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PERTH CASINO ROYAL COMMISSION

PUBLIC HEARING - DAY 16

10.00 AM WEDNESDAY, 28 JULY 2021

COMMISSIONER N J OWEN

COMMISSIONER C F JENKINS

COMMISSIONER C MURPHY

HEARING ROOM 3

MS PATRICIA CAHILL SC and MR NICK WERNER as Counsel Assisting the Perth Casino Royal Commission

MR PETER WARD and MR DOUGLAS JOHNSON as Counsel for Mr John Poynton

MR KANAGA DHARMANANDA SC and MR LEON FIRIOS as Counsel for Crown Resorts Ltd; Burswood Limited; Burswood Nominees Limited; Burswood Resort (Management) Limited; Crown Sydney Gaming Pty Ltd; Southbank Investments Pty Ltd; Riverbank Investments Pty Ltd and Crown Melbourne Limited

MR ANTHONY POWER as Counsel for Ms Maryna Fewster

MR PAUL A. WALKER as Counsel for Consolidated Press Holdings Pty Ltd and CPH Crown Holdings Pty Ltd

MR ROBERT FRENCH as Counsel for Mr Barry Felstead

MR DEAN GRONDAL as Counsel for Mr Joshua Preston

MR PAUL D. EVANS as Counsel for the Gaming and Wagering Commission of Western Australia

MS FIONA SEAWARD as Counsel for the Department of Local Government, Sport and Cultural Industries

10:00AM

COMMISSIONER OWEN: Please be seated. Now we are going to hear perspective evidence in I call block 1, which is what will help us get an understanding of how --- the way the Perth entities, the Burswood entities were governed and operated and
5 interacted with the Crown Group. 9.59 AM Mr Poynton? Please, thank you. Come over, and if you wouldn't mind just remaining standing and give us your full name for the purpose of the record.

10 **MR JOHN HARTLEY POYNTON, AFFIRMED**

COMMISSIONER OWEN: Thank you, Mr Poynton. Please sit down. Mr Ward?

15 **EXAMINATION-IN-CHIEF BY MR WARD**

MR WARD: Mr Poynton, you have prepared a witness statement in response to the
20 summons to appear in both Commissions?

MR POYNTON: I have.

MR WARD: Do you have a copy of that there?
25

MR POYNTON: I do.

MR WARD: Is it the witness statement dated 20 July 2021?

30 MR POYNTON: Yes.

MR WARD: Is there a correction you wish to make to paragraph 25 of that statement?

35 MR POYNTON: Yes.

MR WARD: Can you say what that is?

MR POYNTON: In paragraph 25 it refers to the acquisition of Burswood Ltd being
40 made by CPH, Consolidated Press Holdings. It was actually made by PBL, Publishing and Broadcasting Ltd which is a predecessor company to CPH.

MR WARD: And subject to that one correction, is the balance of your statement true and correct to the best of your knowledge and belief?

45 MR POYNTON: It is.

10:01AM

MR WARD: I tender that statement.

5 COMMISSIONER OWEN: Thank you. The witness statement of Mr Poynton dated 20 July and which bears the identifier WIT.0009.0001.0001 will be admitted as an exhibit.

10 **EXHIBIT #WIT.0009.0001.0001 - WITNESS STATEMENT OF MR JOHN HARTLEY POYNTON DATED 20 JULY 2021**

COMMISSIONER OWEN: Thank you, Mr Ward. Ms Cahill.

15

CROSS-EXAMINATION BY MS CAHILL

20 MS CAHILL: Thank you, Mr Poynton. You have two documents there? What are they?

MR POYNTON: One is a series of reference to board minutes from 14 December 2016 just if I need to refer to particular parts of those minutes. The other is just a briefing note on the structure of the company and its committees just for my reference. I'm happy not to have them but they were just for my memory jog.

MS CAHILL: We might ask your counsel to make copies available to us in due course.

30 MR POYNTON: Sure. Of course. The only other statement was the witness statement. And I have a pad to take notes if necessary.

MS CAHILL: Thank you. We're going to show you documents on the screen ---

35 MR POYNTON: Yes.

MS CAHILL: --- including your witness statement. Your witness statement in hard copy there, does it have any annotations on it?

40 MR POYNTON: No, not at all. I'm happy to show you.

MS CAHILL: If it has no annotations, would you prefer to look at the hard copy?

45 MR POYNTON: It's probably better on screen.

MS CAHILL: Let's go to page 005. We are at the paragraph that you were at where you made the amendment.

MR POYNTON: Yes.

5 MS CAHILL: In the first sentence you talk about being asked to assist CPH in its negotiations for the possible acquisition of the share capital in Burswood. Just to clarify, you did in fact provide that assistance, did you?

10 MR POYNTON: Yes, yes. It was narrowed to just discussions with the two substantial shareholders referred to, being Mr Bendat and Mr Wyllie. I guess on behalf of the PBL entity, conversations about whether they would be prepared to sell to PBL.

15 MS CAHILL: Thank you. Now, you go on to say in your witness statement that after the takeover was completed you were offered a position as a non-executive director of Burswood Ltd by James Packer and over at paragraph 26 you explain that you had no specific experience as a director or executive of any business that operated casinos?

20 MR POYNTON: Correct. Correct.

MS CAHILL: Had you derived any understanding of the nature of the Perth Casino business and its operations through that assistance you provided CPH?

25 MR POYNTON: Not really, no. At that point it was just made up of, I guess, being an observer of the company when it was listed.

30 MS CAHILL: At the time you were appointed as a director of Burswood Ltd in 2004, did you understand or have any appreciation that casino operations were particularly vulnerable to the risk of being used to facilitate money laundering?

MR POYNTON: Not specifically, although even when Burswood itself was a listed company there was often speculation about the people gambling at it.

35 MS CAHILL: When you say "not specifically", did you have a general understanding that casinos were vulnerable to the risk of facilitation to money laundering?

MR POYNTON: Yes, I did.

40 MS CAHILL: And you didn't ever change that understanding in the course of being a director of Burswood Ltd, you always remained of the view that casinos were vulnerable to the risk of money laundering?

45 MR POYNTON: Yes, correct.

MS CAHILL: When you were appointed in 2004, did you understand that casino operations were particularly vulnerable to the risk of being infiltrated by criminals and organised crime syndicates?

10:05AM

MR POYNTON: Not particularly, no.

MS CAHILL: Generally?

5

MR POYNTON: Generally, yes.

MS CAHILL: And, again, you remained of that understanding during your tenure as a director?

10

MR POYNTON: Yes.

MS CAHILL: And, in fact, you would have come to appreciate better the risks of criminal infiltration of casinos?

15

MR POYNTON: Over time, certainly into 2016, 2017, 2018 period.

MS CAHILL: Did you understand at the time of your appointment in 2004 that junket tours posed particular risks to the operations of casinos (inaudible)?

20

MR POYNTON: I have no particular knowledge of junket operations, so not specifically, no.

MS CAHILL: What about generally? Did you understand generally what junkets were then?

25

MR POYNTON: Generally, yes, I didn't really turn my mind to it specifically.

MS CAHILL: Did you understand generally they posed risks of using casinos and operations to facilitate money laundering or they were fronts for organised crime syndicates?

30

MR POYNTON: It would be the same answer, generally, yes, specifically, no.

MS CAHILL: As your time wore on as a director of Burswood Ltd, you became aware of that risk more acutely?

35

MR POYNTON: Much, much later.

MS CAHILL: By which you mean 2017, 2018?

40

MR POYNTON: Well, by which time I mean I suppose around the time of the accusations. There were various media stories.

MS CAHILL: You are pinning that at 2018, 2019?

45

MR POYNTON: Well, yes, but I think there was a story in Four Corners back in

2014 and then, as you say, the 60 Minutes and Fairfax articles in 2018.

5 MS CAHILL: Did you understand at the time of your appointment in 2004 that some people who gamble, whether at casinos or elsewhere can develop an addiction to gambling?

MR POYNTON: Yes.

10 MS CAHILL: And for some people gambling can cause them harm, for example, they can end up gambling themselves into bankruptcy?

MR POYNTON: Yes.

15 MS CAHILL: Did you understand at the time of your appointment that people who regularly play electronic gaming machines are at particular risk of developing a gambling addiction?

MR POYNTON: I didn't have any specific knowledge or concern about that.
20

MS CAHILL: What about a general understanding or concern?

MR POYNTON: General, yes.

25 MS CAHILL: During your tenure as a director of Burswood Ltd, you knew that Burswood Nominees Ltd was the licensee of the Perth casino, didn't you.

MR POYNTON: I did.

30 MS CAHILL: And that Burswood Resort (Management) was the manager of the casino.

MR POYNTON: I did.

35 MS CAHILL: And you understood it was the employer of most of the casino staff?

MR POYNTON: Yes.

MS CAHILL: And you understood that each of Burswood Nominees and Burswood
40 Resort (Management) had their own board of directors.

MR POYNTON: Yes, executive directors.

MS CAHILL: You were never a director of the licensee or Burswood Resort
45 (Management)?

MR POYNTON: No, I wasn't.

10:08AM

MS CAHILL: And, as you say, those boards were each comprised of persons who held executive positions at Crown or Burswood entities, is that right?

5 MR POYNTON: Indeed, that's correct. So the board on which I was a director had no staff, one asset, and one shareholder.

MS CAHILL: You understood that both Burswood Nominees and Burswood Resort (Management) were wholly-owned subsidiaries of Burswood Ltd?

10

MR POYNTON: Could you ask the question again?

MS CAHILL: You understood, didn't you, that both Burswood Nominees Ltd and Burswood Resort (Management) were wholly-owned subsidiaries of Burswood Ltd.

15

MR POYNTON: Yes.

MS CAHILL: In the context of that corporate structure that we've just discussed, what was the business of Burswood Ltd during the time were you a director of the company?

20

MR POYNTON: The business of Burswood Ltd was that it itself was wholly owned by ultimately Crown Resorts. There were two intermediary companies above it, and it had one asset, which was the unit or units in the Burswood Property Trust, and it had no executives, no staff. So its business was to, as I was concerned, was to essentially look after the interests of its shareholder.

25

MS CAHILL: Being Crown Resorts?

30 MR POYNTON: Ultimately Crown Resorts.

MS CAHILL: Now, you --- I will ask you some questions about the casino licence and the casino licensee, understanding that Burswood Nominees had other business interests associated with the Burswood resort. I will ask the questions relevantly only to the Perth Casino business. And I ask you to confine your answers accordingly, unless you need to expand ---

35

MR POYNTON: (Nods head).

40 MS CAHILL: --- to make sense of your answer and make it complete.

MR POYNTON: Yes.

MS CAHILL: So these questions are not about Burswood Ltd, they are about the casino licensee. They will seem somewhat formulaic, but if you just bear with me and answer.

45

MR POYNTON: Sure.

10:10AM

MS CAHILL: At the time of your appointment in 2004, did you seek to inform yourself of the nature and content of the obligations of Burswood Nominees Ltd had as licensee of the Perth Casino ?

5

MR POYNTON: In a general sense I --- well, it's a long time ago, I would have studied that in some detail. I just don't recall specifically.

MS CAHILL: By going to the State Agreement, for example?

10

MR POYNTON: Well, I think at the time of the takeover there was some analysis of the State Agreement.

MS CAHILL: Did you read the State Agreement ---

15

MR POYNTON: Not in full.

MS CAHILL: Did you read it at all at the time that you started as a director of Burswood Ltd?

20

MR POYNTON: I can't recall specifically what I read. I would have had --- I would have made, if I recall, some analysis or some (inaudible) in a general sense.

MS CAHILL: At the time of your appointment in 2004, did you consider that in its capacity as licensee of the Perth Casino, Burswood Nominees Ltd had responsibilities to the State of WA?

25

MR POYNTON: Burswood Nominees, yes.

30

MS CAHILL: And did you consider that Burswood Nominees Ltd, as licensee of the Perth Casino, had a responsibility to the State of WA to mitigate the risk of the Perth Casino operations being used to facilitate money laundering?

MR POYNTON: Yes.

35

MS CAHILL: In 2004 did you consider that Burswood Nominees Ltd, as licensee of the Perth Casino, had a responsibility to the State of WA to mitigate the risk of the Perth Casino operations being infiltrated by criminals or organised crime syndicates.

40

MR POYNTON: In a general sense, yes.

MS CAHILL: What do you mean by that?

MR POYNTON: Well, I had no specific involvement in Burswood Nominees. So I would have been aware of a broad obligation to conduct its business in a legal manner, and not to any prejudice to the state.

45

MS CAHILL: In 2004 did you consider that Burswood Nominees Ltd, as licensee of the Perth Casino, had a responsibility to the State of WA to reasonably mitigate the risk of Perth Casino patrons developing gambling addictions?

5

MR POYNTON: Yes.

MS CAHILL: In 2004 did you consider that Burswood Nominees Ltd, as licensee of the Perth Casino, had responsibility to the State of WA to reasonably mitigate the risk of harm to casino patrons caused by playing games on electronic gaming machines?

10

MR POYNTON: I would have answered that in a sense of a general obligation to mitigate any risks of harm, not specifically around electronic games, just gambling in general.

15

MS CAHILL: At the time of your appointment in 2004, did you understand that in WA, gambling via the use of poker machines was prohibited?

MR POYNTON: Can you ask the question again?

20

MS CAHILL: At the time of your appointment in 2004, did you understand that in WA gambling via the use of poker machines was prohibited?

MR POYNTON: Yes, I did.

25

MS CAHILL: At the time of your appointment in 2004, did you consider that it was important for the Perth Casino operations to be conducted in a way that maintained the confidence of the West Australian public in the integrity of those operations?

30

MR POYNTON: Yes.

MS CAHILL: At the time of your appointment in 2004, did you consider it was important for the West Australian public to have confidence that the licensee of the Perth Casino was of good character and integrity?

35

MR POYNTON: Yes.

MS CAHILL: Can I ask you some questions about Burswood Ltd specifically, the company that you were a director of.

40

Now, you've already mentioned that Burswood Nominees Ltd, as you understood it, the board was comprised of an executive management team . So you did not understand that there was going to be any governance of the Perth Casino operations by the Burswood Nominees Ltd board; is that right?

45

MR POYNTON: The Burswood Ltd board or ---

10:14AM

MS CAHILL: Burswood Nominees board.

MR POYNTON: There was not going to be any governance ---

5

MS CAHILL: Of the Perth Casino operations by that board because it was an executive board.

MR POYNTON: No, I would have imagined that it would be charged with the governance of that business.

10

MS CAHILL: The managerial team would have had governance over the managerial team?

MR POYNTON: Ultimately because Limited and Nominees were wholly-owned subsidiaries of the headco. Ultimate responsibility rests with people that own all the equity.

15

MS CAHILL: Let me understand that. You are saying that at Crown Resorts Ltd that was where the governance responsibility lay?

20

MR POYNTON: Well, I guess what I would say is that if the directors of Limited served at the pleasure of the head company and could be removed at any time, then ultimately the power exists in that place, the board of headco.

25

MS CAHILL: Did Crown Resorts Ltd, on your understanding, have any oversight and governance responsibilities for the management of the Perth Casino operations?

MR POYNTON: Ultimately, yes.

30

MS CAHILL: What do you mean by "ultimately"?

MR POYNTON: As I said a minute ago, they owned all the shares in all the subsidiary companies, they appointed the directors to the boards of the subsidiary companies, therefore, could direct and govern the relationship through those boards with the licensee.

35

MS CAHILL: Who had immediate oversight or governance responsibilities in respect of the Perth Casino operations?

40

MR POYNTON: The immediate and most direct connection was between Nominees and the licence with the Government.

MS CAHILL: The executive board?

45

MR POYNTON: Yes. Yes. Bearing in mind the executives also have national roles.

MS CAHILL: And your position is that Burswood Ltd, their board had no governance responsibilities, no oversight responsibilities in relation to the Perth Casino operations?

5

MR POYNTON: As is seen frequently through the minutes, we would be minuted as saying we recommend adoption of. That's not directing the subsidiary company that we own shares in.

10 MS CAHILL: To come back to my question, did Burswood Ltd in your view have any governance or oversight responsibilities in relation to the Perth Casino operations.

MR POYNTON: Only in regards to monitoring the actions of Nominees Ltd.

15

MS CAHILL: When you say "monitoring", what do you mean by that?

MR POYNTON: So the board packs that came and the reports that came to Limited were a combination of things developed by Nominees in conjunction with the executives and indeed the Risk Committees and other committees of headco, Resorts. So the extent to which we had governance, oversight, it was to ratify things that had been agreed elsewhere, or recommend adoption of, for instance.

20

Being the director of a wholly-owned subsidiary is different obviously from being the director of a company that actually employs staff and operates a business. It's probably worth at this juncture to say, at the time of my appointment, it was envisaged the directors, non-management, let's not call them executives, the non-management directors of Limited were appointed to be, and I've used the term elsewhere "ambassadors". They were there to provide political and economic overview about the situation in WA. It was never envisaged, in my recollection, that this company and its directors would be directly responsible for the management of the casino. And, indeed, for the next 15 years that was how it worked.

25

30

MS CAHILL: We'll come back to that in a moment. I will come back to ask you about that in a little more detail, but to go back to your first proposition that subsidiary holding companies generally have the responsibilities you describe, that very much depends upon the governance structure of the individual group of companies, doesn't it?

35

MR POYNTON: It does, indeed.

40

MS CAHILL: It can change depending ---

MR POYNTON: It can change, yes. Dare I say it, there's are a number of precedents for that structure.

45

MS CAHILL: If you go to page 0008 of your witness statement at paragraph 38, you are talking here Mr Poynton in the context of when you joined the CRL board, you

10:19AM

are calling it headco, aren't you, in your --

MR POYNTON: For the purposes but I can call it Crown Resorts.

5

MS CAHILL: Which you joined in May 2018?

MR POYNTON: I was appointed --- I was offered a role on the board and then had to take probity in NSW and Victoria which took some months, and I was actually appointed officially to the board in November 2018.

10

MS CAHILL: Right.

COMMISSIONER OWEN: Can you repeat the dates?

15

MR POYNTON: I was offered a role not long after Mr Packer resigned from the board of Crown Resorts Ltd. I entered into a consultancy arrangement with his company ---

COMMISSIONER OWEN: Sorry, I just missed the dates. Was it November?

20

MR POYNTON: November, yes. November '18 was the date of my official appointment to the board.

COMMISSIONER OWEN: And the invitation was around August, did you say?

25

MR POYNTON: Sorry?

COMMISSIONER OWEN: The invitation?

30

MR POYNTON: No, that would have been April/May.

COMMISSIONER OWEN: So the probity process is six months or so?

MR POYNTON: It was in NSW, Commissioner, yes. In Victoria a shorter period. And I already had probity in WA.

35

MS CAHILL: Mr Poynton, I'm taking you to paragraph 38 of your witness statement. And what you are talking about there, by reference to the earlier paragraph, the sorts of committees, board committees that CRL had; you see that? And in the second sentence of paragraph 38 you say:

40

As a director of Burswood, I was generally aware of the charters and responsibilities of each of the above committees, and I understood that if any issues relating to the Perth Casino were considered by those committees that required the attention of the board of Burswood, they would be appropriately escalated.

45

You see that?

MR POYNTON: Yes.

5

MS CAHILL: What sort of issues are you referring to there that would be required to be escalated on your understanding?

10 MR POYNTON: Well, and there weren't any, but matters to do with AML/CTF, matters to do with problem gambling, matters to do with concerns that the regulator may have had with nominees.

15 MS CAHILL: So to this extent you understood Burswood Ltd did have oversight or governance responsibility in respect of the Perth Casino operations?

15

MR POYNTON: No, I'm saying that we would have been made aware of it from a reputational point of view. As I said earlier, we had no power to direct. As a wholly-owned subsidiary and two non-management members of that board, we were not able to direct but we were receiving information about matters to do with the casino, to do with the matters you've referred to, and other matters to do with the financing of the group. But it was always clear to me that we have no ability to say to Nominees that "You should do this or that". It would have been much more around escalating to headco or Resorts any concerns we had, and have them direct what needed to happen.

25

MS CAHILL: This division of responsibilities that you've described as between the CRL board and the Burswood Ltd board, indeed, Burswood Nominees Ltd board, was that ever documented?

30 MR POYNTON: Not that I'm aware of, no.

MS CAHILL: So there was no document that explained that your role was limited to an ambassadorial one as you've described?

35 MR POYNTON: The operation of the company over time from 2002 onwards made it clear to me what was expected of our board.

40 MS CAHILL: It should have been documented though, shouldn't it, as a matter of good governance to ensure that there were no misunderstandings about who was required to do what within the corporate group?

45 MR POYNTON: Well, over time it was very clear how it was operating and I don't think documenting it might --- it may have been helpful but I think we, the non-executive --- or the non-management directors of Limited knew what we were appointed to do, which was to provide information, as I said, and to monitor, I guess, from a reputation point of view what was happening.

10:24AM

50 MS CAHILL: So is it your evidence that documenting the responsibilities of Burswood Ltd board directors was something that would be helpful, but wasn't required as a matter of good governance of that board?

MR POYNTON: If I felt that it wasn't clear to me what my responsibilities were, yes, documentation might have been required. But at all times it was clear to me.

55 MS CAHILL: What about the other directors?

MR POYNTON: I can't speak for them.

60 MS CAHILL: What about the CRL board? Were you sure it was clear for them what they were doing or not doing?

MR POYNTON: All I could go on was when an internal audit, or external audit, the regulator, or anybody was escalating matters either through Limited or to CRL, and I at no stage was I made aware of any of those concerns.

65 MS CAHILL: Burswood Ltd didn't have a corporate charter during your tenure as a director, did it?

70 MR POYNTON: No.

MS CAHILL: Were you aware before you joined the CRL board in 2018 whether CRL board had a charter?

75 MR POYNTON: Yes, I think I recall it did, yes.

MS CAHILL: And you were certainly aware once you joined CRL, of the board charter, weren't you?

80 MR POYNTON: Yes.

MS CAHILL: If we go to CRL.506.007.7878_R, here we have an agenda for a CRL board meeting in February 2019 at 8110. We have the then company secretary with a memorandum to do with the review of charters. If we cursor down, please, the first one referred to in the memo is a board charter for CRL, which management has reviewed with some suggested amendments for the board's consideration. And if we then cursor down past the memorandum, we see the board charter. And on to the next page, please. You will see in section one at page 8113 it sets out clearly what the board is responsible to do.

90 MR POYNTON: Yes.

MS CAHILL: It goes on to describe duties, responsibilities and powers of the board; do you recall that much?

95 MR POYNTON: Yes, I do.

10:24AM

MS CAHILL: Was it clear to you from reading the board charter for CRL what the

responsibility of CRL was in relation to Perth Casino's business?

5 MR POYNTON: Yes. As the owner of the assets ultimately, and the appointee of the directors to the subsidiary boards, it was clear to me that it was ultimately responsible for the operation of the Perth Casino.

MS CAHILL: You use the word "ultimately" again, Mr Poynton.

10 MR POYNTON: I take out the word "ultimately". It was responsible.

MS CAHILL: Directly?

MR POYNTON: Directly.

15

MS CAHILL: And not Burswood Ltd?

MR POYNTON: Burswood Ltd was, as I said, a company that was in the chain of structures, had no staff, couldn't direct staff to do things, had one asset and one
20 shareholder.

MS CAHILL: Did you consider, knowing that CRL had a board charter, that Burswood Ltd should also have a board charter?

25 MR POYNTON: Given the fact it was a wholly-owned subsidiary of CRL, no.

MS CAHILL: If we go to page 8114, please, and look at section 3.2 of this board charter. You will see there is a section that deals with "matters reserved for the board" and goes on to list them. What matters were reserved to the Burswood Ltd
30 board?

MR POYNTON: The matters that Burswood Ltd had information provided to it about were the operations of the casino in Perth. It had information regarding risk management, problem gambling mitigation. They came to the board of Burswood
35 Ltd as a pack for review. In some cases, as I said, when there was the need to adopt a particular thing that related to the operation of the casino, the wording in the minutes said that the Limited board recommended adoption by Nominees.

MS CAHILL: So what was reserved to Burswood Ltd on your evidence ---
40

MR POYNTON: Well, see, the minutes --- (overspeaking) ---

MS CAHILL: Sorry, I will just finish. We just need for the transcript to have the question complete ---
45

MR POYNTON: I apologise.

MS CAHILL: So that then the answer --- if you try and look at it when you read it

10:29AM

later, it doesn't make much sense.

MR POYNTON: I understand. I apologise.

5

MS CAHILL: That's all right.

10 So, on your evidence then, do I understand this correctly, the matter, not matters, the matter that was reserved for the Burswood Ltd board was to, in certain circumstances, recommend to CRL board that it makes certain decisions?

15 MR POYNTON: No, it seemed to me that the recommendations went the other way. They went down to Nominees. So, for instance, in an example of the adoption of AML/CTF joint program, Limited looked at that program and recommended its adoption by Nominees.

MS CAHILL: That's a governance ---

20 MR POYNTON: It's a recommendation. It has no legal force.

MS CAHILL: You were exercising oversight over Burswood Nominees operations in that capacity, weren't you?

25 MR POYNTON: We had no power to direct. So it is a semantic point. We were never in a position to direct either any employees, because we didn't employ anybody, and we certainly weren't in a position to direct what may happen with the subsidiary, because ultimately that direction was the purview of CRL.

30 MS CAHILL: Let me just explore that with you. It's not semantic at all, is it, if Burswood Nominees provided to you a report, speaking hypothetically and using an extreme to illustrate the case, they've decided that they won't have any AML risk management at the casino. You would presumably as a board go back and say, well, that you recommend against that, we think you should have a risk management system for AML. If it then transpired that they acted against that recommendation, 35 you would send it up the line to CRL, wouldn't you?

MR POYNTON: My ---

40 MS CAHILL: So just answer that question.

MR POYNTON: I'm not sure I understand the question. I'm sorry.

MS CAHILL: I'll repeat it.

45 Hypothetically speaking, Burswood Nominees comes to the Burswood Ltd board and says that they've decided to abandon any AML risk management. "We're not interested to manage and mitigate risk of money laundering occurring at Perth Casino." Your board says that "We recommend against that, that's a terrible breach

of the risk management systems and the particular vulnerabilities of the Perth Casino." Burswood Nominees decides to act against your recommendation. You are obviously going to report that up the line to CRL, aren't you?

5

MR POYNTON: If it happened.

MS CAHILL: Right.

10 MR POYNTON: That's the problem with hypothetical. It never happened.

MS CAHILL: But the fact of the matter is that the structure was there for you as Burswood Ltd board to exercise oversight of the Perth Casino operations?

15 MR POYNTON: Oversight, but no direction, and no power to direct.

MS CAHILL: Right.

20 MR POYNTON: So certainly one could go to, it never happened, members of CRL and express concern, but as is evidenced by all reports that came, there were no red flags.

25 MS CAHILL: But that simply demonstrates, doesn't it, that your oversight, the oversight that you provided, you were comfortable with what Perth Casino operations were doing?

30 MR POYNTON: On the basis of the reports that we received from many, many sources, but particularly internal and external auditors, there were no red flags. There was never an issue raised, as far as I was concerned, that required --- from the regulator --- if you think about the analogy, it would be like APRA talking to a non-executive director of, say, Commonwealth Bank or, more specifically, Bankwest. My experience is that's not the way it works, and it certainly was never any flags in that regard.

35 MS CAHILL: So you accept that there was a degree of oversight without a power to direct?

MR POYNTON: Correct.

40 MS CAHILL: In relation to the Perth Casino operations?

MR POYNTON: Correct.

45 MS CAHILL: And I think you also described it in your own words as a monitoring function in relation to the Perth Casino operations?

MR POYNTON: Correct.

10:33AM

MS CAHILL: And these were the responsibilities that the Burswood Ltd board had?

MR POYNTON: If you use the term "responsibility" in the context of oversight ---

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MS CAHILL: Yes.

MR POYNTON: --- but not being able to direct.

10 MS CAHILL: Would you agree it was a failure of governance by the board of Burswood Ltd while you were there not to ensure that those responsibilities, we've just agreed that it had, were documented?

MR POYNTON: No.

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MS CAHILL: Would you agree it was a failure of governance by the board of Burswood Ltd during your tenure not to insure there was a Burswood Ltd board charter?

20 MR POYNTON: No.

MS CAHILL: Coming back to paragraph 18 at page 0004 of your witness statement, here you are talking about the management team.

25 MR POYNTON: Indeed.

MS CAHILL: For the Perth Casino. You make an initial comment about management teams generally in your experience. During the second sentence you say you refer to having a high degree of trust and confidence in the management team's judgment skills, competence and integrity in managing the Perth Casino business. You repeat that in a way at paragraph 24 at 0005.

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MR POYNTON: Yes, indeed.

35 MS CAHILL: Did you consider the management team or any of them were ultimately accountable to the board of Burswood Ltd for their management of the Perth Casino operations?

MR POYNTON: Not directly.

40

MS CAHILL: Were they indirectly accountable?

MR POYNTON: They were indirectly in some cases accountable to the group. As I said and it is documented, Burswood Ltd employed no executives. So again, there is no direct linkage between the board of Burswood Ltd and the employees or executives. So in the general sense of making a director of Burswood Ltd comfortable that there were no issues that needed to be elevated, that is the connection that one is relying on management to provide you with assurances about

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those matters that make you satisfied.

5 MS CAHILL: Did you consider the management team of Perth Casino, or any of them, were accountable in any way, either directly or indirectly, to the board of Burswood Ltd for their management of the Perth Casino operations?

10 MR POYNTON: They were accountable to do the right things as directors of their own subsidiaries and, indeed, in their roles as senior executives.

MS CAHILL: They were accountable to the Burswood Ltd board to do the right thing?

15 MR POYNTON: Correct.

MS CAHILL: Now, at 24, you've made this point before, I think, of your witness statement, you mention that a majority of the senior management team at Burswood also held senior positions at Crown, you mean at CRL level?

20 MR POYNTON: CRL, yes.

MS CAHILL: And did you consider them to be primarily accountable to CRL rather than Burswood Ltd?

25 MR POYNTON: Correct.

MS CAHILL: And were there any of the senior management who you did not consider to be accountable to CRL?

30 MR POYNTON: I wouldn't be able to differentiate at this point who those people might be. It evolved over time.

35 MS CAHILL: Is the board of Burswood Ltd responsible for or have any involvement in regularly reviewing the performance of the senior management team who managed the casino operations?

MR POYNTON: No, because we didn't employ any of them.

40 MS CAHILL: Did you regard it as the responsibility of the board of Burswood Ltd to in any way to challenge the management of Perth Casino and hold the senior management to account?

45 MR POYNTON: In the context of the way that the reports were discussed at the board, there was the opportunity to test the veracity of what was coming. And from time to time there would be Q&A about a particular matter. It might be to do with capex or whatever, but in the context of receiving a report and discussing it. I don't recall the need at any stage the pushing back, if you want to use that term, or not believing what was being presented to that board.

MS CAHILL: I will just be clear. My question wasn't directed to whether you did test management or whether there was an opportunity to test management. My question is: did you regard it as a responsibility of the board of Burswood Ltd to challenge the senior management of Perth Casino and hold them to account?

MR POYNTON: Only if there were cause so to do it.

MS CAHILL: By which you mean if you saw from what was reported to you something of concern in relation to the operations?

MR POYNTON: Indeed. So the data points that we had, amongst other things, were risk management reports, specifically around things like AML/CTF, things like Responsible Gaming, those sorts of things. Things like capex on major projects. There were data points like internal audit reports, like reports from management about interaction with AUSTRAC and GWC, and there was reports from Ernst & Young, and my recollection is for the very substantial period of my directorship of Limited there were no red flags raised in any of those reports that would have given me cause to challenge management.

MS CAHILL: But had there been, you would have?

MR POYNTON: Had there been, I would have probably I imagine taken it up not so much with management per se, but with CRL.

MS CAHILL: Did you regard it as a responsibility of the board of Burswood Ltd to instill in senior management a culture of acting lawfully, ethically and responsibly in relation to the Perth Casino operations?

MR POYNTON: Yes.

MS CAHILL: Coming back to paragraph 18 of your witness statement on page 0004, the second sentence I took you to a moment ago where you say you relied on and had a high degree of trust and confidence in management et cetera?

MR POYNTON: Correct.

MS CAHILL: For what purpose did you rely upon and have trust and confidence in the management team?

MR POYNTON: What purpose? What were the data points that gave me that confidence.

MS CAHILL: For what purpose did you rely on upon and have trust and confidence in that management team?

MR POYNTON: To ensure that the operations were being conducted legally.

MS CAHILL: And if during your tenure as a director, you felt you couldn't rely upon or have trust and confidence in that management team, what would you have done?

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MR POYNTON: I would have elevated it to the chair of the company—

MS CAHILL: Do you mean CRL?

10 MR POYNTON: CRL. Bear in mind that the chair of CRL, for a substantial period of my directorship of Limited was in fact the Chairman of CRL.

MS CAHILL: You mean James Packer?

15 MR POYNTON: Well, and in some instances John Alexander. So this, I guess, is the point that there were people in very senior roles sitting alongside me as a director who were in a much, much stronger position to determine whether management could be relied upon.

20 MS CAHILL: But you accept obviously as a director you have independent responsibilities?

MR POYNTON: Absolutely, but in the same case as CRL itself when I joined that, one is given some comfort by the experience of the directors that already sit around
25 the table and, indeed, in the case of Limited, that those people had much, much broader roles and, therefore, insights into matters that Limited wouldn't have had. So therefore, one, to a significant degree, relies upon your fellow directors.

MS CAHILL: But it doesn't abrogate your responsibility?
30

MR POYNTON: No, I'm not saying that.

MS CAHILL: So if you have a concern, and you think someone else at the table might know more about these things than me, you accept that it is your responsibility
35 to at the very least raise it to them?

MR POYNTON: Indeed, to the person metaphorically sitting to the left or right who happens to be the chair of the main company, my point is at no stage in that period that I referred to were there concerns because of the documents that were coming
40 through for our review.

MS CAHILL: Just to be clear, given that you've accepted that you would have a responsibility to raise your concerns, why did you think you had that responsibility?

45 MR POYNTON: Well, I'm required by the law to conduct my directorship, if you like, or my oversight of Limited in a manner that is lawful, is considered, diligent and is in the best interest of the shareholder. And I say shareholder because there was only one.

50 MS CAHILL: And in relation to the State of WA as well?

MR POYNTON: And in relation, indirectly, to the State of WA, yes, not having any direct relationship with that.

55 MS CAHILL: Well, there is the State agreement. Can you recall whether Burswood Ltd is a party to the State Agreement?

MR POYNTON: It would be as far as I recall. I haven't refreshed my memory about that.

60 MS CAHILL: There may be more of a direct relationship in some respects?

MR POYNTON: I --- I --- I suppose the company that is actually the licensee has direct, I would have thought more direct responsibilities that Limited.

65 MS CAHILL: I will change topics now. I want to talk to you about risk management and go to page 009 of your witness statement where you have a heading just before paragraph 41 where you talk about "Risk management at the Crown Group". You see that goes through to paragraph 50. Can I make sure I understand the effect of your evidence between paragraphs 42 and 44 on page 0009. Are you saying that the board of Burswood Ltd did not have any involvement in overseeing the development of the risk management system with respect to Perth Casino?

MR POYNTON: Correct.

75 MS CAHILL: That was effectively overseen by the Risk Management Committee which was a committee of the CRL board?

80 MR POYNTON: There was a committee called the ERCC, the Executive Risk and Compliance Committee, which was a committee of either Limited or Nominees, I don't have that in front of me, which was responsible for the development of risk management protocols which, as I understand it, and I didn't sit on that committee, liaised with the risk committee of CRL and other members of the board.

85 MS CAHILL: I will come back to the ERCC in a moment. I will ask you some more questions about that in a moment.

MR POYNTON: Sure.

90 MS CAHILL: I was asking you about the actual development of the risk management system for Perth Casino. Burswood Ltd had no oversight of that?

MR POYNTON: No.

95 MS CAHILL: No approval of that system?

MR POYNTON: I referred earlier to the term "adoption", "recommend", those sorts of words that are in the minutes. So a risk management structure would come to

10:46AM

100 Limited and be in a sense ratified or approved for adoption by other entities, but it had no part in the development or --- the non-management directors had no part in the development.

105 MS CAHILL: But it was expected to review the system and satisfy itself that it was appropriate for Perth Casino in order to recommend to others to approve it?

MR POYNTON: To recommend to others to approve and to take into account other inputs, including, as I've said, things like reports from internal and external auditors.

110 MS CAHILL: So what about --- we just talked about developing the actual system itself ---

MR POYNTON: Yes, indeed.

115 MS CAHILL: --- and embedding it. What about the oversight of implementation and compliance with the system?

120 MR POYNTON: Again, there would be regular board papers, the quarterly board meetings that Limited had would include a number of matters to do with risk, matters to do with compliance, matters to do with, as I said, finance, the actual operations of the business. And they would be discussed either in length or, you know, in less length depending on whether there were any items specifically to be drawn to our attention.

125 MS CAHILL: So, do I understand then that because of that recommending power that you described, and function, that Burswood Ltd board did have the power to influence the content of the risk management system for the Perth Casino operations?

130 MR POYNTON: Well, you refer, with respect, to recommendation power. I wouldn't say a recommendation. Opportunity is a power. I would say it is just that. In fact, if other parts of the organisation decided not to adopt a recommendation that Limited made, they obviously had the power to remove the directors who are responsible for that.

135 So, I guess my point is we had, and I've indicated a number of times, papers coming to us for our review and either our recommendation or noting as distinct, depending on the circumstances.

140 MS CAHILL: Do you consider that Burswood Ltd board had any capacity to influence the content of the risk management systems and processes insofar as they apply to Perth Casino?

MR POYNTON: Only after the fact.

145 MS CAHILL: Did you have any concerns about that, that risk management of the Perth Casino operations was occurring primarily at parent company level or group level?

MR POYNTON: No. In fact, if you think about it, it's probably better that there is oversight at parent company level than at deep in the subsidiary level, because ultimate obligation of the directors is to the shareholders of Limited in every respect.

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MS CAHILL: Well, there is also these responsibilities to the State of WA that you've identified, aren't there?

MR POYNTON: Indeed. Indeed.

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MS CAHILL: Did you ever have any concerns that the parent company might look at risk management and identification more generically or with a focus on the risks at Crown Melbourne rather than considering risks specific to and in the context of the Perth Casino operations?

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MR POYNTON: I didn't delineate because I would have thought that it is fair to say or observe that the risk issues that might be to do with Melbourne would be pretty much the same in Perth.

20

MS CAHILL: What about the responsibilities to the people of WA?

MR POYNTON: Well, they are expressed through the operation at board level of the company. And, as I said at the outset and I've said it many times, there were no red flags or concerns raised by the board on which I sat that there were any issues to be concerned about. As I said, the chair of the company sat on that board most of the time, and one would have imagined that if there were concerns we would have talked about it.

25

MS CAHILL: So you never thought, at any time during your tenure as a director of Burswood Ltd, or CRL, and it doesn't occur to you now, that it would be preferable for risk management to be overseen locally by Burswood Ltd in respect of the Perth Casino operations?

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MR POYNTON: I think that I would separate out my views once I became a director of CRL from my observations at Burswood Ltd. It has to do with the events that occurred at CRL level which were well documented. I think that that's a matter for this Commission to determine, whether in fact there are flaws in the structure that need addressing. I'm here to try and help with that.

35

MS CAHILL: Right. So is your evidence that looking back now with hindsight, it would be better for the risk management system for Perth Casino operations to be overseen and governed locally by a local company rather than at ---

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MR POYNTON: If ---

45

MS CAHILL: --- I will just finish --- by the parent company?

MR POYNTON: If it's determined that there are matters that concerned government

about compliance shortcomings or oversight shortcomings, then they need to be addressed. My point is that during my tenure as a director of Limited, no issues to do with that were raised. Now, subsequently there have obviously been matters that
5 have been well publicised. So my position would be to investigate what governance shortcomings there may have been and address them.

MS CAHILL: But you had a role to act proactively, didn't you?

10 MR POYNTON: Indeed. Indeed. And on CRL, that is what I was there to try and do.

MS CAHILL: So would you accept that it was a governance failure of the board of Burswood Ltd generally, and you as a director specifically during your time, not to
15 appreciate a need for risk management in respect of the Perth Casino operations to have an oversight component that was local?

MR POYNTON: No, because there was an oversight component that was local.

20 MS CAHILL: Where was that?

MR POYNTON: That was at Nominees. And, indeed, through the directors of Nominees and through, as I said, at least part of the time Mr Alexander, the chair of the company, sat on the Nominees board. It's not as if there isn't oversight at both a
25 parent and local level.

MS CAHILL: Mr Poynton, the Nominees board is an executive board.

MR POYNTON: Yes.
30

MS CAHILL: So that's the executive governing the executive.

MR POYNTON: No. It's actually the liaison, or the relationship you are talking about is in risk management back to, say, the state or the licence. As I said, from my
35 point of view I'm just trying to make the point that there was no issues that came to the board on which I sat that would cause me to be concerned about governance oversight.

MS CAHILL: But that's a reactive posture, Mr Poynton. We're talking about what
40 you as someone with an oversight responsibility ought to have done. And ought you not to have appreciated that there had to be some independent oversight of management in relation to the risk management processes and systems in respect of the Perth Casino?

45 MR POYNTON: I would say that that responsibility sat with the chair of Risk Committee at CRL level, the board of directors of CRL, and ultimately the chair of the company.

MS CAHILL: Are you adopting a position that it is really everyone but you had

a responsibility in relation to the Perth Casino operations oversight?

5 MR POYNTON: Not at all. What I'm trying to say is the legal structure of this company, and the way that the Limited board was set up where it didn't have any employees, it had one shareholder and one asset is not the normal environment that one might see in other places. It is a subsidiary arrangement, a wholly-owned subsidiary. In sitting as a director of that subsidiary, one of course relies on management, on fellow directors and on the risk management structure to be effective. And for the vast period of the time I was on board, in my view it was.

MS CAHILL: The Perth Casino had unique responsibilities to the State of WA, didn't it?

15 MR POYNTON: It had broad responsibilities and no power.

MS CAHILL: The Perth Casino licensee had special responsibilities to the State of WA, didn't it?

20 MR POYNTON: Nominees.

MS CAHILL: The licensee, Nominees?

25 MR POYNTON: Yes, it did.

MS CAHILL: And who was overseeing it at the local level in relation to those responsibilities?

30 MR POYNTON: Well, Limited was receiving information from committees and from executives upon which it relied to assume, in my view fairly, that there were no issues that Limited should be concerned about. There is an oversight, but it is of very limited power. And of course, as we've said, if there were flags, you would refer them elsewhere, either to the chair of risk or chair of audit or elsewhere in the board.

35 MS CAHILL: Come back to my question, Mr Poynton. In relation to the licensee, who was overseeing its fulfilments of its responsibilities, who was overseeing it locally?

40 MR POYNTON: Limited had some oversight but no power to direct.

45 MS CAHILL: I will come to the ERCC Committee that you mentioned a moment ago. I think you had already said that there were no board committees of Burswood Ltd during your tenure. Instead, there was this ERCC, wasn't there? It is the acronym for Executive Risk and Compliance Committee.

MR POYNTON: Correct.

MS CAHILL: That was formed in around May 2008, wasn't it?

10:56AM

MR POYNTON: I can't recall exactly when it was formed.

MS CAHILL: Does that sound about right?

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MR POYNTON: As I said, I can't recall.

MS CAHILL: And it had a director of Burswood Ltd on that committee, didn't it?

10 MR POYNTON: It may have had more than one. I'm not sure at the particular time.

MS CAHILL: It was usually the CEO, wasn't it?

15 MR POYNTON: Well, certainly at one stage I recall Mr Alexander was on it, who was both the executive chair of the company and on Limited and on Nominees.

MS CAHILL: It was populated exclusively by people with executive functions?

MR POYNTON: Correct.

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MS CAHILL: Was the ERCC established at the instigation of the Burswood Ltd board?

MR POYNTON: No.

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MS CAHILL: Was it at the instigation of CRL?

MR POYNTON: I don't know. I was not on the board of CRL when it was established.

30

MS CAHILL: Did Burswood Ltd approve or recommend the establishment of the ERCC?

MR POYNTON: Not that I can recall.

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MS CAHILL: Can we go, please to document CRW.700.023.0324, which is the ERCC charter of November 2010. Do you have that on your screen, Mr Poynton?

MR POYNTON: I do.

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MS CAHILL: Do you agree it is a charter that applies to and is intended to apply to the ERCC and Burswood Ltd? You see the reference in paragraph 2 towards the top of the page about point 2, to the "Company"? Do you understand that to be a reference to Burswood Ltd?

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MR POYNTON: There is reference to the board of directors in the section "purpose". It doesn't say which board.

MS CAHILL: Have a look at numbered paragraph 1.

MR POYNTON: Burswood Ltd.

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MS CAHILL: Company.

MR POYNTON: The business operations of Burswood Ltd.

10 Well, Burswood Ltd didn't have direct business operations. Its asset was one share or shares in the Property Trust. Business operations, I would have thought, is just that, where there is a number of employees and there is operations and those sort of things. Burswood Ltd did not have operations in that sense.

15 MS CAHILL: You understood the ERCC charter and the ERCC structure itself to be premised on the concept that Burswood Ltd was responsible by way of oversight and management of the Perth Casino operations; wasn't it?

MR POYNTON: So, as I said ---

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MS CAHILL: Just answer the question.

MR POYNTON: Sorry, what was the question?

25 MS CAHILL: You understood, didn't you, that the concept underpinning both this charter and the ERCC structure itself, was that Burswood Ltd and more particularly the board, had responsibility for overseeing the operations of the Perth Casino?

MR POYNTON: It didn't have direct responsibility for the oversight of the Perth
30 Casino. You know, as I said, it had no capacity to direct. It was a company in the chain. So, yes, I'm not trying to deny that there was any connection around these companies but we had an oversight role as you said, but we were unable to direct. So the ERCC was designed to give comfort to not just this board, not the Limited board, but presumably the headco, CRL board, that matters of risk were being assessed,
35 discussed and referred.

MS CAHILL: In any event, just having regard to the numbers paragraphs there, Mr Poynton, you would accept that the board of directors of Burswood Ltd had a responsibility to provide oversight for the identification and evaluation of material
40 risks involved in the operation of the Perth Casino?

MR POYNTON: It reviewed work the ERCC did, which was referenced up to the board packs and meetings that occurred quarterly for review and adoption and recommendation. As the non-management members of Limited had no involvement,
45 it is a question of the words. We, by all means, reviewed the work of the ERCC as it came up to Limited and, indeed, recommended adoption in various places and times of the work that had been done, but it was not --- certainly I wasn't directly involved

11:01AM

at all, because I wasn't on the committee, of the establishment of those issues.

MS CAHILL: If we just take numbered paragraph 1?

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MR POYNTON: Yes.

MS CAHILL: And we interpret "business operations of Burswood Ltd" to mean operations of the Perth Casino. Numbered paragraph 1 --- does it correctly state Burswood Ltd's responsibilities?

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MR POYNTON: As I said, I think it is responsible to potentially say that the word "Burswood Ltd" shouldn't be there and it should be "Burswood Nominees Ltd".

MS CAHILL: You've obviously seen this charter before?

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MR POYNTON: It is November 2010, so it is 11 years ago.

MS CAHILL: Have you seen this charter before?

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MR POYNTON: I imagine I would have. I can't remember specifically when. I think it was tabled so presumably I did.

MS CAHILL: You understood the ERCC reported primarily to the Burswood Ltd board?

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MR POYNTON: The ERCC at no stage presented minutes of its meeting to the Limited board. As I said, what would come up to the Limited board was legal and regulatory and compliance.

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MS CAHILL: Did the ERCC report to the Burswood Ltd board?

MR POYNTON: Not directly.

MS CAHILL: Did it indirectly?

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MR POYNTON: Only through the reports that the board got under the title "legal regulatory".

MS CAHILL: So ERCC provided reports to the Burswood Ltd board but that wasn't reporting. Is that your evidence?

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MR POYNTON: Well, I'm trying to explain the way the work of the ERCC was presented to Limited. So the ERCC, consisting of executives, worked up in conjunction presumably with the rest of the company, risk matrices and issues on risk and gave a report to Limited.

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MS CAHILL: And somebody spoke to those reports in Burswood Ltd meetings,

11:03AM

didn't they?

MR POYNTON: They would have, yes.

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MS CAHILL: And that's reporting or not reporting to the Burswood Ltd board by the ERCC?

10 MR POYNTON: It's not --- so, it was not reported to in the context of someone being the chair of the ERCC. It was provided as a report on risk matters, but it wasn't like --- in other boards you get the minutes of the Risk Management Committee or the audit committee and there is the actual chair of the report on that. That was not the context in which these reports were given. They were not given as minutes of the ERCC to us.

15

MS CAHILL: What did you think you had to do with the reports once you received them?

20 MR POYNTON: Study them. I guess, satisfy myself and the rest of the board to satisfy themselves that there were no issues that needed escalation.

MS CAHILL: And if they did need escalation, what would you do?

25 MR POYNTON: Well, they didn't so there was not an example. If in fact, hypothetically, they had needed it, the first person one would have spoken to was the chair of the company who sat on Limited. And, as I said, the chairs were the ones that set these things up.

30 COMMISSIONER OWEN: When you say that the chair of the company you mean CRL or B&L?

MR POYNTON: CRL.

35 MS CAHILL: So this charter that is on the screen, Mr Poynton, the ERCC charter, was that ever formally adopted or approved by Burswood Ltd?

MR POYNTON: I assume it was.

40 MS CAHILL: By you? You approved it in your capacity as a director?

MR POYNTON: I don't have the particular minute of a meeting that I attended that adopted it, but I will assume it would have been adopted.

45 MS CAHILL: If it hadn't been, it hadn't been formally adopted, would you accept that that was a governance failure by the Burswood Ltd board?

MR POYNTON: If it hadn't been, it would be --- I'm not sure about a governance failure because in fact what happened, it operated like it had been adopted, at least

I'm assuming by the reports that I got, so I don't know. So I assume when I look at this it would have been adopted.

5 MS CAHILL: Just to make sure we have your evidence clearly, what was the responsibility that Baghdad Ltd board had in relation to risk management in respect of the Perth Casino operations?

10 MR POYNTON: To, upon receipt of management reports and, indeed, the ones I referred to, satisfy itself that there were no issues that would cause concern regarding compliance.

15 MS CAHILL: And what was the CRL board to your knowledge, your understanding while you were on the Burswood Ltd board, what was the CRL board's responsibility in relation to risk management in respect of Perth Casino operations?

20 MR POYNTON: As the ultimate owner of the company that had the licence, it had primary responsibility in my view for the monitoring, the establishment and monitoring of the risk management tolerance, whatever you want to call it.

25 MS CAHILL: Would you accept that it was a governance failure on the part of the board of Burswood Ltd, while you were on it, not to have documented that division of responsibility in respect of risk management as between Burswood Ltd on the one hand and Crown Resorts on the other?

30 MR POYNTON: No, I don't think it is a governance failure. As I said, because I think the operation was such that as a member of Burswood Ltd, I felt that I was getting sufficient corroboration from internal, but mostly external sources that didn't raise at any point that there was a problem with the governance or the risk management structure.

35 MS CAHILL: All right. If we go to page 0325 of this charter. Here it is set out under the heading "Responsibilities and duties". And what is described there are the responsibilities and duties of the ERCC, this executive committee. Do you see in the first dot point it says "provide risk and compliance oversight to the Company" ---

MR POYNTON: Yes.

40 MS CAHILL: --- which you understood to be Burswood Ltd?

MR POYNTON: It doesn't define which company is referring to?

MS CAHILL: We'll go back to page 1.

45 MR POYNTON: Are you saying it is the same?

MS CAHILL: We'll go back to the beginning of the document, paragraph 1, please.

11:09AM

MR POYNTON: And --- Burswood Ltd and its related entities.

MS CAHILL: So it includes Burswood Ltd.

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MR POYNTON: And its related entities.

MS CAHILL: It includes Burswood?

10 MR POYNTON: Yes.

MS CAHILL: We go back to page 325 ---

15 COMMISSIONER JENKINS: Sorry, before we go there, so you are emphasising, Mr Poynton, related entities. Who do you see as the related entities?

MR POYNTON: In this case Nominees and (Management) Ltd, the operators of the business.

20 MS CAHILL: Page 325. So the executive committee has an oversight function?

MR POYNTON: Yes.

25 MS CAHILL: And then in the second dot point it actually determines the objectives of the enterprise risk management and legal compliance frameworks, determines those?

MR POYNTON: Yes.

30 MS CAHILL: If we drop down to the fifth dot point, reviews and assesses material risks; you see that?

MR POYNTON: Yes.

35 MS CAHILL: From the bottom here, fourth last dot point:

Review and approve the Risk Management Plan, prior to presentation to *[relevantly] the Board of Directors.*

40 And the last dot point:

Conduct annual self-evaluation of the performance of the Committee, including *its effectiveness and compliance with this Charter.*

45 Would you agree with me that the duties that I've drawn your attention to are oversight functions that should more properly have been undertaken by the board of Burswood Ltd rather than at executive level?

11:10AM

MR POYNTON: My response to that would be that the board of BRL has ultimate control over this charter or this committee.

5 MS CAHILL: Did you say BRL?

MR POYNTON: CRL.

MS CAHILL: Again, not Burswood Ltd's responsibility?

10

MR POYNTON: What I've agreed to is that there was an oversight function that Limited had that in fact was essentially manifested by the regular reports that Limited was getting from, amongst other places, legal and compliance. Obviously when I subsequently joined the board of CRL, there was a lot of focus on risk, audit, compliance, et cetera, and there are minutes after minutes to do with that. At this particular level, Limited was receiving reports on a limited basis which again, I've said, had no red flags in them.

15

MS CAHILL: The question is this: looking at these responsibilities of the committee, isn't it the case that what it was requiring the executive to do was to oversee its own executive function to a degree?

20

MR POYNTON: It was. And, indeed, self-evaluation is always potentially an issue. I would have thought again, and I don't know, that there would have been some oversight of this committee as it related to executives of CRL.

25

MS CAHILL: Did you ever have any concerns during your tenure as a director of Burswood Ltd, that to devolve the tasks that I've drawn your attention to here in this document to the executive could militate against the board of Burswood Ltd engaging substantively and proper with issues of risk management and overseeing risk identification?

30

MR POYNTON: No, but it heightens the need to rely on management to provide accurate information.

35

MS CAHILL: I'm just about to start a new topic.

COMMISSIONER OWEN: We'll take a break and come back at 11.30.

40

ADJOURNED

[11.13AM]

RESUMED

[11.31AM]

45

MS CAHILL: Mr Poynton, just so that we can get some understanding of the general procedures of Burswood Ltd board, you mention at page 0006 of your statement at

paragraph 29, I will put that up on the screen for you, that before each meeting the directors were provided with board packs and you described there, in the subparagraphs, topics that are fairly conventional that you would normally see in the professionally run company that you direct?

MR POYNTON: Yes.

MS CAHILL: If we go to CRW.702.001.1322, this is just an example board pack that I am going to ask to be put up on the screen for a meeting that was to be held on 13 August 2013. Now you've mentioned elsewhere, I think at paragraph 15 of your witness statement, that your board packs at Burswood Ltd did not include minutes of Burswood Resort management meetings or Burswood Nominees.

MR POYNTON: Not as far as I recall.

MS CAHILL: Do you think your board packs should include those minutes?

MR POYNTON: Yes.

MS CAHILL: Did you ever raise with anyone ---

MR POYNTON: No, Sorry, again it is a hypothetical question. Yes, they could have ---

MS CAHILL: Sorry, I will just correct you. I asked, do you think they should have.

MR POYNTON: Sorry, I apologise. I heard "could". I have no cause to be they should in the sense that I thought the information that I was receiving was sufficient for me to understand the issues. Perhaps best practice might suggest they should have been, but I'm not suggesting that.

MS CAHILL: Do you know if any other company in the Crown group routinely received the minutes of meeting of the licensee and/or the manager of Perth Casino other than those companies themselves?

MR POYNTON: No.

MS CAHILL: Do you think somebody other than Burswood Nominees and Burswood Resort (Management) should have been received the minutes of those meetings?

MR POYNTON: Yes, they should have and I imagine that would be the Risk Committee of CRL, a matter I would have thought for discussion with the chair of that committee or indeed the chair of the company.

MS CAHILL: Not something you ever checked?

MR POYNTON: As I said, the information that I was receiving was sufficient for me to form a view that there were no red flags requiring my intervention.

5 MS CAHILL: What I'm putting to you is did you ever check to see that those minutes were being sent to CRL?

MR POYNTON: No.

10 MS CAHILL: You should have, shouldn't you?

MR POYNTON: No, I don't believe I should have.

15 MS CAHILL: But Burswood Nominees and Resort Management were subsidiaries of Burswood Ltd?

MR POYNTON: Over a period from 2004 my position would be that where I to have formed a view that I was not receiving sufficient information then I would have, I'm sure, taken it further.

20

MS CAHILL: Let's take that in steps. I'm asking you about the minutes going up to CRL.

MR POYNTON: Yes.

25

MS CAHILL: You didn't know whether they were going up there or not?

MR POYNTON: No, but I assumed they were.

30 MS CAHILL: Why didn't you check?

MR POYNTON: I suppose for the reason that I have no cause to be concerned about quality of the information coming to me as a director of Limited.

35 MS CAHILL: Let's talk for a moment about the information you were getting in your capacity as a director of Burswood Ltd. Wouldn't receiving the minutes of Burswood Nominees and Burswood Resort (Management) meetings have given you an opportunity to cross-check and verify what you were being told?

40 MR POYNTON: It would have.

MS CAHILL: And wouldn't it have been good governance practice therefore, to require those minutes to be provided to the board of Burswood Ltd?

45 MR POYNTON: It would be enhanced governance. I suppose where I'm coming from here is that I was a director. Sitting alongside me was the chair of the company. They had purview, they had control over the flow of information, and so I would say that I was satisfied and, I'm assuming because there was no intervention, that the chair of the company was satisfied, and because there was no other intervention, the chair of risk at CRL was satisfied. So my point, the whole time, is that where I had

11:34AM

- 50 reason to be concerned, I would have escalated matters. The structure of the receipt of minutes, et cetera, which maybe in hindsight have been better governance to receive, and I will concede that, the absence of those minutes coming to the board on which I sat did not give me cause to be concerned about the quality of the information.

MS CAHILL: When you say you look back in hindsight, and it would have been better governance to require those minutes to be provided to you, were you at the time, when you were a director of Burswood Ltd, effectively refraining from asking
5 for the minutes because you relied on the chairman and what the chairman's disposition to governance requirements was?

MR POYNTON: I would have been, as I just mentioned, satisfied about the information received ---
10

MS CAHILL: Checking it? This was a cross-check, wasn't it?

MR POYNTON: Well, I'm not sure, with respect, what would have been in the minutes that would have been different from the reports that were coming up from
15 risk and legal.

MS CAHILL: You never looked?

MR POYNTON: No, I was never given the opportunity to look and I was never
20 given reason to be concerned about it.

MS CAHILL: What do you mean you were never given the opportunity?

MR POYNTON: Sorry ---
25

MS CAHILL: All you needed to do was ask, isn't that so?

MR POYNTON: The reason I didn't see them was because they were not provided. As I've said, if I had cause to be concerned about the quality and veracity of the
30 information coming to me, I imagine I would have asked for more information. There was no reason for me so to do, and there was no reason as far as --- or not expressed in any way by the chair, for members of that board of Limited to be concerned.

MS CAHILL: Presumably you read the board packs before each meeting?
35

MR POYNTON: Yes.

MS CAHILL: What they related to?
40

MR POYNTON: Yes.

MS CAHILL: And meetings took place for Burswood Ltd on a quarterly basis, didn't they, four times a year?
45

MR POYNTON: Correct.

MS CAHILL: Did you consider at the time that the board should meet more regularly?

5 MR POYNTON: I didn't consider it at the time. As was in my evidence subsequently when I became chair, it struck me that the meetings could occur more frequently and have more information particularly from a group level provided to them.

10 As I said, the structure of this was set up by initially James Packer, and there were other chairs along the way, mostly John Alexander. Again, given the roles and responsibilities we had, which in my view were quite limited, the information coming quarterly was sufficient.

15 MS CAHILL: It was a monitoring and oversight role, wasn't it?

MR POYNTON: Correct.

MS CAHILL: In any event, your position is that at the time it didn't seem to you that
20 you needed to meet any more than quarterly?

MR POYNTON: Correct.

MS CAHILL: We'll have a look at this document. This is an aid that we have
25 prepared, Counsel Assisting and the legal team of solicitors have prepared and it is derived from a minutes of meeting of Burswood Ltd. I will show it to you, PCRC.0007.0001.0001.

30 What it does, Mr Poynton is it records the time taken for board meetings of Burswood Ltd, the length of them between 2009 and 2020. There is some summary information on this front page and we can see --- do you see that average column, the second last column on the right-hand side?

MR POYNTON: Yes.
35

MS CAHILL: The average length of meetings each year?

MR POYNTON: And all of them are under 1.5 hours. You see that?

40 MR POYNTON: Yes.

MS CAHILL: Then if we go into the detail over the page, you will see they have the times taken for individual meetings. If we can go down to 2013, please. You will see there for July and August 2013, the meetings last 26 minutes each. And then for
45 October 2013, 34 minutes. And then if we go over the page, for December 2013, 28 minutes.

Now, Mr Poynton, was it the case that until the Bergin Inquiry commenced, the

Burswood Ltd board was not giving any detailed consideration at meetings to agenda items?

5 MR POYNTON: Sorry, can you ask that again.

MS CAHILL: Until the Bergin Inquiry commenced, is it the case that the Burswood Ltd board was not giving any detailed consideration at its meetings to agenda items?

10 MR POYNTON: The board of Burswood was not giving consideration to its agenda items?

MS CAHILL: Any detailed consideration?

15 MR POYNTON: Any detailed, sorry, I apologise. No, I think that I would say that the packs were sufficient to get a clear understanding of the issues. And, indeed, opportunities arose, prior to the meetings, for interrogation of the other directors, being people like John Alexander or Rowan Craigie. And so I think that the board did give consideration to the matters, but it was more in the context of things taken as
20 read and if there was a matter to discuss it would be raised as a result of that, as distinct from a whole lot of time being spent, as in some board meetings in other companies, people speaking to or going into detail about things that have already been presented in a pack.

25 MS CAHILL: Well, what I'm trying to ascertain is how much discussion, debate and interrogation of management issues was conducted at board level.

MR POYNTON: Right.

30 MS CAHILL: And before Bergin, the answer is: not much; isn't that so?

MR POYNTON: I think I would accept that the duration of these meetings, certainly on comparison with an operating board or a company with a board that has operations, these meetings were short in duration for sure.

35

MS CAHILL: Because it didn't have operations?

MR POYNTON: Well, partially because it didn't have operations, partially because the chair decided the length of the meeting in various cases, whichever chair that
40 might be. You are sitting as a director on the company. Apart from the opportunity to ask questions, which the minutes reflect I did from time to time, one doesn't as a director set the duration of the meeting.

MS CAHILL: What do you mean by that, Mr Poynton? If we take the 12 December
45 2013 meeting on the screen, that when it began, the chairman said, "Well, we have half an hour today"?

MR POYNTON: No, no, it wouldn't be set at a particular time. It would be whether

the meeting conducted itself and reviewed the matters on the agenda, which would determine how much discussion and, therefore, the duration of the meeting. It wasn't at the start, "Oh, this meeting is going to take 28 minutes."

5

MS CAHILL: But you were a director with independent responsibilities; yes?

MR POYNTON: I had responsibilities along with the rest of the directors on that board.

10

MS CAHILL: But if you wanted to discuss something or debate it or interrogate it, it was your duty to do that, wasn't it?

MR POYNTON: Yes, and I did from time to time, as the minutes reflect.

15

MS CAHILL: I just want to go back to something you said a moment ago. Is it your evidence that you would debate issues or the chairman outside of meetings?

MR POYNTON: Not debate. I wouldn't use the word "debate". Discuss, get context, have a sense of the overall direction of the business, so there are obviously opportunities to discuss formal things and informal things. Both in the meeting, in the case of formal, and outside of the meeting, in the case of informal. It's part of what a director does to inform themselves.

25 MS CAHILL: Now, if we go --

COMMISSIONER OWEN: While we're on that, those discussions, were they frequent, infrequent --- the discussions before meetings or outside of meetings?

30 MR POYNTON: Commissioner, in most occasions Mr Alexander in particular, not so much Mr Packer, would come over to Perth the night before the meeting and would generally arrange to have dinner with me and/or other directors at which the forthcoming agenda items would be discussed in either some detail or generally.

35 MS CAHILL: Mr Poynton, if we go back to your witness statement at paragraph 31 on page 0006, you refer to your appointment as chair of Burswood Ltd in January 2020 to replace Mr John Alexander. Before then, as I understand it, Mr Packer was chairman from 2004 until 2016?

40 MR POYNTON: Correct.

MS CAHILL: So we have Mr Alexander there from 2017 until 2020?

MR POYNTON: Indeed.

45

MS CAHILL: Were there differences in how each of them performed the role of chair?

MR POYNTON: I would say yes in the sense that Mr Packer was obviously a very busy man in the context of all the other things that he was doing and, therefore, was probably in a way more like a non-exec chair in the way that he was involved.

5 Whereas Mr Alexander was clearly executive chair of CRL and, indeed, on a number of these subsidiary boards that we've discussed and, therefore, had a much more active role, integrated role.

MS CAHILL: How did that translate into how the board meetings were conducted?

10

MR POYNTON: Well, it may not in fact show much difference in the way the board meetings were conducted, but as I said, the opportunity to have conversations with Mr Alexander before meetings were things that didn't occur necessarily and in the same frequency perhaps as with Mr Packer.

15

MS CAHILL: Now, in paragraph 31 of your witness statement when you are talking about when you assumed the role of chair of Burswood Ltd, you talk about identifying that there should be a stronger information flow between Crown and Burswood. Do you mean a stronger information flow from CRL to Burswood Ltd and not the other way around?

20

MR POYNTON: Correct. Correct.

MS CAHILL: So you understood that that monitoring and oversight role that Burswood Ltd had in relation to the Perth Casino operations, at least by 2020, required the Burswood Ltd board to have more information?

25

MR POYNTON: My position was, and obviously from, say, pick a time, but from the 60 Minutes allegations onwards and through the subsequent Bergin Inquiry and then into COVID, there were a number of matters that were very relevant to the operation of the Perth property, or the Perth business, that the board of Burswood Ltd should have and would like to have more information on, ie, what is happening with, say, our response to COVID, or what is happening with our response to the allegations or whatever. So whilst not necessarily specifically within the purview of Burswood Ltd, I thought that particularly for Ms Fewster, who is a relatively recent appointment to the board, that whilst I was able to get quite a lot of information from my role as a non-executive director of CRL, she was not in that same position. So it seemed to me that providing her with that additional overview would be helpful.

30

35

MS CAHILL: Now, at 32 on page 0007, paragraph 32 of your witness statement, you say that as chair in terms, you thought there should be more detailed briefings and increased the frequency and duration of meetings. Is that something you identified just yourself or was it reacting to complaints that Maryna Fewster had made about the length of board meetings and the frequency and the amount of information that was being provided?

40

45

MR POYNTON: I recall it being my initiative. I don't recall Ms Fewster complaining about any lack of information or the duration of board meetings. I made

the decision to have more, six not four, and to have more information coming from CRL. But I don't recall that being in response to any complaints Ms Fewster made. You can ask her. The problem was that I was appointed chair in January 2020 and we all know that COVID arrived in February 2020 and whilst I think there were five board meetings with me as chair, there were complications around actually physically meeting. The property was shut for a few weeks. So the best laid plans.

So I was keen to have more frequent meetings, particularly during a period where the company was facing so much issues on so many fronts, including the operational issues around COVID.

MS CAHILL: In terms of the duration of individual meetings, in general terms, you increased the duration from what to what?

MR POYNTON: Well, I'm sure that the records are there, but from, you know, half an hour shall we say in some instances you've identified to more like an hour, 1.5 hours. I'm not sure specifically. But the minutes will also reflect that there was a greater level of information that was discussed and, therefore, minuted. In fact, I think it is in the records, but the minutes of the meetings I chaired were significantly longer than the minutes previously. I'm not making criticism about that, it's just a fact.

MS CAHILL: The 1 to 1.5 hours, let's stay with that, that the meetings became from the time of your chairmanship. Did you think that was sufficient to address the issues that fell within the Burswood Ltd board's remit?

MR POYNTON: I think so, yes. I mean one can always be told they can improve. But my view was that we were discussing the things that needed to be discussed. As I said, they included issues nationally, but issues that had reputational impact to Crown --- sorry, to Burswood Ltd. So I was keen to make sure that there was more activity at that level.

MS CAHILL: Just to be clear as to the effect of your evidence, this instigation of yours to increase the frequency and duration of meetings and the amount of information that was provided, was that a reaction to the issues, the particular issues that arose in 2019/2020?

MR POYNTON: 2018 onwards.

MS CAHILL: Or was it also or separately because you thought previously there wasn't enough time and information provided in relation to meetings?

MR POYNTON: If I had to weight it, I would say 80/20. 80 that there was a significant number of new issues the company was facing. As I said, not just regulatory and reputational, but operational. And bear in mind that the company employs however many people, 16,000, 17,000, and 5 in Perth. We were very concerned with the issues to do with the operation here. And the 20 per cent would

be conceding that, I suppose, in the back of my mind, as a director minutes, or, indeed, meetings could have been longer.

5 MS CAHILL: With more information?

MR POYNTON: Well, more discussion of the information provided, I suppose, rather than, as I said earlier, just taking things as read. But again, it's not in the context of there being any specific concerns, whether it's from the auditors or the
10 various consultants that were providing information, it was more making sure that everyone was comfortable, that there was an opportunity to discuss everything.

MS CAHILL: As to the 20 per cent that you just identified, you had been on the Burswood Ltd board some 16 years, hadn't you, before you became chairman?
15

MR POYNTON: Yes, it was from --- in 2004 to the start of 2020.

MS CAHILL: And you hadn't raised that 20 per cent concern with the then chairman or chairmen any time in that 16 years?
20

MR POYNTON: Not formally, no.

MS CAHILL: Do you accept that you should have?

MR POYNTON: I would say that if there was a cause to be concerned that the duration of a meeting was leading me to be under-informed or not having an opportunity to properly discuss matters, I would have and should have raised it and asked for meetings to be longer. What I'm saying is I didn't form that view. It was a nuance.
25
30

MS CAHILL: So that 20 per cent concern you had about the duration and content of the meetings previously was a nuance?

MR POYNTON: What I'm saying is you are using the word "concern". I don't think I had a concern. You asked me whether I felt there was a problem with the duration of the meetings. I guess as chair I'm trying to make sure that my fellow directors, particularly the non-executive director, feels that they have sufficient opportunity to raise whatever issues. From my point of view, in the 16 years, I felt I did have sufficient opportunity to raise any issues that might have caused me concern.
35
40

MS CAHILL: Prior to 2020, did you when you were attending a board meeting of Burswood Ltd, did you ever witness or participate in detailed discussions with management, the board interrogating reports that had provided to it?

MR POYNTON: There was discussion with management about items of interest in the board packs with management. I mean, there are two non-executive directors and the other non-exec director didn't always attend, so --- prior to Ms Fewster. But there were, and I think the minutes reflect, discussion with management.
45

MS CAHILL: What I'm talking about is push back and challenging and interrogating, rather than just asking for more information or agreeing with or noting what management has reported.

5

MR POYNTON: Yes, there would have been and I can't recall particular circumstances where there would have been more interrogation, using your word. Not so much push back but certainly requests for more information from management.

10

MS CAHILL: Did that happen frequently?

MR POYNTON: Not that I recall, no. Again, as a director, one is in the hands of the chair, who is the executive chairman of the company. I keep coming back to that because I think it is actually important.

15

MS CAHILL: When you say that you are "in the hands of the chair", what do you mean by that?

MR POYNTON: The chair of a company has significant power, whether they be a chair of a particular subsidiary or indeed the chair of the whole company. So the chair sets the cultural, the risk tolerance and the leadership of the company, and then it is expressed through the board into management. So there is only certain things an individual director can do. I'm saying that there was --- I was not given cause to be concerned about the level of information, but the structure of the length of the meetings, those sorts of things are very much in the purview of the chair. When I took the chair, I changed it.

20

MS CAHILL: Your duties as a non-executive director are neither curtailed or subordinated to the duties of the chair, are they?

25

MR POYNTON: No, they are not.

MS CAHILL: Did the board of Burswood Ltd ever take advice outside of management regarding the establishment and implementation of an appropriate corporate culture for the Perth Casino operations?

30

MR POYNTON: Not that I recall as Burswood Ltd level. Certainly CRL has, as my recollection, sought advice about culture.

35

MS CAHILL: Did the Burswood Ltd board ever have strategy days, retreats, or the like, independently of management to determine the strategic direction, risk management or ethos of Burswood Ltd?

MR POYNTON: No.

40

MS CAHILL: Did you ever conduct your own inspection of the Perth Casino

45

operations without notice to management?

MR POYNTON: No.

5

MS CAHILL: For example, did you ever appear unannounced one evening at the Perth Casino to observe a junket tour in operation?

MR POYNTON: No.

10

MS CAHILL: Did you ever appear unannounced at the Perth Casino to observe the operation of the cage?

MR POYNTON: No.

15

MS CAHILL: The Pearl Room?

MR POYNTON: No.

20

MS CAHILL: Did you ever attend at the Perth Casino unannounced to observe the operation of the EGMs and table games on the main gaming floor?

MR POYNTON: No.

25

MS CAHILL: Do you know if any of the other directors of Burswood Ltd ever conducted such unannounced inspections?

MR POYNTON: No, I don't know.

30

MS CAHILL: Do you think they should have?

MR POYNTON: You think they should have?

MS CAHILL: Yes. Do you think any other director should have?

35

MR POYNTON: Well, it's up to them to say what they thought they should or shouldn't have done.

MS CAHILL: I'm asking for your opinion.

40

MR POYNTON: I can't presume to say what another director should or shouldn't do.

MS CAHILL: Do you think that any other director of Burswood Ltd should have made an unannounced inspection of the Perth Casino operations?

45

MR POYNTON: No.

MS CAHILL: Do you think you should have?

MR POYNTON: No.

5 MS CAHILL: I will move to the topic of anti-money laundering and counter-
terrorism financing issues, which you talk about between paragraphs 100 and 132 of
your witness statement. That's pages 0025 to 0034.

10 Mr Poynton, you were no doubt aware from about 2006 of the introduction of the
Anti Money Laundering and Counter Terrorism Financing Act?

MR POYNTON: Yes.

MS CAHILL: Did you familiarise yourself with that Act at the time?

15 MR POYNTON: I beg your pardon, sorry?

MS CAHILL: Did you familiarise yourself with that Act at the time?

20 MR POYNTON: Not in a specific sense but generally made aware of its existence
and its fundamental thrust.

MS CAHILL: When you were a director of Burswood Ltd, who did you understand
to be the relevant reporting entity under that Act in respect of the Perth Casino
operations?

25 MR POYNTON: CRL.

MS CAHILL: Why do you say that?

30 MR POYNTON: It's the head company. It owns the assets. And is responsible for
the operation of the business.

MS CAHILL: At paragraph 100, which is on page 25, you see that second sentence -
--
35

MR POYNTON: Yes.

MS CAHILL: --- where you are talking about a situation from around 2017 where
you were focusing on, or the board was focusing on improving compliance with
40 AML/CTF; you see that?

MR POYNTON: Yes.

45 MS CAHILL: I want to come back to that in a moment, but first of all I want to ask
you some questions about the period between the introduction of the AML/CTF Act
in 2006 and 2017, so before it became a major focus. Do you understand the time
period I'm talking about?

12:01PM

MR POYNTON: I think so.

5 MS CAHILL: During that period, did the Burswood Ltd board, as far as you understood, have any responsibility for or involvement in overseeing compliance with the AML/CTF Act by the reporting entity for the Perth Casino operations?

MR POYNTON: That's from the period of the Act being promulgated you mean?

10 MS CAHILL: Until 2017, that's right.

MR POYNTON: My understanding about the interaction of the Burswood Ltd board was that it was keeping a very close watch on --- I'm just not sure --- I want to answer the question properly.

15

MS CAHILL: Shall I ask it again?

MR POYNTON: Yes, I think that would help, just the oversight.

20 MS CAHILL: Between 2006 and 2017, did Burswood Ltd board, on your understanding, have any responsibility for or involvement in overseeing compliance with the AML/CTF Act by the reporting entity for the Perth Casino operations?

25 MR POYNTON: It had oversight again and, as I said, the board packs included substantial, as it turned out over time, reports about compliance with AML/CTF as it evolved. It evolved and continues to evolve over time.

30 MS CAHILL: On your understanding, for the same time period did the CRL board have any responsibility for or involvement in overseeing compliance with the AML/CTF Act by the reporting entity for Perth Casino operations?

MR POYNTON: I would imagine absolutely.

35 MS CAHILL: You "imagine". What did you understand?

MR POYNTON: Yes.

MS CAHILL: How did you arrive at that understanding?

40 MR POYNTON: I arrived at the understanding because, and I've mentioned it a few times, they own 100 per cent of the assets and are ultimately are responsible for the interaction with the Government through the licensee, wholly-owned subsidiary.

45 MS CAHILL: I've just been asked you about responsibility for overseeing compliance with the act.

MR POYNTON: Yes.

MS CAHILL: In that same period, between 2006 and 2017, did Burswood Ltd board, on your understanding, have any responsibility for or involvement in overseeing the implementation of risk management systems to address the risks of money laundering occurring at the Perth Casino or through its operations?

MR POYNTON: Yes. So the Burswood Ltd board received numerous reports about compliance with AML/CTF, and more broadly money laundering requirements over an extended period, and including things like external auditors reviewing these matters and not flagging any concerns at all.

MS CAHILL: Did CRL have any responsibility for overseeing the implementation of the systems and processes to address the risk of money laundering occurring in the Perth Casino through its operations?

15

MR POYNTON: Yes.

MS CAHILL: And what was that responsibility?

MR POYNTON: As the owner of the asset and ultimately the owner of the wholly-owned subsidiary that had the connection with the Government, it had primary responsibility for the compliance with those requirements.

MS CAHILL: Now, the respective responsibilities in relation to AML/CTF that you've just described to me, Burswood Ltd on the one hand and CRL on the other, were they documented anywhere?

MR POYNTON: The only documentation was in fact the reports coming through. There was no delineated, "Well, this company is responsible and that company isn't or they are both responsible".

MS CAHILL: Do you think there should have been a document that delineated the roles of each?

MR POYNTON: It's hard to answer because if I were concerned that there was a problem, then presumably documenting these things if there were any concerns about who was responsible for what might well have helped, but there wasn't. So it wasn't something I thought, "We really need to write down the delineation", because everyone had AML/CTF front of mind, both from the Burswood Ltd point of view and later on for me, CRL.

MS CAHILL: Over the page, 0026 at paragraph 103 you mention that the AML/CTF program for Crown Perth, that's Perth Casino, was proved by the Burswood Ltd board on 21 November 2007. When you say "approved", do you mean that approval to be given by CRL was recommended or was Burswood Ltd actually approving this for Burswood Nominees Ltd?

MR POYNTON: Over time, when you look at the wording of the minutes, there are

12:07PM

words like "approved" or "delegated", but in fact in the case of the word "delegated", it had no authority to delegate to Mr Felstead because he was not an employee. So "approving", yes, we approved the program and essentially ratified what was
5 happening elsewhere in the organisation.

MS CAHILL: We're not looking at any minutes. We're looking at your evidence in paragraph 103.

10 MR POYNTON: Sure.

MS CAHILL: The first sentence is that "The Board of Burswood approved the AML/CTF Program" and you understood that that approval was required to be given before that program could be implemented at Perth casino operations?

15 MR POYNTON: Yes.

MS CAHILL: And therefore you understood that the board of Burswood Ltd had to be satisfied that that program was an appropriate program to adequately mitigate the risks of money laundering occurring at or through the Perth Casino operations?

20 MR POYNTON: Yes.

MS CAHILL: The second sentence that you draw attention to, at the time the board delegated Mr Felstead as Burswood CEO to make amendments to this program, that in fact happened, did it?

MR POYNTON: Well, again, looking at this word ---

30 MS CAHILL: It's your word, Mr Poynton.

MR POYNTON: I know it is my word. I'm saying that in the strict legal interpretation of the legal structure of the businesses, we were not able to delegate to Mr Felstead. So I probably should have used a different word.

35 MS CAHILL: What is the word you would like to use now?

MR POYNTON: "Recommended".

40 MS CAHILL: Recommended what?

MR POYNTON: That Mr Felstead as Burswood CEO made amendments to the AML/CTF program.

45 MS CAHILL: Did he have power to do that? The program that your board approved, he could make amendments to that but you couldn't?

MR POYNTON: I assume he had the power to do it. He's the CEO of the company

and he's presumably got some other direction from elsewhere in the organisation as well.

5 MS CAHILL: Well, I'm just focusing on your evidence, which is the second sentence.

MR POYNTON: Sure.

10 MS CAHILL: November 2007, what did the Burswood Ltd board do in respect of Mr Felstead making amendments to the program?

MR POYNTON: 14 years ago?

15 MS CAHILL: This is your evidence, Mr ---

MR POYNTON: I know, but it is 14 years ago. I can't specifically recall other than saying that Mr Felstead, as Burswood CEO, was in this case delegated to, but again I'm saying that in the cold light of the structure of this company we were not able to delegate to Mr Felstead, we were not able to direct Mr Felstead. So again, the word probably should have been "recommended".

20 MS CAHILL: You would not or could not now think it was appropriate to confer upon any member of the executive management a power to amend the AML/CTF program without reference to the board of Burswood Ltd, would you?

MR POYNTON: I think what I would say is that the way this was set up was, as I've said at the outset, an oversight board, wholly-owned subsidiary, and, therefore, had limited powers. Now, certainly as far as AML is concerned, there was oversight of that, and the company took those issues very seriously as evidenced by the multiple numbers of minutes. But getting back to a period 14 years ago, I can't specifically recall other than what I've said in my evidence that Mr Felstead would have had carriage of that matter.

30 MS CAHILL: Let me ask you what in fact happened. Did management, or did management not make amendments to the program without first getting approval from the Burswood Ltd board?

MR POYNTON: It appears from this, and again I don't have a specific memory, that there is an approval, if you like, or a recommendation, Mr Felstead is allowed to make amendments to that program, the details of which I'm not sure. What I would say though is subsequently, whenever reports came back, no external or internal red flags were raised. So whatever amendments were made, it didn't cause an issue.

45 MS CAHILL: You accept it would be a governance failure by the board of Burswood Ltd to permit the program to be amended without reference to it?

MR POYNTON: I would say that depending on what the amendments were, not necessarily. Because they might have been minor amendments.

5 MS CAHILL: This doesn't specify, does it?

MR POYNTON: No, it doesn't. And maybe we need to. Because that would inform the answer. It may be that the amendments were of a very minor nature and that that was explained at the time of the meeting. It's just that it is 14 years ago.

10

MS CAHILL: You give evidence of some of the amendments at paragraph 104, don't you?

MR POYNTON: That's seven years later.

15

MS CAHILL: And I wanted to ask you a question about that first before we go to the detail of this.

MR POYNTON: Yes.

20

MS CAHILL: Are you suggesting that this was the first time amendments were made to the program, seven years after it was first approved?

MR POYNTON: I can't recall how often amendments were made. I would need to refer to the minutes but I would imagine there were amendments between 2007 and 2014.

25

MS CAHILL: This also suggests, this evidence you've inserted here at 104, that the amendments were happening before the board was notified of them. Is that what happened?

30

MR POYNTON: It appears that is what happened. Again, I would say that the material issue was whether this enhanced or didn't enhance the quality of the AML program. And on the reading of this, and I would need to check with the minutes, it does.

35

MS CAHILL: So how does that work, Mr Poynton? If the executive team unilaterally decides something is an enhancement to the program, a procedure is an enhancement, they didn't need to come to the board first, but if it was in diminution of the program, they did?

40

MR POYNTON: What I'm suggesting is, and I don't know for sure, but back then I'm not sure how it worked as it related to CRL. But I can't imagine, and again there was no reason to be concerned, that management was going off and doing things prejudicial in the AML program to the company. There's no evidence of that. So the nuance again of whether they were unilaterally acting against the interest or for the interests of the company is not clear, and I don't know.

45

12:14PM

MS CAHILL: Wasn't it entirely your job to sit on top of management proactively, and to exercise oversight to make sure that they weren't?

5 MR POYNTON: And so what I would say to that ---

MS CAHILL: "Yes" or "no"?

MR POYNTON: Sorry?

10

MS CAHILL: Do you agree with that proposition?

MR POYNTON: What I would say to that is again ---

15

MS CAHILL: No ---

COMMISSIONER OWEN: Let Mr Poynton answer the question.

20

MR POYNTON: What I would say again is that the minutes would reflect the numerous times that the Burswood Ltd board discussed this, the external corroboration of there not being a problem with the AML program, satisfying me as a non-executive director, alongside the chairman of the company, who is not expressing any concerns, that there was not a problem with whatever amendments were occurring.

25

If there had been evidence that management's unilateral actions were diminishing the quality of the AML program and therefore the question of risk for the company, clearly as a director, and I imagine other directors, would have intervened. There was no need for that.

30

MS CAHILL: You gave evidence to the Bergin Inquiry, didn't you, that you first became aware of the Riverbank accounts at the time of the media allegations in about July or August 2019?

35

MR POYNTON: Correct.

MS CAHILL: And I understand from the opening of your counsel --- opening statement to this Commission that you were also not aware of the existence of Riverbank Investments Pty Ltd until about July or August 2019; is that right?

40

MR POYNTON: That's correct, and to the best of my recollection.

MS CAHILL: Now, Riverbank Investments Pty Ltd was a wholly-owned subsidiary of Burswood Ltd since at least 2005; you agree with that?

45

MR POYNTON: Yes.

MS CAHILL: You are not suggesting, are you, that the existence of that company

was hidden from you as a director of Burswood Ltd?

5 MR POYNTON: No. It wasn't hidden. It wasn't specifically referred to. Again, I'm not sure how many subsidiary companies there were of Limited, but I imagine it would be more than one. Indeed, obviously Nominees was a subsidiary company.

10 MS CAHILL: Mr Poynton, isn't it the case that your failure to be aware of the existence of Riverbank Investments Pty Ltd as a wholly-owned subsidiary of Burswood Ltd until 2019 was a failure on your part to ask the right questions of management to hold them to account?

15 MR POYNTON: My response to that would be, what question would I have asked? We rely on management to provide us with information to carry out our duties as a director, and if they don't tell us that there is a subsidiary company that subsequently is a problem, then I'm not sure, other than relying on management, fellow directors who are more deeply enmeshed in the company or I as a director could do, and I made that point to Commissioner Bergin --- if you don't know something, how do you ask something about which you know nothing?

20 MS CAHILL: Did you ever ask management of the Perth Casino operations to please provide you with a detailed corporate structure diagram showing all the subsidiaries (inaudible) of Burswood Ltd?

25 MR POYNTON: No, I didn't.

MS CAHILL: You could have done that annually, couldn't you?

30 MR POYNTON: I could have.

MS CAHILL: And it was a serious failure of corporate governance on your part to not do that, wasn't it?

35 MR POYNTON: I reject that, no.

40 MS CAHILL: You mention some internal audits that were conducted by Perth Casino management at paragraph 127 of your witness statement in relation to AML/CTF issues. And you say you relied on both internal and external audits. Just asking you to clarify your evidence in relation to that. Was it Crown or the board who was relying on these internal and external audits or both?

45 MR POYNTON: Both. Certainly in the period referred to, 2013 and up till, as we know, late 2018, the comment would be around Burswood Ltd. After that, Burswood Ltd and CRL.

MS CAHILL: Now, at 125, paragraph 125 on page 0032, you catalogue a number of internal audit ratings from internal audit reports that were in the board papers of Burswood Ltd; you see that?

MR POYNTON: Correct.

MS CAHILL: On your understanding, why were you being given the audit ratings?

5

MR POYNTON: Well, I would imagine --- well, we'd be given them as part of our, I guess, corroboration that the company is acting, you know, in the best interests of all its stakeholders. So we received external audit reports from Ernst & Young, internal reports, reports from third-party consultants, all building a picture around compliance.

10

MS CAHILL: So just in relation to the internal audits, did you understand that they were auditing and reporting only on compliance with the AML/CTF program and company policy?

15

MR POYNTON: Well, it says so. The AML/CTF audit rating is good.

MS CAHILL: Did you understand that they were --- whether or not they were auditing whether those practices and policies were actually adequately mitigating AML risks in day-to-day operation?

20

MR POYNTON: The strict reading of the internal and audit report suggested to me that internal audit had no issue with compliance of AML/CTF. That's all I can say.

25

MS CAHILL: But a risk management system is only as good as it is to mitigate risk, right? A poor system will not in fact mitigate risk adequately, will it?

MR POYNTON: I'm not sure --- if you have internal and external audits and reports of third-party consultants, and there is reference to a question I asked a third-party consultant in my evidence, I'm not sure what else one can do as a non-executive. You are receiving all this corroboration and evidence from other parties, internal and external, that there is not a problem.

30

MS CAHILL: Staying with the internal audits. We'll get to the others in a moment, Mr Poynton.

35

MR POYNTON: Sure.

MS CAHILL: Did you understand that the internal audit reports were auditing whether or not money laundering risks were actually being adequately mitigated in the day-to-day operations of the Perth Casino?

40

MR POYNTON: My understanding was that the internal audit was saying that the company was complying with its obligations under AML/CTF, which I would include to be money laundering.

45

MS CAHILL: All right. Let's go to document CRW.702.001.3954.

COMMISSIONER JENKINS: While we are doing that, to get back perhaps to the point Ms Cahill was making, there is a difference between complying with the letter of the law and actually mitigating the risks, adequately mitigating the risks that the law is designed to regulate. So, was your understanding that the internal audit was doing the former, telling you that you were complying with the letter of the law, or was it telling you, or that they were telling the board that the risks, the actual risks were being, in practice, properly mitigated within the business?

MR POYNTON: Commissioner, I would say both. I wouldn't delineate between one or the other. It is an overall feeling that the company is compliant.

COMMISSIONER JENKINS: Thank you.

MS CAHILL: Thank you, Commissioner.

Now, I'm taking you to a board pack for 15 June 2018. If we go to page 4018, there is an internal audit activity report for May 2018. This was the way in which these internal audit activities were typically reported to the Burswood Ltd board; is that right?

MR POYNTON: Yes.

MS CAHILL: And if we go down to the second box, which is in relation to anti-money laundering and counter-terrorism financing, it talks about key issues identified and causes, risk implications and management response. I will just show you over the page, because that's not the complete section. Oh yes, it is, sorry. We have got the report rating of "good", yes.

MR POYNTON: Right.

MS CAHILL: Now this obviously didn't tell you how the audit had been designed, did it?

MR POYNTON: No.

MS CAHILL: And it didn't tell you how the audit had been executed?

MR POYNTON: No.

MS CAHILL: Did you ask questions about how the audit had been designed and executed in meetings?

MR POYNTON: Not that I can recall.

MS CAHILL: That was an oversight of governance on your part, wasn't it?

MR POYNTON: I don't believe so. And I would draw your attention to the audit activity scope on the left-hand column which varied from good to excellent.

5 MS CAHILL: Yes. But you don't know what the audit entailed or how well or poorly it was executed, did you?

MR POYNTON: So there is an audit committee at CRL level which, I would suggest, had greater carriage over the design of internal audit than a member of the
10 Burswood Ltd board.

MS CAHILL: So what was your oversight function then?

MR POYNTON: We've talked about that.
15

MS CAHILL: So not to challenge ---

MR POYNTON: I'm receiving reports that suggest to me there is not an issue. I don't drill into the actual design of the audit because I'm imagining, I think with some
20 justification, that other people are responsible for that.

MS CAHILL: How would you know that? Did you ever check?

MR POYNTON: Again, and it plays to the question about the quality and
25 competence of the other directors in the business, so if you start with the chair of audit, supposedly a competent person, the chair of the company, the various other people involved in the whole process, my position is that I did not feel it necessary to drill into that level of detail. Had there been ratings other than good to excellent, I would submit that I would have.
30

MS CAHILL: But, Mr Poynton, you are being provided with an internal audit report for the purpose of an oversight function as to the adequacy of the AML/CTF risk mitigation system; you would accept that?

35 MR POYNTON: Yes.

MS CAHILL: When you are told that the audit conducted has given a rating of good to the risk management system, isn't the first thing you need to understand what the audit entailed and how well it was performed? Aren't they precisely the things that
40 you need to interrogate as a director with an oversight function in relation to AML/CTF issues?

MR POYNTON: I would suggest that in the column "Key Issues Identified", there is
45 some granularity, if you like, about what in fact the issues, the conduct, the scope of the internal audit activity report was. Again, in the absence of there being concern, I don't think my role as a non-executive director of Burswood Ltd extended to drilling into that level of detail.

MS CAHILL: So you weren't concerned, therefore, that this report might have overlooked, failed to detect other issues or more serious issues?

5 MR POYNTON: There was no evidence in anything I saw, received or read that would give me that concern. I come back to the fact that there are various other people involved in the chain, not the least of which is the chair of audit --- who had been, as I understand, chair of audit for some time and presumably had satisfied themselves. Now, did I specifically ask, no, I didn't, but I did have confidence in that
10 person's ability to be on top of the issues.

MS CAHILL: If you just stay with that box in the second column, "key issues identified" and do you see the third dot point:

15 *Lack of an annual review over risk assessments for all designated Services*

See that one? You got that?

MR POYNTON: That's the third point in the left-hand box.

20

MS CAHILL: Second far left. Second column. Got it now?

MR POYNTON: Yes.

25 MS CAHILL: As an example of an area for improvement that was reported in one of these internal audits, how was --- how did the board of Burswood Ltd oversee the response to the audit?

MR POYNTON: I would --- well, I can't specifically recall, but there would have
30 been a subsequent internal audit report which presumably would have addressed that, or not. I mean, there is obviously a management response which suggests that there is a recognition that things need to change. Again, the next internal audit report may or may not flag that it hasn't been done as it is supposed to have been done. I don't recall that flagging occurring. In other words, there are minor areas for
35 improvement, which is the word, report rating is "good", management response and then I wait for the next internal report.

MS CAHILL: But you carefully check against month to month or quarter to quarter?

40 MR POYNTON: Well, quarter to quarter, the extent to which one remembers with everything else you are doing a specific matter, but you are given some opportunity, comfort, whatever the word is, when the next internal report comes along, to see whether the same flag is there.

45 MS CAHILL: It's not a memory test, is it?

MR POYNTON: Sure.

MS CAHILL: You just pick up your old board pack from the previous quarter and you compare it to the new board pack and you check to see whether the proposal to implement improvement has in fact happened? Did you do that?

5

MR POYNTON: I don't recall specifically doing that. I would have taken some comfort from the next rating.

10 MS CAHILL: External audits you say you also relied upon. You refer to these at paragraph 127 of your witness statement between pages 32 and 33 These are external audits that happened before 2017, that you've listed there from (a) through (g); you see that? Now, these external audits occurred on a half-yearly basis; yes?

MR POYNTON: Yes.

15

MS CAHILL: We need the response for the transcript.

MR POYNTON: Yes.

20

MS CAHILL: Thank you.

25 Now, if we take as an example, the first external report that you referred to at sub-paragraph (a) and pick up the reference at footnote 70, CRW.702.001.0964 at page 1004. That's the page that you've referred to as an external audit. If we go back to the beginning of this report. Back to page 1004. Cursor back to the beginning of the report. You understood this, didn't you, to be a high level financial audit, didn't you?

MR POYNTON: A financial audit. I don't know about "high-level".

30

MS CAHILL: It wasn't auditing business or operational risks, was it?

MR POYNTON: I don't know the answer to that question. I thought that it was a review of the risks or, you know, an audit of the business.

35

MS CAHILL AML risk.

MR POYNTON: No, no, risks generally.

40 MS CAHILL: All right. Let's go to the page that you rely on, 1004. And you say that this was an external audit that gave you comfort that AML/CTF risk was being appropriately managed, and that the casino operator was compliant with AML/CTF laws; is that your evidence?

45

MR POYNTON: I would refer to during our review we've not identified any instances of non-compliance with laws and regulations.

MS CAHILL: Well, what were they looking at?

5 MR POYNTON: Laws and regulations is a pretty broad term, and I'm assuming it included AML/CTF and the rest of the laws and regulations that the business operated under.

MS CAHILL: Why did you assume that?

10 MR POYNTON: Well, why wouldn't I? The reality is it is an all-encompassing term, non-compliance with laws and regulations. So you would imagine that the external auditor, being Ernst & Young, would have actually --- and it says there is full cooperation with management, no unsolved disagreements, et cetera, in the scope of our review.

15 MS CAHILL: You would have had to have at least interrogated whether AML/CTF risk had been audited and if so, how, wouldn't you, in order to be able to rely on this document?

20 MR POYNTON: No. I rely on the document prima facie as written.

MS CAHILL: There were more specific external audits undertaken in relation to AML/CTF in respect of Perth Casino operations?

25 MR POYNTON: It's a question of when. Obviously subsequently, subsequent to, I think, around 2017/2018, there were any number of reviews conducted company-wide that would have included Burswood in the chain of owned subsidiaries.

MS CAHILL: There was one in 2010, wasn't there?

30 MR POYNTON: Not that I can recall.

MS CAHILL: CRW.700.019.1547. AML/CTF assessment 30 November 2010 by Ernst & Young. Do you recall this document?

35 MR POYNTON: Not specifically. It is 11 years ago.

MS CAHILL: And you don't recall Ernst & Young even being retained to provide such specific external assessments in relation to AML/CTF?

40 MR POYNTON: I don't recall this specific document because it is dated 11 years ago. I suppose I have some knowledge that Ernst & Young was engaged but it is a pretty dim memory.

45 MS CAHILL: Before 2017, do you remember how frequently specific external audits for AML/CTF were conducted?

MR POYNTON: No.

5 MS CAHILL: If we go to CRW.702.002.2299, which is a legal risk and compliance board report for Burswood Ltd for the period dated 1 August 2010 to 30 November 2010 at page 2304, can you just enlarge that, please, so Mr Poynton can read it and me too. At the top it says:

10 *Report to the board that the following amendments are proposed to be made to the AML/CTF program Reducing external audits from every fifth year to every second*

Does that ring a bell with you now?

15 MR POYNTON: It does now.

MS CAHILL: That prior to 2010, external audits were only taking place every five years. Do you recall that?

20 MR POYNTON: Yes.

MS CAHILL: That wasn't nearly enough at the time, was it?

25 MR POYNTON: In 2010?

MS CAHILL: Yes.

MR POYNTON: Again, what would cause one to think that it wasn't often enough if there are again no red flags?

30 MS CAHILL: Because what is being assessed is the attempt to mitigate a risk of a criminal activity.

35 MR POYNTON: And, indeed, for the next few years there was no evidence of that and, indeed, it is only when you get to, say, 2018 that there is obviously a very large amount of concern about this and the company responded to it.

MS CAHILL: Do you recall that the frequency of the performance of external audits for AML/CTF were actually reduced to every five years after this?

40 MR POYNTON: I'm reminded of it here. I don't have a specific memory of it then.

MS CAHILL: One reason given is the extent of internal audit coverage; do you see that?

45 MR POYNTON: Given the extent of internal audit coverage, AUSTRAC reviews ---

MS CAHILL: Stay with the internal audit coverage for a moment, what did you

know about that?

MR POYNTON: How do you mean?

5

MS CAHILL: What did you know about the extent of internal audit coverage as at 2010?

10 MR POYNTON: I have no specific knowledge of the extent of internal audit coverage.

MS CAHILL: It then refers to AUSTRAC reviews. What did you know about the nature and content of AUSTRAC reviews as at 2010?

15 MR POYNTON: I can't recall. It is 11 years ago.

MS CAHILL: It refers to recent positive outcomes of the Ernst & Young external review.

20 MR POYNTON: Correct.

MS CAHILL: What did you know about that?

25 MR POYNTON: Well, again, it is 11 years ago, but it is part of a picture that doesn't provide an independent director, or a kind of non-management director of Burswood Ltd, a wholly-owned subsidiary being presented with any cause for alarm.

30 MS CAHILL: So, at CRW.702.001.0290 you have the minutes of the December board meeting. At item 7 --- you were in attendance there and the board endorses amendments to the AML/CTF program. So it went from two-yearly reviews to five-yearly reviews?

MR POYNTON: Yes.

35 MS CAHILL: Well, that wasn't nearly enough, was it?

40 MR POYNTON: I reject that again. One, this is 10 or 11 years ago; two, subsequent years would suggest that your premise is not sound. Subsequent to 2018 it clearly is --- identified that the company had issues. Now, again, we are sitting looking at what decisions this board was making at this time based on the information before it, and I don't agree that a five-year review, based on all the other information, was a problem at that time. Subsequently, absolutely proved to be a problem.

45 MS CAHILL: Surely it would have occurred to you at the time that when you are dealing with a risk such as criminal infiltration and money laundering taking place, that within a five-year period those who might wish to perpetrate such activities at Perth Casino might devise ways to get around Perth Casino systems.

MR POYNTON: Criminals have a predilection to get around all sorts of laws and issues. What I'm saying is this is not, in my recollection, the only place at which compliance around this legislation and requirements was occurring. There was, and
5 still is, an audit committee at CRL, there is a Risk Committee at CRL, and I can't imagine, and I don't have the minutes for those meetings, the minutes of those committees, that they were not discussing on a regular basis, certainly more frequently than every five years, compliance with the company's obligations under AML/CTF.

10 MS CAHILL: Now, if we come back to page 0025, paragraph 100 of your witness statement, you describe, over the course of your tenure as a director of Burswood and later Crown, observing an increasing risk for corporate Australia in respect of AML/CTF. Over what period did that risk increase?

15 MR POYNTON: I believe, in my mind, I was referring to the period particularly around the accusations and subsequent convictions by the banks and I think Tabcorp of large-scale money laundering and obviously this company is exposed to dealing in cash, as you said earlier at the outset, potential infiltration. So when we saw the
20 actions against the banks, it increased my interest and concern for compliance.

MS CAHILL: So when we look at the second sentence in that paragraph 100 where it begins "from around 2017, improving AML/CTF compliance was a major focus for both the Burswood and Crown boards", you say it you recognised it was vital for
25 the businesses to do the two things that you specified in (a) and (b), is it your evidence that it became vital for Burswood Ltd's board to oversee that those two things were implemented: a regular assessment and update of AML controls, and the allocation of sufficient resources?

30 MR POYNTON: My evidence suggests that it was both as a director of Burswood Ltd at the time and subsequently CRL that this was an emerging and increasing area of concern and so, yes, as a board member of Burswood Ltd this was, you know, of interest and concern.

35 MS CAHILL: So it was a shared responsibility between the two boards?

MR POYNTON: A shared responsibility group-wide, not just between two boards.

40 MS CAHILL: No, you said it was a major focus for both the Burswood and Crown boards ---

MR POYNTON: Yes.

45 MS CAHILL: And that you recognised it was important to do these two things.

MR POYNTON: I'm saying it is a group-wide responsibility.

MS CAHILL: What you have actually said in your evidence is that it was a major

focus for Burswood and Crown boards. You see that?

MR POYNTON: Yes, and clearly from 2017 to late 2018 I was not on the Crown
5 Board but became aware from discussions that it was of concern to the Crown Board,
and then, indeed, as I was moving into that position, there are numerous minutes of
the Crown Board meetings from which I took some comfort. In fact, I think it was
the board meeting of May 2018 where there is an extensive reference to compliance
10 with these laws and the concerns the company had about it. I was not yet on the
board, but --- I was appointed but not actually ratified. But that gave me great
comfort that the company, before I even joined CRL, took this matter very seriously.

MS CAHILL: Now, just in terms of that then, was there any line of communication
15 formally between the CRL board and the Burswood Ltd board about respective
responsibilities in relation to this area of focus?

MR POYNTON: The executive chairman of Crown, CRL, sat on the board of
Burswood Ltd. And there were discussions presumably on and offline about this
20 matter. I don't recall specifically discussions about them, but one can imagine that as
a non-exec director of Burswood, having the chair of the company on that board and
giving you either specific assurances or general assurances about these matters was
of comfort.

MS CAHILL: Just coming back to paragraph (b) of 100, you say that from around
25 2017 you recognised that it was vital for the business to allocate sufficient resources
to AML/CTF to ensure that "assessments and updates were properly executed". I
will take you to a passage of your evidence before the Bergin Inquiry. That's
BGN.0002.0001.3332 at page 3392.

30 MR POYNTON: Which particular section?

MS CAHILL: I will explain before you answer the question.

On this page Counsel Assisting is referring to a report to the board of Crown Resorts
35 Ltd at its September 2020 board meeting. And it is a report by the Crown Resorts
CEO that is reporting back about the Bergin Inquiry to the board. And at line 40, do
you see there, Ms Sharp takes you to a pinpoint reference in this report and she said
there is a heading "AML General Issues" and the second dot point is that:

40 *The AML team has been under-resourced and lacking in qualified AML
executives*

MR POYNTON: Which line are we talking about?

45 MS CAHILL: Line 40.

MR POYNTON: Oh, right.

MS CAHILL: Have you got it there? She's taking you to a pinpoint reference in a report to the board of CRL of September 2020.

5 MR POYNTON: Right.

MS CAHILL: And at dot point (inaudible) that says "the AML team has been under resourced and lacking in qualified AML executives." She then asks you "Is that an observation that you agree with"? And you say "Yes, it is".

10

Do I understand your evidence to the Bergin Inquiry correctly, that as at October 2020, you thought that the AML team in the group was underresourced and lacking in qualified AML executives?

15 MR POYNTON: It was clear by that time that notwithstanding the numerous efforts of the company to address that, and which there are many, that it was a fair observation, that they obviously not been able to do their job as well as they should have and that was something the company then addressed as a matter of urgency. In fact it was in the whole time, I think, from about 2018 onwards, it was trying to
20 scramble to catch up, and appointing people like the head of financial crimes and people with the requisite amount of experience. Indeed, by this time, I think a lot of these things had been addressed. This is looking back.

MS CAHILL: Well, no, this is a report to the board of CRL of September 2020.

25

MR POYNTON: The AML team has been underresourced.

MS CAHILL: So no longer at that point.

30 MR POYNTON: What I'm saying is it is part of a continuum that if you go again to the minutes of the meetings, and I have, there is a lot of discussion around ensuring that there is qualified people. There has clearly been accusations, probably in some cases justified, that there is not the right outcomes. So the company is on a journey, which is evidenced, to redress it.

35

MS CAHILL: So between 2017 and 2020 when this became a focus for Burswood Ltd board as well as CRL board, and you were chairman from 2018 of the Burswood Ltd ---

40 MR POYNTON: No, I wasn't. I was chairman from 2020. I was chairman for 13 months through the entire period of COVID.

MS CAHILL: Right. Thank you. So on the Burswood Ltd board between 2017 and 2020, what steps were taken to address this resourcing issue in relation to AML/CTF
45 by the Burswood board?

MR POYNTON: I can't specifically recall what steps were taken, other than we were informed to the steps that the CRL was taking, and indeed as we got to the

12:46PM

50 period, as I said, I referred to in mid-18, I was then accessing meetings as an
observer, seeing

that there were substantial steps being made to catch-up. It would appear in hindsight that the steps taken back then were inadequate. But it wasn't as if there were no steps taken. I took some comfort at that point, and this is after the period to
5 which you refer in 2017, that the company was attempting to address the shortcomings.

MS CAHILL: Was it the case that the Burswood Ltd board did not take AML seriously until the Bergin Inquiry exposed serious concerns about money laundering at Crown Casinos?
10

MR POYNTON: No, not at all.

MS CAHILL: I will change topics now and talk about junkets.
15

At paragraph 72 of your witness statement at page 19, 0019, through to paragraph 78, page 0020, you give some evidence about the oversight of VIP international business and junkets prior to July 2019.

20 Now, just so that I make sure I understand the effect of paragraphs 73 and 74 of your evidence, is it the case that the board of Burswood Ltd did not have any involvement in overseeing or implementing the strategy for attracting junket business to the Perth Casino?

25 MR POYNTON: Correct.

MS CAHILL: Is it the case that the board of Burswood Ltd did not have any involvement in overseeing the conduct of junket operations at the Perth Casino?

30 MR POYNTON: Correct.

MS CAHILL: You considered that the responsibility for oversight of marketing strategy for junket operations, the conduct of junket operations at Perth Casino was the over --- the oversight function was carried out at Crown Resorts Ltd board level; is that right?
35

MR POYNTON: Yes, from the time of my engagement or involvement with Burswood Ltd and subsequently, VIP has been a head office function along with hotels and a number of other things.
40

MS CAHILL: You knew that junket tours came to Perth Casino, obviously?

MR POYNTON: I did, and as also evidenced in my statement, I think the maximum amount of profit ever contributed by junkets to Perth's profit was 3 per cent.
45

MS CAHILL: And Burswood Ltd board considered such things as investment in jets and yachts to attract junket participants and junket tours to Perth Casino?

MR POYNTON: Indeed, without much success as it turned out.

MS CAHILL: Nevertheless, involved to that extent, making decisions to attract junket tours to Perth Casino?

5 MR POYNTON: Yes. My understanding from talking to people was that pretty much after the construction of the casinos in Singapore, it was very difficult to attract people to Perth.

10 MS CAHILL: You understood that junket tours increased the risk of money laundering through the Perth Casino operations?

MR POYNTON: Generally, as I've said before.

15 MS CAHILL: And increased the risk of criminal infiltration of Perth Casino's operations?

MR POYNTON: Yes, and it was a fundamental part of casino business in Australia, not just at Crown.

20 MS CAHILL: Would you agree that it was important for the board of Burswood Ltd to have oversight of the strategy for attracting junket business to Perth Casino in order to properly address the risks that the junket business posed?

25 MR POYNTON: No, I saw that as a group, or head office function and, therefore, again, the purview of the people on the board and the head of Risk Committees, et cetera.

30 MS CAHILL: Would you agree it was important for the board of Burswood Ltd to have oversight of the conduct of junket operations at Perth Casino in order to properly assess the risk that those junket businesses posed to the Perth Casino operations?

35 MR POYNTON: No, because I was never given any cause for concern about the conduct of such junkets.

MS CAHILL: Would you agree with hindsight that junket tours to Perth Casino is something the board of Burswood Ltd and you as a director on the board should have taken a more direct interest in and responsibility for?

40 MR POYNTON: No, because there was no red flags raised and it was a very minor part of the business.

45 MS CAHILL: So if we go to paragraph 77 of your witness statement at page 0020, you refer again to, but in the context of junkets here, internal audit reports noted in the Burswood Limited board papers. Did you understand from the fact that given you were being given these audit reports that the Burswood Ltd board was being expected to have some level of monitoring or oversight of junket operations?

MR POYNTON: In the same context of the other matters to which were referred that related to oversight, yes.

5 MS CAHILL: Now, if we take the internal audit report that you referred to at 77(a),
CRW.702.001.2087. This is a set of agenda papers for a Burswood Ltd meeting of 8
August 2014. If we go to page 2235, the reason I'm taking you to page 2235 is it is
the front page of the document that you have pinpoint referenced in your witness
statement. And it is described as a strategic internal audit plan for the financial years
10 2015 to 2017. Now if we go over the page to section 1.1 and blow that up so Mr
Poynton can see it more easily, the purpose of this document is to set the focus and
direction for the internal audit department for the three-year period there specified,
between 2014 and 2017. And it goes on in the next paragraph, do you see:

15 *The objective of the Department is to provide Crown Perth management and
the Board of Directors with assurance and confidence over the effectiveness of
internal systems and controls [et cetera]*

Did you understand that the board of directors there was a reference to the board of
20 Burswood Ltd?

MR POYNTON: Not necessarily, no, because Crown Perth is referred to, which in
other places has in fact been referred to as Burswood Nominees Pty Ltd, but I'm
accepting that this was designed to again give the Burswood Ltd board some
25 assurance.

MS CAHILL: About the effectiveness of internal systems and controls?

MR POYNTON: Indeed.
30

MS CAHILL: Now, you therefore understood that the Burswood Ltd board had
some level of responsibility, oversight and monitoring of the effectiveness of the
internal audit controls?

35 MR POYNTON: Correct.

MS CAHILL: Now, at page 2237 there is a reference to section 2 referring to risks
and outlining the internal audit strategy to provide management and the board with
assurance over these aspects of the risk. The Section then begins at page 2242. The
40 page you refer to is at page 2249.

MR POYNTON: Where are we looking?

MS CAHILL: Waiting for page 2249 to come up, which is the one you referenced in
45 the witness statement. The ICB program is a reference to the junket tours.

MR POYNTON: VIP, yeah.

MS CAHILL: But junkets is what we are talking about?

MR POYNTON: Again, there is various terms, ICB, junket, premium, VIP.

5

MS CAHILL: It certainly includes junket business?

MR POYNTON: Yes.

10 MS CAHILL: This is what you have referred to in your evidence as the audit plan. It says:

The effective and consistent operation of ICB programs is necessary for the Company's reputation.

15

Who do you understand to be the "Company" there?

MR POYNTON: Well I think the company as a broader group but also, through the chain, and, as you know, a corporate citizen of WA.

20

MS CAHILL: Does it include Burswood Ltd?

MR POYNTON: All of the companies. So from CRL through to Nominees and Management.

25

MS CAHILL: Would you accept that this box that you've referred to here, or row in your evidence, particularly in the second column, gives no detail to the board about the nature of the audit that is to be undertaken in relation to ICB business?

30 MR POYNTON: I would say that the very fact that there is a strategic audit plan that refers to the ICB programs and what needs to be happening is evidence that the company is taking this matter seriously.

MS CAHILL: You see in the first paragraph in the second sentence:

35

An audit is scheduled annually due to the high inherent fraud risk and high transaction values.

MR POYNTON: Yes.

40

MS CAHILL: What do you understand that to be a reference to?

MR POYNTON: Matters that you have referred to before, that international players and junkets have the capacity to conduct themselves in ways that might be prejudicial to the company's interests.

45

MS CAHILL: Were you concerned that that might not be referring to money

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laundering risks or criminal infiltration risks?

5 MR POYNTON: I think I took it that it meant an overall, an overarching view of the ICB program as it related to all those matters.

10 MS CAHILL: In any event, you don't recall making any specific inquiry of management as to whether and how a risk of criminal infiltration or money laundering through junket tours was audited?

15 MR POYNTON: No, it is seven years ago. As I said, I think the chairman of the company was on the board, so I'm assuming that there was some discussion around this. I can't recall it. But certainly I was given no cause to be concerned that the matters of the purview of internal audit were not going to be covered.

MS CAHILL: Commissioner.

20 COMMISSIONER OWEN: Before we rise, it is important to us that we complete Mr Poynton's evidence today, so perhaps counsel can have a chat amongst themselves as to the process of further cross-examination, bearing in mind the practice direction, and bearing in mind also that the Commissioners may have some questions. We'll resume at 2 pm.

25 **ADJOURNED** **[1.01PM]**

RESUMED **[2.01PM]**

30 COMMISSIONER OWEN: Please be seated. Thank you, Mr Poynton.

35 MS CAHILL: Mr Poynton, where we were just before lunch, I had taken you to the internal audit plan for 2015 to 2017, which is CRW.702.001.2087. I had taken you to section 1 and 2.

We'll just wait for that to come up on the screen.

40 If we go to section 4, which is at page 2271, this is a section called "Audit Profiles". I will give you some information about what the audit covers, and at page 2273 --- "International Commission Business", cursor down please, I will just give you a moment to read that. Tell me when you are ready for my question.

45 MR POYNTON: Yes.

MS CAHILL: Would you agree that that's in general terms and does it inform you in any detailed way about the content, purpose or robustness of the audit?

MR POYNTON: Please, ask the question again?

MS CAHILL: Would you agree that that does not inform you, as a director, in any detailed way about the content, purpose, or robustness of the audit?

5 MR POYNTON: I haven't formed a view, now or then. It seems to me to be outlining what --- what is planned. And so I guess one would wait for the outcome of that audit to determine its adequacy.

10 MS CAHILL: Well you don't determine the adequacy of an audit by the results, but rather understanding what the process of audit is; would you agree?

MR POYNTON: No. You are saying you don't determine whether an audit was successful when you've got the result of the audit.

15 MS CAHILL: You need to understand something about what the controls were and how they were tested in order to understand whether or not an audit will be affected; would you agree with that?

MR POYNTON: Yes.

20

MS CAHILL: If we go back to page 2271.

You see at the top there, preparatory words in the second sentence:

25 *Detailed scope statements will be developed prior to the commencement of each audit (where appropriate)*

MR POYNTON: Yes.

30 MS CAHILL: Did you ever see any detailed scope statements?

MR POYNTON: I can't recall.

MS CAHILL: Did you ever ask for any detailed scope statements?

35

MR POYNTON: Not that I can recall.

40 MS CAHILL: So if we come back to your witness statement at paragraph 77 I think it is, and where you are referring to the audit ratings as being satisfactory, good and good in different years, are you able to explain what basis --- what controls were applied and how the controls were tested in order to achieve those ratings?

MR POYNTON: No. All I was in receipt of was the reporting from internal audit and its rating.

45

MS CAHILL: And would you accept that it is governance failure on your part not to have paid closer attention and scrutinised the nature of the internal audit plan and

how it was executed?

MR POYNTON: No, not at all.

5

MS CAHILL: Go to paragraph 78 on page 0020, sorry, 0020 yes, of your witness statement.

Paragraph 78, you say:

10

Until July 2019, I do not recall ever being provided with any information from management which caused me concern about the arrangements that the Crown Group had with junket operators.

15 You were, however, aware from media reports that there were some concerns, didn't you?

MR POYNTON: Yes.

20 MS CAHILL: In reference to paragraph 135 of your witness statement, the Four Corners program in 2014, that you were aware from that that there were concerns raised about junket operations?

MR POYNTON: Yes.

25

MS CAHILL: And you say in paragraph 135 that you don't recall watching the program, but you were certainly aware of it at the time in 2014 that that program had been aired?

30 MR POYNTON: Indeed.

MS CAHILL: And the content of the program?

MR POYNTON: Having not watched it, I'm aware of the overall content.

35

MS CAHILL: Was that brought to your attention by management of Perth Casino, that program and its content?

MR POYNTON: I can't recall, given it is seven years ago.

40

MS CAHILL: And what did you do in terms of governance and oversight of the Perth Casino in response to that program?

45 MR POYNTON: I recall subsequently being told that there was at least one inquiry. I'm not sure whether it was ILGA or the VCGLR, looking into this. And in fact, I'm pretty sure that there were no concerns raised as a result of those, whichever inquiry it was.

MS CAHILL: What about Burswood Ltd investigating the situation in respect of Perth Casino as a response to the 2014 Four Corners program?

5 MR POYNTON: As I said at the outset, Burswood Ltd is a company in the chain of
the group and my view would be, and it still is, that that is a company-wide risk and
a company-wide issue. Clearly there was concern at the local level but the response
to it was seen to be then, and in my view now, most appropriately conducted by the
board of the company at CRL level and, indeed, with reference to the Risk
10 Committee.

MS CAHILL: So did you satisfy yourself in 2014 after this program was aired that
the CRL board was investigating issues to do with junket tours to Perth Casino?

15 MR POYNTON: I don't specifically recall, but again, the chair of the company was
sitting on the board to which you refer and I would have, I don't recall a specific
conversation, raised this issue with them and been satisfied that their response, either
not feeling that they were fairly treated or, indeed, responding to other regulator's
response to the article, on top of the issue.

20

MS CAHILL: I want to take you to this document, CRL.639.001.0334_R, "Minutes"
of the ERCC of 19 May 2015, and if we go to page 344. Under that heading
"AML/CTF Update", the chairman of the committee ---

25 advised the Committee that as a result of Crown Perth's decision to allow *junket*
operators to be in a company name, changes to the Crown Perth AML/CTF Program
were necessary

And it goes on.

30

Do you recall this change where at Crown Perth, Perth Casino, junket operators were
allowed to be in a company name?

MR POYNTON: No, I don't, specifically.

35

MS CAHILL: You don't recall whether that was a decision made at board level?

MR POYNTON: I don't recall it being a decision made at board level.

40

MS CAHILL: Looking at it now, is it a decision that should have been made at
board level and not at executive level, in your opinion?

MR POYNTON: What I don't have here is the overlay of whatever CRL had to say
about this. So that would inform my answer.

45

MS CAHILL: But why?

MR POYNTON: As I said, it --- it's the purview of the overall group that has the
power to direct and is in fact in charge of the company and through its committees to

02:07PM

determine these sort of matters, in my view. And then, as I have said before, if there are concerns raised by them that specifically relate to the operation of Burswood Ltd, then I would take action. But none of that happened.

MS CAHILL: You would accept looking at it now, that to allow junket tours to operate through a company name rather than an individual, might increase the risk that the junket tours could be used as a vehicle for money laundering?

5

MR POYNTON: It might. And my response would be, what was "standard industry practice"? Because I'm confident the standard industry practice was to allow that. So as a director, if the company in which I'm associated, and I don't know this for sure, but I'm, kind of, led to believe it to be the case, that if the company is acting outside of standard industry practice, that would cause a concern. I'm told that this was standard industry practice across the casino industry and region. So that would give me comfort that it is not something to be concerned about.

MS CAHILL: Even if you looked at it and thought "oh, that looks like it could increase AML risk"?

15

MR POYNTON: Well again, all I do is I say I'm sitting in this particular place. I'm relying on other people, management and other board members, committee members elsewhere. I'm looking at the overall industry and I'm saying, "Does this give me cause for specific concern?". I'm saying, "no, it didn't." Subsequently, years later, it would appear that this change may well have made it easier for that to happen. But at the time, I had no reason to expect that it would.

MS CAHILL: You were aware, weren't you, of the repeal of regulations in 2010 requiring GWC to approve junket operators --- (inaudible) --- junket tours to Perth Casino?

25

MR POYNTON: I'm aware of that, but more recently.

MS CAHILL: You weren't aware at the time?

30

MR POYNTON: Well I don't recall, being 11 years ago, I don't recall that specifically. So I have to say that I --- I remember it vaguely, but I've subsequently made myself aware of it in more ---

35

MS CAHILL: You can't remember whether at the time you did or did not support that repeal?

MR POYNTON: Not off the top of my head, no.

40

MS CAHILL: Or whether or not you considered that it --- the approval process required --- provided an extra layer of risk mitigation in relation to AML and criminal infiltration?

MR POYNTON: So again, I would imagine, and I guess the records will show, that the respective parties inside the Crown group would have been liaising with GWC and there would have been agreement reached, with GWC as a regulator would have been comfortable with the outcome. Again, I was given no reason to believe that that

45

wasn't the case, then or subsequently.

5 MS CAHILL: All right. Now, if we go to CRL.506.007.8870, and we go to page 8879.

Here, this is a report, part of a report to the Crown Resorts Ltd board on 30 July 2019 when you were a member of CRL, the CRL board.

10 MR POYNTON: I'm just trying to remember whether that was the meeting when I was in the United States.

MS CAHILL: In any event, you recall this report?

15 MR POYNTON: Yes.

MS CAHILL: And this is some information, amongst other information, that the board was provided regarding material referenced in a 60 Minutes program about the SunCity Junket operated by Mr Chau; see that?

20

MR POYNTON: Yes.

MS CAHILL: If we go to page 8880 --- there that is --- the media reports suggested that Mr Chau was formally a member of a triad in Macau, that he was accused of being related to a Chinese triad and that allegation had apparently come from the US government in 2012, there was an allegation that he indirectly benefitted from US\$80 million stolen from the Bangladesh Central Bank in February 2016.

25

30 Then if we go to your witness statement, paragraph 85 on page 0022, you say:

35 *After reviewing the content of the Internal Report [which included the passage I've just taken you to] and after hearing representations from management at the 30 July 2019 board meeting, although I was concerned by the Media Allegations, I recall that I was comforted by the fact that at least one of the junket operators (Suncity) [whom I just referred to] continued to be licensed in Queensland and continued to operate in Star Casino.*

40 So is your position that despite those adverse media reports that I took you to a moment ago, you were prepared to refute the 60 Minutes program allegations without further investigation because this chap continued to be licensed in Queensland and operated at Star Casino?

45 MR POYNTON: So, my specific recollections around this was we were all concerned about the allegations. We were told both internally or in an internal report and at the time of a meeting, that a very substantial number of the junket operators, not just SunCity, were operating at Star and in some cases, in a much, much more material way. We were also told that the Queensland Government had licensed SunCity and the Border Force had not barred any of the people associated from

entering the country.

At the same time, there were concerns, and there were, I think, one or more
5 committees or --- there was a brand committee, there was also a resolution at that
time to very much look into the operation of junkets and the --- and the veracity of
the accusations that were made. And I recall there were three or four external parties
engaged around about this time and going forward, to have a look at this whole
situation. I'm not talking about refuting it. I said I was comforted by the fact that
10 Crown in fact was not the only operator dealing with this particular company and
that we were taking steps to look into the accusations in more detail.

MS CAHILL: But shouldn't your position to have been to stop all dealings with this
company until the investigation was complete --- an investigation by Crown Group
15 into these people?

MR POYNTON: Again I'm not sure, did Star City stop dealing with them? Because
obviously what we are talking about is we're acting on behalf of shareholders. So
you know this is the great tension between, you know, the whole situation where you
20 suddenly decide that you're not going to deal with a junket or any junkets or any VIP,
but all your competitors agree to keep doing it, right? So you open yourself up to an
accusation by shareholders that you are not acting in their interests. So it's not black
and white.

MS CAHILL: Well, what you are saying there is that you prefer the interests of
shareholders and profits over the responsibilities that you have to operate a licence in
25 a socially responsible and lawful way.

MR WARD: With respect, I object to that question --- (overspeaking) ---
30

MR POYNTON: That is not what I said, sir.

COMMISSIONER OWEN: Sorry? Wait, Mr Poynton.

MR WARD: Yes, so I object to the question put in that way. It was not what the
witness said at all. It is significant embellishment and it should be rephrased
properly in accordance with what the answers were.
35

COMMISSIONER OWEN: Rephrase the question, please, Ms Cahill.

MS CAHILL: May it please you, Mr Commissioner.

So you referred there to "shareholders", the tension between shareholders and
45 investigating potentially unlawful conduct by a junket tour operator.

MR POYNTON: Yes.

MS CAHILL: And the tension you describe is because shareholders expect you to generate profits; is that right?

5 MR POYNTON: We have to act in the best interests of shareholders, which takes into account a myriad of things and has to do with the value, you know, creation or maintenance of the business, offset by and including all the social and other regulatory requirements.

10 MS CAHILL: What social requirements are you referring to there?

MR POYNTON: The social licence to operate, doing the right thing. But in a competitive environment, and this is what I was trying to say, you open yourself up to an accusation by shareholders in this highly litigious world of class actions to have taken precipitous action prejudicial to the shareholders' interests. And it is one of the things that directors need to consider. Over time, over the period from 30 July 2019 to towards the end of 2020, there was increasing pressure on the company, if you like, about this whole issue, sort of culminating in an agreement in mid-2020 to cease any junket operators initially until 30 June 2021 and subsequently permanently. So it's not as if the company wasn't aware that this was a major concern. Again, using the analogy about shareholders' interests, in making a decision not to concede --- to continue with junkets, the board needed to be cognisant of the shareholders' interests. And I think I'm quoted somewhere, might have been in Bergin, as saying the risk/reward relationship going forward with junkets became weighted against wanting to continue for commercial reasons because of the overlying social ramifications and the regulatory ramifications.

MS CAHILL: What are the social ramifications you are referring to?

30 MR POYNTON: I'm talking about the social licence to operate, in other words, the reputation of the company. And this is at a time when there are a myriad, I think, four separate external reviews into dealing with junkets and AML.

MS CAHILL: Did you convey the information about Mr Chau and SunCity junkets that I took you to in that internal report of 2019 to the Burswood Ltd board?

MR POYNTON: I didn't need to do that, as they were aware of it. Bearing in mind again that the chairman of the company chaired Burswood Ltd.

40 MS CAHILL: Did you raise with the Burswood Ltd board whether or not the SunCity junket should be permitted to operate at Perth Casino?

MR POYNTON: Not specifically.

45 MS CAHILL: Do you agree that the level of oversight you provided in relation to junket operations to the Perth Casino, such as that was, was a failure of proper corporate governance on your behalf?

MR POYNTON: No, I don't.

5 MS CAHILL: Can I talk to you about communications with the GWC at paragraph 169 of your witness statement at page 0043. Paragraph 169, page 0043.

You talk about the licensee having primary responsibility for communicating with GWC, that is Burswood Nominees. That was your position?

10 MR POYNTON: Correct.

MS CAHILL: And that they had been given general authority to do so by Burswood Ltd, that is your board?

15 MR POYNTON: Amongst others.

MS CAHILL: Burswood Ltd and the licensee?

20 MR POYNTON: Yes.

MS CAHILL: And that was obviously though subject to some limits, wasn't it, that general authority? Specifically the limits you set out at 171.

25 MR POYNTON: Indeed.

MS CAHILL: You say that if there was a material issue, it had to be escalated to the Burswood board.

30 MR POYNTON: Correct.

MS CAHILL: For the Burswood board to monitor how communications --- the content of communications to GWC about that issue?

35 MR POYNTON: So I used the analogy earlier about APRA as it might relate to an individual board member of a listed bank. And indeed more specifically, about something like Bankwest, which is probably the most analogous. So APRA would not, in normal circumstances, be dealing with a non-executive director of a bank. It would deal with chair of audit, the CEO, the chairman of the company. So I have no reason to expect or suspect that any of the relationships going on between Nominees and the members of that board with GWC was of concern. And as it turned out
40 subsequently, there was no reason to be concerned about that.

45 MS CAHILL: Are you aware of presentations that were made by, I'll use this generic expression, Crown management to GWC at August 2019?

MR POYNTON: Yes.

MS CAHILL: And October 2020?

02:22PM

MR POYNTON: Yes.

MS CAHILL: And PowerPoint presentations that were provided to GWC in each of those meetings; do you recall those?

5 MR POYNTON: Yes, I do.

MS CAHILL: Were you apprised of what the Crown management was going to say to GWC before those presentations were made?

10 MR POYNTON: I can't recall whether we saw it before or after but I have subsequently seen it, for sure.

MS CAHILL: Should you not have not only seen it before it was communicated to GWC, but approved it?

15

MR POYNTON: No. As I said, are you saying that as me as an individual, non-exec non-chair of the company or the board itself?

MS CAHILL: As a member of the board.

20

MR POYNTON: As a member of the board, I relied on the fact that the chairman of the company was sitting as the chair of the company that I was the director of, and indeed there were various other people in management, and that again, at that stage there were no issues, red flags raised with me that the material was a problem.

25

MS CAHILL: You didn't know if you weren't looking at it ahead of time.

MR POYNTON: As I said, I'm trying to remember when I became aware of that presentation.

30

MS CAHILL: Just looking back now, acknowledging that your memory isn't perfect about that, looking back now with hindsight and remembering that in August 2019 and October 2020 basically in the thick of the media allegations and the Bergin Inquiry, surely any communication to GWC about the content of those very serious matters ought to have been the subject of prior approval by the Burswood Ltd board; would you agree?

35

MR POYNTON: No, I don't agree with that. I think they should have been subject to prior approval by Crown as headco.

40

MS CAHILL: Now in August 2020 there was a decision made to suspend junkets. That was a resolution of the board of CRL; you recall that?

MR POYNTON: Yes.

45

MS CAHILL: Did Burswood Ltd board also consider whether or not to resolve to suspend junkets?

MR POYNTON: As I understand it, yes. I think it is reflected in the minutes.

5 MS CAHILL: And it considered that it was necessary for it to make a resolution separate from and in addition to the CRL resolution?

MR POYNTON: For completeness.

10 MS CAHILL: You give some evidence about what everyone calls the China arrests at paragraph 79 through to 82 of your witness statement. That is page 0020 to 0021, which you recall occurred in about October 2016?

MR POYNTON: Correct.

15 MS CAHILL: And you refer to the December 2016 board meeting a couple of months later. In paragraph 80, do I understand this correctly, your evidence at 80, that you understood that you were effectively being advised by management to do nothing in the immediate aftermath of the detention of the employees, just wait?

20 MR POYNTON: There was a significant amount of discussion about this at the time, and I think the company was shocked and disappointed that its employees had been detained. It maintained and still I think to this day maintains that there was no proven breaking of the law. But what actually happened is the employees pleaded guilty to be released. There was obviously then great --- what's the word ---
25 introspection about the operations in China and from that time on the amount of business coming out of mainland China fell away dramatically because of the heightened risks. So it wasn't that we were being told to do nothing, it was that none of the employees in question were employed by the company I was a director of and we were --- it is an example of the flow of information down from CRL to a
30 subsidiary board because there are and clearly were reputation impacts.

MS CAHILL: Did you, as a director of Burswood Ltd, press vigorously to understand from management how the arrests had come about?

35 MR POYNTON: Absolutely. There was a significant amount of discussion around this time, not necessarily always under the guise of the board meetings, about how this could have happened.

40 MS CAHILL: Did you ask for a briefing paper?

MR POYNTON: Not a briefing paper per se, but I got a fairly detailed verbal report.

MS CAHILL: From?

45 MR POYNTON: Mr Felstead.

MS CAHILL: Were you concerned about the effects of the arrests on Perth Casino's reputation in the eyes of the West Australian public?

MR POYNTON: Yes, indeed.

MS CAHILL: What did you do about that?

5

MR POYNTON: Specifically --- well, the question I would have asked back is what could I have done? So we actually spent some time talking to Mr Felstead. It was a moving feast at this stage, there was a lot of work being done at group level to get people released and it was a very difficult time. We were monitoring that. Because
10 none of the people were our employees, and there wasn't much more we could do other than make ourselves aware of what the company was doing to try and get people released and not have it happen again.

MS CAHILL: In terms of the confidence that the West Australian public had about
15 the operations of Perth Casino, did you take any steps to reassure the West Australian public about casino operations?

MR POYNTON: Not specifically. And I think people had a general level of
20 concern but I don't know that it actually suddenly caused a great diminution of activity at the casino in Perth because everyone was concerned about it.

MS CAHILL: Did you consider in your role as a director of Burswood Ltd that you
25 had some responsibility to make sure that the regulator was properly apprised of what had happened?

MR POYNTON: I was not a director of the company that held the licence, so, again, I would say that the people who were on the board, and indeed in risk at CRL, would have been the people primarily responsible relaying any concerns.

30 MS CAHILL: Were you aware, up until the point of the China arrests in October 2016, the management of Perth Casino were considering rolling out to Perth the China UnionPay card process, or the CUP process, being utilised at Crown Melbourne?

35 MR POYNTON: It was being utilised at Crown Melbourne and Star, and I think that was the main reason it was introduced in Melbourne, because it was very actively being used at Star. I don't specifically recall the discussion about rolling it out in Perth. I'm pretty confident it never was.

40 MS CAHILL: I'm not suggesting to you that it was, I'm asking you whether you were aware that Perth management were considering rolling it out.

MR POYNTON: I don't have any specific recollection of that.

45 MS CAHILL: Did you have any general recollection?

MR POYNTON: No, I don't.

MS CAHILL: Can I talk to you about harm minimisation, between paragraphs 152 and 161 of your witness statement. That's pages 0038 to 0041. You give some evidence about the topic which you describe there as problem gambling. Is it your
5 position that the board of Burswood Ltd did not have any responsibility for developing the framework with respect to Responsible Gambling that you describe in paragraph 152 of your witness statement?

MR POYNTON: Paragraphs 153 and 154 relate to the subcommittee, or the
10 committee of CRL, chaired by Professor Horvath, the former Chief Medical Officer. I took great comfort that he and his fellow committee members were very much on top of this as an issue, that that was being brought down to, I think --- I'm not sure what it was called, but the equivalent of the Responsible Gaming Committee of Crown --- sorry, of Burswood Nominees. So this was something that was regularly
15 discussed at board meetings, and was an issue of concern that the whole company wanted to make sure it was doing as much as it could.

MS CAHILL: I will come back to my question. Did you understand the board of Burswood Ltd to have any responsibility for developing that Responsible Gaming
20 framework?

MR POYNTON: Not directly, no.

MS CAHILL: Indirectly?
25

MR POYNTON: Indirectly to monitor and satisfy itself that the framework was appropriate.

MS CAHILL: Did it have a responsibility to approve the framework?
30

MR POYNTON: I can't recall whether it had a responsibility to approve it. It did approve it.

MS CAHILL: Did it have a responsibility to oversee that the framework was
35 implemented properly and appropriately at Perth Casino?

MR POYNTON: It had a responsibility to oversee the implementation and satisfy itself.

MS CAHILL: And to then check that the framework was fit for purpose at Perth
40 Casino?

MR POYNTON: Well, I guess it's all part of it. As I said, these things came up regularly as you can see in 155. The ratings are good, low risk, excellent, good,
45 excellent, good, through 2019. So 13 through 19 there was never worse than a good rating.

MS CAHILL: These are the internal audit reports again, aren't they?

MR POYNTON: They have to do with Responsible Gaming.

MS CAHILL: Yes.

5

MR POYNTON: So, again, as a non-exec director, I'm taking these data points that are given me and I'm satisfying myself to the extent I can because I'm using that with other things coming across my desk that the company is on top of these issues.

10

MS CAHILL: But the internal audit reports again you never looked behind the rating to say how was this audit set up, what were the controls that were tested and how robust was that testing?

15

MR POYNTON: I relied on management and my fellow non-independent directors, ie management of the company, to be across all of those issues, including, as I said, right up to the Responsible Gaming Committee chaired by Professor Horvath. And I think that that was reasonable in the circumstances because there were a lot of people focused on it.

20

MS CAHILL: Paragraph 160 at page 0041 you refer to Burswood Ltd being involved in a number of initiatives to promote Responsible Gambling. You mention there two: the annual West Australian Responsible Gaming Awareness Week and working with the PGSSC. What others, to your knowledge, besides the two that you've mentioned there, were initiatives?

25

MR POYNTON: I'm not sure of others.

30

MS CAHILL: Did the Burswood Ltd board ever review the effectiveness of the Problem Gambling Support Services Committee?

MR POYNTON: Not that I'm aware.

35

MS CAHILL: Did the board ever consider whether that committee was properly funded?

MR POYNTON: No, not specifically.

40

MS CAHILL: Did it consider whether Perth Casino was making a sufficient contribution to that committee?

MR POYNTON: Not specifically.

45

MS CAHILL: Would you accept that that was a governance failure on the part of the Burswood Ltd board in failing to do those things?

MR POYNTON: No I don't.

MS CAHILL: Would you agree with the proposition that an effective harm minimisation framework needs to be premised on robust research about how gambling causes harm and the type of harm it causes?

5

MR POYNTON: Could you ask the question again?

MS CAHILL: Would you agree with the proposition that an effective harm minimisation framework needs to be premised on robust research about how gambling causes harm and the type of harm it causes?

10

MR POYNTON: Yes.

MS CAHILL: As a director of Burswood Ltd, did you at any time inquire as to whether Crown Resorts Ltd's framework was based on any research?

15

MR POYNTON: I can't recall asking any specific questions at that time about that specific matter. I would have and still would claim to take comfort from the fact that people more qualified than me with more capacity to implement were managing the issue of problem gambling.

20

MS CAHILL: Did it occur to you, in the 16 years you were a director of Burswood Ltd, that you should require Perth Casino management to undertake research about how gambling causes harm, and the type of harm it causes, specifically with respect to the situation in WA and that of the Perth Casino?

25

MR POYNTON: Not specifically as a director of Burswood Ltd.

MS CAHILL: Well, what about generally as someone involved ---

30

MR POYNTON: No ---

MS CAHILL: I will just finish the question ---

35

MR POYNTON: I didn't see that was my role ---

MS CAHILL: Mr Poynton, I have to finish the question.

In your role as somebody involved generally with the Crown Group's operations, do you think that was your responsibility to make that suggestion?

40

MR POYNTON: No.

MS CAHILL: And did you at any time, as a director of Burswood Ltd, or more generally as someone involved in the Crown Group's operations, inquire of management and seek reassurance as to whether advertising, promotions, and the marketing of gambling to Perth Casino patrons was consistent or inconsistent with Responsible Service of Gambling?

45

MR POYNTON: No.

MS CAHILL: Do you agree with hindsight that is something you should have done?

5

MR POYNTON: No.

MS CAHILL: Can I turn to EGMs specifically. You mention at paragraph 162, page 0041 of your witness statement, your understanding in your role as a director of Burswood Ltd that the EGM business was highly regulated with a high value turnover. On that last point you understood it to be a very profitable part of the Perth Casino gaming business, didn't you?

10

MR POYNTON: Yes.

15

MS CAHILL: And the highly regulated part you understood to be arising from the poker machine ban in WA; is that right?

MR POYNTON: Yes.

20

MS CAHILL: Did you understand that the ban on poker machines related to the harmful effects of those machines?

MR POYNTON: To me it was always a bit of a nuance, the difference between spinning wheel and pokie machine and an EGM machine. But I accept that there was a concern that poker machines per se did harm.

25

MS CAHILL: And EGMs didn't?

MR POYNTON: Well, given that they are generically similar, they are not identical, and they have somewhat different requirements in terms of player input, it is hard for me to say whether one is more harmful than another. There are other people suggesting that they were, and that was the reason for the ban.

30

MS CAHILL: Can I just understand, or make sure I understand the effect of your evidence between paragraphs 163 and 166 of your witness statement. Can you go to paragraph 163, which is on the screen.

35

When you refer there to "Burswood's EGM business", are you referring there to the commercial aspects of the EGM business and, for example, the turnover and improvement of turnover and such like?

40

MR POYNTON: Yes. I imagine I was in an overall sense, yes.

MS CAHILL: When we go to 164 then, and we're looking at the internal audit reports and the internal audit ratings of satisfactory, minor risk, moderate/medium risk, is that just, on your understanding, going to the commercial risks or also matters the

45

subject of the Responsible Service of Gaming?

5 MR POYNTON: I would say the latter. The commercial and the concerns around risks of harm.

MS CAHILL: But again, you didn't know precisely what kinds of audits were being conducted in relation to EGMs and what controls or risks were being tested?

10 MR POYNTON: So, as I said in 165, I understood that the risk to public gambling associated specifically with EGMs were addressed by the Responsible Service of Gaming framework as discussed elsewhere and, indeed, which had the input of that committee at CRL level.

15 MS CAHILL: I will take you to this document, CRW.702.001.6952. This is a business plan for the year ending 30 June 2013. It was provided to the board. If we go to 6954, please, and we drop down to the last dot point of "Key Strategies":

20 *Introduce TITO (Ticket in Ticket Out) and cashless technology to the Gaming Machines environment and maximise the use of the improved functionality (bonusing, extra play) of the IGT Advantage system (implemented during F12) to enhance Gaming Machine growth and customer experience.*

25 See that?

MR POYNTON: Yes.

30 MS CAHILL: All of that was about increasing turnover, wasn't it, of the EGM machine business?

MR POYNTON: Yes.

35 MS CAHILL: Do you consider there was sufficient attention given in the business plan to harm minimisation in the context of growing the business, the EGM business?

40 MR POYNTON: I would need to refresh my memory, given this is seven or eight years ago. As to whether that were the case, I would say that if it isn't specifically covered there, the harm minimisation would have been again the purview of other parts of the business, essentially alongside the desire to get more turnover and provide a better experience to the customer, as well as not being irresponsible in that.

45 MS CAHILL: Was that a focus --- that harm minimisation in relation to EGMs, was that a focus of the Burswood Ltd board in terms of monitoring and oversight at all or was that left to other parts of the business?

MR POYNTON: As you can see in the minutes, there were various reports provided to the Burswood Ltd board about Responsible Service of Gambling over a fairly long

period.

MS CAHILL: Let's go to page 6960, please.

5

COMMISSIONER JENKINS: While that is coming up, this is described as Burswood Ltd's business plan and it's all about running the casino. Why do you say that that wasn't Burswood Ltd's business?

10 MR POYNTON: Well, it's an all-encompassing term, Commissioner. As I said --

COMMISSIONER JENKINS: What is an all-encompassing term?

15 MR POYNTON: So I come back to the point that this company, Burswood Ltd to which we are referring all the time, has one shareholder and one asset and no staff. So essentially what has happened over time, Burswood, or Crown Perth has become an all-encompassing term for the business of the Perth Casino. What I'm saying the whole time is this particular company sat in a chain of other companies where the ultimate responsibility for all of those activities resided, ie at the board level of CRL
20 and its various subcommittees that were established.

So this is essentially a one-way set of information where we are receiving information, we can't control things, we can approve or we can agree or encourage adoption of things, but we don't have a whole lot of people working for us that under
25 normal circumstances a board of directors through the CEO would be able to direct.

COMMISSIONER JENKINS: Then why is it called "Burswood Ltd business plan"?

30 MR POYNTON: Good question.

COMMISSIONER JENKINS: Thank you, Ms Cahill.

MS CAHILL: Thank you, Commissioner.

35 Page 6960, there is additional opportunities identified in the business plan, first two dot points, the spinning reel machines and the exclusive use of international/interstate patrons and the reduction in machine spin rate cycle times.

40 Did you understand that to be a reference to making the machines like poker machines for interstate and overseas players?

45 MR POYNTON: I don't know what I was thinking at that time. Obviously if spinning wheel machines or pokies were banned for use of the normal local player, this must have been seen as an opportunity. I'm not sure that it ever went anywhere. That's all I can say about that.

MS CAHILL: When reading this, whether it went anywhere or not, did you have any concerns that Burswood management, Perth Casino management were not

sufficiently focused on and emphasising deference to poker machine ban and harm minimisation associated with EGMs?

5 MR POYNTON: No.

MS CAHILL: At 6963 under the heading "gaming machines", you will see at about point 5, this is a report and then a plan for the year going forward. If you just read those dot points, rebranding campaign to re-attract an uncarded demographic, new
10 loyalty program, additional product for peak periods, cashless technology, jackpot offerings and so forth, you see the second-last dot point, "More aggressive free credits and mail campaigns"?

MR POYNTON: Yes.
15

MS CAHILL: Did you get the sense that what management was proposing to you was an aggressive marketing of EGMs at the expense of harm minimisation strategy?

MR POYNTON: I think this shows an emphasis of trying to generate revenue, it
20 doesn't tell the other story about harm minimisation. To that extent it is probably the wrong messaging, for sure.

MS CAHILL: Are you aware of amendments in 2019 to the WA appendix to the Gaming Machine National Standards?
25

MR POYNTON: Not specifically.

MS CAHILL: That these were instigated by Crown?

30 MR POYNTON: Again, not specifically. I would need to be reminded.

MS CAHILL: Let's go to GWC, this is a document not for publication, GWC.0002.0016.0268, at page 0077. This is Crown Perth letterhead, 7 March 2019.
35 It's a letter to Mr Ord. Do you recall seeing this letter before today?

MR POYNTON: I beg your pardon, sorry?

MS CAHILL: Do you recall seeing this letter before today?
40

MR POYNTON: No.

MS CAHILL: Essentially there is proposals for the amendment to the standard for the reasons given in the last paragraph.
45

MR POYNTON: Yes.

MS CAHILL: Commercial disadvantage to Crown Perth against other casino

operators interstate and internationally. If we go over the page to 0078, proposal to reduce the speed of play from five seconds to three seconds, you see that?

5 MR POYNTON: Yes.

MS CAHILL: Do you recall approving that proposal be put to GWC at the time?

10 MR POYNTON: I recall being told that it was something to be discussed. I don't recall approving it per se.

MS CAHILL: Is this something that caused you any concern?

15 MR POYNTON: No.

MS CAHILL: Did you consider it was something that could increase the risk of harm to casino patrons playing electronic gaming machines?

20 MR POYNTON: Not specifically.

MS CAHILL: Do you see the next one, return to player, seeking to have the return to player to have it reduced in line with other states?

25 MR POYNTON: Yes.

MS CAHILL: So effectively the patron loses more money? You understood that much?

30 MR POYNTON: I guess that was the intention to generate more revenue for the casino and, therefore, for its shareholders.

35 MS CAHILL: And then at numbered paragraph 3 under the heading "cost of EGM development", did you understand that what the Perth Casino management were wanting to really seek to do here was to change some of the design features of the EGMs at the Perth Casino to make them more like poker machines in order to save on the cost of game development?

40 MR POYNTON: Certainly the --- my understanding was the fact that EGMs were different from machines in every other venue around the country in pubs and clubs and other casinos, that this was an ongoing issue in terms of the cost of the machines and getting people to actually design them. So it didn't --- or it doesn't surprise me that there was an attempt to standardise it such that there would be more overlap, if you like, between machines that the manufacturers were making and what the casino was required to have in play.

45 MS CAHILL: Did you have any concerns in your mind at the time or consider that changing some of the design features of the EGMs could increase the risk of harm to patrons at Perth Casino using those machines?

MR POYNTON: I didn't specifically --- I wasn't specifically concerned about that as there were systems and programs in place to minimise harm and manage that issue.

5 MS CAHILL: Do you agree with the benefit of hindsight that you were not, as a director of Burswood Ltd holding management, sufficiently to account in respect of their management and conduct of the EGM business in the context of appropriate harm minimisation measures?

10 MR POYNTON: No.

MS CAHILL: Different topic now, Mr Poynton. During your tenure as a director of Burswood Ltd, did you acquaint yourself with the contents of the Burswood Ltd constitution?

15

MR POYNTON: I can't specifically recall at the time I became aware or studied it, but I have studied.

20 MS CAHILL: Go to PUB.0026.0002.0001, and at page 0010. If we can pull out clause 3.12 with its heading. Are you familiar with this clause of the Constitution?

MR POYNTON: Yes.

25 MS CAHILL: Did you understand it to be a clause of the Constitution inserted by reason of a requirement in the State Agreement?

MR POYNTON: Yes.

30 MS CAHILL: For the purposes of this clause, what do you say is the business of Burswood Ltd?

MR WARD: I object to that. That is really a question about the proper construction of the agreement. It's not a question on which he can express an opinion.

35 COMMISSIONER OWEN: He is asked whether he ever turned his mind to that distinction.

MS CAHILL: I'm asking him what he says is the business for the purposes of this clause.

40

If you answer that question, please.

MR POYNTON: Can you ask it again?

45 MS CAHILL: You see there in the second line when it says:

The head office of the Company must always be located in WA. For this

purpose, 'head office' means the place of business of the Company

For the purpose of this clause, what do you say is the business of Burswood Ltd?

5

COMMISSIONER OWEN: Have you turned your mind to that issue?

MR POYNTON: I think the legal structure determines what the business is. In the strictest and narrowest sense it's managing the asset it has which is one or more units of the Burswood Property Trust. It has subsidiaries that have a licence, that have employees, have executives. The responsibility of Burswood Ltd is to its one shareholder, which is ultimately CRL. So it is a bit of a misnomer, unfortunately. I'm not sure when this was originally put up, that wasn't at a time when Burswood Ltd was a listed ASX company. Or subsequently.

10
15

MS CAHILL: Coming back to this clause. To answer Commissioner Owen's question, have you ever turned your mind to this clause in terms of the structure of the Burswood Ltd business?

MR POYNTON: Yes, as I said with the aforementioned caveat. So in 2005 or 2004, whenever it was that PBL and then ultimately CPH took control of this company, it was pretty clear immediately that the overall control, given what we've talked about, about companies in the chain, had moved in that case to Sydney. Now, I don't recall at any stage, anyone in government or the regulator raising concerns about that.

20
25

MS CAHILL: Well, the central management of Burswood Ltd, do you say Burswood Ltd has any management?

MR POYNTON: No, it doesn't.

30

MS CAHILL: And the control of Burswood Ltd, where do you say that is exercised?

MR POYNTON: I say the control of Burswood Ltd is firmly in the people that appoint its directors and who own the shares in that company.

35

MS CAHILL: In any event, you've never either in your capacity as a board member of CRL or in your capacity as a board member of Burswood Ltd raised this issue of clause 3.12 and said to anyone, "Well, I think we can't have a centralised casino operation function outside of WA insofar as it concerns Perth Casino"?

40

MR POYNTON: As I said, I think that is a matter for the government and the board of CRL to determine whether that is satisfactory from their point of view. I'm not sure there was ever a requirement to have independent directors of Burswood Ltd in the same way that I think in Melbourne there is a very specific requirement about the company controlling that asset there. Certainly I'm aware of this requirement and it went away as something that government seemed to be concerned about 15 or 16 years ago, because otherwise they would have insisted that the overall business in the whole context of these companies sitting in the chain should have been administered

45

out of WA.

5 MS CAHILL: Just on a related topic but a different topic, in paragraph 40 of your witness statement, on page 0009, you refer to the Melbourne Casino Agreement between Crown Melbourne and Victorian regulator. In response to a request from this Commission that you give evidence on a particular topic, you say that you don't recall reviewing clauses 22.1(r) and 22.1(ra) of that agreement.

10 During your tenure as a director of Crown Resorts Ltd, did you read that Melbourne Casino Agreement at all?

MR POYNTON: I can't recall reading it during that tenure, but I read it subsequently.

15

MS CAHILL: Have you read and recall clause 22.1(ra)(iii)?

MR POYNTON: I would need to be reminded of it, but it has to do with the administration of the Crown facility.

20

MS CAHILL: It is a promise to ensure that Crown Resorts Limited maintains the Melbourne casino as the flagship casino of Crown Resort's gaming business in Australia; do you recall that?

25 MR POYNTON: Yes.

MS CAHILL: While you were on the board of CRL, did CRL maintain Melbourne casino as the flagship casino of CRL's gaming business in Australia?

30 MR POYNTON: Yes, as far as I recall.

MS CAHILL: How did it do that?

35 MR POYNTON: It had an emerging operation in Sydney which hasn't been opened, and it had an operation in Perth which is much smaller. So by definition, flagship, if that's the term you want to use, was in Melbourne.

40 MS CAHILL: So does that mean, therefore, that the Perth Casino could never be developed to become a larger casino attracting more business than Melbourne in your view?

45 MR POYNTON: Almost by definition it wouldn't matter really what one did. Melbourne is a much bigger city, it has a higher profile and it's hard to imagine, and I haven't done or seen the numbers, but it's hard to imagine that investing another billion dollars is going to make it more of a flagship in the revenue sense or profit sense than Melbourne.

MS CAHILL: So flagship is just really a size thing, is it, in your mind?

02:58PM

MR POYNTON: Well, it's like any adjective, what does it actually mean?

MS CAHILL: What does it mean to you?

MR POYNTON: I take it to mean the biggest, the most prestigious, the highest
5 revenue, the highest profile.

MS CAHILL: So how is it made more prestigious than Perth?

MR POYNTON: Only by virtue of size and presence in a major city.
10

MS CAHILL: Once you joined the CRL board and you had responsibilities in
relation to Crown Melbourne as well as Crown Perth, did you perceive any conflict
between your role as chair of Burswood Ltd, or as a member of the Burswood Ltd
board and your role as a director of CRL having regard to that clause I've just
15 referred you to?

MR POYNTON: Not specifically, no, because of the size differences which were
evident. And, indeed, the meetings of CRL were mostly held in Melbourne. The
management, as I understood, was mostly located in Melbourne, and it was being run
20 out of Melbourne.

MS CAHILL: Paragraph 33 of your witness statement, I'm changing topics here,
you refer to a consultancy agreement that you made on 7 May 2018 which is
JHP.001.001.0001. This coincided with your nomination to the board of CRL; you
25 recall that?

MR POYNTON: Yes, I do.

MS CAHILL: Now that consultancy agreement has been displayed on the screen.
30 You say at paragraph 34 that:

*The legal purpose of the Consultancy Agreement was to ensure that I was not
considered an 'independent' director of Crown.*

35 But you didn't require a consultancy agreement to be identified as a non-independent
director, did you?

MR POYNTON: It was to put the matter beyond doubt.

40 MS CAHILL: Well, it could have easily had the matter put beyond doubt by you
being noted in the records of the company as a nominee director; would you agree?

MR POYNTON: The idea of entering into the consultancy agreement was Mr
Packer's. That's what he wanted to do and I agreed.

45 MS CAHILL: You disclosed the fact of the consultancy agreement to Mary Manos
the CRL company secretary at the time, didn't you?

MR POYNTON: Yes.

MS CAHILL: Did you also provide her with a copy of the agreement?

5

MR POYNTON: I can't recall.

MS CAHILL: Going to the document itself you will see on the front page that it is an agreement only between CPH Pty Ltd, and this is your private company, Mulloway Pty Ltd, is it --

10

MR POYNTON: Yes.

MS CAHILL: --- and you as the nominated representative. Is there a reason why CRL or a CRL entity was not made a party to this agreement?

15

MR POYNTON: Because it doesn't involve them. I'm not sure why they would be a party.

20 MS CAHILL: You say it doesn't involve them?

MR POYNTON: Well, not specifically my relationship with Consolidated Press, doesn't it? It is declared that there is an association and therefore I don't think CRL needs to be a party to it.

25

MS CAHILL: We will just have a look at where we are. You will see that the company here is defined as CPH, Pty Ltd, Consolidated Press Holdings; you see that?

30 MR POYNTON: Yes.

MS CAHILL: And then if we go down to the definitions on page 0002, you will see at point 7.8 a definition of "Group".

35 So "Group" means "Consolidated Press Holdings, Crown Resorts Ltd and each of their Related Bodies Corporate."

MR POYNTON: Right.

40 MS CAHILL: "Services" are defined a little distance under that, the services ---

MR POYNTON: Yes.

MS CAHILL: --- and "services" means you acting as a non-executive director of CRL to represent CPH Pty Ltd?

45

MR POYNTON: Yes.

MS CAHILL: And then over the page at (b):

providing such other business services as requested by [CPH Pty Ltd] from *time to time*

5 And you say no other services of that description were provided.

MR POYNTON: I see that.

10 MS CAHILL: So the only services provided under this agreement were acting as a nominee director on the CRL board?

MR POYNTON: Indeed.

15 MS CAHILL: So we go to clause 4.1 at 0004. These are the duties and responsibilities of the consultant, that's Mulloway and therefore you, you would agree with that?

MR POYNTON: Yes.

20 MS CAHILL: And if we drop down to (g):

25 *provide full and prompt information to [CPH Pty Ltd] regarding the provision of the Services including any material issue or information within the Consultant's or Nominated Representative's knowledge affecting the Company*

Did you consider that clause obliged you to disclose information confidential to CRL and its board to CPH Pty Ltd?

30 MR POYNTON: No.

MS CAHILL: Did you make any such disclosures?

35 MR POYNTON: None.

MS CAHILL: Did you disclose the existence of this clause to CRL or Burswood Ltd?

40 MR POYNTON: No. Can I just confirm that the word "Company" refers to CRL, not to CPH?

MS CAHILL: Just go back up to page 001, please. The "Company" refers to CPH Pty Ltd.

45 MR POYNTON: Correct. Not CRL.

MS CAHILL: Not CRL.

MR POYNTON: Yes. So can we just go through that question again for the record. So there is no suggestion that I was to provide confidential information regarding CRL to CPH.

5

MS CAHILL: Can we go to page 0005, please. Do you see the consultancy fee at clause 5.1?

MR POYNTON: Yes.

10

MS CAHILL: The consultant would be paid a fee of \$50,000 per annum by CPH Pty Ltd for being a nominee?

MR POYNTON: Yes.

15

MS CAHILL: You were also being paid by CRL as a board member?

MR POYNTON: I was.

20

MS CAHILL: How much?

MR POYNTON: I think director's fees were something like \$120,000 or \$130,000 or something like that.

25

MS CAHILL: And you were also being paid for your directorship of Burswood Ltd at the same time?

MR POYNTON: Correct.

30

MS CAHILL: How much?

MR POYNTON: That was \$80,000 per year. It's important to note the fee didn't change between 2004 and 2019.

35

MS CAHILL: Did you disclose the fact of this payment pursuant to this agreement to CRL?

MR POYNTON: I recall talking to Mary Manos about it.

40

MS CAHILL: Did you disclose the fact of this payment to the board of Burswood Ltd?

45

MR POYNTON: Yes, as far as I recall, given that John Alexander was chairman of the company at the time and was obviously working as executive chairman of Crown, and also close to James Packer. He would be aware of this.

MS CAHILL: If we go to page 0007, please. Clause 7.3, if you can zoom in on that.

A consultant and nominated representative, that's you and your company, covenant, that's promise, "both during and after termination of this agreement", that the two of you will, (c):

5

upon demand by [CPH Pty Ltd], deliver to [CPH Pty Ltd] Confidential Information in the possession, power or control of the Consultant or the Nominated Representative.

10

If we go back up to page 0001 and look at the definition of "confidential information". Over to page 2. You will see there that "confidential information" includes confidential information of the CRL Group, the Crown Group.

MR POYNTON: Yes.

15

MS CAHILL: Well, why did you agree to deliver confidential information of the CRL Group on demand to CPH Pty Ltd?

MR POYNTON: Does it say "on demand"?

20

MS CAHILL: Go back to point 7.3(c) at 0007.

MR POYNTON: "On demand".

25

MS CAHILL: Why did you agree to that term?

MR POYNTON: I'm not sure in hindsight. What I would say is it never happened.

30

MS CAHILL: Did you consider that the existence of this clause created a potential conflict between the duties of confidentiality you owed in respect of CRL board discussions, the Burswood Ltd discussions and your obligations under this clause?

MR POYNTON: Yes.

35

MS CAHILL: Did you disclose the contents of this clause to Crown Resorts Ltd?

MR POYNTON: I can't recall but I'm pretty sure that I spoke to Ms Manos about it.

40

MS CAHILL: What about Burswood Ltd's board, did you make any disclosure to them about this clause?

MR POYNTON: I can't recall whether anything specific was mentioned to the Burswood Ltd board about it, but I probably would have spoken to John Alexander about it.

45

MS CAHILL: Now, you said that you didn't make any disclosure to CRL.

MR POYNTON: As determined by Commissioner Bergin.

MS CAHILL: Confidential information --- going back a step, you say you didn't make any disclosure of the confidential information --

5 MR POYNTON: No.

MS CAHILL: --- to Mr Packer or CPH Pty Ltd pursuant to this agreement?

MR POYNTON: Correct.

10

MS CAHILL: Did Mr Packer make any demand, issue any demand for confidential information?

15 MR POYNTON: No, not at any stage. As I said, for the record, the Bergin Inquiry looked at every piece of correspondence, text, email, whatever other, to determine what information had flowed from CRL directors to CPH and Mr Packer. And in my case there was none.

20 MS CAHILL: Did you tell the Bergin Inquiry about the consultancy agreement?

MR POYNTON: They knew about it. They already had the records of it.

MS CAHILL: Right. Did you provide that to them?

25 MR POYNTON: It was part of discovery.

MS CAHILL: Did you provide ---

30 MR POYNTON: I can't recall.

MS CAHILL: I will finish the question. Did you provide a copy of the consultancy agreement to the Bergin Inquiry?

35 MR POYNTON: I can't recall where it came from, but I wouldn't be surprised if I did. They either got it from me or they got it from CPH. They were aware of it and they have a copy of it.

40 MS CAHILL: Now you terminated this consultancy agreement on 10 February 2021, didn't you?

MR POYNTON: Correct.

45 MS CAHILL: Did you comply with clause 8.3 on termination? I will show you that clause, it's at 0010.

MR POYNTON: I provided and returned nothing to CPH because I didn't have anything to provide.

MS CAHILL: Why did you agree to this term?

MR POYNTON: I didn't see it as onerous.

5

MS CAHILL: It requires you, on termination of the agreement, to return to CPH Pty Ltd all tangible property of the Crown Group.

MR POYNTON: It was never called upon and I didn't expect it to be called upon.

10

MS CAHILL: So why did you agree to it in the first place?

MR POYNTON: I was presented with this agreement and I signed it. I didn't regard that obligation as being something that would cause me to compromise my position on the board of CRL.

15

MS CAHILL: Finally, just to clarify your evidence at paragraph 54 of your witness statement, page 0013, I will give you a moment to quickly look at that paragraph. Board of --- that was the wrong page number. 0012, I beg your pardon. Just have a look at the second and third sentences and then I will ask you a question.

20

MR POYNTON: Yes.

MS CAHILL: You didn't regard yourself as having the status of an independent director immediately upon termination of the consultancy agreement, did you?

25

MR POYNTON: Not at all.

MS CAHILL: But you thought you could achieve that independent status three years after the termination of that agreement?

30

MR POYNTON: Correct.

MS CAHILL: Thank you. I have no further questions.

35

COMMISSIONER OWEN: Thank you. Does anyone apply for leave to cross-examine?

MR DHARMANANDA: Not other than in the general way, Commissioner.

40

COMMISSIONER OWEN: How long will you be?

MR DHARMANANDA: I have conferred with my learned friends, and there are three of us, including Mr Ward, Mr Ward will be re-examining but two of us would seek to cross-examine and the three of us in total would be between 30 to 45 minutes.

45

COMMISSIONER OWEN: Mr Poynton, are you prepared to sit a little longer today in the hope we can ---

5 MR POYNTON: Sure, by all means, Commissioner.

COMMISSIONER OWEN: If you feel like you would like a break at any stage, let me know.

10 MR POYNTON: No, I'm happy if it means it don't have to come back.

MR DHARMANANDA: Thank you.

15 MR POYNTON: Sorry, can I just ask you to speak up? I'm having trouble hearing you.

CROSS-EXAMINATION BY MR DHARMANANDA

20

MR DHARMANANDA: Yes, of course, I will speak up.

In your witness statement you mention Crown Towers as a VIP asset at Crown Perth.

25 MR POYNTON: Yes.

MR DHARMANANDA: That development occurred during your tenure on the board of Burswood Ltd?

30 MR POYNTON: Indeed.

MR DHARMANANDA: To assist the Commissioners in understanding the nature of that development, would you be able to comment upon its cost and the amenity it offers?

35

40 MR POYNTON: Indeed. So the cost of the project was \$645 million and it was part of an investment of around \$1.1 billion that occurred during my tenure on the board of Burswood Ltd. It was designed to really cement that precinct as a premier tourist operation for interstate, international and local patrons. And, as such, it was a very exciting development and has subsequently proved to be iconic. Unfortunately for the company, the investment decision was taken coming straight out of the mining boom and, indeed, the premise on which it was built was that it would make a certain amount of money. When it opened in late 2016 it was a very quiet time in the West Australian economy and it took some time for it to climb back up. I think, ironically, coming out of COVID was the first time it made the kind of budget numbers that it was supposed to do. So it was a brave investment and not a successful one initially but obviously we now see its impact.

45

MR DHARMANANDA: Thank you.

5 You also mention in your witness statement at paragraph 161(a) the CROWNability Program?

MR POYNTON: Indeed.

10 MR DHARMANANDA: That is a program to create job opportunities for persons with disabilities. Are you able to assist the Commission in understanding the nature of that program and the type of benefits that flow from it?

15 MR POYNTON: Yes. I guess what I would say is not just in that program and others that are mentioned, Crown attempts to be a good corporate citizen, and it has obviously instigated programs nationally like CROWNability, the Indigenous Employment Program and the ones that are mentioned, the gender equity subcommittee, et cetera, and the Crown Foundation. These are designed to cement its position in the community as a good corporate citizen and, indeed, I think it has done very good work in helping these marginalised people.

20

MR DHARMANANDA: What kind of attention was given to these programs at the level of the Crown Resorts Ltd board?

25 MR POYNTON: There were regular updates on these social programs and these employment programs, and the board was directionally, for obvious reasons, very supportive.

30 MS CAHILL: What type of expenditure was given to community programs and charitable programs to your knowledge in any given year?

30

MR POYNTON: I can't remember. Not so much donations, say the Crown Foundation et cetera might be \$3 or \$4 million, or something like that, but these programs did cost a lot of money. I don't know the specific numbers but they were significant investments the company made.

35

MR DHARMANANDA: Thank you.

40 During the course of your cross-examination there was reference to the evidence you gave in the Bergin Inquiry before the luncheon adjournment. Do you recall that?

40

MR POYNTON: The what, sorry?

45 MR DHARMANANDA: The evidence you gave in the Bergin Inquiry that was referenced to by Counsel Assisting before lunch.

45

MR POYNTON: Yes.

MR DHARMANANDA: You were asked a question in respect of that about the

AML program.

MR POYNTON: Yes.

5

MR DHARMANANDA: You weren't taken to the relevant document, this is a document which is not to be put on public screens but if we go, please, to CRL --- and I have a hard copy also that might assist, but CRL.695.001.004. Is that displaying on anyone's screen?

10

MR POYNTON: Not yet.

MR DHARMANANDA: 0004. We might have to work from hard copies, Commissioner. I think we have a number for the witness and the Commissioners.

15

COMMISSIONER OWEN: The so-called paperless courtroom is still a dream.

MR DHARMANANDA: It's up now. On your saying, Commissioner, it showed up.

20

MR POYNTON: Magic.

MR DHARMANANDA: If we go, please, within that document to page 18, 0018. You can see that is a page that is marked as an appendix.

25

Mr Poynton, do you have that?

MR POYNTON: Sorry ---

MR DHARMANANDA: The page numbers are ---

30

MR POYNTON: I have page 18.

MR DHARMANANDA: It is on the top right-hand corner. It is very small writing.

35

MR POYNTON: 0021?

MR DHARMANANDA: It is on the screen.

MR POYNTON: Okay, 0018.

40

MR DHARMANANDA: So in the appendix there then appears the statement to which you were taken in the Bergin Inquiry and to which you were taken today and that is within capability which says that the AML team has been underresourced and lacking in qualified AML executives; do you see that?

45

MR POYNTON: Yes.

Mr DHARMANANDA: So that line was within an appendix reporting on the ILGA

5 observations to date. If we then go, please, to page 0006, you see that then identifies the improvements implemented, and the first line records that Crown has been progressively implementing a range of improvements in its compliance processes since 2017.

MR POYNTON: Yes.

10 MR DHARMANANDA: Does that refresh your memory in relation to ---

MR POYNTON: Absolutely, yes it does.

15 MR DHARMANANDA: And then if you look under the heading "AML", there is a reference under the third bullet to an increase in the resources of the AML team. Do you see that?

MR POYNTON: Yes.

20 MR DHARMANANDA: Does that assist your memory at all?

MR POYNTON: It does.

MR DHARMANANDA: Thank you.

25 You were appointed a non-executive director of Crown Resorts in 2018?

MR POYNTON: Late 2018.

30 MR DHARMANANDA: And that was pursuant to the consultancy agreement that Counsel Assisting took you to?

MR POYNTON: Yes.

35 MR DHARMANANDA: And you were filling a vacancy left by Mr Packer's resignation?

MR POYNTON: Correct.

40 MR DHARMANANDA: Mr Packer offered you the position of non-executive director of Burswood in 2004 after you assisted PBL in the acquisition of Burswood?

MR POYNTON: Correct.

45 MR DHARMANANDA: In your statement you made some observations about the Bergin Report, and at 52 you record that the Bergin Report did not make any adverse findings against you.

MR POYNTON: Correct.

MR DHARMANANDA: You then explain your thinking about the work that needed to be done after the Bergin Report, and that's at paragraph 53. We can go to that. Paragraph 53 of your witness statement.

5

You see there that you record that you had formed the view that the prospects of recovering the licence depended upon the reduction of the CPH directors on the Crown Board to zero, in effect?

10 MR POYNTON: Indeed.

MR DHARMANANDA: And you recognised that the presence of CPH directors and CPH connections was a problem for Crown in light of the Bergin findings?

15 MR POYNTON: Indeed, I did.

MR DHARMANANDA: You then recorded your witness statement various observations made by Mr Crawford who appeared to be saying what you had already worked out, in that CPH directors were a problem insofar as Crown Resorts was concerned?

20

MR POYNTON: Sorry, there is quite a lot to say about this, so if the Commission can indulge me.

25 Taking you back to early 2019, I think it was, when Mr Packer attempted to negotiate a sale of some of his shares with Wynn and that was leaked and that transaction didn't go forward, subsequent to that he then agreed to sell up to 20 per cent of his holding, 20 per cent of holding in the company, to Mr Lawrence Ho of Melco. That actually triggered, amongst other things, it triggered the Bergin Inquiry. What we had there was a pattern of Mr Packer trying to reduce his influence, trying to balance up his portfolio and have less involvement in the company. He was subsequently thwarted, dare I say it, by the inquiry and then the second part of the transaction to Mr Ho was cancelled, and then Mr Ho sold out to Blackstone.

30

35 My point here was that it was pretty clear there was a problem with Mr Packer's involvement; however, he was actually trying to address that. Part of the addressing was to actually reduce CPH directors, but Ms Bergin had no issue with me staying on the board notwithstanding my previous involvement with Mr Packer. And, indeed, I took the view that given what Mr Packer had been trying to do, it was almost inevitable that over time his influence may well go to zero but certainly to a point below which any association I may have had with him was no longer relevant.

40

MR DHARMANANDA: All right. You say in your witness statement at paragraph 59 that you instructed your lawyer to write to Crown Resorts indicating your preparedness to resign and you say that there Mr L'Estrange advised Mr Zwier that:

45

..... I was willing to tender my resignation provided that Mr Crawford publicly

confirmed that the decision that I should resign is based only on a perception of my past association with CPH and Mr Packer by virtue of the Consultancy Agreement.

5

You see that?

MR POYNTON: Yes.

10 MS CAHILL: Thus you were prepared to resign on practical grounds because you recognised that your relationship with CPH made your position untenable in light of the Bergin findings?

15 MR POYNTON: What I also said was the situation was that I was placed in a position where both the chair of the company and Mr Crawford were suggesting that my staying on the board would mean that the licence would not be granted and in one stage I was given two hours' notice to quit the board, and this is all on the public record.

20 So my point subsequently has been I got off the board because I thought at the time it was in the best interests of the company if the company was not going to be given a licence by ILGA and Mr Crawford. Some six months later, the company still doesn't have a licence. Therefore, I respectfully put that me being on the board would have nothing to do with that.

25

MR DHARMANANDA: What you were doing, when Mr L'Estrange was communicating with Mr Zwier, was making it clear that you wanted the basis of your resignation to be absolutely clear?

30 MR POYNTON: Correct.

MR DHARMANANDA: And Mr Crawford then provided you with the confirmation that you wanted?

35 MR POYNTON: No. No, I'm sorry, he didn't. He didn't actually adopt the words we wanted him to, and there were subsequent further threats made by both Mr Crawford and Ms Coonan that led me to have an untenable position.

MR DHARMANANDA: You say in your own evidence at paragraph 62:

40

Despite this confirmation from Mr Crawford, I remained concerned to protect my reputation

So your evidence is that the confirmation that you had sought was obtained?

45

MR POYNTON: Wasn't in the words that satisfied me.

MS CAHILL: Your evidence in paragraph 62 says "Despite this confirmation"; do

you see that?

MR WARD: Excuse me, may I just object to that question on the basis that it is a
5 false premise. What is being put is that the confirmation referred to in paragraph 62
is the confirmation that was sought by Mr L'Estrange in paragraph 59.

COMMISSIONER OWEN: Wait, Mr Dharmananda. Sorry?

10 MR WARD: It is being put that the confirmation referred to in paragraph 62 is the
confirmation sought by Mr L'Estrange in correspondence referred to in paragraph 59,
but it's not. What it is is ---

COMMISSIONER OWEN: I understand the point. What came from Mr Crawford
15 is in paragraph 61.

MR WARD: Well, it starts in paragraph 60. It is from Ms Coonan's letter. It's not
what Mr L'Estrange sought.

20 COMMISSIONER OWEN: Put it on that basis, Mr Dharmananda.

MR DHARMANANDA: On that basis, that there might have been some differences
between you about the language, you still say in paragraph 62:

25 Despite this confirmation from Mr Crawford, I remained concerned to protect *my*
reputation

And you mentioned that there were no findings to suggest that you were not "fit and
proper". So, is it fair to say that at that stage, despite the confirmation to adopt your
30 language in paragraph 62, you were not prepared to resign?

MR POYNTON: It's a semantic point again, but if you have a look at the wording
from Mr Crawford, it says words to the effect that we're not asking Mr Poynton to
leave because of adverse findings. I would need to see the words, but he didn't say in
35 a positive affirmation sense that there were no adverse findings. What he said ---

MR DHARMANANDA: Sorry to interrupt you, please go ahead.

MR POYNTON: I'm just saying there was a campaign conducted in the media
40 against me by Mr Crawford that was based, in my view, on a false premise. There
was nothing in probity in NSW to say that someone couldn't be on the board of a
casino company merely because of a previous association with Mr Packer and that
was certainly what Ms Bergin suggested, or, indeed, that they were not independent.

45 So what I was trying to do, if I had to go because I was getting this pressure, was at
least get the Commissioner to say in a positive sense, that we recognised Bergin, we
recognise there were no adverse findings. The wordings subsequently that came
back did not satisfy me but I was still placed in a position where I had no choice
other than to resign.

MR DHARMANANDA: The wording is in paragraph 61 of your witness statement where Mr Crawford writes to you and says that it is not based upon any adverse findings ---

5

MR POYNTON: Yes, and if you read that, "not based on adverse findings", in other words, the inference in the English language is that there were adverse findings, but you being asked to leave isn't causing that to be the reason. It's not based on adverse findings. In other words, were there adverse findings? Sounds like there were, but that's not the reason we were asking him to go. It's not a positive affirmation.

10

MR DHARMANANDA: I understand, Mr Poynton, but you had asked for a certain confirmation, you obtained it, you then decided that that was insufficient, or you wanted to remain on the board. Is that --- would that be a fair ---

15

MR WARD: I object again. Again, the question put "you obtained the affirmation you wanted." That is not what was said in his statement. What we saw he said at paragraph 59, that is different to what was given in paragraph 62.

20

COMMISSIONER OWEN: We may be reaching somewhere of an impasse on that.

MR WARD: Yes, I understand.

MR DHARMANANDA: Thank you.

25

You accept, don't you, Mr Poynton, that you could not be considered an independent director of the board of CRL in view of your consultancy agreement?

MR POYNTON: Correct, as I haven't been, up to that point.

30

MR DHARMANANDA: To your knowledge, CPH did not want to have any further involvement with Crown Board through nominee directors following the Bergin Report?

35

MR POYNTON: Correct.

MR DHARMANANDA: And, if that is so, the only way that you could remain on the board would have been as an independent director?

40

MR POYNTON: Not at all. Just because Mr Packer's representatives on the board, the other two, resigned, didn't mean that I had to resign that position. I could have stayed on as a non-independent director merely because of the historic association. There is nothing in the constitution or anything that would suggest that. And I would make the additional point that I have specific expertise, that I think, given the \$2 billion reduction in the valuation of the company since I left, might have assisted.

45

MR DHARMANANDA: You accepted, and I think you confirmed with Counsel

Assisting, that you would not be able to be considered an independent director until three years after the date of your resignation; correct?

5 MR POYNTON: No, up to three years. There seems to be some --- there seems to be some subjectivity around that. Given it is an ASX guideline, I don't think it's actually a legal requirement.

10 MR DHARMANANDA: You say in paragraph 54 that you considered it important that you were considered an independent, non-executive director?

MR POYNTON: Yes.

15 MR DHARMANANDA: But you could not be so considered until three years after 10 February 2021; correct?

20 MR POYNTON: What I'm saying is that there was a contemplation, and that's the place I was trying to get to. There was no legal or other Bergin-related, ILGA-related, obligation for me to leave, merely because I was not independent. So that was an aspiration and unfortunately given that I wasn't there, subsequently, you know, it's pretty clear of what could have happened in terms of willing buyers, willing sellers transaction. It wasn't as if I was trying to cling on to some role as a director going forward. I wanted to be part of the situation which would have led to Mr Packer achieving what he was trying to do previously, which was to reduce his influence. Therefore, any previous influence I might have had or in connection with him would have evaporated.

MR DHARMANANDA: Thank you. No further questions.

30 COMMISSIONER OWEN: Who else is seeking leave? Mr Evans?

MR EVANS: Just one or two questions.

Counsel Assisting has taken you ---

35

COMMISSIONER OWEN: Do you know who Mr Evans is representing?

MR POYNTON: No.

40 MR EVANS: I appear for the Gaming and Wagering Commission, Mr Poynton.

MR POYNTON: Sorry, I can't hear ---

MR EVANS: I appear for the Gaming and Wagering Commission.

45

MR POYNTON: Oh, right.

CROSS-EXAMINATION BY MR EVANS

5 MR EVANS: Counsel Assisting has taken you today on a number of transactions and documents over the course of the 16 or so years you were a director of Burswood Ltd and later Crown Resorts Ltd. I just wonder if I could concentrate on a couple of matters to understand the position immediately prior to your retirement as a director of those companies.

10 MR POYNTON: Yes.

MR EVANS: Perhaps I will start with a transaction that you referred to in answer to a question from my learned friend Mr Dharmananda a minute ago, and that's the capital investment that was made in the capital investment program, Burswood commencing in 2012/2013, which was the Crown Towers program. You said it was about a billion dollars. Do I take it that the capital investment decision that was made then was a Crown Resorts Ltd decision?

20 MR POYNTON: It was a Crown Resorts absolutely, Crown Resorts decision. But obviously there was some input by the board of Burswood Ltd as it related to the two independent directors about the economic and political environment of WA ahead of that which was, I guess, feedback given up into CRL.

25 MR EVANS: The decision on capital allocation was made by Crown?

MR POYNTON: Absolutely.

30 MR EVANS: And would it be fair to say that up to the time of your retirement, all significant capital expenditure decisions were made by Crown Resorts Ltd?

MR POYNTON: Yes, it was the head office and they owned all the assets.

35 MR EVANS: I think you have already indicated in your evidence-in-chief that the international business was managed at a Crown Resorts Ltd level?

MR POYNTON: At a group level, yes.

40 MR EVANS: Principally by Mr Felstead, who although resident for much of the period, resident in WA but in fact operating principally out of Victoria?

MR POYNTON: Mr Felstead, as I understand it and you would need to check with him, was hardly ever here once he took on a national role.

45 MR EVANS: I think you also indicated that at points in time, the risk management framework was driven out of --- (overspeaking) ---

MR POYNTON: Risk management started it at CRL level and was devolved as it

related to the subsidiaries for, you know, information.

5 MR EVANS: And I took it from Mr Ward's statement on your behalf yesterday, sorry, on Monday, that if anything, that is a position that has increased over the last few years, and most recently in 2020 under the improvement program that Crown Resorts has suggested undertaking?

10 MR POYNTON: The more sharing of information, you mean?

MR EVANS: The centralisation of functions.

15 MR POYNTON: Oh, I'm sorry. Yes, I think, and it seems in some minutes, I think, back in --- might be 2020 after the, or during the Bergin Inquiry, there was quite a discussion about collapsing the subsidiaries into group, into headco, CRL. And I think there was quite strong support for that given some of the shortcomings that had been identified. And indeed, the only issue I had was this adversarial ---
20 ambassadorial role that I thought still had importance. But there had been some, you know, concerns around this sort of devolved structure and letting things, if you like, fall through the cracks. Hence, the idea to take it up into group. And of course now, as we've seen with Mr Finkelstein in Victoria, if each State adopts a requirement for there to be absolute control at state level, then almost inevitably the company must be split up because it becomes mutually exclusive.

25 MR EVANS: That ambassadorial role is one which could be performed in a number of ways. It doesn't actually require a director.

30 MR POYNTON: It definitely could be and I think it was contemplated in, if you like, an advisory board role where it was very clear there were no --- no fiduciary duties whatsoever.

MR EVANS: I was going to ask you that. Is it the case that to a degree, the Burswood Ltd board functioned as a WA advisory board to Crown Resorts?

35 MR POYNTON: Yes, that's always been my contention. It was the intention of Mr Packer at the outset and continued on. And when you look at the evidence, that's the way it was run and regarded. And I think this Commission has work to do to determine what it looks like you know if, in fact, each State regulator insists on what Mr Finkelstein sounds like he is going to insist upon because almost inevitably there
40 can be no national casino companies.

MR EVANS: So to understand the position as at the end of your tenure in the beginning of 2021, capital allocation decisions were made for WA at Crown Resorts?

45 MR POYNTON: Yes.

MR EVANS: The Responsible Gaming framework originated at Crown Resorts?

MR POYNTON: So ---

MR EVANS: The risk management framework ---

5 MR POYNTON: If you --- if you ---

MR EVANS: Sorry, Mr Poynton, if you just answer my question. The risk management originated at Crown Resorts, yes?

10 MR POYNTON: Yes. So what I would say is all you need to do is look at the subcommittees, or if you like the board committees of CRL, to determine what the board of CRL believes is in its purview.

MR EVANS: And those were not reflected at Burswood Ltd level, were they?

15

MR POYNTON: No.

MR EVANS: Not at any time?

20 MR POYNTON: No.

MR EVANS: Not today.

MR POYNTON: No.

25

MR EVANS: Not while you were a director?

MR POYNTON: If you think about ASX guidelines requiring independent directors to make up the majority of a board committee, clearly there were independent
30 directors at CRL complying with that guideline and indeed, devolving, if you like, by information, some of those decisions to, not devolving but informing the board of Burswood Ltd and the other subsidiaries about matters to do with risk management and AML et cetera.

35 MR EVANS: Informing, for them to adopt?

MR POYNTON: Well, informing --- see, at the end of the day, Burswood Ltd had no real power. At the end, if in fact ---

40 MR EVANS: Mr Poynton, we understand your point in relation to that. But my question is as at January 2021, central management and control of Burswood's activities in WA rested in Crown Resorts?

MR POYNTON: Absolutely.

45

MR EVANS: Thank you.

I believe there is one question which is possibly more general relevance to the state than to me, which my learned friend Ms Seaward might properly put.

5 COMMISSIONER OWEN: Ms Seaward represents the department as opposed to the Gaming and Wagering Commission.

MR POYNTON: Thank you.

10

CROSS-EXAMINATION BY MS SEAWARD

15 MS SEAWARD: Mr Poynton, following on from those questions from Mr Evans, you were asked questions as well by Ms Cahill about the constitution of Burswood Ltd and in particular clause 3.12, which is the head office of the company must always be located in WA.

20 You've agreed that the central management and control of the Crown activities in WA were run interstate. You said that was a matter for the government. Did you, as a director of Burswood Ltd, ever ask if anyone had informed the State or anybody in the department that central management and control was being run out of WA?

25 MR POYNTON: Outside of?

MS SEAWARD: Outside of WA?

30 MR POYNTON: No, because I have to think that it was self-evident. Various people, including Mr Packer from time to time, came to Perth, as I understand it, had the occasional meeting with senior figures and I would have thought that it would have been self-evident that in fact, at least initially in Sydney and then later in Melbourne, that the business as a listed public company was being run out of another state.

35 MS SEAWARD: Did you ever ask if anyone had discussed, therefore, whether this clause 3.12 was something that the State thought was being complied with?

40 MR POYNTON: No, because as I said, and maybe it was an incorrect assumption, but it wasn't as if this was not a high profile company. It was --- I would have thought given all the requirements for the company to provide information to the ASX and its shareholders, evident where it was being managed and, indeed where the board of directors resided.

45 MS SEAWARD: These are assumptions you've made; is that correct?

MR POYNTON: They are assumptions, yes, and indeed where ---

MS SEAWARD: You've seen no paperwork ---

MR POYNTON: No ---

5 MS SEAWARD: --- that this matter was ever raised with the State or discussed with the State.

MR POYNTON: No, I didn't. As I said, I wasn't the chair of the company when the decision was taken. So whether that chair did, I'm not sure.

10 MS SEAWARD: You didn't ask if he had done that?

MR POYNTON: Not specifically that I recall. But this is 16 years ago.

15 MS SEAWARD: Thank you. No further questions.

COMMISSIONER OWEN: Thank you. Is there anyone else? Commissioner Jenkins?

20 **QUESTIONS BY THE COMMISSIONERS**

COMMISSIONER JENKINS: Yes, thank you.

25 Mr Poynton, I understand what your position is, you've made it very clear, I think, about what you understood that Burswood Ltd's role was, but I want to ask you a few questions about that. You said that it had no employees, but it wasn't the case that it couldn't employ people, was it?

30 MR POYNTON: No, it wasn't the case it couldn't at all, just never did.

COMMISSIONER JENKINS: So it made its own decision not to employ?

35 MR POYNTON: By default, I assume ---

COMMISSIONER JENKINS: --- (overspeaking) --- discharge its functions.

MR POYNTON: Yes.

40 COMMISSIONER JENKINS: You said that it had no power, but that's not true either, is it? It just chose not to exercise the power in terms of governance. Or it was directed not to do so by CRL.

45 MR POYNTON: It was never directed not to direct. It was evident where it sat in the chain as to what its powers were and the limits to those powers.

COMMISSIONER JENKINS: Well, Burswood Nominees Limited was

a wholly-owned subsidiary?

MR POYNTON: Yes.

5

COMMISSIONER JENKINS: Burswood Resorts (Management) Ltd was a wholly-owned subsidiary?

MR POYNTON: Yes.

10

COMMISSIONER JENKINS: Absent any direction or implied direction from a parent company, it had power, did it not, to direct its wholly-owned subsidiaries, just like you say CRL had power to direct Burswood Ltd?

15

MR POYNTON: It delegated whatever powers it had as far as I can tell to those subsidiaries. The practical import is ---

20

COMMISSIONER JENKINS: Sorry, just stop there. I think we are getting beyond ourselves but I would like to pick up on that. My question was, it's not a case that Burswood Ltd did not have power over its subsidiaries, is it?

25

MR POYNTON: It's probably more in the exercise of the power. So in the strict legal sense, again, it had its own directors, we had our directors. So presumably if a direction occurred and it was ignored or not followed through by nominees, Limited could have changed the directors. But if CRL said that they didn't want us to do that, they get rid of the directors on Limited. It's more how it plays out in practice as to whether there is real power and how it is exercised. At the end of the day, as a wholly-owned subsidiary of headco, CRL, it didn't really have practical power.

30

COMMISSIONER JENKINS: Right.

Then you also said that it only had one asset. Can you describe for me what that asset is in your terms?

35

MR POYNTON: It is either one unit or a series of units in the Burswood Property Trust.

40

COMMISSIONER JENKINS: So it held all the units, however many there were in the Burswood Property Trust; is that right?

MR POYNTON: Correct.

COMMISSIONER JENKINS: It also owned Burswood Nominees Ltd?

45

MR POYNTON: It had 100 per cent ownership of Burswood Nominees, yes.

COMMISSIONER JENKINS: It also owned Burswood Resort (Management) Ltd?

MR POYNTON: Which was a subsidiary, I think, of Burswood --- I have the structure here, but I think Burswood Resort (Management) was a subsidiary itself of Nominees.

5

COMMISSIONER JENKINS: Whichever, whether it was through Burswood Nominees or through --- or directly from Burswood Ltd ---

MR POYNTON: That's where most if not all of the employees were.

10

COMMISSIONER JENKINS: In a sense when you say one asset, we're still talking that somewhere or other in that one asset lay the ownership of all the assets out at the Burswood casino complex?

15

MR POYNTON: Well, again, the time it became relevant to the directors of Nominees was when there were financing arrangements that involved the asset being essentially the bricks and mortar, if you like, not so much the operating business. So that's when we had some input into decisions around those assets when banking arrangements were made. But at every other time, the operations, we had no direct employees. We were informed about the activities but we had no direct input. We couldn't direct.

20

COMMISSIONER JENKINS: So, for me as a Commissioner, when I'm directing my mind to who was governing the casino activities out at Burswood, is it right that I am to look at when I look at Burswood Resort (Management) Ltd, I see that its board did not meet regularly for governance purposes of casino activities?

25

MR POYNTON: Well, I wasn't on that board so I don't know how often it met.

30

COMMISSIONER JENKINS: So Burswood Ltd, as the parent company of that company, you never looked to see what it was doing at the governance level?

MR POYNTON: Well, as we said, we were getting regular reports quarterly about the activities of the whole business here, and, indeed, some that increased over time about the national operation. But, as I said, from my point of view you have a listed public company with a wholly-owned subsidiary in WA. It's not an unusual situation. What I think is unusual is there seems to have crept in that this board had more influence than it did, and it was never set up to have influence. So what I try and take people to is other national companies that have wholly-owned subsidiaries.

35

40

COMMISSIONER JENKINS: Let's forget about them.

MR POYNTON: (Laughs).

45

COMMISSIONER JENKINS: No, don't laugh at me, please. I'm looking at the arrangements that were in place here. Can we accept the fact that Burswood Resort (Management) Ltd's board did not meet regularly for governance purposes? Do you agree with that? Or do you not know?

MR POYNTON: Burswood Ltd ---

COMMISSIONER JENKINS: Burswood Resort (Management).

5

MR POYNTON: I don't know how often that company met.

COMMISSIONER JENKINS: Do you know how often the Burswood Nominees, the licensee met --

10

MR POYNTON: No.

COMMISSIONER JENKINS: --- for the purposes of governance?

15 MR POYNTON: No. I don't. But I'm assuming that it was quarterly like we met.

COMMISSIONER JENKINS: And you agree that --- I won't go there, thank you.

20 You express confidence in what the management of Perth Casino told you about the risks of money laundering being appropriately mitigated at the Perth Casino.

MR POYNTON: Correct.

25 COMMISSIONER JENKINS: Do you agree that the board of Burswood Ltd was misled by management in that respect?

MR POYNTON: It was not told all the things it should have been told. Whether it was the word "misled" or "omission", it ended up in the same place, that we were not provided with information that subsequently we should have been provided with.

30

COMMISSIONER JENKINS: And who do you say is responsible at management at Perth Casino for those omissions?

35 MR POYNTON: Well, I've seen the evidence of various people in various places. It would appear that there are two people, Joshua Preston and Barry Felstead, who seem to have been the ones that haven't provided enough information. But there are other people in the management chain, people like Ken Barton, who appears not to have provided not only information to us but to the CRL board either.

40 COMMISSIONER JENKINS: In relation to the change in the EGM rules in respect of speed of play, I just want to clarify your evidence about that. Did you know that Perth Casino management was going to ask GWC to change the rules in that respect before it happened?

45 MR POYNTON: I honestly can't recall. I'm trying to remember whether we were informed beforehand. I think it was an issue that had been bubbling along for some time. On balance I think I knew before they asked, but I can't recall.

COMMISSIONER JENKINS: My next question was going to be, if you knew beforehand, was it that the Burswood Ltd board was asked to approve that approach to GWC?

5

MR POYNTON: Again, if we were told in advance, it would have been acquiescence rather than approval, in the sense that we were informed that you're going to do this and we would endorse it.

10 COMMISSIONER JENKINS: So in that process, would you have assumed that they had sought that approval from Crown Resorts?

15 MR POYNTON: Absolutely. I can't imagine a situation where the executives of the company would have unilaterally decided to apply for changes to those EGMs without reference to everyone else in the chain of command in CRL. I just can't imagine that would have happened.

20 COMMISSIONER JENKINS: And so when you say "the chain of command", does that mean at the CRL board level?

MR POYNTON: The CRL board level, CEO and relevant committees, and the management.

25 COMMISSIONER JENKINS: Did Burswood Ltd have committees?

MR POYNTON: Burswood Ltd had two or three committees. One was the ERCC, another one was patron ---

30 COMMISSIONER JENKINS: The patron care committee?

MR POYNTON: Patron care and then I think Responsible Gaming.

35 COMMISSIONER JENKINS: You said in answer to a question from counsel that in order to look at the governance issues, the governance responsibilities of Crown Resorts, it was only necessary to look at their committees, or its committees. Is the same not true of Burswood Ltd?

40 MR POYNTON: Again, it was not set up at any stage in a conventional way. Obviously, at a listed public company level, committees are made up of a majority of independent directors. At no stage were any of the non-executives --- and we shouldn't really call them non-executives --- but the non-management members of Burswood were invited to participate in the committees. So that's unusual.

45 COMMISSIONER JENKINS: So your answer would be no, you can't say the same about Burswood Ltd?

MR POYNTON: Correct.

COMMISSIONER JENKINS: Thank you, Mr Poynton.

5 COMMISSIONER OWEN: Mr Poynton, I have a few questions for you. Can I start with the ambassadorial issue.

MR POYNTON: Yes.

10 COMMISSIONER OWEN: I'm familiar with the corporate structure that you mentioned, and you give the example of the Commonwealth Bank in your witness statement as one where the shared service model comes in.

MR POYNTON: Indeed.

15 COMMISSIONER OWEN: I will come back to shared services in a minute, but you say that the intention was that Burswood Ltd really was to be an advisory board on a WA basis, which is a different model again to the CBA model.

20 MR POYNTON: Yes. Well, I was involved in the IPO of Bankwest and I recall some of the same provisions, ie the head office has to be in WA and the board of directors. I'm not actually sure what happened after the takeover by Commonwealth Bank, but that unwound over time.

25 COMMISSIONER OWEN: But if I could just come back, if it were the intention that Burswood Ltd would in effect be a WA advisory board, you would accept, wouldn't you, that that may have been the intention but it didn't happen?

30 MR POYNTON: Well, it didn't happen in the way that a normal advisory board, of which I've been on a few, would operate. You are absolutely correct.

COMMISSIONER OWEN: So you would accept that Burswood Ltd is a company?

MR POYNTON: It is a company.

35 COMMISSIONER OWEN: And the directors of that company have the duties that directors have?

MR POYNTON: Correct.

40 COMMISSIONER OWEN: And I understand your position on what the business of that company is. I wanted to ask you because I think I may have misheard, so I want to make sure I understand it. Do you remember at one stage you were asked about the role of the chair and you stressed the importance of the chair in a governance framework of companies, and that is something with which I agree: a strong chair is
45 vital. But the note I took was that in terms of culture, what you said was that the

chair sets the culture and risk appetite and that permeates through to management. Did I hear you correct when you say that the chair sets the culture and risk appetite?

5 MR POYNTON: I used those words. In hindsight it is the chair and the board, but I think because the chair has such a powerful role, whatever culture and whatever is adopted by the board is expressed through the chair and then as they direct the CEO. So I wasn't complete in my answer.

10 COMMISSIONER OWEN: So you wouldn't cavil with what I would think is the more conventional governance theory that culture is set by the board?

MR POYNTON: Correct. In hindsight, that is the better way to put it.

15 COMMISSIONER OWEN: But the chair plays a vital role in getting the board to a point where it can endorse that?

MR POYNTON: Correct.

20 COMMISSIONER OWEN: This is a general question I'm going to ask you. You've been around this body since 2004. Can I split it into four periods: 2004 to 2007 when Burswood Ltd was in effect a wholly-owned subsidiary of the PBL Group. That's the first period. The second period is post the PBL break-up, so that's 2007.

25 MR POYNTON: Yes.

COMMISSIONER OWEN: 2007 on. So it's no longer a wholly-owned subsidiary of PBL, but through, I think PBL had 38 per cent or something of CRL and that becomes a wholly-owned subsidiary of CRL.

30 MR POYNTON: Yes.

COMMISSIONER OWEN: The third period is after you became a director of CRL, so that's some time in 2018.

35 MR POYNTON: Mid-2018.

COMMISSIONER OWEN: And then the 2020 period when you are a director of CRL and the chair of --- so they are the four periods.

40 MR POYNTON: Yes.

45 COMMISSIONER OWEN: What I want to ask you is thinking back now, as best you can, did your perception of the role that you were playing, that you were playing, and the role of the companies of which you were directors, did that change from those periods given the different structures within which were you operating?

MR POYNTON: I would say that the roles didn't necessarily change because of the

different structures of the company, and my role changed to the extent you've discussed. I think the company evolved over time, and so there was a period between 2004 and 2007 where James Packer was much, much more directly engaged
5 in the aspirations he had for the business in WA and then when it became more of a conventional wholly-owned subsidiary of a listed company with him the chair, for a while those things moved on and there was obviously a large investment in Towers. But at the same time, that period coincided with well-publicised issues in his own
10 personal life which led to some appointments being made which did change I think significantly the culture of the company, and led to a lot of the issues that have been the subject of all the inquiries. And, indeed, from say the time I agreed to replace him on the board, there was this period of trying to catch up and address these issues that had become evident during that former period where perhaps he wasn't as
15 involved, and where some of the CRL directors were not as alert to this as they might have been, I don't want to make comment about that. But there was definitely a change in the way the company and its culture carried through that period from, shall we say, the China arrests or just before that through to 2020.

Unfortunately, when I then became chair here and thought, well --- and I mentioned
20 before about some of the issues around Mr Packer's own shareholding and the fact that it was almost inevitable that he would sell down or out completely, we had this period of, and we still have it, these rolling closures, the COVID, all the operational issues which were trying to be managed at the same time in parallel with responding to the Bergin Inquiry, to the Finkelstein, to this Commission. And the company,
25 back then, for me, felt quite under siege. And I thought I could help. Others disagreed, and so I've observed since a serious erosion in value of the company.

COMMISSIONER OWEN: All right. Thank you for that. That gives me an
30 understanding of your mindset.

Can I take you to the time when you were a director of CRL.

MR POYNTON: Yes.

35 COMMISSIONER OWEN: In broad generalisation, it had four theatres of operation: Melbourne, Perth, the Barangaroo development and the international operations. Is that a fair statement?

40 MR POYNTON: Well, the international operations related to the UK casinos or the international operations as they related to the VIP premium?

COMMISSIONER OWEN: Anything that was within the purview of the board of CRL.

45 MR POYNTON: Okay, it owned two casinos in the UK. So that would be what I would regard as the international businesses that related to operations.

COMMISSIONER OWEN: So you have four theatres of operation?

MR POYNTON: Yes.

5 COMMISSIONER OWEN: I hope this doesn't sound too parochial, but from your perception of your time on the CRL board, did you form an impression as to whether the particular interests of the Perth Casino, the Burswood entities, were given proper attention given the demands on the time of the CRL board and management of those other theatres of operation?

10 MR POYNTON: I think with the benefit of hindsight, and we see what has actually happened, that would be a fair observation. I think it has a bit to do with the fact, as I mentioned earlier, that the investment in the hotel here was disappointing and that the results here were not satisfactory, if you like. So to a degree it was almost like we'll turn away from that and we have all these other issues, we're trying to develop
15 business, and then of course we walk straight into the issues with junkets.

So, to a degree, yes, I think that happened, and the very fact that some of the senior people were spending a lot of time outside of the state managing other things led to it.

20 COMMISSIONER OWEN: All right. I want to look to the future and get your assistance on that part of our endeavour, which is looking to the future. Can I come back to the shared services model. Don't worry about whether or not there might have to be a break-up. Let's just look at what the situation is.

25 If you accept the proposition, as I think you did, that Burswood Nominees as the licensee of the casino has obligations to the people of WA, that Burswood Ltd because, if for no other reason, than its a party to the State Agreement, has obligations to the people of WA. And then you look at the shared service model, and
30 perhaps greater degrees of centralisation of functions that have been in the past, and you ask yourself the question whether this is different to the CBA example that you mention in your statement. This is different for the very reason of those obligations to the people of WA. And you could possibly add that it is heightened, depending on
35 the interpretation you put on it, of clause 3.12 of the Burswood constitution and also the provisions in the Victorian Casino Agreement. What I'm asking you is, is the current situation sufficiently bespoke to cater properly for the legitimate expectations of the people of WA in relation to the operations of a casino in their State?

40 MR POYNTON: The fact that there has been a problem with the operation of those accounts, the Riverbank account, and the fact that the board didn't know about it them or that, the fact that there was a barred player playing in Perth, which has not been mentioned, some of those things indicate a problem with the structure. And the question to me is whether one or two things, and I'm not in any way downplaying the situation with Riverbank, but if 99 per cent of the time the operation is fine and it
45 manages to make big capital investments and create employment and do all the right things, then the focus is more on what went wrong, how we stop that happening again. If in fact at the end of that you realise that the structure is unable to be put right, then inevitably you will end up with the

5 need to have stronger oversight in a much more conventional way, of the licensee and the operations of the company, and not rely on the efficiencies that come from a shared services model and economies of scale that go with that, with a head office somewhere else.

COMMISSIONER OWEN: All right. Thank you.

10 Ms Cahill, anything arising?

MS CAHILL: No, thank you.

COMMISSIONER OWEN: Mr Ward?

15 MR WARD: Commissioner, before I commence re-examination, that last question, Commissioner, that you put to the witness, and this came up also in Ms Cahill's question earlier put to the witness, the proposition that Burswood Ltd is a party to the State Agreement. Respectfully, it is not. It is an approved company for the purposes of clause 17A. It is not a party to the agreement.

20 COMMISSIONER OWEN: I stand corrected.

25 **RE-EXAMINATION BY MR WARD**

MR WARD: Thank you, sir.

30 Mr Poynton, can I just ask you about one of the questions that Commissioner Owen raised with you about the culture being expressed through the chair. Would you agree --- I withdraw that.

35 In the case of an executive chair, as opposed to a non-executive chair, is that different?

MR POYNTON: Yes. Well, it's different in the sense that that person as an executive as two roles: he's the head of the board, he or she are the head of the board, and they have a role as management, CEO of the enterprise.

40 MR WARD: In terms of actually expressing the culture ---

45 MR POYNTON: Well, it you think that a non-executive director is one who can more objectively, in a sense, manage the role than an executive director, then it probably leads you to think that a non-executive is probably going to be, in a sense, able to, how can I put it, set the culture from a distant --- not so much distant but in a more objective way. Inevitably whether an executive chairman like James Packer, he's going to dominate the board because of his shareholding and the history and everything when he held more than 40 per cent, sure, I do see the difference of an

exec chair and non-exec chair in the setting of and monitoring, makings of a culture. But Commissioner Owen was correct, it is actually a board role but it is expressed in a way in operations through the activities and behaviour of the chair.

5

MR WARD: I take you back now to questions that were asked by Ms Cahill. You were shown the consultancy agreement that you entered into with CPH, and you recall she took you to the clauses relating to confidential information and made the point that the definition of "Group" in those clauses included both Crown Resorts and CPH; you recall that?

10

MR POYNTON: Mmm.

15

MR WARD: Until your attention was drawn to it by Ms Cahill, did you ever understand that that agreement extended to confidential information of Crown Resorts?

20

MR POYNTON: No, which obviously is an oversight of my part. I guess what I would say in operation, and this again came out in Bergin, there wasn't any evidence because there was none to see about any sharing of confidential information. And to that extent, you know, the premise that at least in behaviour, I acted independently was something I was pleased to see.

25

MR WARD: Thank you.

Can I ask you then to turn to the topic that you were asked many questions about by Ms Cahill of audit activities and whether you satisfied yourself as to the scope of internal and external audits. Can we please have up documents JHP.001.001.0016. Can we go back to the first page of that document. This is the Crown Resorts Ltd Audit and Corporate Governance Committee Charter.

30

MR POYNTON: Yes.

35

MR WARD: Do you recall having seen that document?

MR POYNTON: I have seen it.

MR WARD: Do you recall when this charter was put into place?

40

MR POYNTON: Not specifically, no.

MR WARD: It was before your time joining that board?

45

MR POYNTON: Yes.

MR WARD: You were aware that this charter existed through your involvement before that as a director of Burswood Ltd?

MR POYNTON: Yes.

MR WARD: If we go please to page 16. 0016. Start at the top of that page, please, everything above 4. In clause 3.6 there you will see that the audit committee is required to review the scope and adequacy of the external audit and annual audit plan, and then in clause 3.8, this committee oversees the process for and receives periodic updates on internal audit processes.

Was it your understanding that the scope of internal and external audits that you were asked about by Ms Cahill was being dealt with by this committee?

MR POYNTON: Correct.

MS CAHILL: So when you were taken to the draft strategic internal audit plan, which was document CRW.702.001.2239, this was the draft strategic audit plan that Ms Cahill took you to before when she was asking you questions about setting the scope of the audit. Where did that audit plan originate from?

MR POYNTON: CRL.

MR WARD: And if we just go back to the first page in this document, page 2087, this was an attachment to the Burswood Ltd board meeting agenda for the meeting on 8 August 2014. So did you read that document before that meeting?

MR POYNTON: I would have.

MS CAHILL: Can I ask you then please to look at the minutes for that meeting which are document CRL.627.001.0602. Can we go to point 6 on page 6083. CRL.627.001.0602. I wonder if there might be some way we can arrange to produce that to have it incorporated into the hearing book later. I can read from it now if that assists.

Point 6 of the minutes for that meeting, starting at the beginning to incorporate the formalities, these are the minutes of meeting of Burswood Ltd held at Crown Perth on 8 August 2014 at 8.30 am and you are listed as one of the directors attending. Under point 6, the heading "internal audit report", the minutes record that the report and the strategic internal audit plan were accepted and taken as read. That is all that is said about the draft strategic internal audit plan. Why doesn't that say anything about them having been approved or accepted for implementation?

MR POYNTON: I don't know. Do each of the minutes refer to the times that those things are put up in the same way or is it ---

MR WARD: Perhaps I can ask the question in a slightly different way. The strategic internal audit plan that you referred to, you said originated from Crown.

MR POYNTON: Yes.

MR WARD: What was the reason why it was coming through your board?

MR POYNTON: For information.

5

MR WARD: And where would it be implemented --- who would it be implemented by?

10 MR POYNTON: As it related to Crown Perth, it would be implemented through the subsidiaries that employed the people and managed or ran the business.

MR WARD: Thank you. Can I come back to one of the other documents you were shown. This is a not for publication document, GWC.002.016.0268. Ms Cahill took you to it, it relates to the proposed amendments to the WA appendix for electronic gaming machines. Do you have that on the screen in front of you?

15

MR POYNTON: I do, yes.

MR WARD: Can I take you, please, firstly to page --- I will start where Ms Cahill left matters. You were asked about the changes to frequency of gaming and the impacts that might have on harm minimisation. Can I take you to page 0080.

20

MR POYNTON: I have it.

MR WARD: You see on point 8, the table on that page, there is a column, "Harm Minimisation Features"?

25

MR POYNTON: Yes.

MR WARD: And there is no tracked changes in that indicating this is a proposed change to the determination which you will see from the page before.

30

MR POYNTON: Yes.

MR WARD: You are not aware, are you, that Burswood Ltd or Crown were seeking to alter its harm minimisation obligations as a consequence of this?

35

MR POYNTON: Not at all.

MR WARD: If I can then take you to page 0083 under the heading of "Responsible Service of Gambling". You will see that there are three points that the Commission was asked to take into account, the first of which relates to increasing State revenue, tourism and potential and retention of employment and it's balanced against other factors. Were you aware of the balancing exercise being considered in the way that Crown built its business plans?

40
45

MR POYNTON: Yes, indeed, in the same way I talked about the junket operations. It is a constant tension. And the Government is leveraged to the outcome of this

precinct and facility because it collects a very large amount of tax. So there are always shareholder interests, there is a broader community interest, interests around harm minimisation, problem gambling, and I've always thought, the fact that it says
5 here it is a single precinct to gamble and you have to actually make a conscious decision to go there is a good thing. So, yes, it is something that is always balanced in mind.

10 MR WARD: That point you just made about a single precinct, that is really in the second dot point, isn't it?

MR POYNTON: Yes.

15 MR WARD: Were you aware in your capacity as a director that there was a low rate of prevalence problem gambling in WA?

MR POYNTON: Not specifically, but it was never raised as some kind of epidemic, as being a major problem.

20 MR WARD: You weren't aware of it being any worse in WA than anywhere else?

MR POYNTON: No, in fact I would have thought that it was worse in other places that had many more sort of ubiquitous gambling opportunities like NSW and Victoria, in particular Queensland where pokies are everywhere in the community.
25

MR WARD: Finally, on that page under Mr Felstead's signature you will see his title "Chief Executive Officer, Australian Resorts". Where in the structure of the company did that sit?

30 MR POYNTON: Can you ask that again?

MR WARD: Under Mr Felstead's signature at the bottom of the page, his title was "Chief Executive Officer Australian resorts". Where in the Crown structure did that position sit?
35

MR POYNTON: He reported to the CEO of CRL.

MR WARD: So Mr Felstead, in writing this letter as Chief Executive Officer of Australian Resorts, didn't report to Burswood Ltd?
40

MR POYNTON: No. He was a director of it but didn't report to it. He was a management director but not an executive director because there were no executives.

MR WARD: You recall you were asked some questions by Ms Cahill regarding the delegation to the Chief Executive officer to amend the anti-money laundering program. You recall those questions?
45

MR POYNTON: Yes.

MR WARD: Can we please bring up CRW.702.001.1839. I will describe the document and arrange to get it to the Commission to get it incorporated.

5 MR WARD: Thank you. This document --- we can go back to the start if necessary, it is an attachment to a board pack. It is a memorandum from Joshua Preston, EGM legal and corporate, to Barry Felstead and refers to the board delegating the authority to make changes to the AML program, as required. Do you recall being informed of changes that were made as required?

10 MR POYNTON: Only vaguely. I note that this is on the letterhead of Burswood Nominees.

MR POYNTON: So, yeah, unfortunately being seven years ago, I don't actually recall specifically about it, but it ties in with the previous question.

15

MR WARD: So would you expect to have been informed as changes were made through these board packs?

20 MR POYNTON: Probably after the fact. I'm still trying to recall the extent to which we were told in advance about applications being made, and I'm pretty sure that we were. So this evidences that there was a discussion and then so-called delegation. I have a recollection that we were involved in these discussions for sure.

25 MR WARD: Thank you. Can I just go back to one matter I omitted to ask in relation to the proposed amendments to the EGM determination. Was it your understanding that that was just a proposal and that it was subject to GWC approval?

MR POYNTON: Yes.

30 MR WARD: And GWC has to approve every single machine?

MR POYNTON: Yes, it does, and did.

35 MR WARD: Thank you. You were asked by Ms Cahill on that topic of Responsible Gambling whether you ever enquired to management whether some of Crown's advertising was inconsistent with its problem gambling obligations or whether you should have done so, and your answer was "no". Why didn't you consider it was your role to ask?

40 MR POYNTON: Well, I suppose again, having been involved in the company for a while, and I'm not sure about the period we are referring to, but we talked earlier about just whether problem gambling was something that was a major, major issue, and it was never brought to us as being a major issue. But we looked at other enterprises that advertise their wares, whether they be purveyors of alcohol or other
45 things that might be considered to be harmful, and this comes back to the tension

between running a business that operates a casino and hospitality outlets that is in the business of gambling and recognises its social obligations around harm minimisation. So all these things are always in your mind. Whether you are brought to it as a board member or whether you see advertising out in the community, you are going to be monitoring that, and if you have a concern that it is too aggressive or has the capacity to make problem gambling worse, you will say something about that.

MR WARD: Thank you. Can I now take you to the topic Ms Cahill asked you about relating to junkets and particularly document CRL.506.007.8870. Ms Cahill took you to page 8880 and referred you to the adverse entries in due diligence media reports relating to one of the junket operators. Page 8880, please.

Now, you can see there under those media reports there were also law enforcement inquiries. There is a reference to VicPol, Victoria Police, 2016 intelligence. These matters, I think you said you were balancing media reports against the fact that Border Force was offering visas to these people and the Queensland Government had licensed this operator.

MR POYNTON: Yes.

MR WARD: Accepting that brand is important, when you were looking at these things at that time did you have any reason to act precipitously to determinate connections on the basis of the media reports or not?

MR POYNTON: No, in fact, I think over time there have been moves to precipitously stop dealing with people when it became clear that there was evidence that they were criminals or not being allowed back into the country or whatever. So there was an ongoing monitoring of these junket operators ---

MR WARD: Would it be fair to say that the media reports were only one thing that's being taken into account?

MR POYNTON: The media report --- the problem was that there were a number of media allegations all wrapped up together. The company felt that it needed to defend itself and moved quickly to try and do that by way of refutation. Subsequently, in the Bergin Report, it has been established it moved too quickly do that and it should have done more analysis on the things that were subsequently proving to be correct. What hasn't happened, though, is some of the things that were proved to be incorrect, haven't been referred to much at all, like the accusation that people from Border Force were corruptly engaged with Crown, or, indeed, other allegations that inferred people were dealing with Crown who hadn't for some years. So the problem is that on the one hand you accept that these are serious allegations and need to be addressed; on the other hand, management presents you with evidence that in fact a number of them are factually incorrect, which proves to be correct down the track. So you have to balance the reaction that you take, particularly given your competitors are dealing with the same people.

So I'm not trying to make light of the concerns I had about all of this, and, indeed, down the track obviously, part of the decision to stop dealing with junkets altogether. But, you know, this is a balance issue.

5

Just one other thing that comes to mind, late 2020 at one of the meetings, there was a piece that can be put up at some point that said that Burswood had actually identified somebody, I'm pretty sure it was Burswood, identified someone who deposited a whole lot of cash, they had been reported to law enforcement authorities and arrested for money laundering. So this contention that the company wilfully and consistently turned a blind eye to money laundering is countered by evidence that it didn't do that in that particular case and, indeed, presumably in others. So I'm not sitting here trying to defend it, but there is some balance required.

15 MR WARD: So you were aware, as a director, that there had been instances where the money laundering program had identified and caused matters to be reported and prosecuted?

MR POYNTON: Yes, and indeed what we were told, in board packs, regularly, was that AUSTRAC was appreciative or WA police were appreciative or that we'd been told in meetings there were actions taken and others were appreciative. So it didn't lead you to the conclusion that the company was actively participating, facilitating, making money laundering easy, because if that were the case there wouldn't have been any of these kind of actions taken or responses from the authorities. The Riverbank account is a real problem, and we didn't know about it, and it has been shut down and been the subject of much other discussion. But it's not as if there was an endemic culture of looking the other way.

MR WARD: You mentioned AUSTRAC. You were asked by Ms Cahill about the decision to move external audits from two to five years. One of the factors that was mentioned in that board minute was that there were AUSTRAC reviews going on. Ms Cahill asked whether you knew --- I think the question was something along the lines of were you aware of what AUSTRAC was looking into, to which you said "no". But were you aware generally that AUSTRAC was conducting regular reviews?

MR POYNTON: Indeed, and we were told that regularly, that there were interactions and meetings being held between management and AUSTRAC, and indeed a number of times that the relationship was viewed positively. Now, we've got to take that that minute was written by someone who may well have interest in making us want to believe that, but again there was no evidence coming through from AUSTRAC to, say, the chair of the company or the CEO that refuted that assertion.

45 MR WARD: There are perhaps three elements to this: the first is as to whether AUSTRAC was engaged in the review of the company's AML policies were. Were you aware that AUSTRAC was engaged in that?

04:35PM

MR POYNTON: Yes. And, indeed, as I mentioned, over time, and I'm not sure exactly when it all started, but for, say, the last three years or so there has been at

least three, if not four external parties, being Deloitte, Promontory, Initialism and Dow Jones, all engaged in reviews of, amongst other things, money laundering.

5 MR WARD: I would describe that as the first phase, the policy. The second phase would be the implementation of the policy, the actual operational work done to comply and implement the policy. Were you aware of AUSTRAC reviewing that activity?

10 MR POYNTON: I was aware generally, as I've said, about interaction between AUSTRAC and the company as evidenced by references to meetings, by working on improving the protocols and the structure and the whole area around money laundering. And again, no negatives that came from other data sources.

15 MR WARD: The third phase would be the outputs, the reports to AUSTRAC. Were you aware of AUSTRAC receiving those reports?

MR POYNTON: Yes, yes, and indeed then reviews of the work done by these
20 aforementioned external parties and, indeed, reference to a question I asked one of them in the middle of 2019 I think it was, "Can you confirm that Crown has best practice?", "Yes, I can". So, again, it wasn't as if we were sitting back listening and not asking.

MR WARD: So until those issues arose, in your capacity as a director, did you ever
25 receive any information to indicate that AUSTRAC was concerned about Crown's performance in any of those three phases?

MR POYNTON: No, other than obviously down the track after all the revelations
30 there was, and as expected, increased surveillance, interaction, questioning from AUSTRAC because they were concerned like everybody else.

MR WARD: Thank you. Ms Cahill asked you about the length of meetings of
Burswood Ltd and how short many of them were and you did mention that you
35 would usually have dinner with Mr Alexander the night before and talk about matters that were to be dealt with on the board. Were other directors usually at those dinners?

MR POYNTON: Occasionally, yes.

40 MR WARD: And even outside of those dinners, did you have other opportunities to discuss with Mr Alexander or other members of the board?

MR POYNTON: Yes, I did, with Mr Alexander and mostly it would have been with
45 Mr Felstead.

MR WARD: And did you avail yourself of those opportunities?

MR POYNTON: Yes.

MR WARD: Did you ever have any concern when you got to board meetings that you had not had sufficient opportunity to consider and discuss the matters (inaudible)

5

MR POYNTON: No, I mean, I think the secretariat part of Crown, Burswood Ltd was actually quite effective at getting robust board packs to the directors in due time so that there was sufficient time to both read the packs and then enquire ahead of the meeting about things that might not have been clear that might well then have taken less time to discuss during the meeting.

10

MR WARD: Thank you. Can you now go to the ERCC that Ms Cahill asked you about. You were taken to the ERCC charter. I just want to take you to a report. Can we bring up CRW.702.001.0964. And can we go, please, to the legal risk and compliance report. Apologies, I don't have the page number. Can we just scroll down to section 7.

15

COMMISSIONER OWEN: It is likely to be a long document, scroll down.

MR WARD: Yes. I need to drag it up myself. Apologies. It is at page 1055. Is this an example of the typical form of report that was included in each board pack? If we could just go to the next page, 1056, that might assist the witness. You recall receiving reports of that kind?

20

MR POYNTON: I do.

25

MR WARD: You see at the top of the page it says that:

The Executive Risk & Compliance Committee [so the ERCC] met on 29 January 2013 to consider, amongst other matters

30

And the four dot points below that, so, regulatory compliance and business risk matters, the second point being matters relating to Responsible Service of Gambling, amongst other things.

35

MR POYNTON: Yes.

MR WARD: And the third dot point is the compliance of Anti Money Laundering and Counter Terrorism Financing Act. Do you recall that these sort of reports were received every meeting?

40

MR POYNTON: We talked earlier about whether we received the minutes. So they are not the minutes per se but they are a report of the meeting and the committee's deliberations. I recall seeing those sorts of comments occasionally. I can't remember they were in every meeting, but they were certainly that, as far as I know, is not the only time that there was a reference to that committee meeting.

45

MR WARD: So you would receive a report of this kind?

MR POYNTON: Yes.

5

MR WARD: But not the minutes of the meetings of the ERCC?

MR POYNTON: Every meeting we got a report like this.

10 MR WARD: To the best of your recollections, was there anything in the reports that caused you to need to make inquiries as to the company's compliance.

15 MR POYNTON: No. As I said, the quality of the board packs, and the specific references to these matters, which obviously have to do with the Responsible Service of Gambling and compliance and AUSTRAC et cetera, did lead me to be confident that the business was meeting its obligations.

20 MR WARD: Picking up something that Commissioner Jenkins asked you about, and was also part of your earlier evidence in answer to Ms Cahill, you were asked about the extent to which Burswood Ltd could exercise control. And I think you said in response to Commissioner Jenkins, that, yes, strictly it had the legal power to remove the directors of nominees but in a practical sense it couldn't because the directors of Burswood Ltd would simply be removed by the directors of Crown.

25 To use the examples put to you by Ms Cahill, the example used was Burswood Nominees decided just to abandon its AML policy altogether and Burswood Limited as its parent could say to Burswood Nominees, "we think that is a really bad idea and we think you shouldn't do it", or words that that effect.

30 MR POYNTON: We could do that.

MR WARD: You were asked what would happen if they didn't take recommendation and you said you would escalate it to CRL. Now, if CRL did nothing about it, what could you do about it?

35

MR POYNTON: Resign.

MR WARD: Do you have any other option?

40 MR POYNTON: Well, the extent to which it involved AUSTRAC or the Government, or the regulator. There were a number places one could go.

MR WARD: But as regard your personal position as a director?

45 MR POYNTON: Well, I think, you know, in those circumstances you resign first and then go and see other people afterwards.

MR WARD: Thank you.

Finally, you said in response to an earlier question that there are a number of precedents for this sort of structure of an intermediary company that has one shareholder, one asset. And Commissioner Owen has drawn some differences perhaps between the Bankwest model. Are you aware, of or have you been involved in any other companies, that sit in this intermediate structure?

MR POYNTON: Well, I was chair of the ASX in Perth 34 years ago in 1987. The ASX Perth operated as a wholly owned subsidiary of ASX Limited. I suppose that was my first experience to something like this. Not identical, but not dissimilar.

MR WARD: Did ASX WA or ASX Perth, or whatever the company's name is, did it have any independent power to do things?

MR POYNTON: Well, not really given it was a wholly owned subsidiary of ASX Limited. It might be an example of limited value given it was a long time ago, but I can't specifically say there is these 23 companies, but the reality is it is a wholly owned subsidiary and it, as a result, has limited practical power.

MR WARD: I did say that was "finally" but one more.

In the division of responsibilities as between local functions and national Crown-level functions, how did that break up within this company? What functions were dealt with nationally versus what was dealt with locally?

MR POYNTON: As I understand it, finance, IT, marketing, hotels, VIP were group functions and significantly a lot of HR. And then local, local gaming, support services, food and beverage, some shared service around HR, but that was pretty much the delineation.

MR WARD: And those local functions they were dealt with by Nominees or Burswood Management?

MR POYNTON: They were dealt with by the property trust, Resort Management I should say.

MR WARD: That's all there is, Commissioner.

COMMISSIONER OWEN: Thank you very much.

The practice that we adopted in the last sittings was to prepare a separate tender list to make sure that all of the documents that had been referred to get into evidence. Are we going to continue with that practice?

MS CAHILL: I think so, Commissioner, and what that will resolve is when we have subsequent witnesses we aren't trying to tender documents twice. We will probably wait and do a consolidated list.

04:51PM

COMMISSIONER OWEN: Thank you.

5 MR DHARMANANDA: Mr Commissioner that, of course, will mean that some of the documents that we put to the witness will need to be the subject of that?

COMMISSIONER OWEN: Yes. And you can liaise, or your instructors, can liaise with Counsel Assisting's instructors.

10 MR DHARMANANDA: Yes, thank you, Commissioner.

COMMISSIONER OWEN: Mr Poynton, thank you very much. That has been of assistance to us. We may have to tidy some things up so we'll leave the summons in place, but you are free to go.

15

MR POYNTON: Thank you very much.

THE WITNESS WITHDREW

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COMMISSIONER OWEN: We will adjourn until 10 am tomorrow.

25 **HEARING ADJOURNED AT 4.52 PM UNTIL THURSDAY, 27 JULY 2021
AT 10.00 AM**

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