the asserted "unsuitability".[821] Before addressing those proposals, Counsel Assisting outlined a series of contentions regarding the relevant legislative framework and regulatory agreements, specifically insofar as that framework and agreements concern the disciplinary powers conferred on the Authority by the CC Act (and any curtailment or modification of those powers by agreement).

975. In Crown's respectful submission, Counsel Assisting's contentions in this regard are premature and take the Inquiry into territory beyond that permitted under the 'Suitability Review' to be conducted under Part B the Amended Terms of Reference. Counsel Assisting's submissions are framed as being for the purpose of the Commissioner addressing *"paragraph 16(c) of the Amended Terms of Reference"*. That paragraph requires the Commissioner to inquire into, in the event the Commissioner concludes that either the Licensee or Crown Resorts is unsuitable, "*what, if any, changes would be required to render those persons suitable*".

976. As noted in the opening section of Crown's submissions regarding the framework pursuant to which suitability is to be assessed, in conducting the 'Suitability Review' the Commissioner is exercising the Authority's power of constant review prescribed by s 141(2)(c) of the CC Act.

977. Section 23 of the CC Act empowers the Authority to take disciplinary action against the Licensee if the Authority is of the opinion, for specified reasons, that (inter alia) the Licensee is no longer a suitable person to give to the license and the CC Act. Provided the Authority issues a notice specifying the grounds for disciplinary action pursuant to s 23(2) of the CC Act, and affords the Licensee with an opportunity to respond (under s 23(3) of the CC Act), the Authority may decide to:

    (a) take disciplinary action by giving written notice of the action to the licensee. That disciplinary action may constitute (a) cancellation or suspension of the licence (s 23(1)(a)); (b) the imposition of a pecuniary penalty of up to $1 million (s 23(1)(b)); (c) the amendment of the terms or conditions of the License (s 23(1)(c)); (d) the issue of a

[821] Submissions of Counsel Assisting: Paragraph 16(c) of the Amended Terms of Reference: Changes to Render Crown and its Close Associates Suitable.

letter of censure to the Licensee (s 23(1)(d)); and

(b) alternatively, issue a rectification order under s 24 of the CC Act which directs the Licensee to take specified action within a specified time.

978. But these powers can only be exercised by the Authority once there has been, relevantly, *consideration* by the *Authority* that the Licensee is not suitable and the statutory process has thereafter been complied with, including by providing the Licensee with an opportunity to respond. What steps the Authority is empowered to take following its decision to form a view about suitability, and how those powers are informed by provisions in the regulatory agreements that Crown has entered into with the State of New South Wales and/or the Authority,[822] have nothing to do with the task of this Inquiry. It is respectfully submitted that such matters are of no relevance to this Inquiry in the context of addressing the Amended Terms of Reference. In fact, they go far beyond those Terms. Crown respectfully submits that it is premature for the Commissioner to consider what, by way of disciplinary action, the Authority should do given the range of legal rights and obligations that arise in that kind of situation. Counsel Assisting's submissions on this point constitute advice to the Authority as to the powers of the Authority at some future point of time (rather than as a submission for the purposes of assisting the Commissioner address the Terms of Reference) and should therefore be discounted.

Changes proposed by Crown are sufficient to render a finding of suitability

979. If there is a finding of unsuitability, the measures and changes proposed by Crown are sufficient to render the Licensee and Crown Resorts suitable.

980. The Commissioner has asked for Crown to assume unsuitability on the part of the Licensee and/or Crown Resorts and assist with submissions as to how to achieve suitability.[823] In response to that request, this section proceeds on the assumption that, notwithstanding the case

[822] The Amended and Restated Framework Agreement between the State of New South Wales, Crown Resorts, the Licensee, Crown Sydney Property Proprietary Limited and Crown Sydney Holdings dated 7 July 2014 (Framework Agreement). The State Crown Financial Deed between the State of New South Wales, the Authority, Crown Resorts, the Licensee, Crown Sydney Holdings Proprietary Limited and Crown Sydney Property, dated 8 July 2014 (Financial Deed). The Financial Arrangements Agreement between the Authority, the Minister for Hospitality, Gaming and Racing, and the Licensee, dated 8 July 2014 (Financial Arrangements Agreement). The VIP Gaming Management Agreement between the Authority, Crown Resorts, the Licensee, Crown Sydney Property Proprietary Limited and Crown Sydney Holdings, dated 8 July 2014 (VIP Gaming Management Agreement).
[823] T.4821 to T.4822 (Hearing, 23 October 2020).

advanced by Crown in these submissions, the Commissioner finds that:

(a) Crown Sydney is an unsuitable licensee; and/or

(b) Crown Resorts is an unsuitable close associate of the licensee.

981. The progressive improvements that Crown has made over time, including in response to matters raised in the Inquiry, are also relevant to converting any finding of unsuitability based on *past conduct* of Crown Resorts into a finding that both it and the Licensee are *presently* suitable for the purposes of giving effect to the Restricted Gaming Licence and the CC Act. In this regard, Crown refers to the matters summarised in the preceding sections regarding the measures Crown has already implemented, or is in the process of implementing, on AML measures, junkets, culture and governance improvements, and the cessation of the provision of information to CPH and Mr Packer, otherwise than via the Board of Directors.

982. In addition to these matters, Crown submits that any finding of unsuitability can be addressed by the Authority closely supervising gaming operations at Crown Sydney and Crown engaging in regular consultation with the Authority to ensure that the Licensee remains a suitable person to continue to give effect to the Restricted Gaming Licence and the CC Act.

983. Crown has commenced a process of consultation with the Authority. Should it become necessary to do so, Crown would work with the Authority as part of a formal consultation process under cl 14 of the VIP Management Agreement. But for the reasons set out below, Crown believes that it can work with the Authority to appropriately address any concerns it has about suitability without the need for any other action by the Authority.

984. On 9 November 2020, Crown provided a detailed paper to the Authority regarding the proposed limited opening of Crown Sydney.[824] That presentation addressed: (a) the improvements and reforms implemented, or in the process of being implemented, by Crown; (b) the current AUSTRAC investigation and the recent Show Cause notice received from the VCGLR; (c) Crown's readiness to commence gaming operations; (d) proposed arrangements for the commencement of gaming; (e) and Crown's risk management approach including reference to Crown Sydney's Internal Control Manuals (**ICMs**).

985. The best way for the regulator to be satisfied that the Licensee remains suitable for the purposes of giving effect to its licence and the CC Act is to supervise the conduct of casino operations and engage with the Licensee about what, if any, further measures or modifications

[824] Presentation to ILGA dated 9 November 2020 (CRL.743.001.0021); Exhibited to Sixth Barton Statement dated 17 November 2020, [13]. On 30 October 2020, Ken Barton, Jane Halton and Helen Coonan met with representatives of the Authority to discuss the opening of the Restricted Gaming Facility. At this meeting it was agreed that Crown would prepare a paper for ILGA in relation to a solution that would both enable the proposed opening of the Restricted Gaming Facility to proceed and address the concerns that have arisen during the Inquiry.

are required.

986. Another means of 'converting' a finding of unsuitability on the basis of Crown Resorts' past conduct to suitability is through the mechanism of internal controls. Part 9 of the CC Act deals with casino accounting and internal controls. Section 124 of the CC Act provides that a condition of a casino licence (including the Restricted Gaming Licence) is that the licensee conduct operations in the casino in accordance with a system of internal controls and administrative and accounting procedures for the casino that have been approved in writing by the Authority.

987. The Licensee has already documented and submitted 14 ICMs to the Authority. The paper Crown provided to the Authority on 9 November 2020 refers to each of these ICMs and the implementation risk associated with the limited opening of Crown Sydney in respect of each. In addition to these 14 ICMs, Crown has submitted an additional ICM to the Authority for its consideration entitled: *"Internal Control Manual 15: Information Sharing, Regulator Supervision and Audit*".[825] The controls set out in this document are designed to ensure that the Authority has available to it the information it requires to maintain oversight of the operations in the Restricted Gaming Facility (and, specifically, the information it needs to fully and properly evaluate the Licensee's management of the risks associated with gaming operations).

988. The reports which Crown proposes to provide to the Authority pursuant to ICM 15 consist of the following:[826]

(a) regular reporting on all new members who have joined Crown Sydney;

(b) regular reporting on all guests who have entered the Restricted Gaming Facility;

(c) making gaming records and related reports available to the Authority upon request;

(d) compliance, AML and risk reports available to the Authority upon request;

(e) reports produced for meetings of the Persons of Interests committee, along with the decisions of that committee, to be made available to the Authority upon request.

989. The enhanced information sharing and oversight which Crown proposes, subject to further consultation with the Authority, would also include:

(a) an undertaking or commitment by Crown to self-report any breach of an ICM to the

[825] Presentation to ILGA dated 9 November 2020 (CRL.743.001.0021), p. 34.

[826] Presentation to ILGA dated 9 November 2020 (CRL.743.001.0021), p. 34.

Authority within 7 days of that breach occurring;

(b) periodic external reviews of Crown's AML Program and policies and Risk Management Frameworks;

(c) a process by which the Authority is able to engage directly with the Board of the Licensee and the Crown Resorts Risk Management Committee;

(d) a framework for regular meetings between representatives of Crown and representatives of the Authority regarding all matters concerning the operation of the restricted gaming facility at Barangaroo.

990. Under the CC Act, the approval of the Licensee's internal control procedures may be amended from time to time, as the Authority thinks fit, on the Authority's own initiative or on the application of the casino operator concerned.[827] A failure to comply with a requirement of an internal control procedure is met with a penal sanction under the CC Act.[828] Crown respectfully submits that the ability of the Licensee to work collaboratively with the Authority in relation to these controls, and for the Authority to identify any changes it considers necessary to be made to those controls, either as a result of its supervision of gaming operations under the proposed limited opening in December 2020, or because of the recommendations made by the Commissioner, is a further means through which to address any concerns about the Licensee or Crown Resorts' suitability.

991. A fundamental component of this enhanced monitoring and supervision is, as proposed by Crown to the Authority in the 9 November 2020 presentation: [829]

> *"Providing an opportunity for ILGA's inspectors to be able to more thoroughly review and audit Crown's operating processes in real time".*

992. Crown is committed to engaging with the Authority to find the best mechanism to facilitate this real time audit. It could be through inspectors on the gaming floor, or through high-frequency reporting, or a combination of the two. Crown recognises that this audit capability is particularly important in relation to AML. Crown accepts that the Authority should be put in a position by Crown where it has a full understanding of the capacities and operating effectiveness of the automated transaction monitoring program run through AML Sentinel. The precise mechanism through which this is achieved should be the subject of consultation with the Authority, but Crown is committed to ensuring that these consultations take place

[827] Section 124(2), CC Act.
[828] Section 124(4), CC Act.
[829] Presentation to ILGA dated 9 November 2020 (CRL.743.001.0021), p. 4.

and that a mechanism is agreed.

993. In oral closing submissions, Crown's senior counsel submitted that these enhanced controls to ensure adequate supervision and monitoring by the Authority can be given effect to in several ways, either by undertakings given by the Licensee and/or Crown Resorts, by directions issued by the Authority, or through the mechanism of ICMs (which are backed by the statutory powers referred to above).

994. Formalising the "changes" to Crown's processes and practices through undertakings or directions (or otherwise) also applies to the substantial organisational changes Crown is in the process of implementing (which are outlined in section G2 above in the context of the assessment of current suitability). Each of these reforms to Crown's governance, risk management and cultural practices can also be the subject of undertakings by Crown, or monitored through another mechanism so as to ensure they are being progressed and appropriately implemented.

995. A mechanism that, on reflection, Crown considers could provide the Commissioner and the Authority with assurance that these reforms, and any other reforms required by the Commissioner's recommendation, are being appropriately implemented and progressed is via the appointment of an Independent Monitor, funded by Crown. There is precedent for this in both gaming and non-gaming contexts.

996. As alluded to in section G3, a condition of the MGC allowing Wynn Resorts to maintain its licence in that jurisdiction in the wake of Steve Wynn being deemed unsuitable was the appointment of an Independent Monitor to review and evaluate Wynn Resorts' adherence to the company's revised policies and organisational changes. The appointment of an Independent Monitor appears to have been highly successful. As Mr Apfel observes:[830]

> [T]he Commission required that Wynn Resorts pay for and cooperate fully with a Commission-appointed independent monitor who would, without limitation, conduct a "full review and evaluation of all policies and organizational changes adopted by the Company," "recommend to the Company such measures and other changes necessary to correct any deficiencies identified," and "make such additional recommendations to the Company that the monitor deems appropriate on an ongoing basis over the course of its engagement." *Id. at 50-51*. The requirement of an independent monitor was put "in place for five years, subject to any petition for relief to the Commission after three years." *Id. at 51*.
>
> On August 15, 2019, the Commission appointed the Washington D.C. law firm of Miller & Chevalier—at Wynn Resort's expense and with the Company's full cooperation—to serve as the independent monitor. On May 21, 2020, the monitor released its first report, finding various positive changes including a "meaningful shift in culture [of compliance] at the highest levels of the organization." See Alejandra Almonte, "Independent Compliance Monitor Baseline Assessment Report" (Miller &

[830] Massachusetts Report (Mr David Apfel), [58]-[59].

Chevalier, May 8, 2020) at 2, available at https://massgaming.com/wp-content/uploads/Commissioners-Packet-5.21.20.pdf.

997. As the final sentence of the excerpt indicates, the appointment of the Independent Monitor resulted in significant positive outcomes being achieved by Wynn Resorts.

998. There are other examples where a similar mechanism has been used, including in the context of enforceable undertakings provided by Australian Financial Services Licensee holders under s 93AA of the *Australian Securities and Investments Commission Act* 2001 (Cth). The Australian Securities and Investments Commission (**ASIC**) usually requires that the implementation and effectiveness of a s 93AA undertaking be monitored. Monitoring is generally the responsibility of the entity concerned, but there are a number of instances where the relevant undertaking has required the company to appoint an independent expert to ensure the terms of the undertaking are being complied with and it is being given appropriate effect to. For example, in the context of concerns ASIC held with respect to the trading by each of Australia and New Zealand Banking Group Limited, Commonwealth Bank of Australia (**CBA**) and National Australia Bank Limited in the bank bill market, each of those entities agreed to ASIC appointing an independent expert to, among other things, conduct an assessment of the respective remediation programs that those entities developed to address ASIC's concerns.[831] There are numerous other examples of ASIC accepting similar enforceable undertakings from Australian financial services licensees that involved the appointment of an independent expert, submission of a remediation program, and an assessment by the independent expert of the effectiveness of that remediation program.[832]

999. Similarly, there are examples of other Australian regulators, including the Australian Competition and Consumer Commission and the Australian Prudential Regulation Authority, addressing compliance concerns through the use of enforceable undertakings that include the appointment of an independent expert or independent monitor.[833]

1000. Crown has also proposed that the Authority conduct an interim review of the Restricted

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[831] See: - NAB: https://download.asic.gov.au/media/4551196/028424907.pdf
- ANZ: https://download.asic.gov.au/media/4551130/028424906.pdf.
[832] See: - ANZ: https://download.asic.gov.au/media/4692613/030219182.pdf
- CBA: https://download.asic.gov.au/media/4702998/030219204.pdf
- CBA: https://download.asic.gov.au/media/4810600/030219285.pdf
- ANZ: https://download.asic.gov.au/media/4810606/030219284.pdf
- MBL: https://download.asic.gov.au/media/4265010/029337448.pdf.
[833] See: - APRA / CBA: https://www.apra.gov.au/sites/default/files/20180430-CBA-EU-Executed.pdf
- ACCC / Ford: https://www.accc.gov.au/system/files/public-registers/undertaking/Section%2087B%20Undertaking%20-%20%20Ford%20Motor%20Company%20of%20Australia%20Limited.pdf.
- ACCC / VW: https://www.accc.gov.au/system/files/public-registers/undertaking/EO%20-%20Section%2087B%20Undertaking%20-%20Volkswagen%20Group%20Australia%20-%20signed%206%20September%202018.pdf.

Gaming Licence on the first anniversary of full gaming operations commencing at Crown Sydney (and prior to the first formal review under s 31 of the CC Act). The scope of this review would ultimately be a matter for the Authority to determine, however Crown considers it could involve reviewing matters such as:

(a) the Licensee's compliance with the requirements of the CC Act, the regulatory agreements and operational compliance matters (eg, gaming rules and controlled contracts). This could include reviewing Crown's compliance with any measures imposed or adopted following the publication of the Commissioner's report and recommendations;

(b) the Licensee's transparency and its willingness to provide the Authority with documents, information and reports;

(c) the implementation of measures that have been put in place to assess the suitability of gaming participants;

(d) the reporting and decision-making relationships between the Boards, Committees and Executive, including the trail of relevant information from the gaming floor to the Board;

(e) composition and functionality of the Licensee Board, including the experience and qualifications of its directors;

(f) the adoption of modern governance processes and documents, including a Charter for the Crown Sydney Board, a Constitution for Crown Sydney, a Risk Framework and articulation of the Licensee's risk appetite.

1001. As noted above, Counsel Assisting's submissions on suitability culminated in the proposition that Crown needed to address "fundamental problems" in its "risk management, governance and culture" before it could be in a position to be considered suitable by the Authority.[834] Again, these submissions were not directed, with any precision, to the suitability of the Licensee to give effect to the Restricted Gaming Licence at Barangaroo (or, for that matter, to give effect to the CC Act). The closing submissions also overlook, or pay insufficient regard to, the reforms on corporate governance and other matters that Crown has taken in response to the matters raised in this Inquiry. The submissions also appear to criticise Crown for not having "*conducted any comprehensive review or root cause analysis to ascertain the reasons or causes for the*

- ACCC / Brookfield: https://www.accc.gov.au/system/files/public-registers/undertaking/Brookfield%20Infrastructure%20Group%20%28Australia%29%20Pty%20Ltd%20%20Brookfield%20Infrastructure%20Group%20%28Australia%29%20Pty%20Ltd%20and%20DJP%20XX%2C%20LLC%20-%20s87B%20Undertaking%20-%20Public%20version%20-%2012%20November%202019.pdf.

[834] See: Submissions of Counsel Assisting – Closing Remarks, [8]&ff.

failures that have been identified",[835] notwithstanding the many investigations and reviews that Crown has conducted and the independent expert reports it has obtained and whose recommendations it has implemented.

1002. Moreover, public hearings in this Inquiry have been running continuously over several months, the evidence has only just concluded, and Crown has been conscientiously addressing and remediating the problems that have been identified, as its board papers of August, September and November demonstrate.

1003. Contrary to the submissions of Counsel Assisting, as documented in these submissions and as reflected in the evidence, Crown has acknowledged past mistakes and failures and has or is doing its utmost to address them. Crown does not accept that the reforms it is implementing, or has committed to implementing, are "tokenistic" or that they will not adequately address these mistakes or failings[836] so as to make the Licensee a suitable person to give effect to the Restricted Gaming Licence. That is particularly so in circumstances where Crown has committed to working collaboratively with the Authority in relation to the implementation of measures to satisfy the Authority that the Licensee is a suitable person to give effect to the licence.

1004. A degree of irony attends Counsel Assisting's proposed solution to the asserted unsuitability of the Licensee and Crown Resorts. Counsel Assisting submit that a review by external experts covering 22 widely described topics, followed by a remediation plan, must be a component of any response by Crown. As noted above, Counsel Assisting have been quick to criticise and/or dismiss the various reviews which Crown has engaged external experts to undertake in response to matters which have emerged in this Inquiry, including in relation to junkets (Deloitte), AML (Initialism, Promontory and Grant Thornton[837]) and culture (Deloitte). Crown respectfully submits that the package of measures it has identified and proposed are preferable to the unfocused and ill-defined external review proffered by Counsel Assisting. This is particularly so because Crown's proposed measures have been formulated in direct response to the matters which have emerged in this Inquiry. As Crown's senior counsel submitted in closing oral submissions:

> *"Informed as the Inquiry now is, Madam Commissioner, it's much better for the Inquiry, in our submission, to target specific measures that can be made the subject of the kind of undertakings that we've proposed rather than postponing everything in favour of a multitude of expert reports about a*

[835] Submissions of Counsel Assisting – Closing Remarks, [9].
[836] Cf: Submissions of Counsel Assisting – Closing Remarks, [10].
[837] Crown is in the process of undertaking an independent review of the entire AML/CTF program. Initialism has been engaged to review and refine, if necessary, the Joint Program and Promontory has been engaged to undertake a vulnerability and strategic capability assessment of the money laundering and CTF risk facing Crown: T.5664.28 – 46; Presentation to ILGA dated 9 November 2020 (CRL.743.001.0021) p.14.

multitude of ill-defined matters".[838]

1005. That is particularly so when an important component of Crown's remediation program is the engagement of experts to report on specific issues that have emerged in the Inquiry and require the assistance of industry experts. Crown considers that the suite of reforms already underway, and those further reforms proposed by Crown and identified above, are sufficient to address any residual concerns about the Licensee and/or Crown Resorts' suitability.

Counsel Assisting's proposals for addressing Crown's relationship with CPH

1006. Counsel Assisting put forward three proposals for consideration which are directed at addressing the influence of CPH whilst it retains its present shareholding in Crown Resorts. They are:

(a) that CPH and and its close associates not be permitted to exercise more than 10 per cent of their voting power in Crown (**CPH Voting Prohibition**);

(b) that no more than one director of Crown or any subsidiary of Crown may be a CPH close associate or a nominee of CPH or any CPH associate (**CPH Director Prohibition**); and

(c) that neither the Licensee nor Crown may enter into any agreement or arrangement under which CPH or any person with whom CPH is associated, including Mr Packer, are provided with confidential and material non-public information regarding the Licensee (**CPH Contracting Prohibition**).

1007. Counsel Assisting acknowledged that the above proposals were put forward in general terms and that further consideration and/or refinement is required.

1008. Crown respectfully submits that, in light of the termination of the Controlling Shareholder Protocol and the Services Agreement, there is no reason to impose the measures of the kind identified by Counsel Assisting in order to address the influence of CPH. Crown's future relationship with CPH will be no different to any other relationship between a publicly listed company and its major controlling shareholder. CPH will only be able to access information and otherwise influence Crown's affairs via its nominee directors on the Board. Crown has also commenced a Board renewal process in light of the retirements of Mr Alexander and Professor Horvath. In those circumstances, the imposition of any further measures upon CPH would be unjustified, unnecessary and plagued by practical difficulties.

1009. Moreover, and for the reasons explained below, each of the proposals made by Counsel

[838] T.5674.06 – 09.

Assisting are practically unworkable, including because they cannot be implemented by Crown or ILGA without the cooperation and consent of a range of third parties and/or are otherwise potentially prejudicial to Crown's shareholders and Crown itself.

CPH Voting Prohibition

1010. There is no evidence before the Inquiry which suggests that CPH has used, or intends to use, its voting power in Crown Resorts inappropriately or as a means exerting improper influence over Crown's affairs. Accordingly, the CPH Voting Prohibition is not targeted at addressing any specific issue or conduct that has emerged during the course of the Inquiry.

1011. In any event, Crown does not have the power under its Constitution or at law to prohibit CPH from exercising more than 10% of its voting power in Crown.

1012. As a publicly listed company trading on the ASX, the terms of Crown's securities must, in ASX's opinion, be appropriate and equitable and Crown may only have one class of ordinary shares.[839] In practice, this means that CPH's ordinary shares in Crown cannot be varied to carry less votes than other shares held by other shareholders.

1013. Moreover, any amendment to Crown's constitution to provide for the CPH Voting Prohibition would require the approval and/or consent of a number of key stakeholders, including:

(a) Shareholders: the shareholders of Crown would need to approve the amendments by way of a special resolution (being a resolution passed by at least 75% of the votes cast by members entitled to vote on the resolution);[840]

(b) ASX: waivers from ASX would be required, including because Crown is generally restricted under the ASX Listing Rules from preventing or interfering with share transfers,[841] or otherwise creating separate classes of shares (as noted above);

(c) Other casino regulators: approvals from Crown's other gaming and casino regulators would be required; and

(d) Financiers: approvals are likely to be required from Crown's banks and other financiers under financing documents which require amendments to Crown's Constitution to be approved by the financier.

CPH Director Prohibition

1014. In light of the termination of the Controlling Shareholder Protocol and the Services

[839] ASX Listing Rules 6.1 and 6.2.
[840] Section 9 of the *Corporations Act 2001* (Cth).
[841] See ASX Listing Rule 8.10.

Agreement, the imposition of the CPH Director Prohibition would constitute an unnecessary intrusion into Crown's affairs. Having regard to the size of CPH's shareholding, CPH's right to appoint 2 to 3 nominees to the Board of Crown does no more than reflect the ordinary workings of an ASX listed corporation and accords with market practice. Moreover, given that there are currently ten directors on the Crown Board, whether CPH has one or three nominee directors will not materially alter or affect its ability to influence the decision making at Board level.

CPH Contracting Prohibition

1015. By terminating the Controlling Shareholder Protocol and the Services Agreement, Crown has recognised that it should enter into any agreement or arrangement under which CPH or any person with whom CPH is associated, including Mr Packer, are provided with confidential and material non-public information. Any further restriction of the kind proposed by Counsel Assisting is unnecessary. Crown is, however, prepared to give an undertaking if the Commissioner considered that such a restriction was appropriate or necessary.[842]

1016. In that respect, Controlling Shareholder Protocols (although sometimes referred to by different names such as Major/Majority Shareholder Protocols or Nominee Director Protocols) are not unusual for ASX listed entities and have been used by large, listed entities (having a market capitalisation of more than $2 billion). Similarly, agreements like the now terminated Services Agreement are not without precedent. Examples of listed companies with protocols similar to Crown's Controlling Shareholder Protocol include:

(a) Yancoal Australia Ltd (Yancoal): Yancoal is a listed coal company with a market capitalisation of $2.52 billion. Yancoal has a major shareholder (Yanzhou Coal Mining Company Limited) which holds 62.3% of the shares. The 2019 Annual Report for Yancoal refers to a Major Shareholder Protocol, however the terms of this document are not disclosed.843

(b) STW Communications Group Limited (STW Group): STW Group is a listed marketing and communications company with a market capitalisation of $3.82 billion. STW Group has a major shareholder (WPP plc) which holds 61.5% of the shares. A Majority Shareholder Deed was entered into by STW Group. In addition to the Majority Shareholder Deed, STW Group entered into a Management Fee Framework Agreement. The primary purpose of this agreement is to determine the fee which will be paid by STW Group for services provided by its majority shareholder to STW

[842] This was confirmed by Senior Counsel for Crown in Counsel Assisting's reply submissions at T5794.
[843] Yancoal Annual Report 2019, page 86.

Group.[844]

(c) Boral Limited (Boral): Boral is Australia's largest construction materials and building products supplier with a market capitalisation of $6.32 billion. Relatively recently, Seven Group Holdings Limited (**SGH**) acquired a relevant interest in 19.984% of Boral's shares. The 2020 Explanatory Memorandum to Boral's Notice of Meeting notes that Boral has entered into an agreement with SGH and associated entities to agree protocols and other arrangements appropriate to the appointment of a director representing a large shareholder.[845]

CONCLUSION

Based on all of the foregoing submissions, Crown respectfully submits that the Commissioner should find that Crown Resorts and the Licensee are suitable, or can be rendered suitable by implementing a specified set of further practical measures, in relation to the operation of the Barangaroo Restricted Gaming Facility.

[844] See Attachment 2, page 21 of STW Group's Explanatory Memorandum dated 2 March 2016 (Independent Expert Report and Financial Services Guide prepared by KPMG).
[845] See page 6 of Boral's Annual General Meeting – Notice of Meeting dated 28 September 2020.

ANNEXURE A: MATTERS NOT IN ISSUE IN CHINA

1. Crown or Crown subsidiaries employed staff who either lived and worked in China or travelled to China from time to time. The staff who lived and worked in China were employed by a Crown subsidiary called Crown Resort Pte Ltd.

2. In October 2016, 18 employees of Crown Resort Pte Ltd were arrested by Chinese police. All were convicted of contravening Article 303 of the PRC Criminal Law by the Baoshan District People's Court. Sixteen were fined and sentenced to fixed terms of imprisonment on 27 June 2017. Three of those employees were administrative employees, who were employed on a basic salary with no incentive component.

3. The media response Crown Resorts issued on 31 July 2019 focused on the core allegation that Crown Resorts knew that the conduct of its staff in China constituted an offence and that it deliberately flouted the law.

4. Relevant corporate governance principles applicable at the time of, and prior to, the China arrests were the following:

   (a) The board of a listed entity is ultimately responsible for deciding the nature and extent of the risks it is prepared to take to meet its objectives.

   (b) It is the role of the board to set the risk appetite for the entity, to oversee its risk-management framework, and to satisfy itself that the framework is sound.

   (c) It is the role of management to design and implement that framework and to ensure that the entity operates within the risk appetite set by the board.

5. It was a matter for the board of Crown Resorts in that period to decide whether the business strategy being pursued in China remained within the board's risk appetite.

6. In order for the board to decide if the business strategy in China remained within its risk appetite, it was necessary for the board to be informed of all material facts relating to making that decision, including any escalation of risk to the safety of staff in China.

7. Boards cannot operate properly without having the right information and boards do not operate effectively if they do not challenge management.

8. The board of a listed entity plays an important role in setting the tone and influencing and overseeing the culture of the entity.

9. There were in place at relevant times codes of conduct for both directors and employees. The principles in those codes of conduct were expected to be followed by directors and employees of subsidiaries.

10. The code of conduct for employees stated:

> It is a fundamental principle of Crown Resorts Ltd that all of our business affairs be conducted legally, ethically and with strict observance of the highest standards of integrity and professionalism.

11. All employees were required to follow that principle in all the jurisdictions in which they were worked.

12. Risk management was and is an integral part of the casino industry. Each business unit was responsible for identifying, assessing, and managing material risks to its business and reporting those risks to the relevant risk-management committee.

13. The Crown Resorts Risk Management Policy dated February 2008 was applicable in the period up to October 2016. It provided a broad description of the risk-management processes of Crown Resorts and its wholly owned operating businesses, including Crown Melbourne. The policy stated that, while the board of Crown Resorts assumes ultimate responsibility for risk management at Crown Resorts, it had delegated oversight responsibility for risk management and internal control of major risks to the Crown Resorts Risk Management Committee. The stated goal of the Risk Management Policy was to build a culture of risk awareness and a sense of ownership of risk.

14. It was important for the senior managers in the business units to understand that they had a responsibility for managing risk and to coordinate with risk-management officers and committees.

15. Crown's operations in China were part of the VIP international business, which was a business unit within Crown Melbourne. The management of risk for the VIP international business was therefore reported formally through Crown Melbourne in the period up to the China arrests.

16. Despite the established framework for the reporting and management of risk, certain members of senior management in the VIP international business attempted, for the most part, to manage the risks in China themselves, or "on the ground", without engaging with the risk-management processes and structures of Crown.

17. The formal risk-management process for Crown Melbourne was coordinated by Mr Drew Stuart who reported to Ms Debra Tegoni and to Mr Felstead in the period leading up to the arrests.

18. To identify the risks faced by various business units, Mr Stuart depended on senior management in the business units, the Crown Melbourne Risk Management Committee (a management, not a board, committee), and meetings of the Crown Melbourne executive team.

19. It was the responsibility of management, including Mr Felstead, to identify the risks in relation to VIP international business for Mr Stuart so that he could include them in the risk registers and risk profiles and to identify, through discussions with Mr Stuart, the mitigation controls that were appropriate to regulate the identified risks.

20. In discharge of his responsibilities, Mr Stuart coordinated the formal risk-management process for Crown Melbourne. Key documents that were utilised as part of the formal process included the Risk Management Plan and the Risk Management Report, which were presented to the Crown Melbourne Audit Committee, a board committee that was ultimately responsible for risk management at Crown Melbourne. Other key documents were the departmental risk registers and departmental risk profiles of the business units. Both the Risk Management Plan and the Risk Management Report contained a document referred to as the Corporate Risk Profile, which set out the high and significant risks as determined by that process.

21. In summary, the formal risk-management process at Crown Melbourne comprised the following aspects:

    (a) The annual risk-assessment process commenced in around August each year and culminated in the presentation of the annual Risk Management Plan in November each year to Crown Melbourne Audit Committee. That plan contained the Corporate Risk Profile. As part of the annual risk-assessment process, Mr Stuart coordinated workshop-style meetings with executives and senior staff of various departments in Crown Melbourne to discuss and review the risk registers and risk profiles for each department and to consider whether the controls in them remained appropriate, to consider new and emerging risks, and to consider generic risks.

    (b) The high and significant risks from these departmental risk registers and risk profiles were then translated into the Corporate Risk Profile by way of a mapping document.

    (c) Prior to providing the Corporate Risk Profile to the Crown Melbourne Audit Committee (as part of the Risk Management Plan or the Risk Management Report as the case may be), the approval of the Crown Melbourne Risk Management Committee would be obtained.

(d) Next, the approval of the Crown Melbourne executive team would be obtained. Twice a year, Mr Stuart arranged meetings with that team, which included Mr Felstead and Mr O'Connor, to discuss updates to the Corporate Risk Profile prior to Mr Stuart's presentation of that document to the Crown Melbourne Audit Committee. During the executive team meetings, the risk ratings of existing risks as well as any new risks that had been identified, and the mitigation controls required to regulate those risks, would typically be discussed. The executive team meetings provided the opportunity for executives to look at the corporate risk profile as a collective group of executives and trade ideas prior to its presentation to the Crown Melbourne Audit Committee.

(e) Once the executive team had provided its approval, Mr Stuart would table for approval the Risk Management Plan or the Risk Management Report, as the case may be, to the Crown Melbourne Audit Committee. The Risk Management Reports also contained the Corporate Risk Profile and was prepared in or about July or August of the following year to provide updates on risk developments since the provision of the Risk Management Plan in November of the previous year.

22. Risk mitigation must be dynamic. Risk mitigation strategies need to be regularly updated. Accordingly, it was important for Mr Stuart to have regular discussions with senior management in various business units.

23. The core principles of acting legally, ethically and with strict observance of the highest standards of professionalism and integrity needs to be taken into account when identifying appropriate risk-mitigation strategies.

24. In relation to the VIP international business, it was important for Mr Felstead and Mr O'Connor to be involved in the formal risk-management process in order for it to be effective, given they were the two most senior executives in VIP international. The importance of the discussions at the executive team meetings and workshop-style meetings with senior staff was that they were meant to ensure, amongst other things, that relevant risks were identified, analysed and evaluated. An example of this occurring was given by Mr O'Connor in the course of his evidence was the decision to not pursue the proposal of opening an office in China.[846] Another example is when Mr O'Connor caused 'Foreign Political Policy' to be added to the risk register of Crown Melbourne.[847]

[846] T2022/3-5.

[847] Ex M52 (CRL.545.001.0623).

25. Risk-management processes at Crown Melbourne were intended to feed into risk-management structures of Crown Resorts.

26. The Crown Resorts Risk Management Committee, which was a board committee, was delegated oversight responsibility for risk management and internal control of major risks. Pursuant to the Crown Resorts Risk Management Committee Charter dated 20 February 2014, and pursuant to the August 2016 version of that Charter, the Crown Resorts Risk Management Committee was mandated to hold meetings twice a year.

27. In the period between 2014 and 2016, the key documents that were provided to the Crown Resorts Risk Management Committee included a document referred to as the Report Against Material Risks, which typically identified the high and significant risks for Crown Resorts and drew upon the risks identified by the wholly owned businesses, including Crown Melbourne. Mr Stuart provided input into the Crown Melbourne sections of that document based on the knowledge he obtained through the formal risk-management process of Crown Melbourne and input from Crown Melbourne personnel, including Ms Tegoni.

28. The key documents also included a document referred to as a Risk Profile, which was reviewed annually by the Crown Resorts Risk Management Committee. It was a matrix that was not confined to high and significant risks, but also included risks rated as low, moderate and significant.

29. Senior executives, senior legal counsel, and Mr Stuart discussed any proposed updates to the Risk Profile before it was presented to the Crown Resorts Risk Management Committee for discussion and approval.

30. Mr Stuart provided his input into the Crown Resorts Risk Profile drawing upon his knowledge of the risks affecting Crown Melbourne.

31. Members of the Crown Resorts Risk Management Committee in the period up to October 2016, were Mr Dixon, who was chairman of the Crown Resorts Risk Management Committee; Mr Craigie; and Ms Danziger.

32. The Crown Resorts board obtained information relating to risk management issues through various sources, including the minutes of the Crown Resorts Risk Management Committee meetings being included in the board papers provided to the members of the board and, in relation to VIP international business, regular attendance by Mr Felstead at the Crown Resorts board meetings. Mr Felstead had a standing invitation to attend meetings by virtue of his position as CEO Australian Resorts. He was required to report on all aspects of the business for which he was responsible, including the VIP international business.

33. The VIP international business unit managed, among other matters, Crown's overseas operations and the identification and development of relationships with international VIP gamblers.

34. Crown Resorts considered international VIP gamblers to be persons living outside Australia who received commissions and other benefits based on turnover played through premium player programs or who participated in a junket. They were either premium players or participants in a junket.

35. While the VIP international business unit sat within Crown Melbourne, it was part of Crown's global strategy and had an impact on multiple properties, namely, Crown Melbourne, Crown Perth, and Crown Aspinalls. VIP international maintained operations in various jurisdictions including Malaysia, Singapore, and China.

36. During the period up to the China arrests, staff with responsibility for VIP international were based in Melbourne, such as Mr O'Connor, or overseas, such as Mr Chen, who was based in Hong Kong. This was in addition to the staff based in mainland China employed by Crown Resort Pte Ltd.

37. The senior executives of the VIP international business unit were Mr Felstead, Mr O'Connor, and Mr Michael Chen. Mr Felstead was the most senior executive responsible for the VIP international business unit.

38. Mr Felstead's position has been made redundant and he will cease work for Crown by the end of the year. Mr Chen and Mr Craigie no longer work for Crown.

39. As Group Executive General Manager, VIP International Gaming from 2011 to October 2016, Mr O'Connor reported to Mr Felstead from May 2013 to October 2016. Mr Felstead was often consulted and involved in major strategic decisions such as decisions pertaining to pricing, capital investments and critical customer relationships. Mr O'Connor and Mr Felstead communicated in person or by telephone several times a week. It was Mr O'Connor's practice to alert Mr Felstead to any issues concerning the VIP international business that Mr O'Connor considered important.

40. Mr Chen was one of Mr O'Connor's direct reports. Mr Chen held the position of President of International Marketing and was the most senior internationally based member of the VIP international business. He was the person who had the greatest experience in conducting business in China and who had previously worked for Caesars.

41. A number of senior vice presidents responsible for different geographic regions or business lines within VIP international reported to Mr Chen.

42. In the period between 2014 and 2016, Mr Chen and Mr O'Connor spoke every other day. In addition to Mr Felstead, Mr O'Connor and Mr Chen, Ms Jacinta Maguire, General Manager Commercial, and Mr Roland Theiler, Senior Vice-President of International Business were senior members of the VIP international team.

43. In 2015 to 2016, Mr Kunaratnam reported to Mr Felstead and held a number of titles, including vice-president of entertainment, vice-president of Capital Golf Course, president of VIP development. His role involved running the Capital Golf Club, which sat within the VIP business, promoting non-gaming events and roadshows on behalf of Crown Resorts. From at least October 2014, Mr Kunaratnam was also conferred the title special assistant to the chairman, Crown Resorts chairman at the time being Mr James Packer. The title was honorary and intended to signal respect to VIP patrons who met Mr Kunaratnam but who were unable to meet Packer. From around 2015, Mr Kunaratnam acted as a personal assistant to Mr Packer when Mr Packer visited Melbourne.

44. During the period 2015 to 2016, Mr Felstead reported directly to Mr Craigie, managing director and chief executive officer of Crown Resorts. Mr Felstead and Mr Craigie did not have formal regular meetings, but conversed on an as-needs basis. Formal reporting processes were unnecessary owing to the regularity of informal communications.

45. Mr Felstead prepared a weekly report, referred to as a trading update or similar, that contained information on how the VIP international business was performing, as well as the Australian business as a whole. These trading updates were sent to Mr Craigie, Mr Ken Barton, Mr Michael Neilson, Mr Michael Johnston, and the chairman at the time.

46. One of the ways in which information regarding the VIP international business unit was reported to Crown Resorts was via the CEO meetings involving the chairman, Crown Resorts management and certain CPH personnel.

47. The CEO meetings were discontinued by Mr Robert Rankin shortly after Mr Rankin succeeded Mr Packer as chairman in August 2015. The purpose of the CEO meetings was to brief the chairman on matters relevant to the Crown Resorts business prior to Crown Resorts board meetings. Regular attendees at the CEO meetings were Mr Packer or, in his absence, Mr Alexander, as deputy chairman; Mr Craigie; Mr Felstead; Mr Neilson; Mr Todd Nisbet, who was the Executive Vice-President of Strategy and Development; Mr Karl Bitar, who was the head of government relations.

48. CPH personnel also regularly attended the CEO meetings, such as Crown Resorts and CPH director, Mr Johnston, and Mr Mark Arbib, who worked for CPH in a business development role.

49. Mr O'Connor also often attended the CEO meetings and presented an update on VIP international business on a monthly or a bi-monthly basis. It was usual practice for a specific update on the VIP international business to be prepared and spoken to at each of the meetings by Mr Felstead or Mr O'Connor. The VIP updates had structured reporting topics, such as turnover by region, and included outstanding debts owed to Crown Resorts by VIP international customers and the mechanisms that might be employed to recover those debts. The VIP updates were detailed documents that were not tabled at board meetings or otherwise presented to the board.

50. In 2013, the VIP working group was established. That group primarily comprised VIP international executives. Regular attendees were Mr Johnston, Mr Felstead, Mr O'Connor, Mr Chen, and Mr Theiler. Mr Barton, Ms Maguire and Mr Kunaratnam attended less frequently.

51. The VIP working group met approximately monthly or once every two months from about April 2013 to October 2016. Topics included debt, provision of credit for customers, operational issues, opportunities to grow the business, and strategies relating to the Chinese market.

52. The activities of the China-based VIP international staff included recruiting customers to travel to and gamble at Crown casinos in Australia, assisting customers to obtain lines of credit to be used at the casinos in Australia, assisting customers with their travel arrangements to Australia for the purpose of visiting the Crown Resorts casinos, including visa applications, and encouraging customers to settle any debts that they owed to Crown as a result of gambling at its casinos.

53. As at September 2014, approximately 20 staff lived and worked in mainland China.

54. Between September 2014 and October 2016, Mr Alfread Gomez, senior vice president China, who was based in Malaysia but responsible for the teams in China, reported to Mr Chen.

55. The staff in China were divided into seven geographic regions, namely, China South-West, China South, China Central, China Shanghai, China Mid-East, China Mid-North, China North, with each of those units reporting to Mr Gomez.

56. China was the region with the highest compound annual growth rate of all the regions where Crown Resorts VIP international was conducting business with turnover increasing year on year from 2014 to 2016.

57. A changing political landscape in China owing to a corruption crackdown announced by the government was recognised by some within Crown as likely to have the effect of redirecting business from Chinese VIP gamblers to Crown Resorts casinos in Australia.

58. A detailed five-year plan for the VIP international business prepared around 17 March 2015 identified the relevant opportunity in relation to the ongoing corruption crackdown in China and weakening economic conditions in China as follows: "The poor state of the Macau and Singapore markets has allowed Crown to secure new customers and additional volumes as a proportion of Macau business is shifting to other regions. It's unclear whether these relatively isolated events will continue into financial year '16. To the extent that it does, opportunities for continued growth are good."

59. VIP international senior executives and staff were incentivised based on the performance of the entire VIP international business.

60. As a senior executive of Crown, Mr Felstead was awarded short-term incentives based on key performance objectives, which included the achievement of VIP turnover growth and market share. In 2015, Mr Felstead received a short-term incentive payment of 40 per cent of his total employment cost at a value of $864,000.

61. Mr O'Connor participated in a short-term incentive plan that was applicable to roles that had the ability to influence the financial performance of VIP gaming. This plan provided for an annual cash bonus on the achievement or exceeding of the company's overall VIP gaming targets.

62. As president of international marketing, Mr Chen participated in long and short-term incentive plans based on the revenue of VIP international. Mr Chen was eligible for a yearly bonus capped at 250 per cent with total annual remuneration under his short-term incentive plan. Separately, Mr Chen was eligible for a maximum bonus of 200 percent of his commencing annual remuneration paid across four years under his long-term incentive plan. According to his payment summary for the financial year ending 30 June 2015, Mr Chen received a VIP bonus for that year of US$1,823,000.

63. In the period up to October 2016, the VIP international sales staff in China, with the exception of the administrative staff, were eligible for bonuses based on turnover targets, including the turnover of VIP customers in China.

64. The 19 employees in China who were arrested and detained were ultimately convicted with gambling offences contrary to Article 303 of the Criminal Law of the People's Republic of China.

65. At the relevant time, Article 303 of the Chinese Criminal Law relevantly provided:

> Whoever, for the purpose of profit, gathers a crowd to gamble or undertakes gambling as a business shall be sentenced to fixed term imprisonment of three years or less, detention, or surveillance, and shall be subject to a fine.

66. Article 1 of the Interpretation of the Supreme People's Court entitled "The Interpretation of the Supreme People's Court and Supreme People's Procuratorate about Some Issues Concerning the Application of Law in Gambling in Criminal Cases", issued on 13 May 2015, provided as follows:

> Any of the situations set out below, if undertaken for the purpose of profit, will constitute gathering a crowd to gamble as provided by Article 303 of the Criminal Law …
>
> (4) organising 10 or more persons who are citizens of the People's Republic of China to go abroad to gamble from which kickbacks or referral fees are collected.

67. From around 2012, Crown obtained legal advice from WilmerHale, an international law firm headquartered in the United States of America.

68. That advice was obtained by the VIP international team through Mr Chen.

69. From around March 2015, Crown also received, through Mr Chen, advice from the Mintz Group.

70. The VIP international team relied on the WilmerHale and Mintz Group advices.

ANNEXURE B – KEY QUESTIONS TO MR CRAIG QC

Schedule of responses to key questions put to Robert Craig QC by Commissioner Bergin on 18 November 2020 – provided for consideration for inclusion as an annexure to Counsel's submissions

No	Commissioner's question	Answer
	Are the below policies in final form and does the Board need to approve them? Cash Deposits Policy[848] Critical Risk Customer Policy[849] Escalation of Critical Risk Customers' Policy[850] Third Party Transfer and Money Remitters Policy[851] Bank statement monitoring AML/CTF manual rule[852]	The following policies are in final form and were approved by Nick Stokes (Group General Manager Anti-Money Laundering) and sit below the AML/CTF Policy and Procedures. Accordingly they do not have to be approved by the Board, as they do not form part of the Part A Program: Escalation of Critical Risk Customers' Policy approved by Nick Stokes on 12 November 2020 pursuant to clause 7.5(i) of the Joint AML/CTF Program Part A and clause 6.2.3 of the Joint AML/CTF Policies and Procedures (this is a standalone policy which reflects the policy position contained in section 3 of the Joint AML/CTF Policy and Procedures (which was referred to at the 18 November 2020 hearing as the 'Critical Risk Customer Policy')).[853] The Joint AML/CTF Policy and Procedures form part of the Part A Program and were approved by the Board on 2 November 2020;[854] Third Party Transfers and Money Remitters Policy approved by Nick Stokes on 16 November 2020 pursuant to clause 7.5(i) of the Joint AML/CTF Program Part A and clause 6.2.3 of the Joint AML/CTF Policies and Procedures ;[855] Bank statement monitoring AML/CTF manual rule approved by Nick Stokes on 16 November 2020 pursuant to clause 7.5(i) of the Joint AML/CTF Program Part A and clause 6.2.3 of the Joint AML/CTF Policies and Procedures.[856]. Ken Barton (CEO, Crown Resorts Limited) also issued a final Executive Office Memorandum dated 16 November 2020 to the Chief Operating Officers of Crown Melbourne and Crown Perth and relevant senior executives[857] regarding additional controls for cash deposits (this was referred to in the 18 November 2020 hearing as the 'Cash Deposits Policy'). This memorandum does not form part of the Part A Program, and so does not require Board approval.[858]

[848] T.5592.40-46; T.5595.1-11. T.5596-5-10.

[849] T.5592.40-46; T.5624.14.

[850] T.5624.9 -19.

[851] T.5596.1-45; T.5624.14.

[852] T. 5624.20-25.

[853] Stokes I [30] (CRL.742.001.0026) Ex [xx].

[854] Barton IV [15(b)] (CRL.728.001.0054) Ex AO81.

[855] Stokes I [28] (CRL.742.001.0101) Ex [xx].

[856] Stokes I [27] (CRL.742.001.0009) Ex [xx].

[857] The names of the people to whom the memo was circulated are Xavier Walsh, Lonnie Bossi, Peter Crinis, Alan McGregor, Joshua Preston, Stephen Hancock, David Brown, and John Salomone.

[858] Barton VI [30]-[31] (CRL.742.001.0014) Ex [xx].

<table>
<tr><th>No</th><th>Commissioner's question</th><th>Answer</th></tr>
<tr><td></td><td>How do the following documents fit within the Part A Program?[859]
bank statement monitoring AML/CTF manual rule
Third Party Transfer and Money Remitters Policy</td><td>As explained above, neither document forms part of the Part A Program.[860]</td></tr>
<tr><td></td><td>What has been approved by the Board?[861]</td><td>Joint AML/CTF Program Part A and Joint AML/CTF Policy and Procedures (which together comprise Part A of the Joint AML/CTF Program) were approved by the Board on 2 November 2020.
The Board endorsed Part B of the Joint AML/CTF Program on 2 November 2020, but is not required to approve it under the AML/CTF Rules.[862]</td></tr>
<tr><td></td><td>Has the Significant Cash Items Policy been approved by the Board?[863]</td><td>We assume this is referring to the executive memorandum prepared by Mr Barton regarding significant cash deposits (referred to in row 1 above). This memorandum does not form part of the Part A Program and is not required to be approved by the Board.[864]</td></tr>
<tr><td></td><td>Have the documents in Mr Stokes' statement gone to the Board?[865]</td><td>We have set out below which of the following documents in the Statement of Nick Stokes dated 17 November 2020 had gone to the Crown Resorts Board, prior to being provided to the Board through Crown's Board portal on 20 November 2020.
<table>
<tr><th>Document Name</th><th>Provided to the Board prior to 20 November 2020</th></tr>
<tr><td>Memorandum from Xavier Walsh and Nick Stokes (CRL.728.001.0193)[866]</td><td>Yes.</td></tr>
<tr><td>AML Team Organisation Chart (CRL.728.001.0197)[867]</td><td>No</td></tr>
<tr><td>AMLCTF Induction Training (CRL.741.001.0566)[868]</td><td>No</td></tr>
<tr><td>AMLCTF Awareness Training (CRL.741.001.0590)[869]</td><td>Made available to directors through their Crown Learn profiles and Mr Stokes</td></tr>
</table></td></tr>
</table>

[859] T.5599.10.

[860] Stokes I [27] (CRL.742.001.0009) Ex [xx]; Stokes I [28] (CRL.742.001.0101) Ex [xx].

[861] T.5604.24; T.5605.3.

[862] Barton IV [15(a)] (CRL.728.001.0001) Ex AO79; Barton IV [15(b)] (CRL.728.001.0054) Ex AO81; Barton IV [15(c)] (CRL.728.001.0036) Ex AO80; Barton IV [19].

[863] T.5605.37-38.

[864] Barton VI [30]-[31] (CRL.742.001.0014) Ex [xx].

[865] T.5605.22-24; T.5607.38-46.

[866] Stokes I [9] (CRL.728.001.0193) Ex [xx].

[867] Stokes I [15] (CRL.728.001.0197) Ex [xx].

[868] Stokes I [18] (CRL.741.001.0566) Ex [xx].

[869] Stokes I [19] (CRL.741.001.0590) Ex [xx].

No	Commissioner's question	Answer	
			statement was provided to the Board.
		AMLCTF Targeted Training for the Business Operations Team (CRL.741.001.0576)[870]	No.
		Crown Melbourne AMLCTF Program (CRL.566.002.0001)[871]	This document has been superseded by the adoption of the Joint AML/CTF Program approved by the Board on 2 November 2020.
		Crown Perth Standard Operating Procedures - Legal Services – AML (CRL.663.001.0010)[872]	No. This document is not required to be approved by the Board, as it sits below the AML/CTF Policy and Procedures
		AMLCTF Manual Rule for Bank Account Monitoring (CRL.742.001.0009)[873]	No. This document is not required to be approved by the Board, as it sits below the AML/CTF Policy and Procedures.
		AMLCTF Third Party Transfers and Money Remitters Policy (CRL.742.001.0101)[874]	No. This document is not required to be approved by the Board, as it sits below the AML/CTF Policy and Procedures.
		AMLCTF Critical Risk Customer Policy (CRL.742.001.0026)[875]	No. This document is not required to be approved by the Board, as it sits below the AML/CTF Policy and Procedures A.
	How does a person (such as Louise Lane) escalate an AML/CTF issue under the Part A Program?[876]	A person such as Ms Lane (who was formerly the Group General Manager, Anti-Money Laundering) is required to raise matters of concern through the process set out in: Section 19, Joint AML/CTF Policy and Procedures;[877] and Section 7.1, Joint AML/CTF Part A Program.[878]	
	Should Crown have an external body certify that its employees	Section 10 of the Joint AML/CTF Part A Program and section 5 of the Joint AML/CTF Policy and Procedures requires that Crown has an	

[870] Stokes I [20] (CRL.741.001.0576) Ex [xx].

[871] Stokes I [24] (CRL.566.002.0001) Ex [xx].

[872] Stokes I [24] (CRL.663.001.0010) Ex [xx].

[873] Stokes I [27] (CRL.742.001.0009) Ex [xx].

[874] Stokes I [28] (CRL.742.001.0101) Ex [xx].

[875] Stokes I [30] (CRL.742.001.0026) Ex [xx].

[876] T.5601.1-3.

[877] Barton IV [15(b)] (CRL.728.001.0054) Ex AO81, section 19.

[878] Barton IV [15(a)] (CRL.728.001.0001) Ex AO79, section 7.1.

No	Commissioner's question	Answer
	and officers are trained in AML/CTF?[879]	AML/CTF risk awareness training program which applies to employees, relevant contractors and the Board. Section 8 of the Joint AML/CTF Program requires that the Part A Program be subject to independent review.[880] Crown will give consideration as to whether there is an appropriate external body who could provide such certification.
	Is there a requirement for the customer to declare its source of wealth or source of funds? If not, is this something that Crown is considering?[881]	Crown has the following requirements in relation to seeking Source of Wealth (***SOW***) and Source of Funds (***SOF***) information: [redacted]

[879] T.5601.43 - T.5602.4; T.5602.12-14.

[880] Barton IV [15(a)] (CRL.728.001.0001) Ex AO79, sections 8 and 10; Barton IV [15(b)] (CRL.728.001.0054) Ex AO81, section 5.

[881] T.5603.40-41; T.5626.33 – T.5627.17

[882] Barton IV [15(a)] (CRL.728.001.0001) Ex AO79, section 12.2.2.

[883] Barton IV [15(b)] (CRL.728.001.0054) Ex AO81, section 3.1.6.

[884] Barton IV [15(b)] (CRL.728.001.0054) Ex AO81, sections 3.1.3(g)(ii), 3.1.4, 7.2.3(b), 7.4.7, 9.3.3, 8.1.2, 8.2.1.

No	Commissioner's question	Answer
		[redacted]
	Was the petty cash limit always $100,000 at Suncity? Who fixed the $100,000 petty cash limit?[888]	REDACTED - PRIVILEGE [redacted] [Based on the transcripts of the ILGA hearings Mr Preston set the Suncity petty cash limit at $100,000 on 17 April 2018.][889]
	Are the Southbank and Riverbank accounts no longer operative? Have they been deregistered? What is the status of the process?[890]	The Southbank and Riverbank accounts were closed on 3 December 2019. Crown is progressing with its consideration of the deregistration of the Southbank and Riverbank entities.
	Is it necessary for patrons at Crown Sydney (if there are no junkets) to have 'upfront money' deposited?[891]	Yes, even where there are no junkets, some customers (either interstate or international) will still be required to put up 'front money' to engage in particular types of gambling.
	Does s123 prohibit Crown from sharing SMR information with	Section 123 of the AML/CTF Act prohibits entities within the Crown designated business group (***DBG***) from sharing information captured by s123(1),(2) and (3) with Crown Resorts Limited, which is not itself a

[885] Barton VI [30]-[31] (CRL.742.001.0014) Ex [xx].

[886] Barton VI [30]-[31] (CRL.742.001.0014) Ex [xx].

[887] [redacted]

[888] T.5612.19-26.

[889] T.782.1-14, T.3314.35-43, T.3508.1-37, T.5079.1-14, T.3507.1-32, T.3537.8-26, T.5610.30-36.

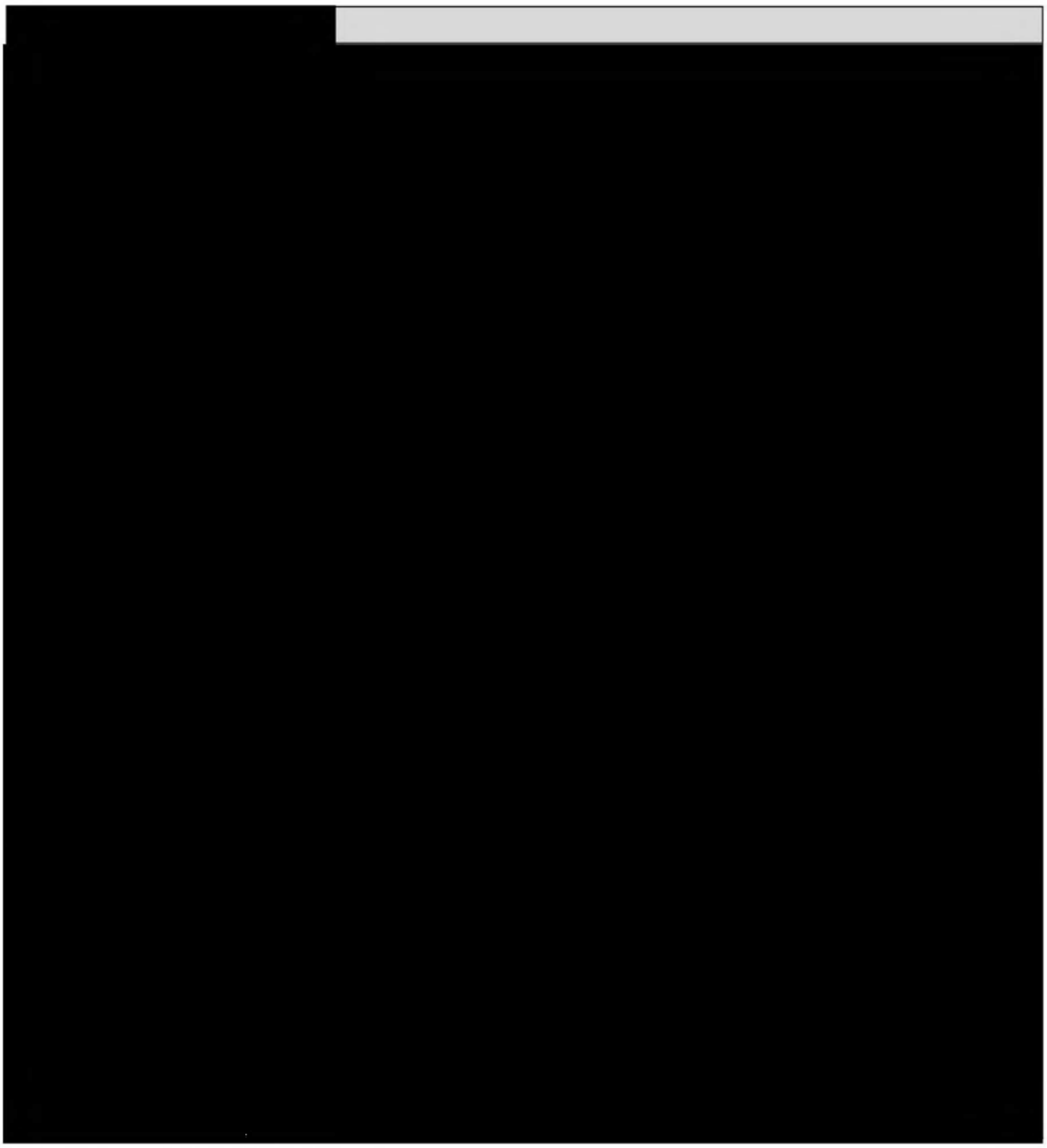
[890] T.5631.15.

[891] T.5632.32-37.

No	Commissioner's question	Answer
	the AML/CTF Committee or the Risk Committee?[892]	reporting entity. Even as between the members of the DBG, there are restrictions regarding the sharing of information captured by s123.

[892] T.5634.10-18.

ANNEXURE C – SENTINEL



[893] Barton,16 September 2020 [65] (CRL.697.001.0033 ExCB1).

[894] Stokes, 17 November 2020, Confidential Annexure 1 (CRL.744.001.0042 Ex[#]).

[895] Barton, 16 September 2020 [66] (CRL.697.001.0033 ExCB1); Stokes, 17 November 2020 [26] (CRL.744.001.0042 Ex[#]).

[896] Barton, 16 September 2020 [66] (CRL.697.001.0033 ExCB1); Stokes, 17 November 2020 [26] (CRL.744.001.0042 Ex[#]).

[897] Barton, 16 September 2020 [65] (CRL.697.001.0033 ExCB1).

[898] Stokes, 17 November 2020 [24] (CRL.744.001.0042 Ex[#]).

[899] Stokes, 17 November 2020 [24] (CRL.744.001.0042 Ex[#]).

[900] Stokes, 17 November 2020 [24] (CRL.744.001.0042 Ex[#]).

Question	Answer
	[redacted]
What does the live version provide for?	
Is there going to be any certification or testing of it once it is commissioned across the three properties?	
Why is Sentinel not fully implemented?	
When will Sentinel be fully implemented?	
What capacity will Crown have to 'mine' the data produced by Sentinel?	

[901] Barton, 16 September 2020 [65] (CRL.697.001.0033 ExCB1); Stokes, 17 November 2020 [27] (CRL.744.001.0042 Ex[#]).

[902] Barton, 16 September 2020 [67] (CRL.697.001.0033 ExCB1).

[903] Barton, 16 September 2020 [67] (CRL.697.001.0033 ExCB1).

[904] Stokes, 17 November 2020 [23] (CRL.744.001.0042 Ex[#]).

Question	Answer
	[redacted]