

INQUIRY UNDER SECTION 143 OF THE CASINO CONTROL AUTHORITY ACT 1992

PUBLIC SUBMISSIONS IN RELATION TO THE PUBLIC HEARING

Term of Reference 1 (elements 1 and 2 of the public hearing)

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INQUIRY UNDER SECTION 143 OF THE CASINO CONTROL ACT 1992

COUNSEL ASSISTING'S SUBMISSIONS IN THE PUBLIC HEARING

IN RELATION TO TERM OF REFERENCE 1

INTRODUCTION

1. Term of Reference 1 requires the Inquiry to inquire into, and report upon the circumstances surrounding the cessation of the employment with Echo Entertainment Group of Mr Sid Vaikunta as Managing Director of The Star casino, including in relation to Echo Entertainment's obligations under the *Casino Control Act 1992* and otherwise to inform the Authority of relevant information.
2. Two elements of the public hearing required to be held under the Amended Terms of Reference are relevant to Term of Reference 1. They are:
 - (1) the response by The Star and Echo Entertainment Group to the allegations against the former Managing Director; and
 - (2) whether there were any attempts to influence the response by The Star and Echo to those allegations.
3. These submissions address these two elements of the public hearing. To the extent that information relevant to Term of Reference 1 has been obtained in private, it is not considered here. All evidence will be considered in the report of the Inquiry.
4. Witnesses who have given evidence in private and who may be adversely affected by proposed findings will be given an opportunity to comment on the proposed findings before the Inquiry's report is finalised.
5. The former Managing Director, Mr Vaikunta is understood to be overseas, although his address is not known to the Inquiry. There has been an email exchange between the Inquiry and Mr Vaikunta in which he has been invited to participate in the Inquiry. He has declined that invitation, however, he has confirmed that he denies the allegations made against him by the two complainants. In addition, he has made submissions as to the scope of this Inquiry's terms of reference to make findings as to the substance of those allegations.

THE STAR AND ECHO RESPONSE TO THE ALLEGATIONS

- 6. Four witnesses gave evidence in the public hearings relevant to the response by The Star and Echo to the allegations against the former Managing Director, Mr Vaikunta.
- 7. Three witnesses are officers or employees with Echo or The Star, Ms Louise Marshall, Executive General Manager, Human Resources at Echo, Mr Larry Mullin, Chief Executive of Echo and Mr Kevin Houlihan, Investigations Manager at The Star. In addition, Mr Peter Grimshaw, the partner of the woman who made allegations against Mr Vaikunta in relation to certain events on 8 December 2011 ("the Second Complainant"), gave evidence.

Course of the investigation

- 8. There is little dispute as to the course of the investigation, although differences in evidence emerge as to the timeliness of it.
- 9. The unwelcome sexual advances complained of by the First Complainant took place on Tuesday 6 December 2011.¹ The unwelcome comments of a sexual nature complained of by the Second Complainant were made on Thursday 8 December 2011.²
- 10. On Friday 9 December 2011, the Second Complainant spoke to Ms Joanne Ede, the General Counsel, Employee Relations at Echo. On Monday 12 December 2011, Ms Ede reported her conversation with the Second Complainant to Ms Marshall.³ During the evening of 12 December 2011, the Second Complainant spoke to Ms Marshall and Ms Ede by telephone about her own allegations and those of the First Complainant.⁴ Ms Marshall regarded the allegations as serious.⁵ Ms Marshall contacted Mr Michael Anderson, the Group General Counsel at Echo, that evening.⁶ Mr Kevin Houlihan, the Investigations Manager at The Star was then briefed.⁷
- 11. From 12 December 2012, Ms Marshall, Mr Anderson, Mr Houlihan and Ms Ede formed the core of the team that handled the investigation of the allegations.⁸ Mr Grimshaw's evidence that an investigation began in the week of the incidents and then another investigation team was established on 12 December 2011 should not be accepted.⁹ Mr Grimshaw's evidence of the

¹T213.35-40; T214.6-9.

²T214.37-42.

³T213.31-33.

⁴T215.22-34.

⁵T214.11-15; T214.44-47.

⁶T215.36-42.

⁷T215.44-T216.2; T216.10-13; T473.34.

⁸T217.4-8.

⁹T62.29-T63.3; T64.46-T65.6; T170.29-45.

matters is less reliable as it is second hand. Further, it is inconsistent with the extensive records, most made contemporaneously, available to the Inquiry which are consistent with the chronology set out above.

- 12. On Tuesday 13 December 2011, Mr Houlihan met with the First and Second Complainants.¹⁰ Late on 13 December 2011, Ms Marshall informed Mr Larry Mullin, the Chief Executive of Echo, of the allegations.¹¹
- 13. On Wednesday 14 December 2011, Mr Houlihan conducted a recorded interview with the First Complainant and spoke to the Second Complainant.¹² The investigation team met on 14 December, and continued to have regular meetings thereafter.¹³ Also on 14 December, Ms Marshall had a detailed conversation with Mr Mullin about the investigation.¹⁴
- 14. By 15 December 2011, Mr Mullin had advised Mr John Story, the Chairman of Echo, of the investigation.¹⁵
- 15. Mr Houlihan was the primary person to interview witnesses. He interviewed a number of witnesses or potential witnesses on 14, 17 and 19 December 2011 and reviewed some CCTV footage.¹⁶
- 16. On Monday 19 December 2011, Mr Houlihan interviewed Mr Vaikunta with Ms Marshall present.¹⁷ Mr Vaikunta disputed or denied aspects of the First Complainant's allegations and denied the Second Complainant's allegations.¹⁸
- 17. On 19 or 20 December 2011, Ms Marshall and Mr Story decided that external legal advice should be obtained in relation to the investigation.¹⁹ It was also decided that further investigation was warranted and that some second interviews were required.²⁰
- 18. By around Thursday 22 December 2011, Mr Houlihan had prepared a draft investigation report and it was provided to the external lawyers.²¹ On 22 December, Mr Houlihan also conducted a second interview of a witness.²²

¹⁰ T218.37-42.
¹¹ T218.19-35.
¹² T219.2-7; T219.42-44.
¹³ T220.10-16; T220.27-33.
¹⁴ T221.45-222.6.
¹⁵ T221.40-43; T222.8-21.
¹⁶ T220.35-46; T221.31-38.
¹⁷ T223.17-44.
¹⁸ T224.5-20.
¹⁹ T224.44-T225.6; T225.17-26.
²⁰ T224.27-37.

- 19. After Christmas and the New Year, on Tuesday 3 January 2012, Ms Marshall asked the First Complainant to participate in a second interview.²³ Time was allowed for her to consider obtaining legal advice, and she was reinterviewed on Monday 9 January 2012.²⁴
- 20. The Second Complainant did not participate in a second interview.²⁵ On Tuesday 10 January 2012, Ms Marshall and Mr Houlihan interviewed Mr Vaikunta for a second time.²⁶ Other witnesses were also interviewed at this time.²⁷
- 21. On Tuesday 17 January 2012, Mr Houlihan finalised his investigation report with input from other members of the investigation team.²⁸ The report found that the First Complainant's complaints were substantiated and that part of the Second Complainant's complaints was substantiated.²⁹ All of the comments alleged to have been made by the Second Complainant were accepted as having been made, however, one of those was not considered to be offensive or of a sexual nature.
- 22. In each case, the report found that the substantiated complaints constituted sexual harassment in breach of Echo's policies.³⁰ The report was provided to the external lawyers for review and advice as to available options.³¹
- 23. On Wednesday 18 January 2012, the investigation report, legal advice and a covering memorandum by Ms Marshall were sent to Mr Story, who was overseas at the time.³² On Friday 20 January 2012, Mr Story, Mr Mullin and Ms Marshall met to discuss the material and discuss the options available. The key options were to summarily dismiss Mr Vaikunta or to negotiate with him the terms on which his employment would be terminated. The latter option would most likely involve a payment of money to him in exchange for the execution of a deed of release which would have the effect that he could not take any legal action in respect of his cessation of employment.³³

²¹ T233.35-44.
²² T233.46-T234.7.
²³ T237.45-T238.8.
²⁴ T238.21-40; T239.30-38.
²⁵ T236.34-40, T238.47-T239.14.
²⁶ T240.17-41.
²⁷ T240.43-T241.16.
²⁸ T241.18-34.
²⁹ T242.14-20.
³⁰ T242.22-27.
³¹ T242.37-45.
³² T242.47-T243.11.
³³ T243.29-T244.15.

- 24. Ms Marshall said that Mr Story was to be the decision maker in relation to the outcome of the investigation.³⁴ Mr Mullin gave evidence that he and Mr Story agreed that the outcome should be that Mr Vaikunta separate from The Star.
- 25. On Sunday 22 January 2012, Mr Mullin and Ms Marshall met with Mr Vaikunta to inform him of the conclusions reached following the investigation and give him an opportunity to comment on those conclusions.³⁵ On Monday 23 January 2012, Mr Vaikunta told Mr Mullin and Ms Marshall that he had no comment to make on the conclusions and he was told that consideration was being given to summary dismissal or negotiated termination and he was asked to consider his position on these options.³⁶ Mr Vaikunta considered his position until the evening of 1 February when he met with Mr Mullin and Ms Marshall. The terms of the negotiated termination were then finalised on the morning of Thursday 2 February 2012 and Echo then made an announcement to the Australian Stock Exchange during the afternoon of 2 February.³⁷

Available findings

- 26. The evidence on the course of the investigation supports a finding that the investigation was undertaken competently and thoroughly by senior and experienced officers and employees of Echo and The Star. This evidence also supports a finding that the investigation was undertaken in a timely manner, particularly given the intervention of Christmas and the New Year, that there were two complainants, and the length of time taken by Mr Vaikunta to consider his position. Given the seriousness of the complaints and the fact they involved the Managing Director of The Star, it was reasonable for Echo to comprehensively and thoroughly investigate the matters and reasonable for it to seek external legal advice.
- 27. Mr Grimshaw gave evidence that he and his partner were concerned that the investigation was taking too long, that there could or would be a "cover-up" and that the outcome of the investigation might not be fair to the complainants.³⁸ Ms Marshall gave evidence that the Second Complainant at times raised similar concerns with her.³⁹
- 28. While it should be accepted that the Second Complainant and her partner wished the investigation to be conducted more quickly and that they had some expectations based on a

³⁴T243.13-27.
³⁵T245.12-30; T249.28-36.
³⁶T245.32-43; T249.38-44.
³⁷T245.45-T246.6; T246.25-28; T249.46-T250.14.
³⁸T59.10-30; T62.21-27; T65.13-43.
³⁹T225.44-T226.3; T226.47-T227.18; T232.41-47.

conversation between the Second Complainant and Mr Houlihan that that would occur,⁴⁰the evidence does not support a finding of delay or “cover-up” or an unfair process or outcome. Seven weeks in the circumstances set out above were not unduly long. The complaints of sexual harassment were substantiated and Mr Vaikunta’s employment was terminated.

29. Further, Ms Marshall gave evidence that there was no interference in the investigation by senior officers of Echo.⁴¹ This evidence supports a finding that there was no “cover-up” or attempted “cover-up”. Ms Marshall’s evidence as to why external investigators were not engaged,⁴² why she was present at the interviews with Mr Vaikunta,⁴³ and why Mr Story was to be the decision-maker⁴⁴ supports a finding that Echo and the investigation team took appropriate steps to ensure that the investigation was conducted properly and fairly.

30. As to whether or not the Second Complainant received adequate support, both Mr Grimshaw and Ms Marshall gave evidence that the Second Complainant had “up and down days”.⁴⁵ Mr Grimshaw was taken to a text message that showed that the Second Complainant on at least one occasion expressed trust in the process,⁴⁶ and Ms Marshall gave evidence that the Second Complainant, also on at least one occasion, expressed confidence in Ms Marshall and Ms Ede.⁴⁷ Mr Grimshaw was also taken to text messages showing contact between Ms Marshall, Mr Houlihan and Ms Ede and the Second Complainant.⁴⁸ Both Mr Grimshaw and Ms Marshall gave evidence that there were ebbs and flows in the level of contact with the Second Complainant.⁴⁹

31. The evidence does not support a finding that Echo or The Star did not provide adequate support to the Second Complainant or provide her with sufficient information about the process. Given the circumstances, including the Second Complainant’s emotional state and the stress she was undoubtedly experiencing, it is understandable that at times the Second Complainant felt concerns about the process and believed that she was not receiving appropriate support. Objectively, however, no criticism could or should be levelled at the investigation or any members of the investigation team.

⁴⁰ T474.24-25

⁴¹ T222.23-T223.15.

⁴² T217.14-T218.10.

⁴³ T223.34-44.

⁴⁴ T243.13-27.

⁴⁵ T146.13-18; T147.19-20; T250.42-T251.10.

⁴⁶ T145.34-T146.26.

⁴⁷ T230.7-14; T233.25-33.

⁴⁸ T64.6-22; T136.15-T137.2; T137.40-T138.13; T147.29-T149.32.

⁴⁹ T146.20-26; T147.19-20; T149.24-32; T227.35-T228.18.

ATTEMPTS TO INFLUENCE

32. Four witnesses gave evidence in the public hearings relevant to whether there were any attempts to influence the response by The Star and Echo to the allegations against the former Managing Director, Mr Vaikunta: Mr Grimshaw, Mr Lipson, a media adviser to Mr Souris, Ms Marshall and Mr Houlihan

Evidence

33. Although Mr Grimshaw denied that his departure from the casino in September 2010 was acrimonious,⁵⁰ he gave evidence that he formed an adverse view of Mr Vaikunta and Mr Mullin before he left the casino,⁵¹ that the timing and circumstances of his departure were not of his choosing,⁵² that he did not like Mr Vaikunta,⁵³ and that he thought Mr Vaikunta was not a suitable person to run the casino.⁵⁴ Mr Grimshaw also gave evidence that he sought an opportunity to present information to the Inquiry under s 31 of the *Casino Control Act 1992* and that he informed the s 31 Inquiry of his opinions, which were adverse to the casino.⁵⁵ Mr Grimshaw also gave evidence that he felt confident that the s 31 report would bring down an adverse finding against Mr Vaikunta⁵⁶ and that he provided information to a journalist about the casino during 2011.⁵⁷

34. Mr Grimshaw gave evidence that he and the Second Complainant discussed a number of options to put pressure on The Star or Echo to pursue the investigation and dismiss Mr Vaikunta.⁵⁸ These options included Mr Grimshaw or the Second Complainant or another person telephoning Mr Story and other members of the Echo board,⁵⁹ Mr Grimshaw telephoning members of the Echo board impersonating the Second Complainant's husband,⁶⁰ making threats to the members of the Echo board that they would take the complaints to the media,⁶¹ leaking information about the complaints to the media⁶² and Mr Grimshaw taking the complaints to Mr Souris.⁶³

⁵⁰ T18.37-45.

⁵¹ T19.44-T20.20.

⁵² T18.16-45; T106.16-27.

⁵³ T33.32-34.

⁵⁴ T32.40-T33.5; T33.20-30; T110.39-44; T113.15-23.

⁵⁵ T23.39-T24.34; T25.5-32.

⁵⁶ T32.19-T32.31; T43.16-42; T166.10-17.

⁵⁷ T45.30-46; T47.38-41; T49.12-14; T52.9-12; T113.25-44; T118.13-19; T120.37-T121.9.

⁵⁸ T59.32-42.

⁵⁹ T59.44-T60.15, T61.10-T62.9; T64.6-26; T67.17-33; T73.36-T74.25, T83.7-46.

⁶⁰ T137.14-26; T139.5-41; T142.4-38; T143.7-21.

⁶¹ T73.36-T74.25

⁶² T60.17-23; T72.3-T73.34; T73.36-T74.25.

⁶³ T60.25-28, T74.27-45; T140.41-T141.2.

35. Ms Marshall gave evidence that the Second Complainant threatened to go to the media, to Mr Grimshaw and to the Human Rights and Equal Opportunity Commission (HREOC).⁶⁴ There was also evidence that the Second Complainant suggested to Ms Marshall that her (the Second Complainant's) husband had taken or might take steps in relation to the matter.⁶⁵ Mr Houlihan gave evidence that the Second Complainant told him she would take her complaint to Mr Grimshaw.⁶⁶
36. Mr Grimshaw gave evidence that neither he, nor to his knowledge the Second Complainant, acted on any of the various options he discussed with the Second Complainant.⁶⁷ Mr Grimshaw also gave evidence that he sought a discussion with Mr Souris in January 2011 and told Mr Souris about the Second Complainant's complaint, however the conversation was personal and he did not ask Mr Souris to do anything about the complaint.⁶⁸ There is no evidence that Mr Souris did anything in response to, or in relation to, the information he received from Mr Grimshaw in relation to the complaint.
37. Mr Grimshaw and Mr Lipson gave evidence that Mr Grimshaw told Mr Lipson of the complaints and that Mr Lipson advised Mr Grimshaw that the First Complainant should make a police complaint.⁶⁹ There is, however, no evidence that any police complaint was made or that Mr Grimshaw or the Second Complainant encouraged the First Complainant to make a police complaint.
38. The evidence clearly establishes that the Second Complainant discussed her complaint with Mr Grimshaw during December 2011 and January 2012; however, Ms Marshall gave evidence that she had no contact with Mr Grimshaw in December 2011 or January 2012 and, to her knowledge, nor did any other member of the investigation team.⁷⁰
39. Mr Grimshaw was questioned about a telephone call received by Mr John O'Neill, a non-executive director of Echo, on 17 January 2012 from a person claiming to be a concerned shareholder.⁷¹ Mr Grimshaw agreed that he had provided Mr O'Neill's telephone number to the Second Complainant on 16 January 2012.⁷² Mr Grimshaw gave evidence that he was not aware

⁶⁴ T225.44-7; T233.2-23; T246.47-T247.12.

⁶⁵ T233.10-19; T475.45.

⁶⁶ T475.45.

⁶⁷ See references in notes 59 – 64 above, and T75.14-46; T84.1-20; T85.9-47.

⁶⁸ T86.12-T89.11.

⁶⁹ T81.24-T82.9; T197.10-31; T199.41-T201.27.

⁷⁰ T246.30-45.

⁷¹ T85.9-47; T142.23-T144.30.

⁷² T83.28-37; T85.1-7.

of the telephone call to Mr O'Neill, that he did not put anyone up to telephoning Mr O'Neill and that he has no knowledge of the Second Complainant doing so.⁷³ Mr Grimshaw did not deny that he and the Second Complainant had discussed getting someone to telephone a director and pretend to be a concerned shareholder.⁷⁴

40. Both Mr Grimshaw and Ms Marshall gave evidence that, before Echo's announcement on 2 February 2012, there was in fact no disclosure of the allegations in the media.⁷⁵ This evidence is supported by the fact that there is no evidence of any media report concerning the allegations prior to 2 February 2012 when Echo made an announcement to the Australian Stock Exchange in relation to the end of Mr Vaikunta's employment.
41. Mr Lipson gave evidence as to his receipt by email at 5.05 pm on 2 February 2012 of a draft statement by the then Casino Liquor and Gaming Control Authority and his sending of the statement by email to Mr Grimshaw at 5.09 pm on 2 February.⁷⁶ Mr Grimshaw gave evidence that he forwarded the statement by email to the Second Complainant at 5.22 pm on 2 February.⁷⁷
42. Mr Grimshaw gave evidence that he contacted Mr Souris by text message on 2 February 2012, probably not long before 7.02 pm, asking Mr Souris to help ensure that the Second Complainant was not named or identified in relation to the complaint.⁷⁸ Mr Grimshaw also gave evidence that he probably asked Mr Souris not to tell the Premier that one of the allegations against Mr Vaikunta involved Mr Grimshaw's partner.⁷⁹ The text message by which Mr Grimshaw forwarded to the Second Complainant at 7.02 pm on 2 February 2012 Mr Souris's reply is in evidence.⁸⁰ Mr Grimshaw also gave evidence that it was not until around 14 February 2012 that he told the Premier that one of the complaints against Mr Vaikunta involved his partner.⁸¹
43. The timing of the various email and text message communications on 2 February 2012 establishes that they were made only after the investigation had been concluded and the outcome of the investigation had been announced to the Australian Stock Exchange. Similarly,

⁷³ T85.23-47; T143.30-37; T144.12-30.

⁷⁴ T143.39-T144.3.

⁷⁵ T60.17-20; T72.47-T73.8; T144.5-10; T237.14-25.

⁷⁶ T205.1-41.

⁷⁷ T93.40-43.

⁷⁸ T99.25-33; T99.46-T100.2.

⁷⁹ T100.22-T101.3.

⁸⁰ T98.36-T99.23; T100.9-11.

⁸¹ T80.10-15; T102.21-32.

Mr Grimshaw's informing the Premier that one of the complaints involved his partner occurred some 12 or so days after the outcome of the investigation had been announced.

44. Ms Marshall gave evidence that she was not influenced by any person external to the casino in the investigation.⁸²

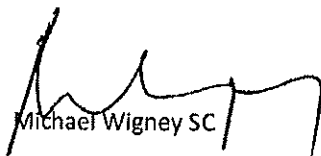
Available findings

45. The evidence supports a finding that the investigation by The Star and Echo into the allegations against the former Managing Director, Mr Vaikunta, was not in fact influenced by any person external to The Star or Echo.
46. It is not in dispute that Mr Grimshaw had adverse views towards the casino and Mr Vaikunta in particular. However other than possibly in two respects, it should be found that, consistent with Mr Grimshaw's evidence, neither he nor the Second Complainant acted on any of the various options they discussed. The two possible exceptions are: first, the Second Complainant made various threats to Ms Marshall and Mr Houlihan about giving information to Mr Grimshaw, the media and HREOC; and second, the making of a telephone call to Mr O'Neill.
47. In relation to the first of these matters, the evidence of Ms Marshall and Mr Houlihan that the Second Complainant made the threats should be accepted. The mere making of these threats could, to a certain extent, be seen as an attempt to influence the response of The Star to the allegations. However, it is clear from Ms Marshall's evidence that neither she nor any member of the investigation team was in any way influenced by the threats. Given the Second Complainant's likely emotional state and the stress she was under, no adverse finding should be made concerning the Second Complainant's conduct.
48. In relation to the telephone call to Mr O'Neill, the evidence supports a finding that this telephone call was not made by a concerned shareholder unconnected in any way with Mr Grimshaw or the Second Complainant. The timing of the call and its very nature supports an inference that it was made by someone connected with Mr Grimshaw and the Second Complainant, or someone who had been given information by one or other of them. However, given Mr Grimshaw's denials, it cannot be excluded that the person who made the call did so on their own initiative, even though they may have been given information about the allegations (and perhaps even Mr O'Neill's telephone number) by either Mr Grimshaw or the Second

⁸² T251.23-30.

Complainant. There is insufficient evidence to be comfortably satisfied that the telephone call was made at the direct request of either Mr Grimshaw or the Second Complainant.

49. The communication of some details about the sexual harassment allegations by Mr Grimshaw to Mr Souris was not done with any intention on the part of Mr Grimshaw to have Mr Souris act in any way which might influence the investigation by Echo. Mr Grimshaw's evidence that it was a personal communication to a close friend and was made without any request to do anything should be accepted. This is supported by the absence of any evidence that Mr Souris did anything with the information he received from Mr Grimshaw.
50. What else Mr Grimshaw may or may not have done to further his adverse views of the casino is not a matter for this Inquiry.
51. No adverse finding should be made in relation to any aspect of Mr Lipson's conduct. Mr Grimshaw's communications to Mr Lipson were personal communications between friends and were not intended in any way to result in pressure being put on the investigation. Mr Lipson's gratuitous advice was not given with any improper motive and was not acted on in any way.
52. No adverse findings should be made against anyone in relation to the communications which occurred between Mr Grimshaw, Mr Lipson and Mr Souris on 2 February 2012 or the communication between Mr Grimshaw and the Premier around 14 February 2012. Nothing said or done on those dates could have been intended to, or could in fact have, influenced the investigation in any way. The investigation had been concluded by 2 February 2012.



Michael Wigney SC



Leigh Sanderson

Counsel Assisting

12 April 2012

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

OUTLINE OF SUBMISSIONS OF ECHO ENTERTAINMENT GROUP LIMITED
AND THE STAR PTY LIMITED
IN RELATION TO TERM OF REFERENCE 1

Introduction

- 1 These submissions of Echo Entertainment Group Limited (“**Echo**”) and The Star Pty Limited (“**The Star**”) deal with the public hearing conducted by the Inquiry between 2 and 11 April 2012, in so far as the evidence given at the hearing relates to the first term of reference of the Inquiry. That term of reference required the Inquiry to inquire into, and report upon, the circumstances surrounding the cessation of employment of Mr Sid Vaikunta as Managing Director of The Star.
- 2 The Star is the licensed operator of The Star Casino in Sydney. The Star is a wholly owned subsidiary of Echo, which is an ASX listed company.
- 3 The public hearing conducted between 2 and 11 April 2012 dealt only with two particular matters relevant to the first term of reference, namely:
 - (a) the response by The Star and Echo to the allegations of sexual harassment against Mr Vaikunta; and
 - (b) whether there were any attempts to influence the response of The Star and Echo to those allegations.

The response of The Star and Echo to the allegations

- 4 The Star and Echo agree with, and adopt, the submissions of Counsel Assisting as to the course of the investigation into the sexual harassment allegations against Mr Vaikunta and the findings which ought be made in respect of the investigation and the response by The Star and Echo to the allegations of sexual harassment against Mr Vaikunta. The investigation was marked by its thoroughness, professionalism and

fairness to all involved. It is difficult to conceive of anything which could have been done to improve the process.

5 The Star and Echo wish to supplement Counsel Assisting's submissions in two respects only.

6 First, paragraphs 23-24 of Counsel Assisting's submissions refer to the two options which were considered by Echo upon finalisation of the investigation report; namely, summary dismissal of Mr Vaikunta or a negotiated termination of his employment. The benefit of the latter option was that it involved Mr Vaikunta entering into a settlement deed which would prevent him from making any claims in respect of his termination. The evidence was that the primary reason this option was chosen was that if Mr Vaikunta brought a claim it may uncover the identities of the complainants whereas a negotiated settlement brought finality for the victims.¹

7 Second, Counsel Assisting's submission at paragraphs 30-31 to the effect that the evidence supports a finding that the second complainant was given adequate support and sufficient information in respect of the investigation is plainly correct.

8 In this context, it should be noted that the issue as to whether or not she received appropriate support and information arose only because her partner, Mr Grimshaw, sought in evidence to justify his plans to make threatening phone calls to Echo board members on the basis, inter alia, that "[t]here was no sympathy. There were no calls being made to [the second complainant]"², "sympathy for the victim in this whole issue has been thrown out the window"³, "my partner has had no sympathy throughout this whole thing"⁴ and "[T]here was no sympathy. There were no calls. There was nothing to try and see if she was ok."⁵

9 Those excuses were false and simply cannot be accepted. Quite apart from the contemporaneous documentary record of the dealings between the investigation team and the second complainant which is before the Inquiry, the text messages between the second complainant and members of the investigation team show clearly that she

¹ T244.37-245.10

² T65.20-.21

³ T67.07-.08

⁴ T67.13-.14

⁵ T70.37-.38

was afforded real and genuine sympathy and was kept abreast of the course of the investigation to the extent appropriate. Those messages included:

- (a) a text from the second complainant to Ms Ede on 19 December 2011 in which she said *“I trust the process”*⁶ and *“thanks for your friendship and support”*;⁷
- (b) a text from Ms Marshall on 20 December 2011 to the second complainant, who was then on holiday on the Gold Coast, saying *“Hi, didn’t want to interrupt your holiday but wanted to check how you are? Would you like to touch base?”*;⁸
- (c) the response from the second complainant saying *“Hi, Lou, thanks for your text and voice message. I was at the theme park today and let Jo know I wouldn’t take phone. I talked my concerns through with Jo. Thanks, Lou, for following up. We can talk when you have an update.”*⁹

10 Mr Grimshaw’s claim that the second complainant was given no sympathy or information should be rejected. The Inquiry should find that the claim was manufactured by Mr Grimshaw in order to justify and excuse his conduct in planning for threatening phone calls be made to Echo board members to influence the outcome of the investigation.

Attempts to influence The Star’s and Echo’s response

- 11 The Star and Echo agree with and adopt the submissions of Counsel Assisting:
- (a) as to the evidence that was led at the public hearings in relation to the attempt to influence, as set out in paragraphs 33 – 44 of those submissions;
 - (b) in relation to Mr Lipson, as set out in paragraphs 51 and 52 of those submissions; and
 - (c) as to the conduct of the second complainant in making threats to Ms Marshall and Mr Houlihan and that the making of those threats could be seen as an attempt to influence the response of The Star or Echo to the allegations, as

⁶ T146.07-.08

⁷ T146.33

⁸ T148.20-.22

referred to in paragraph 47 of those submissions. The Star and Echo do not make any submissions as to whether any adverse findings should be made concerning the second complainant's conduct in that regard.

- 12 The Star and Echo submit that based on the available evidence at the public hearing, the Inquiry ought to find that Mr Grimshaw, together with the second complainant, planned to exert pressure on the investigation through the making of threatening phone calls to Echo board members. The Inquiry ought further find that this plan was carried into effect, albeit in a more limited and less offensive manner than some of its other manifestations, when an unknown person pretending to be a concerned shareholder called Mr O'Neill's mobile phone complaining, and demanding an explanation, about the incident involving the sexual harassment allegations against Mr Vaikunta.
- 13 The evidence shows that Mr Grimshaw had been campaigning against the casino, and Mr Vaikunta in particular, since Mr Vaikunta reduced his responsibilities as Media and Government Relations Director in about August 2010:
- (a) Mr Grimshaw told Mr Lipson in an email dated 30 September 2010 (in response to Mr Lipson's comment that he would ensure that Star City would *"not be forgotten by many, many journos"*¹⁰ for making a donation to a charity) that *"Don't be too kind to Star. We are parting ways. The new American management team doesn't see a need for me, so I am off."*¹¹
 - (b) On 21 August 2010, Mr Grimshaw told the then leader of the Opposition, Mr O'Farrell, *"what a dick Sid is"*¹² and failed to inform his employer of Mr O'Farrell's response which was that *"we might all have to give Star a wake up call when [Mr Grimshaw] leaves"*.¹³
 - (c) He likewise did not inform his employer of his belief in November 2010 that Mr O'Farrell and persons associated with him *"are going to smash Star"*.¹⁴

⁹ T149.11-22

¹⁰ T108.41-46

¹¹ T109.12-.13

¹² T112.01

¹³ T112.44-113.10

¹⁴ T115.09-.21

- (d) In mid-2011 Mr Grimshaw sought out the opportunity to give adverse evidence about the casino in the s 31 inquiry and he was confident that the s 31 report would make adverse findings leading to the Mr Vaikunta's removal.¹⁵
- (e) Mr Grimshaw leaked confidential Echo and The Star information (which he improperly retained following his employment) to the media for the purpose of damaging the casino. He did so with a sense of delight and satisfaction at the damage caused by the reporting, as is evidenced by the text to him from Heath Aston (a Fairfax journalist) which he forwarded to his partner on 10 December 2011 which read "*From Heath Schmitt [Brad Schmitt, Mr Grimshaw's successor as Echo's head of media relations] pointedly told me that I was probably getting my leaks from a disgruntled ex-employee. I told him he hasn't got a clue. This yarn will sting.*"¹⁶ The following day The Sydney Morning Herald published an article by Mr Aston which alleged, purportedly on the basis of a confidential internal report, that The Star casino had drawn up plans to "*lure away low-income and migrant gamblers*". Mr Grimshaw admitted that he took the report in question with him when he left the casino's employment and that he gave information to Mr Aston for the purpose of this and other damaging stories.¹⁷

- 14 Against this background, the evidence discloses that Mr Grimshaw and his partner proposed a variety of plans which involved calls being made to Echo board members for the purpose of exerting pressure on Echo to terminate Mr Vaikunta without allowing the allegations to be investigated and assessed on their merits. Some involved serious dishonesty to the extent of impersonating the second complainant's husband. The plan was refined over time:

¹⁵ T32.27-33.05

¹⁶ T48.21-.24

¹⁷ T117.21-118.19; T120.28-.39. Mr Grimshaw's claim that he did not provide any documents to Mr Aston, just "*some incident report numbers*" (T121.04-.40) should not be accepted. The proposition that Mr Grimshaw had made notes of some incident report numbers and their contents whilst at The Star and happened still to have these notes a year later (but which he no longer has because he has destroyed them, although he cannot say when) is inherently improbable. Even if accepted, it should be seen as a device to ensure that the source of the story is not attributed to him. In any event, whether he provided the document or only information about its contents to Mr Aston is not to the point. He was actively using the media as a tool in his campaign against the casino.

- (a) The first version of the plan was to seek to encourage the partner of the first complainant to make the threatening call to Echo's Chairman, Mr Story. At approximately 2pm on 13 December 2011, the second complainant texted the first complainant asking her if she had time for a coffee.¹⁸ They agreed to a meet at 3pm. Between 2pm and 3pm, Mr Grimshaw and the second complainant spoke on the telephone¹⁹ following which Mr Grimshaw sent a text to the second complainant containing Mr Story's mobile telephone number.²⁰ He then sent the following text setting out what the partner of the first complainant should say in the proposed call to Mr Story: *"I reckon he should start with... 'Hi I'm XXXX and my partner was sexually assaulted by sv last week'. Makes it had for him to reject the call"*.²¹ No such call was ever made. An available inference is that the first complainant, to her credit, was not prepared to be involved in any attempt to exert pressure on the investigation.²²
- (b) The next version of the plan involved Mr Grimshaw calling Mr Story under the false pretence that he was the second complainant's husband. On 20 December 2011, the second complainant sent a text to Mr Houlihan, the principal investigator, which included *"My husband doesn't want to go into xmas without this resolved (neither do I). He wants to call the Board himself and tell the media"*.²³ The Star and Echo were not aware at this time that the second complainant was separated from her husband or of the relationship between Mr Grimshaw and the second complainant.²⁴ On 21 December 2011, Mr Grimshaw and his partner sent the following texts to each other between 5.50pm and 7.00pm:

| | |
|--------------------------------|---|
| Grimshaw to second complainant | <i>"I want to ring Story now"</i> ²⁵ |
|--------------------------------|---|

¹⁸ T133.01-.11

¹⁹ T133.17-.21

²⁰ T60.34-61.12

²¹ T60.43-.47

²² When the second complainant later sent a text to the first complainant saying that her husband intended to call the Board and go to the media, the first complainant responded *"We have to believe in the system and we have to be patient"* (T138.03-.38).

²³ T136.15-.45

²⁴ T247.14-20

²⁵ T73.36-.42

| | |
|--------------------------------|---|
| Second complainant to Grimshaw | "..... What would you say to Story?" ²⁶ |
| Grimshaw to second complainant | "Just what you said. How would you feel if it was your wife, need an answer now or we will push you into it by taking it to the media" ²⁷ |
| Second complainant to Grimshaw | "Do you think he will think that's a threat? Maybe we should say when do you think it will be resolved.....And then whatever he says we can say that's unreasonable blah blah???" ²⁸ |
| Grimshaw to second complainant | "Would let him answer first. Then say that is not good enough...we are off to the media." ²⁹ |
| Second complainant to Grimshaw | "Lets do it tomorrow because then you can say I had another very bad night and whilst Lou explained the process we are concerned at the time etc. He has to go honey. He is such a pig." ³⁰ |
| Grimshaw to second complainant | "..... Will do it whenever you want." ³¹ |
| Grimshaw to second complainant | ".... How about I tell George [Souris] about Sid. That's my job. Then he will ring Story" ³² |
| Second complainant to Grimshaw | "I want to keep you clean. Lets do it all tomorrow morning." ³³ |

- (c) A number of things can be observed about this exchange. First, it is evident that the purpose of the planned call was to threaten the Chairman that unless Mr Vaikunta was terminated immediately the company would be pushed into that decision through the allegations being taken to the media. There can be no suggestion its purpose was to raise genuine concerns. Second, the planning was calculated and deliberate. Third, the dishonest nature of the plan stemmed not only from the impersonation of the second complainant's husband but also from the proposed content of the planned call, eg the proposal that the call be

²⁶ T74.01

²⁷ T74.02-.04

²⁸ T74.04-.08

²⁹ T74.08-.09

³⁰ T74.14-.17

³¹ T74.17-.18

³² T74.31-.32

³³ T74.36-.37

made the following morning so that Mr Grimshaw could say the second complainant had another very bad night.

- (d) The planned call to Mr Story was not made the following day (22 December 2011) or at all. It appears the reason was that Mr Grimshaw reconsidered the proposal following his meeting with an unnamed “corporate affairs boss” on 22 December 2011. Shortly following the meeting he sent a text to the second complainant which included “*He [the corporate affairs boss] said pretending to be [the second complainant’s husband] was huge risk but happy to do it if u want.*”³⁴
- (e) The final version of the plan was to have an unrelated person call another Echo director, Mr O’Neill, to complain and demand an explanation about the sexual harassment allegations against Mr Vaikunta. On 16 January 2012, Mr Grimshaw sent a text with Mr O’Neill’s mobile telephone number to the second complainant.³⁵ The following day Mr O’Neill received a bogus call on his mobile phone from a person pretending to be a concerned shareholder.³⁶
- 15 It is true that, with the exception of the call to Mr O’Neill’s mobile, none of the plans developed by Mr Grimshaw and the second complainant to put pressure on Echo to dismiss Mr Vaikunta were carried into effect. Equally, it is clear that Echo’s response to the allegations was not in fact influenced by any such attempt.³⁷
- 16 However, The Star and Echo submit that the inference is irresistible that the bogus call to Mr O’Neill’s mobile phone on 17 January 2012 was in furtherance of a plan devised by Mr Grimshaw and the second complainant. Mr Grimshaw had given the second complainant Mr O’Neill’s mobile number the day before. Mr O’Neill’s mobile number was not freely available. Significantly, Mr Grimshaw did not deny that he and his partner discussed getting someone to ring a board member and pretend to be a concerned shareholder.³⁸ The fact and nature of the allegations was known only to a very limited number of people.

³⁴ T141.11-.38

³⁵ T83.28-.37

³⁶ T143.06-.23

³⁷ T251.23-30

³⁸ T143.39-144.03

- 17 The inherent likelihood, having regard to these facts and the extent of Mr Grimshaw's animosity towards Mr Vaikunta, is that the call was made to Mr O'Neill at the request or direction of Mr Grimshaw and/or the second complainant. It would be a truly extraordinary coincidence if the call had been independently instigated by another person who knew of the allegations and who had Mr O'Neill's mobile phone number. The Inquiry ought to find that the call was part of a plan by Mr Grimshaw and the second complainant to influence the investigation into the allegations against Mr Vaikunta.

17 April 2012

Alan Sullivan QC

Justin Williams

Counsel for The Star and Echo

INQUIRY UNDER SECTION 143 OF THE CASINO CONTROL ACT 1992

SUBMISSIONS OF PETER GRIMSHAW

1. Mr Grimshaw was required to give public evidence to the inquiry constituted under s.143(1) of the *Casino Control Act 1992* (NSW) ("**Act**") in relation to the issue of whether there were any attempts to influence the response by The Star and Echo in relation to the allegations of sexual harassment made against Mr Sid Vaikunta, the former Managing Director of The Star. In the opening address of Counsel Assisting, it was suggested that this inquiry would consider whether certain persons sought to "*interfere*" with the investigation into these allegations and whether it was sought to achieve the removal of Mr Vaikunta.¹

2. Mr Grimshaw was subjected to more than a day of probing and testing cross-examination. The inquiry also had a unique insight into Mr Grimshaw's innermost thoughts in the form of vast quantities of text messages and email communications passing between him and his partner over an 18 month period. Yet nowhere in that vast array of communications is anything that evidences any conduct by Mr Grimshaw in the nature of improperly influencing the course of the investigation. Counsel Assisting have not sought any adverse findings against Mr Grimshaw. This is appropriate in view of the evidence.

3. In summary, it should be found that:
 - (a) Mr Grimshaw did not have and did not pursue a personal agenda against Mr Vaikunta following Mr Grimshaw's departure from The Star;

 - (b) at no time did Mr Grimshaw seek to influence the response of The Star or Echo to the allegations of sexual harassment against Mr Vaikunta;

 - (c) at all times, Mr Grimshaw acted with propriety and in particular, he did not:
 - (i) pursue a personal agenda against Mr Vaikunta in giving evidence to the s.31 inquiry into the casino licence;

 - (ii) misuse or take advantage of his professional position to affect the

¹ T7/8-14.

conduct of the investigation into Mr Vaikunta or to damage The Star more generally in relation to the allegations against Mr Vaikunta or in the conduct of the investigation;

- (iii) make available to the media the information he had about the allegations against Mr Vaikunta or the investigation into those allegations.

4. Sexual harassment in the workplace is disturbing in numerous respects, including because of feelings of violation, humiliation and powerlessness. Mr Grimshaw's partner was deeply distressed both by the acts of sexual harassment and her perception that The Star may attempt to "cover up" the allegations. As any dutiful and loving partner would, Mr Grimshaw did his best to provide support to his partner during this stressful period. In the context of providing this support, he discussed various options with his partner. However, the evidence indicates that he acted on none of these options. A person ought not be criticised for mere thoughts alone or merely considering options or ideas. The important point is that Mr Grimshaw dismissed acting upon any of those ideas.
5. Notably, Counsel Assisting do not make the submission that Mr Grimshaw had an "agenda" against Mr Vaikunta or pursued a campaign against him (Counsel Assistings' Written Submissions ("**CAS**") at [33]). The evidence, including that referred to by Counsel Assisting at [33], does not warrant such a finding. Mr Grimshaw frankly acknowledged his personal dislike of Mr Vaikunta² and his distaste for the way in which the culture at the casino had deteriorated under his leadership.³ However, such evidence does not establish a personal agenda against Mr Vaikunta. The circumstances in which Mr Grimshaw ceased employment at The Star do not justify a finding that Mr Grimshaw had a personal agenda against Mr Vaikunta. Mr Grimshaw was not aggrieved by his departure from The Star.⁴ At the time Mr Grimshaw's position was re-structured, he was already looking to join the (proposed) new government.⁵ He was offered more money by The Star to stay,⁶ but preferred to pursue his "dream job".⁷ Mr Grimshaw departed from The Star on good terms,⁸ although once he had

² T19/47; T33/32-34; T106/34-38.

³ T20/7-20; T109/35-37.

⁴ T17/28-30

⁵ T17/23-24.

⁶ T17/35-36.

⁷ T21/34; T106/20.

⁸ T17/26.

secured his redundancy he would have preferred to leave earlier rather than continue to work on.⁹ However, the fact that he was required to stay on for a period beyond his wishes was not a matter for which he blamed Mr Vaikunta.¹⁰

6. Further, Mr Grimshaw's participation in the s.31 inquiry in 2011 does not stand as evidence of any sort of "agenda" against Mr Vaikunta. People should be encouraged to provide evidence to such inquiries. Numerous former employees gave evidence to the s.31 inquiry and have also come forward to offer information to this inquiry.¹¹ The mere fact that Mr Grimshaw approached the inquiry was therefore nothing remarkable. Mr Grimshaw made it clear in writing that he approached the inquiry as a former employee and not in his capacity as a member of the Premier's office.¹² He also stressed that none of the information he provided had come from his partner, who was still employed at The Star.¹³ He provided evidence because he, like others, considered the standards at the casino were deteriorating.¹⁴ The transcripts of Ms Furness SC's interviews with Mr Grimshaw show that he traversed a large number of areas of concern with Ms Furness SC.¹⁵ He raised a number of systemic issues and did not single out Mr Vaikunta for particular attention. The evidence Mr Grimshaw gave of problems at The Star was consistent with evidence given by others to that inquiry.¹⁶ Indeed, at various stages during his two interviews, he was told by Ms Furness SC that his evidence was consistent with that given by other witnesses.¹⁷
7. In the result, no conduct on the part of Mr Grimshaw had any bearing on Mr Vaikunta's departure from The Star. Mr Vaikunta's employment was terminated after two separate complaints of sexual harassment were sustained against him.
8. Counsel Assisting submit that it was "*understandable*" that the Second Complainant felt concerns about the investigation process (CA at [31]). The apprehensions of Mr Grimshaw and his partner regarding the fairness and conduct of the investigation were not, in the circumstances, unreasonable. Their

⁹ T18/16-45.

¹⁰ T19/14-21.

¹¹ T8/40 to 9/3. See also Report of Investigation pursuant to Section 31 of the NSW Casino Control Act 1992 (December 2011) at pp.1 and 10-11.

¹² T23/47 to 24/3.

¹³ Transcript of interview with Ms Furness dated 19 May 2011 at T11/42-47.

¹⁴ T29/15-23; T32/35-38.

¹⁵ Transcripts of interview with Ms Furness SC dated 19 May 2011 and 29 June 2011 respectively.

¹⁶ T25/5 to 32; T164/40 to T166/17.

¹⁷ Transcript dated 19 May 2011 at T10/1-9; T25/20-22; T31/4-7; Transcript dated 29 June 2011 at T4/39-41; T5/18-21

apprehensions are to be judged from their own perspective at the time and not according to how the investigation ultimately concluded.

9. On his own admission, the investigator, Mr Kevin Houlihan, told Mr Grimshaw's partner that the investigation "would take a couple of weeks".¹⁸ As it turned out, it took far longer and this caused understandable concern in view of the expectation that had been created that the investigation would be finalised quickly. The Second Complainant was also concerned that Ms Louise Marshall was involved in the investigation, given her perceived closeness to Mr Vaikunta.¹⁹ The Second Complainant and Mr Grimshaw were also troubled that it had been decided to investigate the matter internally.²⁰ In this regard, the Second Complainant was aware that previous sexual harassment investigations had sometimes involved the use of external investigators.²¹ There were good reasons for appointing an external investigator in the present case given the seniority of the person under investigation (to whom Mr Houlihan reported) and the very serious allegation of harassment in the case of the First Complainant.²² Indeed, Ms Marshall gave evidence that these two factors eventually guided the decision to retain external lawyers.²³ The Second Complainant also felt unsupported by The Star at various times during the investigation.²⁴ This is consistent with the somewhat hostile attitude that Ms Marshall expressed towards the Second Complainant during her oral evidence.²⁵
10. It was in the context of those reasonable apprehensions as to the conduct of the investigation and the Second Complainant's concerns that there would be a cover up²⁶ that the Second Complainant and Mr Grimshaw discussed various options to ensure the investigation was carried out properly and comprehensively by The Star.²⁷ Mr Grimshaw candidly and without evasion acknowledged these

¹⁸ T474/24-25. See also T170/35-40 and T231/42 to T 231/1.

¹⁹ T171/4-16. Mr Grimshaw also refers to the evidence he gave Ms Furness SC for the purpose of the s.31 inquiry on 19 May 2011 at T5/28-35 and T6/27-33 and notes that this evidence was given well-before the investigation team was appointed for the purpose of investigating the sexual harassment allegations.

²⁰ T171/10-35.

²¹ T168/30-44. See also T217/14-25.

²² T168/7-10; T214/13-15.

²³ T225/17-26.

²⁴ T65/31-33.

²⁵ T228/45 to T229/4. At T242/19-20. Ms Marshall characterised the Second Complainant's complaint as only "*partially substantiated*". In fact, all the conduct alleged by the Second Complainant was found to have occurred, although some of it was not held to amount to sexual harassment. See also T247/18-20.

²⁶ T59/17-22.

²⁷ But not to "dismiss" Mr Vaikunta, as the submissions of Counsel Assisting suggest at [34] and footnote 58. At T59/32-42, Mr Grimshaw agreed that he and his partner discussed various options for putting pressure on the Star to pursue the investigation. It was not

discussions.²⁸ However, Mr Grimshaw was firm in his evidence that he never acted upon any of these options and nor, to his knowledge, did his partner or anyone else.

11. Importantly, Ms Marshall gave evidence that she had no contact with Mr Grimshaw during the course of the investigation and nor, to her knowledge, did any other member of the investigation team.²⁹ She said she was not influenced by any person external to the casino in the conduct of the investigation.³⁰
12. At no point during the investigation did Mr Grimshaw make the Premier aware that there were allegations against Mr Vaikunta or that his partner was one of the complainants.³¹ He adopted this prudent course to avoid any accusations of political interference.³² Nor did Mr Grimshaw at any time provide this information to the media.³³
13. Mr Grimshaw adopts the submissions of Counsel Assisting in relation to his dealings with Mr Souris and Mr Lipson at CAS [36]-[37], [41]-[43] and [51]-[52]. Mr Souris was a close personal friend of Mr Grimshaw's³⁴ and Mr Lipson was one of his best friends in government.³⁵ Mr Grimshaw spoke to both men in a private capacity³⁶ and, as Counsel Assisting acknowledged, neither Mr Souris nor Mr Lipson divulged any details of the discussions to others.
14. There is no evidence that at any time Mr Grimshaw made contact with Mr John O'Neill, an executive director of Echo. Mr Grimshaw was firm in his evidence that he was not aware of anyone else telephoning Mr O'Neill.³⁷ Contrary to the suggestion of Counsel Assisting at [39], at no point did Mr Grimshaw admit that the discussion with his partner had extended to having a concerned shareholder contact a non-executive board member. Importantly, there are no text messages which evidence knowledge that such a communication had been made to Mr O'Neill. In view of the detailed nature of the text communications, it is reasonable

suggested to Mr Grimshaw that he considered options to achieve the dismissal of Mr Vaikunta. As to the discussion of various options, see T59/32 to T60/28.

28

T59/32 to 60/28.

29

T246/30-45.

30

T251/23-30.

31

T80/10-15; T102/21-32.

32

T102/41-45.

33

T144/8-10. See also T237/21-25.

34

T53/22-24.

35

T55/45.

36

T86/37-38; T88/22-23; T88/31-35 and T199/5-15.

37

T85/13-16; T85/43-47; T144/12-30.

to expect that had Mr Grimshaw been aware of such a call, it would have been adverted to in those text messages. It was not. However, even if a call was made to Mr O'Neill in the terms alleged in evidence during the inquiry,³⁸ it is difficult to see the impropriety in such a call.

15. With respect to Counsel Assisting and noting the otherwise fair and balanced nature of their submissions, the observations at CAS [50] are gratuitous and unnecessary and ought be withdrawn.

15 April 2012

N L Sharp
Counsel for Mr Grimshaw
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³⁸ See T85/23-40.

INQUIRY UNDER SECTION 143 OF THE CASINO CONTROL ACT 1992**SUPPLEMENTARY SUBMISSIONS OF PETER GRIMSHAW**

1. These supplementary submissions are in response to a 19 April 2012 invitation of Ms Furness SC. Ms Furness SC called for any submissions in relation to submissions by Echo and The Star to the effect that:
 - (a) the Echo shareholder register shows no shareholder by the name of "Renaë Turner" or "Reneë Turner" in the period 15 June 2011 and 13 April 2012; and
 - (b) Mr O'Neill's telephone number was not given to any shareholder by way of a shareholder line or by senior management.
2. In relation to the alleged telephone call with Mr O'Neill on 17 January 2011, Mr Grimshaw relies on his written submissions dated 15 April 2012 at [14]. Mr Grimshaw did not make the telephone call; did not cause the telephone call to be made and did not have knowledge that such a call had been made.
3. It is unknown to Mr Grimshaw whether Mr O'Neill gave any oral or written evidence to this inquiry. Mr Grimshaw has not been afforded any opportunity to test the assertion as to the telephone call Mr O'Neill allegedly received. In particular, Mr Grimshaw has not been able to test the accuracy or reliability of the asserted recollection that a person identified herself to Mr O'Neill as "Renaë". As the Echo/Star submissions note, its searches turned up 246 entries in the register for "Turner". It may be that Mr O'Neill does not have an accurate recollection of all details of the alleged telephone call, including the name "Renaë".
4. The evidence of Echo and The Star only excludes two means by which Mr O'Neill's telephone number may have become known to a third party. Mr O'Neill works in a number of different professional capacities. There are many other ways that a third party may have obtained his telephone number.
5. It is also worth recalling that Mr Grimshaw and his partner were not the only people aware of the investigation into sexual harassment allegations into Mr Vaikunta as at 17 January 2012. This inquiry has not investigated other persons

who were aware of the information and who may have had an interest in disclosing it. The fact remains that a number of other people were aware of the information at that time and the evidence in this inquiry has not excluded the possibility that some other person made or caused to be made the 17 January 2012 telephone call to Mr O'Neill.

6. For the above reasons, as well as the reasons set out in Mr Grimshaw's 15 April 2012 submissions at [14], no adverse finding should be made against him in relation to the alleged call to Mr O'Neill.

23 April 2012

N L Sharp
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INQUIRY UNDER SECTION 143 OF THE CASINO CONTROL ACT 1992

COUNSEL ASSISTING'S SUBMISSIONS IN THE PUBLIC HEARING

IN RELATION TO TERM OF REFERENCE 2

INTRODUCTION

1. Term of Reference 2 requires the Inquiry to inquire into, and report upon any issues relevant to the Independent Liquor and Gaming Authority's ("the Authority's") responsibilities under the *Casino Control Act 1992* that arise from information received by the Authority or the Inquiry in relation to The Star casino since 2 December 2011.
2. One element of the public hearing required to be held under the Amended Terms of Reference is relevant to Term of Reference 2, namely certain allegations made publicly against The Star since 2 December 2011.
3. These submissions address this element of the public hearing. Information relevant to Term of Reference 2 that has been obtained in private is not considered here. All evidence will be considered in the report of the Inquiry.
4. Since 2 December 2011, five people have publicly identified themselves and made allegations about The Star in respect of matters relevant to the functions of the Authority. Those five people were summonsed to give evidence about their allegations at the public hearing. Three employees of Echo and The Star also gave evidence relevant to these allegations.
5. The allegations by each of Mr Tim Roach, Ms Annika Soraya and Mr Mark Boyd are considered separately below. The allegations by each of Ms Elizabeth Ward and Mr Greg Culpan are considered together under a number of topics.
6. Some of the allegations relate to the former Managing Director, Mr Vaikunta. Mr Vaikunta is understood to be overseas, although his address is not known to the Inquiry. There has been an email exchange between the Inquiry and Mr Vaikunta in which he has been invited to participate in the Inquiry. He has declined that invitation, however, he has indicated that he intends to make some submissions in relation to the matters the subject of these submissions.

MR TIM ROACH

7. Mr Tim Roach was summonsed to give evidence to the public hearing because he had appeared in the media since 2 December 2011 making allegations about the casino.
8. On 11 February 2012, the Sydney Morning Herald published an article about the casino, in which certain allegations were attributed to Mr Roach. In the article, Mr Roach was quoted as referring to "a massive culture shift" at the casino since he first began work at the casino when Mr Jim L'Estrange was chief executive. Mr Roach was quoted as saying:

"We remembered Jim used to come down and cook once a month. He basically held the same role as Sid [Vaikunta] did but you'd see him cooking with the other line cooks flipping burgers... I don't think Sid ever walked into that room."

9. On 21 February 2012, Mr Roach appeared in a story on the casino on the Channel 7 6.00 pm news. In that story, Mr Roach was shown saying:
 - (a) *"Certain gaming rules, players were allowed to alter bets once cards had reached the tables, players were allowed to remove bets if they kicked up enough of a stink."*
 - (b) *"I saw the same person three days running. Turns out they had done a 72 hour stint on the table."*
10. On 22 February 2012, Mr Roach appeared in another story on the casino on the Channel 7 6.00 pm news. In that story, Mr Roach was shown saying, in relation to a pop star:

"It wasn't unusual to see him up in the Sovereign Room absolutely beyond drunk."
11. In his evidence, Mr Roach confirmed that he was employed at the casino from March 2006 as a dealer and then as a dealer supervisor.¹ Mr Roach resigned from The Star on 2 January 2012, primarily to relocate to a regional city because of his wife's employment.²
12. Mr Roach was interviewed by the Sydney Morning Herald after he was contacted by his former union, United Voice, and asked if he was willing to talk to the Sydney Morning Herald.³ He said that he was.⁴ He was interviewed and the relevant article was published in the Sydney Morning

¹T174.14-20; T174.29-32.

²T174.47-T175.19.

³T175.35-T175.45.

⁴T175.44-45.

Herald on 11 February 2012.⁵ Mr Roach confirmed that the quotations attributed to him in the article were accurate.⁶

13. Mr Roach initiated the contact with Channel 7.⁷ Mr Roach confirmed that the quotations attributed to him in the two Channel 7 stories were accurate.⁸
14. To support his allegation of "a massive culture shift" at the casino, Mr Roach gave the examples of the relaxation of the dress code, particularly in the private rooms; a shift towards keeping players happy on tables rather than upholding game rules; and a more relaxed level of responsible service of alcohol ("RSA") on the main gaming floor.⁹
15. In relation to the relaxation of game rules, Mr Roach gave the example of rule 12.1 in baccarat, which allows players to remove their bets from the table once cards have left the shoe. Mr Roach said that, previously, players were only allowed to remove their bets if there was any question as to the order of the cards, but from around October 2011, the rule came to be used in a wider range of circumstances to allow players to remove their bets if the dealer made any error at all.¹⁰ It was to this change that Mr Roach was referring in the Channel 7 news story on 21 February 2012.¹¹ Mr Roach said that the change made his job as a supervisor harder and that it made the jobs of dealers, supervisors and pit managers harder.¹² The change in interpretation of the rule was, however, to the benefit of players.¹³ Mr Roach gave evidence that he raised his concerns about the interpretation of the rule on occasions with the pit manager but not in a formal way and not with documentation.¹⁴
16. In relation to RSA, Mr Roach gave evidence that, throughout 2011, he observed that intoxicated patrons were allowed to remain on the main gaming floor and that, if they left the main gaming floor, they were allowed back onto the main gaming floor.¹⁵ Mr Roach gave evidence that, if security was notified, the person would be removed or, if security deemed them to be acceptable (with regard to their level of intoxication), they would be allowed to stay.¹⁶ Mr Roach agreed that security personnel are trained in RSA and that, if there was a disagreement as to the

⁵T176.6-10.

⁶T177.10-12.

⁷T183.11-36; T187.32-34.

⁸T183.46-T184.8; T184.19-42; T187.44-T188.22.

⁹T177.14-28.

¹⁰T178.1-10; T179.1-5.

¹¹T183.46-T184.8.

¹²T178.19-35; T179.41-45.

¹³T178.6-7.

¹⁴T179.7-39.

¹⁵T180.17-45.

¹⁶T181.16-32.

level of intoxication, the view of the security personnel was to prevail.¹⁷ Mr Roach gave evidence that he did not make use of the available formal complaint mechanisms in relation to the RSA issue and that, if he had made a formal complaint every time, he would have doubled his workload filling out paperwork.¹⁸

17. Mr Roach also referred to a shift against employees and a more "American" way of running the casino, giving the example of compulsory forums for employees, which were to be attended in the employees' own time and without pay.¹⁹ Mr Roach said that, as a result of pressure from him and other union delegates, these forums were changed to be compulsory only if the employee wanted a customer service bonus.²⁰ Mr Roach also said that senior management previously were more involved with employees in the day-to-day running of the casino.²¹
18. In relation to responsible gambling, Mr Roach confirmed that his allegation about a patron gaming for 72 hours related to an incident he observed in early 2011 in a private gaming room.²² Mr Roach said that, when he commenced his eight hour shift as a dealer, the patron was asleep at the table for about half an hour, after which he woke up, placed a bet, and then went back to sleep again.²³ Mr Roach said that he observed the patron being easily agitated and drinking caffeinated beverages, but that he was an eccentric person and that he was not acting more irrationally than usual.²⁴ Mr Roach gave evidence that he reported the matter to his pit manager but did not take it further.²⁵ Mr Roach agreed that dealers are taught that it is their personal responsibility to remove someone from a table if they believe the person is not in a fit condition to be at the table, but said that that is theoretical training and it is not the way it occurs on the main gaming floor and the other gaming sections in the casino.²⁶
19. Mr Roach also gave evidence that, for the entire period of his six years of employment at the casino, he observed patrons in the former Endeavour Room, now the Sovereign Room, across two of his shifts who must have been gambling for periods of 24 hours or more.²⁷

¹⁷T190.35-46.

¹⁸T181.42-T182.8.

¹⁹T182.20-28.

²⁰T182.26-28.

²¹T182.37-T183.4.

²²T184.19-42.

²³T185.15-29.

²⁴T185.47-T186.12.

²⁵T186.14-29.

²⁶T190.11-17.

²⁷T186.35-T187.30.

20. Mr Roach gave evidence that he had seen a particular patron "beyond drunk" on more than 20 occasions from late 2010 until late 2011 in the Sovereign Room and that this is the person to whom he was referring in his statement on Channel 7.²⁸ Mr Roach said that this is the only person he has observed himself in relation to concerns about how RSA is applied to VIPs.²⁹ Mr Roach said that he reported the patron to the casino duty manager, who told Mr Roach that the host department had declared him to be okay.³⁰
21. Mr Roach's evidence on these issues is consistent with matters brought to the attention of the investigation carried out in 2011 under s 31 of the *Casino Control Authority Act 1992* ("the Section 31 Investigation"). Mr Roach's evidence does not raise any new matters which require investigation additional to that conducted for the Section 31 Investigation.
22. The approach of the casino to rule 12.1 of Baccarat was investigated during the Section 31 Investigation. The casino's approach is consistent with the rules approved by the Authority and with the casino's obligations under s 66 of the Act to comply with those rules. The rules are designed to protect players and the change in interpretation favours players.
23. The report of the Section 31 Investigation ("the Section 31 Report") noted that some Table Games staff had expressed concern in relation to the casino's changed approach to asking patrons to leave.³¹ The Section 31 Report also considered issues in relation to RSA and time spent gambling.³² Two recommendations were made in relation to RSA and one recommendation was made in relation to responsible gambling, as follows:³³

Recommendation 13

The Authority should periodically carry out an analysis of reported incidents relating to the responsible service of alcohol.

Recommendation 14

The Authority should obtain copies of all reports which are, from time to time commissioned by the casino operator, in relation to the responsible service of alcohol.

²⁸T187.44-T188.22.

²⁹T188.29-42.

³⁰T188.44-T189.9.

³¹Section 31 Report, pp37-38.

³²Section 31 Report, pp86-90.

³³Section 31 Report, pp86-90; pp93-98.

Recommendation 15

The Star should revisit its list of indicators of problem gambling in light of research which lists many more activities or behaviours which may indicate problems. The Authority may, in due course wish to inquire of The Star, the action it has taken in this regard.

MS ANNIKA SORAYA

24. Ms Annika Soraya was summonsed to give evidence to the public hearing because she had appeared in the media since 2 December 2011 making allegations about the casino.
25. On 26 February 2012, the Sunday Telegraph published an article about the casino, headed “Casino full of racist bullies’ The Star denies ex-worker’s claims”, which reported certain allegations attributed to Ms Soraya. In the article, the following opinions and quotations were attributed to Ms Soraya:
- (a) bullying and racism were rife at the casino, Ms Soraya’s short stint there was a nightmare, and she was driven to despair by constant taunts over her sexuality and left shocked at the level of racist abuse;
 - (b) new recruits were told in training “*Here at Star City we don’t worry much about political correctness too much, so I hope you two blokes don’t mind if I refer to your mob as Lebs or Lebos*”;
 - (c) her suspension and dismissal from the casino were due to the “*dozens of incidents*” of workplace harassment; and
 - (d) staff treated “*VIP drunks and prostitutes*” with kid gloves, and during training the term “*grey area*” was used to refer to “*VIPs and dignitaries*” when it came to reprimanding them over being drunk or propositioning prostitutes.
26. Ms Soraya was employed at the casino for just over two months from March to May 2010 as a customer liaison officer in security.³⁴
27. Ms Soraya gave evidence that she initiated the contact with the journalist at the Sunday Telegraph herself.³⁵ Ms Soraya confirmed the allegations attributed to her in the article.³⁶
28. Ms Soraya gave evidence, both in private, as summarised by Counsel Assisting,³⁷ and in some respects in public, as to eight specific incidents on which she relied as the basis for her allegations of racism, bullying and workplace harassment.
29. The first incident occurred during an initial interview when Ms Soraya alleges that an officer from the casino said: “You don’t have to tell us this if you don’t want to but as a matter of

³⁴T311.7-17; T311.38-44.

³⁵T312.42-45.

³⁶T314.4-T315.2.

³⁷T260.29-T262.33.

interest what is your racial profile, what is your racial background?" Ms Soraya answered the question and did not express concern about it at the time or subsequently to any person in authority at the casino.³⁸

30. The second incident occurred during training where the person conducting the training is said to have made the statement quoted above in relation to "Lebs or Lebos".³⁹ It was not directed at Ms Soraya.⁴⁰
31. The third incident involved a fellow trainee who Ms Soraya claimed subjected her to embarrassing jokes, such as saying "Look at the princess, gone off to brush her teeth" and sending his friends over to Ms Soraya while she was on patrol to ask her what was her nationality. The fourth incident involved her colleagues asking her if she would become romantically involved with another female staff member.
32. The fifth incident occurred when she was on duty and she asked to be replaced by another officer whilst she went to the bathroom. The officer who came to replace her said "Bladder problems?" Ms Soraya gave evidence that this caused her great offence and was unwanted verbal attention.⁴¹
33. The sixth incident involved a cleaner saying to her as she walked past the male toilets, "Go on in, you look like a bloke." The seventh incident involved the same cleaner excessively vacuuming around her feet while she was on duty in a stationary position. The eighth incident involved a colleague saying to her in the staff change room "Hey, Annika, put my washing away", which Ms Soraya has written caused her to feel so threatened that she feared for her personal safety.⁴²
34. Ms Soraya also gave evidence that she did not have a birth certificate and that she felt discriminated against because she was an orphan.⁴³ In a document she provided to the Inquiry, Ms Soraya's account suggests that her training supervisor attempted to assist her with this matter as a birth certificate was required for licensing reasons.⁴⁴
35. In relation to the term "*grey area*" being used in training to refer to VIPs and dignitaries, Ms Soraya confirmed the account given by her in her private evidence that the trainer said:

³⁸T316.1-T317.10.

³⁹T317.16-28.

⁴⁰T317.30-42.

⁴¹T323.42-46.

⁴²MFI

⁴³T328.7-29.

⁴⁴MFI

*"You need to be a bit careful when addressing guests and VIPs of the casino because you also need to be aware of why we are all here and why we are in these jobs and that without revenue from the casino we wouldn't have jobs", and he said to "negotiate any of these guests and VIP patrons very carefully and with caution" and "you may also want to seek Oscar's [a more senior security officer's] advice"*⁴⁵

and that the trainer said *"Now this can be a bit of a grey area."*⁴⁶

36. In her private evidence, as summarised in the public hearing, Ms Soraya gave one example of seeing two girls in the casino who appeared to be drunk. Ms Soraya said she spoke to some senior officers and was told the girls were from a private function and, to her observation, they were not asked to leave.⁴⁷ In relation to prostitution, Ms Soraya said in her private evidence that she saw a number of women, who she concluded were prostitutes because they were scantily clad, in the hotel area of the casino and not in the gaming area.⁴⁸
37. As to Ms Soraya's termination, the evidence given was that a fellow employee put his hand on her shoulder from behind to stop her walking into the path of an approaching tram at the Light Rail stop, and at that time and over a short time following, Ms Soraya verbally abused the fellow employee. Ms Soraya was found to have engaged in serious misconduct as a result of this incident and was dismissed from her employment.⁴⁹
38. Ms Soraya suggested that there might be other incidents in addition to those raised in her evidence. Ms Soraya was asked to identify all relevant incidents in her private and public evidence, and she also provided documents at her private interview and at the public hearing. It should be accepted that in the event that there are further incidents, those the subject of public and private evidence were the more serious and that any others were in a similar vein.⁵⁰
39. Ms Soraya made a note of some of these incidents in her official notebook. She also made complaints about some of the incidents. These were investigated and, in respect of one incident, she received an apology from the cleaner. It can be accepted, therefore, that these incidents occurred.

⁴⁵T262.43-T263.4.

⁴⁶T330.6-44.

⁴⁷T263.12-18.

⁴⁸T263.20-35.

⁴⁹T263.37-T264.12.

⁵⁰T327.1-T329.36.

40. These incidents do not, however, support Ms Soraya's claims of racist bullying and workplace harassment or the headline of "Casino full of racist bullies". Nor do they support Ms Soraya's claim that she was dismissed due to the "*dozens of incidents*" of workplace harassment.
41. The conclusions Ms Soraya draws from the incidents she described are objectively unreasonable. Further, Ms Soraya's demeanour in giving evidence, both in private and public, raises clear concerns about the credibility and reliability of the conclusions she draws and the opinions she expresses. This should have been apparent to the journalist who interviewed Ms Soraya and the Sunday Telegraph deserves criticism for reporting Ms Soraya's claims in the manner in which it reported them.
42. It follows from what appears above that the Inquiry would be entitled to make a finding that the reporting of Ms Soraya's conclusions and opinions was sensationalist and not supported by objectively reliable facts, particularly as to the following:
- (a) the nature of the incidents Ms Soraya experienced;
 - (b) the reasonableness of Ms Soraya's conclusions about the casino; and
 - (c) the working environment and culture of the casino as an employer.

MARK BOYD

43. Mr Mark Boyd, Secretary of United Voice NSW, the union that covers liquor, hospitality and other employees, including employees at the casino, was summonsed to give evidence to the public hearing because he had appeared in the media since 2 December 2011 making allegations about the casino.
44. On 22 February 2012, Mr Boyd appeared in a story on the casino on the Channel 7 6.00 pm news. In that story, the following opinions and quotations were attributed to United Voice and Mr Boyd:
- (a) the union says it is alarmed but not surprised by allegations of illegal drug taking, sexual harassment and bullying;
 - (b) the union calls the casino the most difficult employer in the state; *"They're at the top, by far. They're number one, then it's a big stretch to number two"*; and
 - (c) *"There's this intimidation and fear of just raising issues in the place these days"*.
45. Mr Boyd gave evidence that the union contacted Channel 7 and offered to make Mr Boyd available for interview.⁵¹ Mr Boyd confirmed that he told the reporter that the union regarded the casino as the most difficult employer in the state.⁵² Mr Boyd also confirmed the quotations attributed to him and that he stood by all of his comments to Channel 7.⁵³
46. Mr Boyd confirmed that he attended an interview on 21 July 2011 in the course of the Section 31 Investigation. Ms Belinda Giblin, another union official, was also present.⁵⁴ Mr Boyd confirmed that his evidence to the Section 31 Investigation in July 2011 was as follows:
- (a) union members had formed a view of the new management at the casino; they raised issues and there was no real evidence to support what they were saying and Mr Boyd described them as having conspiracy theories about what was happening at the casino,⁵⁵
 - (b) there has been nothing significant in relation to harassment or bullying at the casino,⁵⁶ and claims of harassment and bullying are something of an "art form" these days when in fact it is just managers directing persons to do their job,⁵⁷ and

⁵¹T278.41-46.

⁵²T279.38-41; T284.29-45.

⁵³T279.43-T280.10.

⁵⁴T277.28-35.

⁵⁵T280.24-T281.24.

(c) for the size of the workforce, there are no major issues at the casino and the daily issues are no more than in other places.⁵⁸

47. After that story was aired, the Inquiry's solicitors wrote to Mr Boyd asking him to provide an explanation for the apparent significant change in his opinion since he gave evidence to the Section 31 Investigation. He responded with a letter advising that his comments to the Section 31 Investigation were made in the context of having no major concerns when it came to formal complaints made on behalf of United Voice members employed at the casino, and that he was then of the view that the relationship between the casino operator and the union office was not relevant to the Section 31 Investigation.

48. Mr Boyd enclosed copies of correspondence sent to the casino and dispute notices lodged with Fair Work Australia relating to six issues and concerns raised by United Voice members, and raised formally with the casino, since July 2011. Mr Boyd indicated that the issues included roster changes, denial of union representation, leave applications, contracting out of housekeeping services at the hotel and retrenchment of staff on maternity leave.

49. In his public evidence to the Inquiry, Mr Boyd explained the discrepancy between his evidence to the Section 31 Investigation in July 2011 and his interview with Channel 7 on the basis that his view has changed based on his experience particularly in the last six months of 2011,⁵⁹ and because of major issues arising between July 2011 and February 2012.⁶⁰

50. Mr Boyd identified the following issues arising between July 2011 and February 2012 as the basis for his statement to Channel 7 that the casino was the worst employer in the State.⁶¹

(a) on some four or five occasions, employees have been denied union representation in disciplinary hearings in relation to incidents which could be described as minor rather than major incidents;⁶²

(b) the move of long-serving employees from fixed rosters to changing rosters, the concern this caused for some union members and the union's meetings with casino management about the issue;⁶³

⁵⁶T282.12-18.

⁵⁷T281.26-T282.10.

⁵⁸T282.43-46.

⁵⁹T288.31-38.

⁶⁰T290.1-9.

⁶¹T294.10-15.

⁶²T291.20-46.

(c) less cooperative or more adversarial relations between the union and casino management, resulting in more applications to Fair Work Australia.⁶⁴

51. Mr Boyd was unable to identify by name any employee who requested but was denied union representation in a disciplinary hearing in the last six months in the course of giving evidence, although he indicated that there should be notes in the union office.⁶⁵ None of the documents submitted by Mr Boyd in response to a request from the Inquiry related to the denial of union representation in a disciplinary hearing.⁶⁶

52. In relation to his statement to Channel 7 that there is "intimidation and fear of just raising issues in the place these days", Mr Boyd gave evidence that this was based on members on a number of occasions expressing to union organisers that they are fearful of raising with casino management issues about wanting to be represented in a disciplinary matter or about a roster change because they were fearful of losing their jobs.⁶⁷

53. In relation to the introduction by Channel 7 that:

*"The union representing workers at Sydney's Star Casino says it's alarmed but not surprised by allegations of illegal drug taking, sexual harassment and bullying"*⁶⁸

Mr Boyd gave evidence that he said he was alarmed but not surprised by harassment and bullying, but that he had no knowledge of illegal drug taking or sexual harassment.⁶⁹ The harassment and bullying concerns arose from how middle management at the casino was dealing with roster changes.⁷⁰

54. The matters raised by Mr Boyd, even if true, do not, objectively, support an opinion or an allegation that the casino is the worst employer in the State.

55. There is no evidence available as to precisely what Mr Boyd told Channel 7 the union was "alarmed but not surprised" by. If Mr Boyd's interview with Channel 7 was in accordance with Mr Boyd's evidence and related to industrial issues and workplace bullying, there could be no

⁶³T292.10-T293.1.

⁶⁴T293.3-34.

⁶⁵T302.4-18.

⁶⁶T307.31-34.

⁶⁷T294.36-47.

⁶⁸T296.23-34.

⁶⁹T297.4-34.

⁷⁰T297.36-45.

justification for Channel 7 saying that the union was alarmed but not surprised by allegations of illegal drug taking or sexual harassment.

56. It follows from what appears above that the Inquiry would be entitled to make a finding that the reporting of Mr Boyd's allegations was sensationalist and not supported by objectively reliable facts, particularly as to the following:

- (a) the nature of incidents at the casino of which Mr Boyd had knowledge; and
- (b) that Mr Boyd's concerns with the casino were other than of an industrial nature.

THE SUBSTANCE IN THE BATHROOM INCIDENT

57. The Section 31 Report gave detailed consideration to an incident that occurred on 30 October 2010 when a maintenance technician at the casino saw what he believed to be a line of white dust on a vanity in a bathroom located between two pits in the inner sanctums of the private gaming rooms. When tested, it was initially found not to be cocaine and ultimately was found to be a building material and not an illicit substance.⁷¹

58. Four witnesses gave evidence in relation to this incident: two former casino employees, Ms Elizabeth Ward and Mr Greg Culpan, and two current casino employees, Mr Kevin Houlihan and Mr James Robins.

59. The Section 31 Report commented as follows in relation to the incident:

*The casino operator's handling of these events has been poor. The Police or at least the investigators should have been alerted when the substance was found, and the substance should have been photographed and properly secured. It should then have been given to the Police for testing. Table Games duty managers should have informed their managers. The acting casino duty manager was correct to be concerned. While I do not agree that the matter was 'covered up', it had that appearance. The only patron in the vicinity of where it was found, was thought to be valuable to the casino. Staff often told me that he was the recipient of special or favourable attention by managers. These matters add to that appearance.*⁷²

60. Despite the conclusion of the Section 31 Report that the matter was not 'covered up', the former acting casino duty manager, Ms Ward, has continued to make allegations publicly about the incident. The former acting pit manager, Mr Culpan, has also continued to make allegations about the incident.

61. Ms Ward made the following allegations on the 6.00 pm news on Channel 7 on 20 February 2012:

- (a) she and her husband lost their careers because she tried to investigate the suspected drug scandal;
- (b) the more she investigated, the uglier things seemed to get for her; and

⁷¹ T490.18-35.

⁷² Section 31 Report, p70.

(c) the casino puts customers and money first, and the high rollers are always right.

62. Ms Ward gave evidence that she worked at the casino from 1995, commencing as a pit manager and, from November 2008, working as an acting casino duty manager.⁷³

63. Ms Ward had no direct involvement in the incident on 30 October 2010. She was not on duty or present at the casino when the substance was found on the Saturday morning and she was not next on duty until the following Monday, 1 November 2010.⁷⁴

64. Ms Ward gave evidence that she believed that the substance was a drug for the following reasons:

(a) the substance was not correctly bagged and was kept in an unsecured drawer for a week;⁷⁵

(b) a number of people who saw the substance stated that they believed it was a drug;⁷⁶

(c) Mr James Robins told Ms Ward he had tasted it and it was cocaine;⁷⁷

(d) the Investigations Manager, Mr Houlihan, told Ms Ward that he had had the sample sent to an independent laboratory for testing;⁷⁸ and

(e) the surveillance tape footage disappeared.⁷⁹

65. Ms Ward gave evidence that she believed there was a 'cover up',⁸⁰ that Ms Heather Scheibenstock, the General Manager, Table Games, was told to shut her up and close the investigation down,⁸¹ and that that instruction was given by Mr Vaikunta, the former Managing Director,⁸² that Mr Vaikunta had a friendship and possibly a "social [drug] habit" with the high roller who was the last patron to use the pits near the bathroom, and that Ms Scheibenstock and Mr Vaikunta conspired to cover up the incident.⁸³

⁷³T337.27-31; T338.23-35.

⁷⁴T345.4-17.

⁷⁵T359.21-23.

⁷⁶T359.23-25.

⁷⁷T360.5-8.

⁷⁸T360.10-19.

⁷⁹T360.19-44.

⁸⁰T361.20.

⁸¹T361.46-47.

⁸²T362.1.

⁸³T361.5-20.

66. Ms Ward gave evidence that she believed that, while the substance was stored in the security officers' office, someone removed what Ms Ward thinks was a drug and replaced it with concrete dust.⁸⁴ Ms Ward was unable to say who had done this.⁸⁵
67. Ms Ward did not take the matter to the police or to the Authority.⁸⁶
68. In relation to the bagging and storage of the substance, Ms Ward's evidence adds nothing to the evidence considered in the Section 31 Investigation. The Section 31 Report was critical of the bagging and storage of the substance.
69. As to Ms Ward's evidence that the persons who initially expressed a belief or view that the substance might be drugs, Ms Ward agreed that none of them was a police officer or former police officer, and that the two experienced former police officers said that they did not believe it was a drug.⁸⁷ Ms Ward was also taken to descriptions given by two of the persons present when the substance was found, each of which was inconsistent with it being a fine, white powder.⁸⁸
70. Ms Ward's evidence about Mr Robins should not be accepted. Mr Robins gave unambiguous evidence that he did not touch or taste the substance.⁸⁹ He had previously made a statement to the same effect. Ms Ward was in court when this evidence was given.⁹⁰ In her evidence, for the first time, she raised another occasion where she said Mr Robins had told her he had tasted the substance.⁹¹ In any event, Mr Robins' evidence was that he did not taste the substance, and this was not in any way limited to a particular comment he made to Ms Ward. Mr Robins' evidence should be accepted.
71. Mr Houlihan denied that he had discussed the testing of the substance with Ms Ward.⁹² Ms Ward's chronology of events made no later than June 2011 does not record Mr Houlihan telling Ms Ward that the substance had been tested, or that it had been tested at an independent laboratory.⁹³ The substance was tested in late 2011 at an independent laboratory, during the

⁸⁴T362.42-45.

⁸⁵T363-T364.4.

⁸⁶T407.10-27.

⁸⁷T368.4-21.

⁸⁸T403.5-20; T404.22-34.

⁸⁹T272.5-11; T273.18-25.

⁹⁰T366.26-28.

⁹¹T366.38-T367.1.

⁹²T486.13-28.

⁹³MFI #6.

Section 31 Investigation.⁹⁴ Mr Houlihan gave evidence that he told Ms Ward that, in his opinion and based on his experience in law enforcement, the substance was not a drug, but that Ms Ward did not seem to accept his opinion.⁹⁵

72. Ms Ward's evidence about the surveillance tape being tagged (that is, saved) and then disappearing should not be accepted, either as to the tape being tagged or as to it disappearing.⁹⁶ The surveillance duty manager, Mr David Gould, gave evidence to the Section 31 Investigation that the tape was never tagged, but that the relevant footage was saved on his monitor and was available for review and so did not go missing.⁹⁷ Mr Houlihan gave evidence that the footage saved by Mr Gould was reviewed by Mr Houlihan's colleague, Mr McGregor.⁹⁸
73. Ms Ward's evidence that there was a conspiracy between Mr Vaikunta and Ms Scheibenstock to cover up the incident should not be accepted. Ms Scheibenstock gave evidence to the Section 31 Investigation of a number of steps she took to satisfy herself that the investigation into the incident was appropriate.⁹⁹ There is no evidence to support Ms Ward's proposition.
74. Mr Culpan agreed that his knowledge of the incident was limited to what Ms Ward had told him.¹⁰⁰ Mr Culpan also agreed that he was told by casino senior officers that some of the information Ms Ward had provided to Mr Culpan was incorrect.¹⁰¹ Mr Culpan, however, maintained his opinion that the substance found in the bathroom was cocaine,¹⁰² and he based this belief on inconsistencies between what he says he was told in or around June 2011 by Ms Aloizos and Mr Power in relation to testing of the substance,¹⁰³ and talk on the floor, rumour and scuttlebutt.¹⁰⁴
75. None of the matters raised by Ms Ward and Mr Culpan could in any way prove that the substance was an illegal drug, or that it was not concrete dust, or that there was a cover up. The criticisms of the casino's handling of the incident made in the Section 31 Report stand, but nothing raised in this inquiry could reasonably support a finding of a cover up or that the substance was an illegal drug.

⁹⁴T490.24-30.

⁹⁵T487.34-47.

⁹⁶T365.11-14.

⁹⁷T470.30-42; MFI #8.

⁹⁸T488.36-45.

⁹⁹T471.5-11; MFI #9.

¹⁰⁰T420.5-8.

¹⁰¹T420.30-40.

¹⁰²T425.7-14.

¹⁰³T425.16-34.

¹⁰⁴T427.4-12.

76. Ms Ward and Mr Culpan each agreed with the proposition that essentially nothing could be done now to allay their concerns about the incident being a cover up.¹⁰⁵ Ms Ward and Mr Culpan's continued allegations about this matter are unreasonable and are not supported by the evidence.
77. Ms Ward's allegation that both she and her partner, Mr Gordon Vail, lost their jobs as a result of her pursuing the substance in the bathroom incident must be rejected. Mr Vail took a voluntary redundancy in February 2011.¹⁰⁶ The email he sent to various staff at the casino on his departure indicates that he left on good terms.¹⁰⁷
78. Ms Ward did not cease to work at the casino until March 2011 when she applied for workers compensation. The grounds on which she sought workers compensation relate to an incident on 25 November 2010, when she gave an apology to the high roller for an incident which occurred on 4 November 2010. Aside from taking two days of sick leave, Ms Ward continued to work after her meeting with the high roller on 25 November 2010.¹⁰⁸ Ms Ward worked through December 2010 and January, February and into March 2011, and she did not cease to attend work until she was notified that she was unsuccessful in her application for the new position of gaming manager.¹⁰⁹ Neither this timing nor Ms Ward's workers compensation claim support any connection between the substance in the bathroom incident and Ms Ward's ceasing to attend work at the casino. Ms Ward's employment was terminated by the casino on 20 December 2011, to take effect from 17 January 2012, as she was still unfit to return to work.

¹⁰⁵T368.29-32; T404.9-14; T428.22-26.

¹⁰⁶T369.2-19.

¹⁰⁷T369.36-T370.25.

¹⁰⁸T351.33-T352.13.

¹⁰⁹T352.20-27.

ALLEGATIONS ABOUT COMPLAINTS AND REPORTING

79. Mr Culpan confirmed that he said to Channel 7:

"No matter what you report, no matter what you see, no matter what you say, nothing is ever done about it"

and that this was his belief at the time, being 20 February 2012.¹¹⁰

80. Mr Culpan gave evidence that other casino employees would bring issues, complaints and grievances to him to take up with management.¹¹¹ Mr Culpan's principal point of contact was Ms Sylvia Aloizos, General Manager, Compliance, at Echo.¹¹² Mr Culpan agreed that some of the matters he reported to Ms Aloizos were "talk on the floor" or gossip.¹¹³

81. Mr Culpan agreed that, over the last two years, particularly since Ms Aloizos has been on the job, he had been content with how the complaints and issues he has raised have been acted upon and that his comment to Channel 7 was a matter of history, before 2010.¹¹⁴ There is, however, no indication in the broadcast or in the material obtained under summons from Channel 7 that Mr Culpan made this clear to Channel 7.

82. Mr Culpan gave evidence about a feedback session he had on 24 October 2011 for just over three hours with Mr Michael Anderson, the General Counsel of Echo, Mr Andrew Power, the General Counsel of The Star, and Ms Aloizos.¹¹⁵ Mr Culpan agreed that he was told, and he believed, that those senior officers placed great importance on investigating illegal or undesirable conduct that might have taken place at the casino and that casino management took complaints about alleged unlawful or improper behaviour very seriously.¹¹⁶

83. Mr Culpan agreed that, in some cases, the senior officers sought further details or substantiation of allegations from him, and that, in some case, they told him what had already been done to investigate the allegations.¹¹⁷ Mr Culpan also agreed that he had had other feedback sessions

¹¹⁰T416.13-28.

¹¹¹T411.36-45.

¹¹²T412.17-45.

¹¹³T414.30-33; T414.45-T415.2.

¹¹⁴T453.27-43.

¹¹⁵T416.35-45.

¹¹⁶T417.19-31.

¹¹⁷T418.13-23.

over the following weeks and months, including one on 9 February 2012.¹¹⁸ Mr Houlihan also gave evidence of some matters he had investigated arising from Mr Culpan's allegations.¹¹⁹

84. Mr Culpan also agreed that the senior managers encouraged Mr Culpan and staff to use the ETIPS (or the then TIPS) hotline to report complaints.¹²⁰ Mr Culpan accepted that there was a genuine desire on the part of the senior officers that things be reported.¹²¹
85. Mr Culpan's employment at The Star was terminated on 13 March 2012 for breach of confidentiality.¹²² There is no evidence that Mr Culpan's employment was terminated because he raised allegations with management.
86. Mr Culpan's allegations in relation to reporting and investigations are not supported by the evidence.
87. It follows from what appears above that the Inquiry would be entitled to make a finding that the reporting of Mr Culpan's allegations in relation to reporting and investigations was sensationalist and not supported by objectively reliable facts. In particular, it may wrongly have suggested the following:
- (a) that Mr Culpan's concerns about reporting and investigations were currently held;
 - (b) that Mr Culpan makes reports and the casino does not act on or investigate them; and
 - (c) that the casino does not act on or investigate reports.

¹¹⁸T451.36-T452.3.

¹¹⁹T482.41-47; T483.12-T484.27; T484.29-34; T491.47-T493.3; T493.29-T496.26.

¹²⁰T444.28-41.

¹²¹T445.33-38.

¹²²T410.22-37.

OTHER DRUG ALLEGATIONS

88. On the 6.00 pm news on Channel 7 on 20 February 2012, Ms Ward was said to have never seen a culture like there is today at The Star, and that as to drugs, sex and sexual harassment, Ms Ward was shown saying: *"It's party town in there, it's a permanent party."* In the same program, Mr Culpan was shown (with his identity obscured) saying that there is *"chronic drug abuse"* among senior managers.
89. Ms Ward gave evidence that she believed that Mr Vaikunta was under the influence of drugs on several occasions, based on her observation of his behaviour.¹²³ Ms Ward did not report her concerns to anyone, including through ETIPS, to the investigation staff or to security.¹²⁴ These incidents occurred before March 2011.¹²⁵
90. Mr Culpan gave evidence that his reference to *"chronic drug abuse"* amongst senior managers,¹²⁶ was based on his observation of Mr Vaikunta at an employee forum in 2011 from which he believed that Mr Vaikunta was on some substance.¹²⁷ Mr Culpan did not raise this matter with the senior officers of the casino at his feedback sessions,¹²⁸ or make an ETIPS complaint.¹²⁹ When Mr Culpan raised allegations of Mr Vaikunta's drug use in an email to Ms Aloizos on 4 November 2011, he said that it was just hearsay.¹³⁰
91. Neither Ms Ward's nor Mr Culpan's evidence, even if true, could objectively support the allegations they made to Channel 7 in February 2012 in relation to drugs, the casino being *"a party town"* or *"chronic drug abuse"* amongst senior managers. There is no evidence to support the comment made by Mr Culpan to Channel 7 and reported by Channel 7. It was made without any foundation and was apparently based on one observation he made of one senior manager.
92. Mr Houlihan gave evidence of the investigations he carried out in relation to allegations of drug use involving Mr Vaikunta. In August 2010, allegations were made, including by way of an ETIPS complaint in relation to Mr Vaikunta and another employee.¹³¹ The allegations included an allegation that Mr Vaikunta used cocaine.¹³² The allegation was based on belief, rumour or

¹²³T374.18-33.

¹²⁴T375.15-27.

¹²⁵T376.1-3.

¹²⁶T454.44-46.

¹²⁷T455.43-T456.10; T457.44-T458.2.

¹²⁸T458.9-12.

¹²⁹T459.24-33.

¹³⁰T462.16-38; MFI #7.

¹³¹T477.9-12.

¹³²T478.9-11.

gossip and not on any first-hand observation.¹³³ Mr Houlihan gave evidence that Mr Vaikunta denied the allegations and advised that he participated in a routine drug testing program in a US casino in which he had worked.¹³⁴ Following his investigation, Mr Houlihan found the allegations against Mr Vaikunta to be unsubstantiated and that there was no direct or circumstantial evidence of drug use by Mr Vaikunta.¹³⁵

93. Mr Houlihan also gave evidence of a more recent investigation he conducted into an allegation of cocaine use by Mr Vaikunta on the main gaming floor.¹³⁶ There was no time frame given as to when the incident was alleged to have occurred.¹³⁷ Mr Houlihan gave evidence that he went back to the day that Mr Vaikunta commenced employment at the casino and reviewed incident reports for a period of some two or so years.¹³⁸ Mr Houlihan also interviewed the Asset Protection Manager, Mr John Lomax.¹³⁹ Mr Houlihan found no evidence to support the allegation.¹⁴⁰

94. Mr Houlihan also gave evidence that he was not aware of any allegations made about drug use by any other senior manager apart from Mr Vaikunta, that he found the allegations against Mr Vaikunta to be unsubstantiated, and that he has not seen any evidence of anyone in senior management at the casino being involved in drugs at all.¹⁴¹

95. Mr Larry Mullin, Chief Executive of Echo, gave evidence that, during the course of an investigation conducted by Mr Houlihan in 2010, he asked Mr Vaikunta whether there was any truth to the allegations that he used drugs and that Mr Vaikunta said no.¹⁴² Mr Mullin also recalled an investigation that involved swabbing or testing Mr Vaikunta's office for drugs and that the outcome of that investigation was that there was no truth to any of the allegations.¹⁴³ Mr Mullin also gave evidence as to the mandatory drug testing regime at the Borgata casino in the United States, where both he and Mr Vaikunta had worked previously, and said that, to his knowledge, Mr Vaikunta had never tested positive for drug use.¹⁴⁴

¹³³ T478.38-46.
¹³⁴ T480.7-17.
¹³⁵ T481.16-32.
¹³⁶ T497.36-42.
¹³⁷ T498.4-6.
¹³⁸ T498.8-18.
¹³⁹ T497.44-T498.2.
¹⁴⁰ T498.20-21.
¹⁴¹ T499.18-43.
¹⁴² T507.20-33.
¹⁴³ T510.35-T511.13; T511.25-T512.16.
¹⁴⁴ T507.38-T508.17.

96. It follows from what appears above that the Inquiry would be entitled to make a finding that the reporting of Ms Ward's allegations as to the casino being a "party town" and Mr Culpan's allegations of "chronic drug abuse" amongst senior managers was sensationalist and not supported by objectively reliable facts. In particular, it may wrongly have suggested the following:

- (a) that Ms Ward has knowledge of and evidence to support claims of illegal drug use at the casino;
- (b) that Ms Ward's knowledge and evidence was current as at 20 February 2012;
- (c) that Mr Culpan has knowledge of and evidence to support claims of chronic drug abuse amongst senior managers at the casino; and
- (d) that there is evidence of illegal drug use by senior managers at the casino.

ALLEGATIONS ABOUT RESPONSIBLE GAMBLING, RSA AND CULTURE CHANGE

97. Ms Ward made an allegation on Channel 7 that high rollers are plied with free drinks and food to stay at the table and this is not responsible gambling. Ms Ward estimated that, in the 12 months before she ceased to work at the casino, on ten occasions she had sent an email to someone alerting them to a concern that a player had stayed at a table for more than 48 hours.¹⁴⁵ Ms Ward also agreed that, on each occasion when she believed something should be done about a player being at a table too long or otherwise being incapable of playing, either she took action or someone else took action as a result of her reporting the matter.¹⁴⁶

98. In relation to his allegation on Channel 7 that high rollers will “just wee under the table” rather than take a break from gambling, Mr Culpan agreed that he had not observed this himself,¹⁴⁷ and that the reports he had seen on this issue had all been made before 2010.¹⁴⁸

99. The issue of time spent gambling was reported on in the Section 31 Report and a recommendation was made that:

*The Star should revisit its list of indicators of problem gambling in light of research which lists many more activities or behaviours which may indicate problems. The Authority may, in due course wish to inquire of The Star, the action it has taken in this regard.*¹⁴⁹

100. In relation to her allegations on Channel 7 about an a foreign politician, Ms Ward agreed that she had already stopped working at the casino when the alleged incident occurred and that she only knew about it through other people telling her.¹⁵⁰

101. In relation to her allegations on Channel 7 about a pop star behaving in an “obnoxious” manner, “repeatedly”, Ms Ward gave evidence that she had observed the pop star in the Sovereign Room on roughly 30 occasions, and that probably on 90 per cent of those occasions he was obnoxious and that was possibly from intoxication.¹⁵¹ Ms Ward did not lodge any incident report.¹⁵²

102. Mr Culpan confirmed that he had made a number of allegations, based on second-hand information, that Mr Vaikunta had been observed intoxicated on a number of occasions at the

¹⁴⁵T384.18-31.

¹⁴⁶T398.19-27.

¹⁴⁷T461.2-6.

¹⁴⁸T461.43-47.

¹⁴⁹ Recommendation 15; Section 31 Report, pp96-98.

¹⁵⁰T385.81-T386.11.

¹⁵¹T387.17-29.

¹⁵²T387.43-44.

casino.¹⁵³ Mr Culpan agreed that he was given information about the investigation of these allegations by senior officers of the casino at a feedback session on 9 February 2012.¹⁵⁴ Mr Houlihan gave evidence as to how he investigated these and other allegations of intoxication. Mr Houlihan reviewed the incident report database for any mention of Mr Vaikunta, interviewed the Asset Protection Manager and sought to identify any potential witnesses.¹⁵⁵ In relation to one allegation, Mr Houlihan identified 25 staff members who may have been present at the time of the alleged incident for interview,¹⁵⁶ and in relation to another allegation, Mr Houlihan reviewed CCTV footage and interviewed two staff members.¹⁵⁷ Mr Houlihan found that none of the allegations as to intoxication was substantiated.¹⁵⁸

103. Ms Ward also made allegations in a story on the casino broadcast on "7.30" on the ABC on 2 April 2012. Ms Ward referred to the culture change that she said occurred with the arrival of US management, that existing staff were regarded as "the school mums", and that that Mr Vaikunta and Mr Victor Tiffany said "Don't worry about the rules. Don't worry about that, we'll take care of that."¹⁵⁹

104. Ms Ward agreed that there is nothing wrong with changing from frumpy to exciting, but said that this is provided it is within normal standards.¹⁶⁰ Ms Ward was also taken to passages in her application for the Gaming Manager position, dated 6 March 2011, and she agreed that she did not raise concerns about the casino and she cited good relationships with key stakeholders, including Mr Vaikunta and Mr Tiffany, in her application.¹⁶¹

105. Mr Culpan's allegations on Channel 7 about there being "a financial incentive not to report breaches" and in relation to helping high rollers get around money laundering rules raise matters brought to the attention of the Section 31 Investigation.¹⁶² Mr Culpan's allegations do not raise any new matters which require investigation additional to that conducted for the Section 31 Investigation.

¹⁵³T448.31-35.

¹⁵⁴T451.42-T452.13.

¹⁵⁵T493.41-T494.16.

¹⁵⁶T494.18-30.

¹⁵⁷T501.22-T502.8.

¹⁵⁸T494.43-T495.3; T501.22-T502.19.

¹⁵⁹T390.16-28.

¹⁶⁰T390.38-45.

¹⁶¹T392.47-T395.1.

¹⁶²Section 31 Report, p104; p82.

106. It follows from what appears above that the Inquiry would be entitled to make a finding that the reporting of Ms Ward's and Mr Culpan's allegations was sensationalist and not supported by objectively reliable facts. In particular, it may wrongly have suggested the following:

- (a) that Ms Ward has personal knowledge of high rollers being encouraged to keep gambling in circumstances where she had a concern that they had been at the table too long or were otherwise incapable of playing;
- (b) that Mr Culpan has witnessed high rollers "just wee[ing] under the table";
- (c) that Mr Culpan's concerns about high rollers "just wee[ing] under the table" are current; and
- (d) that Ms Ward has personal knowledge of the matters raised in the allegations about the foreign politician.

Michael Wigney SC

Leigh Sanderson

Counsel Assisting

17 April 2012

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

OUTLINE OF SUBMISSIONS OF ECHO ENTERTAINMENT GROUP LIMITED

AND THE STAR PTY LIMITED

**IN RELATION TO TERM OF REFERENCE 2 – MR ROACH, MR BOYD AND MS
SORAYA**

Introduction

- 1 These submissions of Echo Entertainment Group Limited (“**Echo**”) and The Star Pty Limited (“**The Star**”) deal with the public hearing conducted by the Inquiry between 2 and 11 April 2012, in so far as the evidence given at the hearing relates to the second term of reference of the Inquiry. That term of reference required the Inquiry to inquire into, and report upon, any issues relevant to the Authority’s responsibilities under the *Casino Control Act 1992* that arise from information received by the Authority or the Inquiry in relation to The Star casino since 2 December 2011.
- 2 The Star is the licensed operator of The Star Casino in Sydney. The Star is a wholly owned subsidiary of Echo, which is an ASX listed company.
- 3 These submissions only address the matters raised in the evidence of Mr Tim Roach, Mr Mark Boyd and Ms Annika Soraya at the public hearing conducted between 2 and 11 April 2012.

Mr Roach

- 4 The Star and Echo agree with, and adopt, the submissions of Counsel Assisting as to the evidence given by Mr Roach and the findings which ought to be made in respect of Mr Roach’s evidence.
- 5 The Star and Echo wish to supplement the submissions of Counsel Assisting in relation to the following allegations raised by Mr Roach:

- (a) an alleged “massive culture shift” at The Star.¹
- (b) an alleged “*more relaxed level of RSA on the main gaming floor*”²;
- (c) an allegation that he had seen a pop star in a private gaming room “beyond drunk” on more than 20 occasions;³ and
- (d) allegations regarding time spent gambling.

Culture shift not at expense of compliance

6 Echo and The Star accept and acknowledge that there has been a cultural shift at The Star as part of the revamp of its brand and the renovations at the casino, which has increased the focus on customer service. However, that cultural shift has not in any way affected The Star’s approach to compliance with its legal and regulatory obligations. Mr Mullin gave evidence that this shift has not been at the expense of compliance which remains top of mind and is enforced on a very regular and rigid basis.⁴

7 The section 31 report acknowledged that The Star “*cannot be properly criticised for focusing on customer service and it does not necessarily follow that such a focus will result in the casino operator not complying with its obligations*”.⁵

8 For example, The Star cannot be criticised for matters such as a relaxation of the dress code at the casino.⁶ The dress code applicable to patrons of the casino and the removal of a requirement for a collared shirt in the private gaming rooms provides no objective basis for the assertion of a “massive cultural shift at the casino” or that there has been a relaxation in compliance with legal or regulatory obligations, including in relation to the responsible service of alcohol or responsible gambling.

¹ T177.16-17

² T177

³ T188.14-22

⁴ T524.41-45; T534.17-19

⁵ Section 31 report, page 107

⁶ T177.22-25

Responsible service of alcohol

9 The Star must not permit intoxication within the gaming area of the casino, or permit an intoxicated person to gamble in the casino.⁷ The Star commits an offence if it allows this to occur. Penalties of up to \$11,000 can apply. In addition, The Star’s employees must not permit an intoxicated person to gamble in the casino.⁸ An employee who allows this to occur commits an offence. Penalties of up to \$2,200 can apply.

10 The Star takes its obligations to comply with responsible service of alcohol laws extremely seriously. Mr Mullin gave evidence that as a licensed entity, The Star must ensure that its officers and employees are focused on compliance with their legal and regulatory obligations.⁹ Mr Mullin accepted that “one of the significant compliance issues is responsible service of alcohol at a casino”.¹⁰ Any change to internal compliance policies and procedures will not come without public scrutiny.¹¹

11 Mr Roach gave evidence that he had a personal duty to ensure that security was called to remove an intoxicated patron from the premises.¹² Mr Roach excused his failure to comply with The Star’s responsible service of alcohol policies on the basis that:

- (a) it could be “up to a three-hour wait on a busy morning”¹³ before security would come to remove a patron from the premises; and
- (b) he did not make formal complaints about intoxicated patrons because “if I started doing a formal complaint every time, I’d be doubling my workload filling out paperwork.”¹⁴

12 In relation to the allegation in paragraph 11(a) above, Mr Roach conceded in cross-examination that on an average day, the response time for security is between one and

⁷ Section 163(1) of the *Casino Control Act 1992* (NSW).
⁸ Section 163(2) of the *Casino Control Act 1992* (NSW).
⁹ T521.3-8.
¹⁰ T521.21-24
¹¹ T521.7-8.
¹² T190.35-37
¹³ T181.23
¹⁴ T182.5-8.

two minutes.¹⁵ The security officer's assessment of intoxication is to prevail in the event of a disagreement as to the level of intoxication.¹⁶

- 13 As highlighted during the Section 31 Investigation, table games and other operational staff who deal with customers who may have consumed alcohol are required to undertake The Star's internal RSA training. All Security and Food & Beverage staff of The Star, in addition to undertaking the internal RSA training to ensure they are aware of The Star's policies and procedures, are required to have an NSW Office of Liquor Gaming and Racing accredited RSA certificate.¹⁷ Accordingly, table games staff are trained to call for the assistance of Security staff to make an assessment as to whether a patron is displaying any sign of intoxication in order to ensure that the most appropriately qualified person is available to assess whether the patron does appear intoxicated.
- 14 In relation to the allegation in paragraph 11(b) above, The Star's employees are responsible for complying with The Star's responsible service of alcohol policies. The prospect of having to complete paperwork does not excuse an employee's failure to comply with The Star's obligation to serve alcohol responsibly, particularly in circumstances where it is an offence to allow an intoxicated person to gamble in the casino. Echo and The Star do not condone such behaviour.

Pop star

- 15 Mr Roach also gave evidence in response to questions about the Channel 7 program on 22 February 2012 which referenced "*the pop star who hit the tables every night for months*" that he had seen that pop star in a private gaming room "*beyond drunk*" on more than 20 occasions between late 2010 until late 2011.¹⁸
- 16 The Inquiry has objectively reliable evidence before it to establish that Mr Roach's allegation that the pop star in question "hit the tables every night for months" is false and also that the other allegation should not be accepted..

¹⁵ T190.23-26

¹⁶ T190.35-46

¹⁷ Section 31 report, pages 85-86

¹⁸ T188.14-22

Responsible gaming

- 17 Mr Roach alleged that a person was seen gambling for a 72-hour stint on one occasion,¹⁹ and that it was “not uncommon” for people to be seen gambling for 24 to 48 hours.²⁰ Echo and The Star submit that there is no evidence to support the allegation that it is “not uncommon” for people to be seen gambling for 24 to 48 hours, and that such assertion is grossly exaggerated.
- 18 Without accepting the truth of this allegation, it is also to be noted that time spent gambling is not the sole determinant for compliance with The Star’s responsible gambling obligations.²¹ Mr Mullin gave evidence that there are some experienced players who are capable of playing for a lengthy period of time while maintaining concentration and remaining able to make rational and responsible decisions.²² The player’s behaviour is the first and most important determinant – it is a matter for the dealer or their supervisor to recognise behavioural patterns that may indicate that the person is acting irrationally.²³
- 19 Mr Mullin was also referred to an article in the Australian Financial Review dated 20 March 2012 setting out the Authority’s view on the length of play and responsible gaming, which stated that “*the Authority did not expect the casino to impose a universal arbitrary time limit on patrons...indicators of problem gambling vary from person to person and the casino and special employees have obligations to take an individualised approach to preventing problem gambling.*”²⁴
- 20 The section 31 report published in December 2011 indicated that three employee surveys conducted by The Star indicated that “*staff responded very favourably to the question whether they felt informed about the responsible gambling policies and practices*”.²⁵ Furthermore, the section 31 report states that “*the work done by the original Responsible Gambling Manager, is, within the resources available to her,*

¹⁹ T184.19-36.

²⁰ T186.37-38

²¹ T525.18-19

²² T525.33-38

²³ T526.6-7; T525.40-44

²⁴ T549.1-27

²⁵ Section 31 report, page 94.

excellent...and has a principled approach to ensuring, to the extent she can, that patrons at The Star gamble responsibly".²⁶

Available findings

- 21 Echo and The Star agree in general terms with Counsel Assisting's submission in relation to the rules of Baccarat, and note that the Authority approved an amendment to rule 12.1. The reporter on the Channel Seven broadcast on 21 February 2012 stated "*one claims even gaming rules are being relaxed*".²⁷ In the context of that broadcast, a viewer would have been left with the impression that The Star was engaging in improper conduct or conducting gaming contrary to gaming rules approved by the Independent Liquor and Gaming Control Authority by allowing players to change or remove their bets. Echo and The Star submit that the Inquiry ought to find that there was no evidence to justify that imputation and further that the reporting was sensationalist.
- 22 Echo and The Star submit that the Inquiry should find that Mr Roach's evidence is exaggerated, and that Mr Roach is an opportunist who was seeking to pursue his own agenda against The Star in the media. This submission is supported by the fact that:
- (a) he initiated contact with Channel 7;
 - (b) there is objectively reliable evidence to refute the allegation in relation to the pop star, or at the very least, suggest that it has been grossly exaggerated;
 - (c) an allegation about a change in dress code provides no objective basis for the assertion of a "massive cultural shift at the casino" or that there has been a relaxation in compliance with legal or regulatory obligations
 - (d) the media's suggestion that The Star is relaxing its compliance with responsible gaming and service of alcohol obligations is largely based on gaming rule changes that favour players, and a disgruntled ex-employees' own failure to comply with The Star's training and internal policies and procedures. This does not objectively support a claim of impropriety on the part of Echo or The Star.

²⁶ Section 31 report, page 99.

Mr Boyd

- 23 The Star and Echo agree with, and adopt, the submissions of Counsel Assisting as to the allegations raised by Mr Boyd and the findings which ought to be made in respect of such allegations.
- 24 In cross-examination, Mr Sullivan QC suggested to Mr Boyd that “*contrary to what others may have reported to you, that Star has not denied union representation in any disciplinary hearing in the last 12 months.*”²⁸ The Inquiry noted that it had no evidence before it regarding this suggestion.²⁹
- 25 The Star and Echo have subsequently provided the Inquiry information supporting this position, including:
- (a) work practices of The Star with regard to representation at disciplinary meetings;
 - (b) internal inquiries of Echo and The Star’s staff regarding any allegations of denial of union representation at a disciplinary meeting between 1 July 2011 and 12 April 2012; and
 - (c) details regarding any investigations by United Voice of any allegations of denial of representation at a disciplinary meeting between 1 July 2011 and 12 April 2011.
- 26 The Inquiry ought to find that there is no basis for any assertion that employees of The Star have been denied union representation in disciplinary hearings.

²⁷ T183.43-44

²⁸ T301.44-47.

²⁹ T303.12-13.

Ms Soraya

- 27 The Star and Echo agree with, and adopt, the submissions of Counsel Assisting as to the allegations raised by Ms Soraya and the findings which ought to be made in respect of such allegations.
- 28 The Star and Echo wish to supplement Counsel Assisting's submissions in two respects only.
- 29 The Star and Echo agree with the concerns raised by Counsel Assisting about Ms Soraya's credibility. The Star and Echo submit that it follows that the Inquiry should not accept that all of the incidents described by Ms Soraya occurred (as referred to in paragraph 39 of Counsel Assisting's submissions). The fact that Ms Soraya received an apology in respect of one incident, or that certain incidents were recorded in Ms Soraya's "official" notebook, does not provide an objective basis for a finding that other incidents occurred, or that they occurred in the manner described by Ms Soraya.
- 30 Ms Soraya asserted on two occasions in evidence that Echo and/or The Star had improperly destroyed documents.³⁰ Ms Soraya's lack of credibility in respect of other matters, combined with the volume of material produced to the Inquiry by Echo and The Star to date, plainly supports that these assertions are false.

20 April 2012

Alan Sullivan QC
Counsel for The Star and Echo

King & Wood Mallesons
Solicitors for The Star and Echo

³⁰ T326.22-24; T329.41-42

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

OUTLINE OF SUBMISSIONS OF ECHO ENTERTAINMENT GROUP LIMITED
AND THE STAR PTY LIMITED
IN RELATION TO TERM OF REFERENCE 2 – MS WARD AND MR CULPAN

Introduction

- 1 These submissions of Echo Entertainment Group Limited (“**Echo**”) and The Star Pty Limited (“**The Star**”) only address the matters raised in the evidence of Ms Elizabeth Ward and Mr Greg Culpan at the public hearing conducted between 2 and 11 April 2012.
- 2 Echo and The Star agree with, and adopt, the submissions of Counsel Assisting in respect of the evidence given by Ms Ward and Mr Culpan but wish to supplement Counsel Assisting’s submissions in the following respects.

Available findings

- 3 This section sets out the findings which it is submitted the Inquiry ought to make in relation to Ms Ward’s and Mr Culpan’s evidence. The evidentiary support for these findings is further developed in the remaining sections of these submissions

Ms Ward and Mr Culpan’s public campaign against The Star

- 4 In relation to Ms Ward’s and Mr Culpan’s allegations about the substance in the bathroom, complaints and reporting, “chronic drug use” by senior managers, responsible service of alcohol, responsible gaming and culture issues, the Inquiry ought to make a finding that the evidence of Ms Ward and Mr Culpan:
 - (a) lacks credibility;
 - (b) involved apparent collusion between them;

(c) was designed to take advantage of the publicity surrounding the cessation of Mr Vaikunta’s employment to further their own public campaign against The Star; and

(d) demonstrates that they are “conspiracy theorists”.¹

5 Such a conclusion is supported by the evidence before the Inquiry, the matters identified in the submissions of Counsel Assisting and in these submissions, in particular that:

(a) Ms Ward and Mr Culpan appeared on the same television programs together;²

(b) Ms Ward gave evidence that she and Mr Culpan discussed their individual grievances with The Star with each other;³

(c) Ms Ward and Mr Culpan sat together during the hearing and were present when evidence was being given by other casino staff, including Mr Robins. Mr Culpan maintained that he did not question Mr Robins at all about his comments to Ms Ward regarding the substance in the bathroom, because Mr Culpan had a “*certain amount of credibility in what Elizabeth told me*”.⁴ This suggests that Mr Culpan reposed blind faith in the truth of Ms Ward’s allegations. Mr Culpan’s reliance on Ms Ward likely influenced the allegations Mr Culpan raised before the Inquiry; and

(d) Mr Culpan gave evidence that Ms Ward was the source of some of the information he reported to senior officers of Echo and The Star⁵.

6 The credible and clear evidence before the Inquiry from current employees of Echo and The Star (including Mr Houlihan and Mr Robins) should be preferred over the (at best) hearsay evidence of Ms Ward and Mr Culpan and their conspiracy theories.

¹ T406.23-26
² T406.36-38
³ T406.40-42
⁴ T424.39-T425.5
⁵ T415.4-8

Ms Ward's allegations

7 The Inquiry ought to find that Ms Ward's allegations against The Star were motivated by two key factors:

- (a) Ms Ward's personal antipathy for a particular high roller and The Star (including Table Games management) which resulted from a number of incidents involving Ms Ward and the high roller in 2010,⁶ and
- (b) Ms Ward's resentment towards The Star, which resulted from her failure to secure a gaming manager position and from her inaccurate view that her partner, Mr Vail, had been "forced" into departing The Star.⁷

8 For the reasons stated in paragraphs 63, 69, 70-73 and 75-78 of Counsel Assisting's submissions and paragraphs 15, 18-20, 26-27 and 30-34 below, The Inquiry also ought to make a finding that Ms Ward's allegations against The Star, including those allegations published by the media, should be rejected on the basis that:

- (a) they are sensationalist, unsubstantiated, lack any factual basis and are motivated by Ms Ward's antipathy and resentment of The Star; and
- (b) her evidence is inherently unreliable following her concession that nothing could be done to allay her concerns that there had been a 'cover-up' in relation to the 'substance in the bathroom' incident⁸.

Mr Culpan's evidence

9 Based on the evidence before the Inquiry and the matters set out in paragraphs 74-76, 79-85 and 90-95 of the submissions of Counsel Assisting and paragraphs 16-17, 22-23, 26-28 and 30-32 below, the Inquiry ought make a finding that Mr Culpan's allegations against The Star are sensationalist and not supported by objectively reliable evidence. In this respect, the Inquiry ought also make findings that:

⁶ T343.41-T344.34; T345.19-25; T347.4-24; T347.26-31; T349.21-32; T350.15-T351.35

⁷ T395.3-5; T396.11-13

⁸ T368.29-32

- (a) contrary to Mr Culpan's statement to Channel Seven, Mr Culpan's evidence is consistent with there being a culture of reporting matters at The Star, and that matters which are raised will be appropriately investigated;
- (b) Echo's and The Star's investigations into Mr Culpan's allegations were comprehensive, appropriate given the nature of the allegations and the amount of detail provided by Mr Culpan and that it is difficult to conceive of anything more which could have been done by The Star to improve its response to Mr Culpan's allegations; and
- (c) Mr Culpan made statements to the media knowing them to be false and damaging to The Star, some of which were made at a time he continued to be employed by The Star.

10 The Inquiry should also make a finding that Mr Culpan's evidence is inherently unreliable, in circumstances where:

- (a) Mr Culpan failed to question the accuracy of allegations raised by Ms Ward;⁹
- (b) Mr Culpan continued to rely on Ms Ward's allegations in circumstances where they were clearly contradicted by objectively reliable evidence¹⁰ (including the evidence given by Mr Robins);
- (c) Mr Culpan's continued blind adherence to the truth of Ms Ward's allegations was plainly unreasonable; and
- (d) Mr Culpan admitted that nothing would change his mind about there being a cover up in relation to the substance in the bathroom.¹¹

Media reporting of Ms Ward's and Mr Culpan's allegations

11 The Inquiry ought to find that the reporting generally of Ms Ward's and Mr Culpan's allegations was sensationalist and not supported by objectively reliable facts.¹² In particular, the Inquiry ought to make a finding that Channel Seven's reporting of Ms

⁹ T424.39-T425.5

¹⁰ T420.25-34

¹¹ T428.22-26

¹² See paragraphs 7, 9, 24 and 32 of these submissions.

Ward's and Mr Culpan's allegations on 20, 21 and 22 February was sensationalist and not supported by objectively reliable facts.

- 12 Further, and based on the evidence before the Inquiry and the matters set out in paragraphs 92-95 of the submissions of Counsel Assisting and paragraphs 26-28 below, the Inquiry should also make a finding that, from 2010 to date:
- (a) there has been no investigation by Tabcorp or The Star or Echo (or otherwise) into allegations of "widespread substance use" by casino executives or senior casino management; and
 - (b) there is no evidence to support allegations of "chronic drug abuse" by senior managers.
- 13 In this respect, sworn evidence given by Mr Mullin and Mr Houlihan establishes that Mr Vaikunta is the only current or former casino executive or senior manager who has been the subject of drug allegations, which was comprehensively investigated and found to be unsubstantiated. Unsubstantiated allegations against one casino executive/senior manager do not, in any way, suggest that there were, or is, allegations of "widespread" substance use or chronic drug abuse among senior executives or senior management at Echo or The Star.
- 14 Accordingly, the Inquiry ought to find that the Sydney Morning Herald and Channel Seven's reporting of such allegations was sensationalist and not supported by objectively reliable facts.

The substance in the bathroom

- 15 Echo and The Star agree with, and adopt, the submissions of Counsel Assisting in respect of Ms Ward's allegations regarding the substance in the bathroom incident. There is nothing in the evidence raised by any person during this Inquiry that could support a finding of a cover up or that the substance was an illegal drug.
- 16 In addition to Ms Ward, Mr Culpan also stated that he did not believe Mr Robins' sworn evidence that he had not actually tasted the substance and had just made the

statement as a joke.¹³ Mr Culpan did not ask Mr Robins anything about his statement, or whether in fact the event had actually occurred.¹⁴ Instead, Mr Culpan stated that his reason for disbelieving Mr Robins' evidence was based on him having "*a certain amount of credibility in what Elizabeth told me,*" rumour and scuttlebutt.¹⁵

17 Mr Culpan's evidence about Mr Robins should be rejected. Mr Culpan's assertions suggest that Mr Culpan gave unreasonable and undue weight to Ms Ward's allegations, even in the face of objectively reliable evidence which contradict her allegations. The Inquiry ought to prefer the clear and reliable evidence of Mr Houlihan and Mr Robins in relation to these issues.

18 There is objectively reliable evidence before the Inquiry to indicate that a number of the allegations made by Ms Ward in respect of the substance in the bathroom incident should be rejected out of hand. For example:

(a) Mr Houlihan gave evidence that the surveillance department's review of the available footage was deficient as the surveillance department had primarily focused on the patrons within the pit, rather than each and every person (including employees of The Star) who had access to the pit.¹⁶ Mr Houlihan indicated that the high roller had been seen leaving the pit 10 hours before the substance was found.¹⁷

(b) Ms Ward asserted that she requested Mr Gould review "*who else had been into the bathroom*".¹⁸ Mr Gould's evidence to the section 31 investigation indicated that Ms Ward in fact requested he confirm whether the high roller was the only patron playing in the pit at the relevant time.¹⁹ Mr Gould's evidence is consistent with Mr Houlihan's statement that the surveillance staff focused their review on patrons. Mr Houlihan and Mr Gould's evidence demonstrates that Ms Ward was solely motivated by her antagonism towards the high roller, rather than any legitimate desire to ensure that the matter was properly investigated.

¹³ T424.33-40

¹⁴ T424.28-37

¹⁵ T424.39-T425.5

¹⁶ T489.24-38

¹⁷ T500.42-47

19 Ms Ward’s allegation that she and her partner, Mr Vail, lost their jobs as a result of her pursuing the substance in the bathroom incident ought to be rejected.²⁰ Ms Ward continued to work for some months after the incident and made an application for a new position, confirming in writing her commitment to The Star’s “policies, rules and procedures in all areas”.²¹ It was not until the day that Ms Ward was informed that she had not secured a position as a gaming manager (some four months after the incident) that Ms Ward ceased to attend work at The Star.

20 Ms Ward’s allegations regarding the substance in the bathroom incident supports Mr Boyd’s evidence to the section 31 investigation that a number of staff on the gaming floor “are into conspiracy theories about what was happening at the casino.”²²

Allegations about complaints and reporting

21 Echo and The Star agree with, and adopt, the submissions of Counsel Assisting with respect to the evidence given by Mr Culpan about the complaints and reporting processes at The Star.

22 Mr Culpan’s evidence indicates that Echo and The Star take the complaints process and staff reporting obligations extremely seriously. Mr Culpan’s allegations were addressed thoroughly and comprehensively by senior employees of Echo and The Star. Mr Culpan agreed that:

- (a) Mr Power and Mr Anderson emphasised with him the importance of raising concerns on a number of occasions;²³
- (b) Mr Anderson told Mr Culpan that if any retribution occurred as a result of raising concerns about The Star, Mr Anderson would like that to be reported because it was unacceptable;²⁴ and
- (c) employees had an obligation to report any concerns in relation to breaches of internal policies, suspicious behaviour and illegal and undesirable conduct.²⁵

¹⁸ T360.32-40

¹⁹ MFI #8.

²⁰ Mr Vail applied for, and received, a voluntarily redundancy in February 2011: T369-370.

²¹ T393.21-23

²² T281.7-8

²³ T464.14-21

²⁴ T464.23-32

- 23 As noted in paragraph 81 of Counsel Assisting's submissions, there is nothing to suggest that Mr Culpan informed Channel Seven that his allegations regarding complaints and reporting were historical and did not reflect the current complaints and reporting processes at The Star. It is apparent that Channel Seven failed properly to investigate Mr Culpan's allegations to determine whether they remained valid and relevant. Channel Seven's report of Mr Culpan's allegations in a manner suggesting they reflected current practices was plainly unfair to The Star.
- 24 It follows from what appears above that Mr Culpan's allegations in relation to complaints and reporting ought to be rejected. To the contrary, the Inquiry ought to find that:
- (a) Echo and The Star encourage staff to report grievances or concerns;
 - (b) staff do not face retribution if they report matters; and
 - (c) consistent with the findings above, Mr Culpan's allegations are sensationalist and are not supported by any objectively reliable evidence, particularly in circumstances where a number of his allegations had been investigated and turned out to be wrong.²⁶

Other drug allegations

- 25 Echo and The Star agree with, and adopt, the submissions of Counsel Assisting with respect to other allegations of drug use raised by Ms Ward and Mr Culpan.
- 26 There is simply no objectively reliable evidence to support any of Ms Ward or Mr Culpan's allegations of drug use by executives or senior management, or "chronic drug abuse", at The Star.
- 27 The evidence of Mr Houlihan and Mr Mullin is clear. Mr Vaikunta was the only current or former executive (or senior manager) of Echo or The Star in 2010 who has been investigated in relation to allegations of drug use. The allegations were found to be unsubstantiated.

²⁵ T464.39-43

²⁶ T418.25-28

28 During his evidence, Mr Culpan raised a new allegation about Mr Vaikunta's alleged drug use based on Mr Vaikunta's behaviour at a staff forum.²⁷ Mr Culpan claimed that he did not report this allegation because it "*was something that you don't like to raise about your managing director*".²⁸ The Inquiry ought to reject Mr Culpan's evidence in relation to this allegation. Further, Echo and The Star submit that it is inconsistent with Mr Culpan's own evidence:

- (a) Mr Culpan had previously reported similar allegations to Ms Aloizos in the past;²⁹
- (b) Mr Culpan previously raised allegations about Mr Vaikunta being intoxicated on the premises;³⁰
- (c) Mr Culpan was aware that there were a number of possible ways in which he could lodge a complaint without fear of retribution, including by making an anonymous complaint via E-Tips³¹ or directly approaching the Independent Liquor and Gaming Authority;³² and
- (d) Mr Vaikunta was no longer employed by Echo by the time of Mr Culpan's further follow-up meeting with Mr Power on 9 February 2012.³³ Even assuming (which Echo and The Star deny) that Mr Culpan's evidence is true, there was no basis for withholding such allegations after Mr Vaikunta ceased to be employed by Echo.

29 The Inquiry should reject Ms Ward's evidence that she believed Mr Vaikunta was under the influence of drugs³⁴ and had a social drug habit with the high roller.³⁵ Ms Ward's evidence lacks credibility in circumstances where she herself gave evidence that she reported matters of concern to her but failed to report these allegations,³⁶ and admitted that she had no evidence of actually witnessing Mr Vaikunta taking any

²⁷ T455.36-T456.10

²⁸ T458.39-40

²⁹ T462.31-38

³⁰ T459.1-5

³¹ T444.43-T445.22

³² T447.30-33

³³ T458.42-45

³⁴ T374.21-24

³⁵ T362.9-10

³⁶ T379.1-14; T396.8-11; T398.19-27

drugs.³⁷ In addition, these submissions suggest that her approach to the evidence she has given to the Inquiry, and the information she has provided to the media, is sensationalist.

Responsible gaming, responsible service of alcohol and culture change

30 Echo and The Star agree with, and adopt, the submissions of Counsel Assisting in respect of the allegations about responsible gambling, responsible service of alcohol and culture change.

31 Mr Mullin gave evidence that any cultural change at The Star has not come at the expense of compliance, which remains top of mind at the casino.³⁸ The section 31 report also indicated that The Star *“cannot be properly criticised for focusing on customer service and it does not necessarily follow that such a focus will result in the casino operator not complying with its obligations”*.³⁹

32 Further, the section 31 report considered the role and activities of The Star’s Responsible Gambling Managers in some detail. Ms Baker’s work was described as *“excellent”*, the report indicated that Ms Baker *“takes appropriate action based on the information she has and has a principled approach to ensuring, to the extent she can, that patrons at The Star gamble responsibly”*, and that *“She is integral to The Star’s approach to responsible gambling.”*⁴⁰

33 It follows from the above, together with the matters raised in paragraphs 98, 100, 102 and 104 of Counsel Assisting’s submissions, that Ms Ward and Mr Culpan’s allegations about responsible gambling, responsible service of alcohol and culture change are sensationalist and ought not be accepted.

No culture of bullying, harassment or sexual harassment

34 It follows from the matters outlined above, coupled with other objectively reliable evidence before the Inquiry (and previously, the section 31 investigation) that Ms Ward’s allegation that there is a culture of bullying, harassment or sexual harassment

³⁷ T375.25-27

³⁸ T521.5-8

³⁹ Section 31 report, page 107

⁴⁰ Section 31 report, page 99

ought to be rejected.⁴¹ For example, Mr Boyd, the Secretary of United Voice NSW, gave evidence to the section 31 investigation that:

*The issues raised by some in relation to harassment and bullying are something of an “art form” these days when in fact they are just managers directing persons to do their job. There has been nothing significant.*⁴²

*Most of the members that our officials deal with are into conspiracies, mainly those members on the gaming floor. This occurred particularly when the new management had a shake up of middle management.*⁴³

35 Furthermore, the Inquiry ought to find that the reporting of Ms Ward’s allegations of a “culture” of bullying and harassment incorrectly suggested that bullying and/or harassment is tolerated by Echo and The Star. The evidence given by Mr Mullin, Mr Houlihan and Ms Marshall regarding the circumstances surrounding the cessation of Mr Vaikunta’s employment with Echo, plainly contradicts this allegation.

26 April 2012

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Counsel for The Star and Echo

Justin Williams

Counsel for The Star and Echo

King & Wood Mallesons

Solicitors for The Star and Echo

⁴¹ T371.34-41

⁴² T281.35-39

⁴³ T280.34-38

UNITED VOICE

New South Wales Branch



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 Branch Secretary Mark Boyd
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24 April 2012

Dear Ms Furness,

The Star's submissions regarding Mark Boyd

The correspondence from The Star dated 18 April 2012 raises a number of issues it is necessary to address:

Representation at meetings – The Star's work practices

It is accepted that The Star has policies in place with respect to the right of workers to be represented at meetings. What United Voice disputes is whether it follows these procedures at all times.

Allegations of denial of Union representation

We respectfully suggest that any inquiry conducted by The Star can hardly be considered an objective review. Whilst we are not in a position to dispute the outcome of the inquiries made to their Human Resource staff, we dispute the objectivity of such a review and therefore the legitimacy of its conclusions.

As stated in my correspondence of 5 March 2012 and my testimony of 4 April 2012¹ we have had numerous allegations raised by members about denial of union representation by The Star management. Some of those allegations have been put directly to The Star by way of:

- statutory declarations relating to a dispute before Fair Work Australia, and
- verbally during a dispute conference before Fair Work Australia; and
- verbally during a unfair dismissal conciliation before Fair Work Australia; and
- by way of a number of emails and letters.

United Voice is happy to provide what written evidence of this if the inquiry requests it.

There have been further allegations made by members to the Union which the Union has chosen not to take further for a variety of reasons, often stemming from the members' reluctance to make the matter

¹ T290.16-20, T291.31-34

formal. In reviewing our records this denial of union representation is a new theme and did not exist to its current extent prior to July 2011.

Allegations of denial of representation raised by United Voice

As stated above the assertion that there have been occasions where members have been denied representation is not limited to Paul Rontidis.

Denial of representation at non-disciplinary hearings

The Star is aware that United Voice raised this issue not just in the emails of 9 September and 16 September 2011 but also in the dispute conference held on 25 October 2011 before Commissioner Raffaelli. United Voice contends that representation should have been offered and granted where requested because The Star was attempting to implement a fundamental change to the terms and conditions of employment of members working part time, namely requiring them to be available to work every day of the week at all hours of the day.

Submission

As specified in my testimony on 4 April 2012 the difference between my statements to the s.31 inquiry in July 2011 and to Channel 7 in February 2012 came about because of a shift in the nature of the relationship between the Union, its members and The Star.² I stand by my statements on both occasions however I reject the framing of my July 2011 comments by Mr Sullivan and Mr Wigney.

In July 2011 I made a statement that Union members had formed a view of the new management but it was largely speculative. As I explained in my testimony³ there was little evidence to support this speculation at the time. However the fact that something is unable to be proven does not make it untrue. It just limited my capacity to respond formally. I did not at the time of the original enquiry see merit in reporting something unlikely to be actioned due to lack of evidence that would further damage our relationship with The Star. However, as I suggested in my later television interview, members' concerns appear to have been borne out.

At the special inquiry it was suggested to me that in July 2011 I had said something to the effect that bullying and harassment was a phrase that could be overused by workers. As a responsible Union we have an obligation to educate our members about their rights and how to identify legitimate bullying and harassment issues and how to deal with them if and when they occur.

Let me make it clear that when bullying and harassment occurs it is a real and serious issue. My response was a reflection of the lack of evidence at my disposal in July 2011 combined with the unwillingness of concerned individuals to allow their cases to be cited.

The third comment I made in July 2011 was that there was not an unusual level of issues coming out of The Star for an organisation of its size. However, as demonstrated by the chart attached, the number of issues has increased following those comments. Contributing to the increase in disputation has been The Star's new way of engaging in rostering.

² T290.4-6

³ T281.2-8

As specified in my testimony three core themes brought about the change in my opinion, namely a number of incidents where members were denied union representation; a fundamental shift in the attitude taken by The Star with respect to rostering and an expressed increase in fearfulness amongst employees.

The Star has changed elements of how it rosters employees.⁴ It has attempted to make all part time staff available at all times, as opposed to the limited availability most had previously, enabling them to plan their lives, families, alternative work and study commitments. It has made significant changes to the way in which people on the preferred shift arrangement work, giving them less certainty about their start and finish times. It has significantly increased its part time workforce. The Star has consistently sought to increase its rostering flexibility, which has the effect of making work at The Star increasingly insecure. This has had a detrimental impact on our membership and given rise to complaints. In October of last year we had a dispute conference before Fair Work about the enormous impacts these changes were having on our members. Historically The Star provided greater numbers of full time positions, and was more respectful of members non-work commitments. This stance has changed considerably since new management has come on board.

United Voice officials have also noted that workers at The Star were increasingly reporting being too afraid to raise issues. Whether this fear is warranted cannot be objectively measured. However the perceived risk of reporting increased insofar as it was being reported to me. More people were calling the Union or speaking with our officials and saying they felt too intimidated to raise issues or concerns. Some of these concerns were communicated through phone calls to the Union, some were in face to face conversations with members and non-members who were asserting their reservations about reporting issues. Some people also expressed concerns about being perceived as active within the Union.

In summary I was called to provide opinions by both the s.31 inquiry in July 2011 and Channel 7 in February 2012 and I did so on the basis of my understanding of what was happening at The Star. This understanding was based on my discussions with Union officials and reports of conversations between our officials and members and non-members on site. The change in my opinion over the period came about as a result of an increase in disputation, an increase in calls made to the call centre regarding The Star, incidents where members reported being denied union representation, the implementation of new rostering protocols and an increase in reported fearfulness of employees of The Star.

If you need any further clarification please let me know.

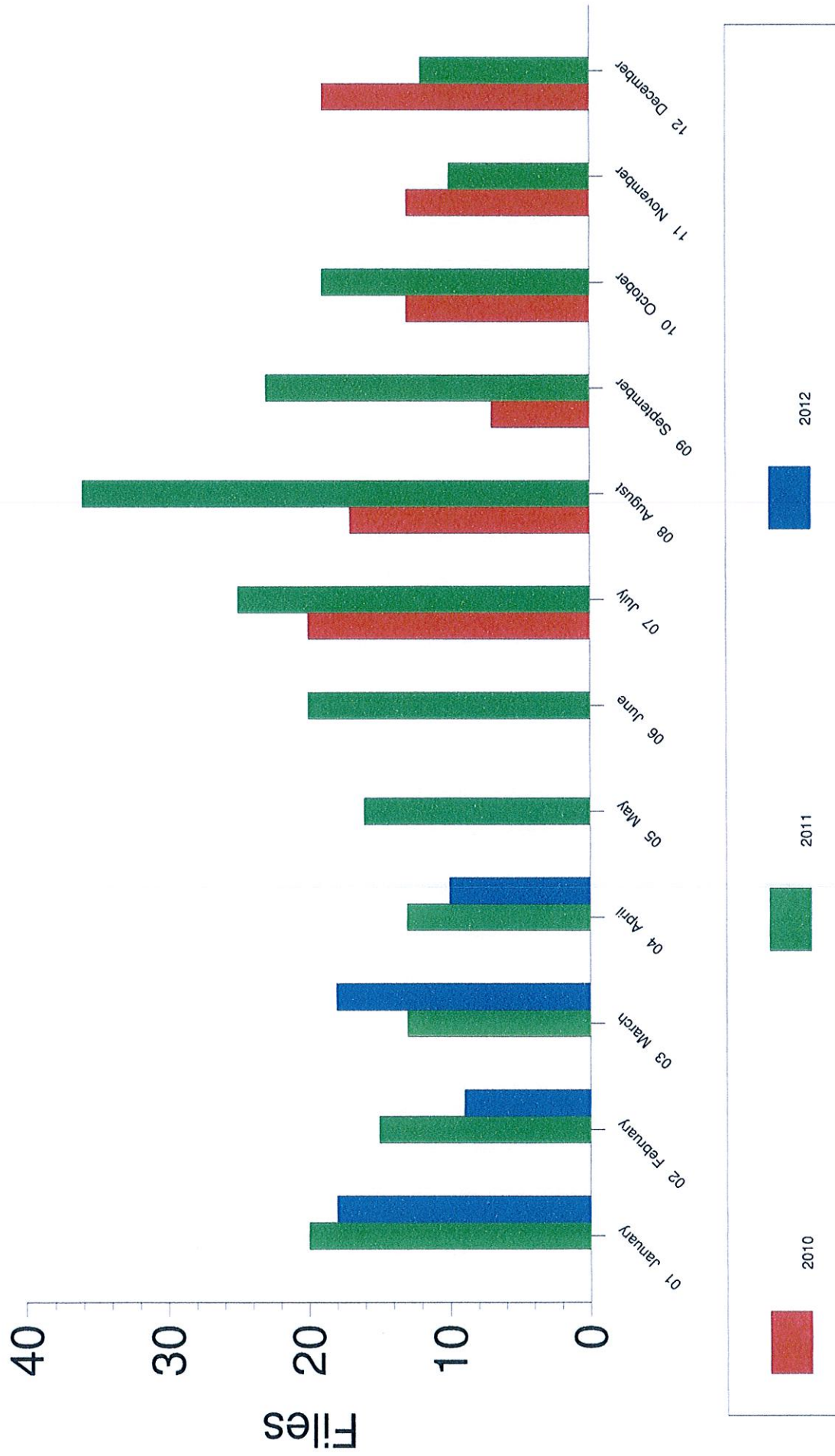
Yours sincerely



Mark Boyd
Branch Secretary

⁴ T293.1

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**SUBMISSIONS ON BEHALF OF CHANNEL SEVEN
IN RESPONSE TO PARAGRAPHS 43 TO 56 OF SUBMISSIONS
OF COUNSEL ASSISTING THE INQUIRY**

A. INTRODUCTION

- 1 These submissions are made on behalf of Channel Seven in response to a portion of the written submissions of counsel assisting an inquiry under s.143 of the *Casino Control Act 1992* (“the Inquiry”).
- 2 The portions of counsel assisting’s submissions (“CAS”) provided to Channel Seven comprise paragraphs 43 to 56, which are submissions concerning Mr Boyd, the Secretary of United Voice NSW, the union that covers liquor, hospitality and other employees, including employees at the casino.
- 3 Channel Seven does not, of course, make submissions on behalf of Mr Boyd, nor as to his evidence before the Inquiry. Channel Seven does however make submissions in relation to paragraph [56] of CAS which contend that the Inquiry would be entitled to make a finding that the reporting of Mr Boyd’s allegations (that is, by Channel Seven) was “sensationalist” and not supported by objectively reliable facts.
- 4 Channel Seven’s submissions below fall into two parts:
 - (a) An assessment of the *reporting* of Mr Boyd’s allegations (as opposed to the correctness of those allegations) is not a matter on which the Inquiry ought to make findings, having regard to its terms of reference; and
 - (b) If despite the foregoing submission, the Inquiry is to make a finding, it ought not make a finding that the reporting of Mr Boyd’s allegations was sensationalist, but that it was proper reporting having regard to the material available to Channel Seven at the time of the reporting.

B. ASSESSMENT OF REPORTING OF ALLEGATIONS NOT A MATTER FOR THE INQUIRY

- 5 The Inquiry, as Channel Seven understands matters, is established by the Casino, Liquor and Gaming Control Authority appointing Ms Gail Furness SC to preside over an inquiry to be held under s.143(1) of the *Casino Control Act 1992*. The scope of the

Inquiry is provided by the Amended Terms of Reference of 26 March 2012, which relevantly provide that the Inquiry is to inquire into, and report upon, the following matters:

- the circumstances surrounding the cessation of the employment with Echo Entertainment Group of Mr Sid Vaikunta as Managing Director of The Star casino, including in relation to Echo Entertainment's obligations under the *Casino Control Act 1992* and otherwise to inform the Authority of relevant information;
- any issues relevant to the Authority's responsibilities under the *Casino Control Act 1992* that arise from information received by the Authority or the inquiry in relation to The Star casino since 2 December 2011; and
- any matters relevant to the above.

6 As part of the Inquiry, public hearings were held into the following:

- the response by The Star and Echo Entertainment Group to the allegations against the former Managing Director;
- whether there were any attempts to influence the response by The Star and Echo to those allegations; and
- certain allegations made publicly against The Star since 2 December 2011.

7 The allegations made by Mr Boyd in his interview with Channel Seven, in his capacity as Secretary of United Voice NSW, may readily be seen to be relevant to the second point on which the Inquiry is to report (information received ... in relation to The Star casino since 2 December 2011), because that interview was certainly in relation to The Star casino, and certainly came to the attention of the Authority or the Inquiry, at the earliest on 22 February 2012. It also falls within the third point on which public hearings were to be held.

8 However, and not surprisingly, it is the *allegations* (or "information" as it is referred to in the second point) which are to be the subject of inquiry, report or hearing as the case may be. The Inquiry is not established to inquire into the manner in which those

allegations were reported by the media. Nor could it be said that the manner, nature, character or quality of the reporting of such allegations (or "information") is a matter "relevant" to any of the other matters upon which the Inquiry is to inquire or report. To be relevant to the Inquiry, a matter must affect in some fashion the probabilities of the existence of a fact or state of affairs which bears upon a matter which is the subject of inquiry. Any finding (which would necessarily be in the nature of an expression of opinion) by the Inquiry into the quality of the reporting of Mr Boyd's allegations would not have any bearing whatever upon the matters the subject of inquiry, and so do not fall within the third point either.

- 9 Stepping back from the precise terms of reference, it is difficult (in fact, impossible) to see how an assessment by the Inquiry of the quality of the reporting could be a matter which would be of the faintest interest to the Casino, Liquor and Gaming Control Authority, in the discharge of its statutory obligations. The authority is not a censor, nor charged with regulating the media. There is not the faintest suggestion that Channel Seven has been party to any impropriety, nor that it had itself attempted to influence any particular person or entity. Absent such suggestions – and there are none - the way in which Channel Seven chose to deal with the information provided to it by Mr Boyd was, quite simply, outside the scope of the matters which the Inquiry was charged to consider.
- 10 For the Inquiry to accept the invitation of counsel assisting, and make findings as to the nature or quality of the reporting by Channel Seven would be to travel beyond its terms of reference. Further, the particular area into which this would take the Inquiry is one which should be entered only with considerable caution, namely the right of free speech, whether exercised by the media or any other person. For reasons developed in the final part of these submissions, Channel Seven contends that its reporting was in fact wholly appropriate and in the public interest. However, the more important point is that the Inquiry has no business passing judgment upon such matters, when such matters are irrelevant to the subject-matter of the Inquiry.

C. CHANNEL SEVEN'S REPORTING WAS APPROPRIATE

- 11 If contrary to the foregoing, the Inquiry does consider making findings as to the quality of Channel Seven's reporting of Mr Boyd's allegations, it is submitted that the

only finding reasonably open to the Inquiry is that Channel Seven's reporting was appropriate in the circumstances.

- 12 It is important to bear those circumstances clearly in view. First, Channel Seven was not, itself, conducting an inquiry, but providing a *news service* to the public. Second, in the present matter (CAS, paragraph 45), it was *the union* which contacted Channel Seven, and which offered to make Mr Boyd available for interview. Mr Boyd was its Secretary. The fact of Mr Boyd being put forward by the union, and the fact of the office he held, entitled Seven to assume that (a) he knew about matters touching upon the affairs of the union and (b) he was authorised to speak on behalf of the union. He was, in short, a source whom Channel Seven was entitled to treat as reliable and authoritative. Further, because of the office he held, and the circumstance of being nominated by his union to speak to Channel Seven, what he had to say was inherently news-worthy if it related to matters of public interest. Once the subject matter of what he had to say is taken into account (illegal drug taking, sexual harassment, bullying, intimidation, all taking place at the State's only casino), then the public interest in such matters is clear, as indeed the holding of this very Inquiry shows.
- 13 Channel Seven does not make any submissions as to whether, having regard to the evidence of Mr Boyd to the Inquiry, and such other evidence as may be available to the Inquiry, the allegations made by Mr Boyd as broadcast by Channel Seven on 22 February 2012 have been made out. That is not Channel Seven's role.
- 14 However what Channel Seven does contend, and strongly, is that the evidence of Mr Boyd to the Inquiry confirms that he did indeed *make the claims in question* to Channel Seven, *on behalf of the union in question*. Indeed counsel assisting's submissions appear to recognise as much (CSA, paragraph 45). It would be remarkable if matters were otherwise.
- 15 There is no evidence before the Inquiry that Channel Seven was in a position to know that Mr Boyd's statements were incorrect (if indeed they were). Nor is there any evidence from Mr Boyd or elsewhere, that Mr Boyd's statements were taken out of context by Channel Seven, or otherwise misconstrued as part of their broadcast. Nor is there any evidence that Channel Seven broadcast its news story in bad faith, or as a result of any ulterior purpose, or otherwise than as part of its ordinary news service.

- 16 Not only is there no evidence of such matters, there is not even a suggestion of such matters in the submissions of counsel assisting.
- 17 If the Inquiry is to enter upon the making of findings in this area, then once it is accepted (as it is submitted it must be, on the evidence) that:
- (a) The relevant union (which United Voice NSW was) had approached Channel Seven, and put forward its Secretary to make statements on its behalf; and
 - (b) The secretary had indeed made such statements; and
 - (c) Channel Seven broadcast those statements in good faith; and
 - (d) The subject-matter of the statements was a matter of interest to the public,
- then for the Inquiry to criticise Channel Seven for broadcasting them to the public would be a remarkable thing. It would involve the Inquiry finding that Channel Seven had some overriding duty to “second guess” or “vet” an apparently authoritative and fully identified source, speaking on matters of public interest, when the very fact that the allegations were being made was itself a matter of interest and concern to the public.
- 18 Such an approach would involve the Inquiry dictating to the media the approach it should take to deciding questions of news-worthiness, and ultimately could amount to an attempt to muzzle public discussion of matters of public interest.
- 19 It is also quite unreal, having regard to the demands of currency, news-worthiness and compression that are part and parcel of a television news service. Far from exposing media such as Channel Seven’s news service to criticism, news items like the one broadcast on 22 February 2012 show the role that the media has in permitting a variety of matters to come to light, which otherwise might have remained unknown to the public, and unknown to those who are charged with protecting the public interest in relation to gaming in New South Wales.
- 20 Viewed in the circumstances applicable to a television news service, the approach taken by Channel Seven was appropriate and timely, permitting the public to be aware

that a senior union official was making serious allegations about the conduct of the State's only casino. If there is to be any finding as to the nature and quality of Channel Seven's news broadcast, it ought to be that it played an important and appropriate part in the complex business of bringing into the public gaze the operations of that casino.

20 April 2012

Kieran Smark SC, counsel for Seven Network (Operations) Limited



Our ref: RJT

20 April 2012

RESPONSE TO PROPOSED SUBMISSIONS TO ILGA INQUIRY UNDER S. 143 OF THE CASINO CONTROL ACT RELATING TO MS ANNIKA SORAYA.

Nationwide News' response to the proposed submissions can be summarised as follows:

1. The Article published by the Sunday Telegraph was accurate and fair and is supported by the uncontested facts before the Inquiry. Any suggestions to the contrary is without any factual basis and misrepresents the legal position in relation to discrimination and bullying. The unchallenged incidents support Ms Soraya's claims of bullying and discrimination.
2. The inquiry does not have the power to make findings of the type sought in the submissions, nor should they be made against a person who are neither the subject of or otherwise involved in the inquiry and whose conduct or otherwise is not the subject of its terms of reference.
3. Counsel assisting the inquiry has no logical or factual basis for the submissions against Nationwide News and its journalist. In particular the journalist was not called to give evidence presumably because any evidence or information she could provide would not disturb Ms Soraya's uncontested evidence or be otherwise relevant to the Inquiry.
4. Further the submissions are flawed as the factual matrix shows that it is conceded the incidents referred to by the witness did in fact occur and on their own would justify an objective finding of bullying and discriminatory behaviour. The witnesses demeanour or credibility is irrelevant to these findings given it is not contested the incidents occurred. Therefore her conclusions about those incidents are 'objectively reasonable'.

Accordingly Nationwide News strongly objects to the unfounded and illogical criticism of its journalist.

There is absolutely no basis or power for the findings sought by the submissions nor should they be made. Should they be made and accepted by Inquiry they will be beyond any protection afforded to the Inquiry.

The Facts

Nationwide News submits that the submissions do not carefully or fairly examine the facts relating to the article and the incidents described.

Indeed the Inquiry has no evidence of the circumstances of publication other than Ms Soyara's evidence set out in the transcript which confirms that Ms Soraya made the

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claims, that the Article was an accurate record of her claims and that she initiated contact with the journalist.

In particular the submissions summary of the article at paragraph 25 is inaccurate. That paragraph does not fairly describe the material set out in the article preferring to focus on Ms Soraya's claims and totally ignoring the extensive material in the article setting out Star Casino's response to those claims. The article fairly and prominently includes the Casino's responses and denials.

Immediately after Ms Soraya's claim the article records the Casino's denials:

"But a spokeswoman for The Star said this was the first they had heard of Ms Soraya's allegations - and that they would not tolerate the behaviour she alleges. "The Star denies any suggestion she was the subject of bullying or intimidating behaviour during her training and no complaint has ever been made until now, he said"."

We note that the Casino's response to the Sunday Telegraph is in fact false.

Complaints were made by Ms Soraya which are acknowledged in the submissions. Paragraph 39 of the submissions notes the Casino was aware of her complaints, they were investigated (although the investigations manager gave no evidence in relation to them) and Ms Soraya had received an apology for one incident.

The false statement made by the Casino to the journalist is not adverted to at all by the submissions.

The article in the paragraph following the Casino's denial includes the Casino's statement that Ms Soraya was dismissed which was clearly made by the Casino to diminish the veracity of her complaints.

The article in its headline also prominently includes the Casino's denial of the claim. Paragraph 40 of the submissions fails to refer to these qualifying words.

Ms Soraya's opinions were correctly attributed to her in the article. The transcript shows she concedes she made the statements and expressed the opinions reported. A proper analysis of the factual material referred to in the article shows they are substantially true.

A stern but misguided criticism of the Article is that they were only eight incidents not "dozens". The submissions at paragraph 28 assert that Ms Soraya's complaints were limited to about eight "specific" incidents however she did complain that there were more than eight incidents in the short eight week period she was employed. It is not contested that she told the journalist there were 'dozens' of incidents indeed that is the exact evidence she gave to the Inquiry and which was not challenged either in examination or by seeking information or evidence to the contrary.

Ms Soraya's unchallenged evidence was:

- "I didn't realise that she (Ms Furness SC) would have wanted each and every incident documented and brought to her attention in detail. I did outline that there were dozens of incidents, there were many... " (T. 310;40-45)

- The statement about her being romantically involved with some other female staff member was repeated "on numerous occasions". (T. 322;39-47)
(T. 329;20-24)
- She was asked about her "nash" (nationality) repeatedly "up to 50 times per week". (T. 322;11-15)
- She felt she was constantly being racially profiled by the repeated questions about her nationality including "what breed are you?" (T. 327;28-33)
(T. 328;1-5)

This supports both Ms Soraya's contentions there were numerous incidents on the eight week period and certainly that there were more than the eight specific incidents.

The submissions concede:

1. In a period of 8 weeks there were 8 "specific" incidents.
2. That it is accepted that to the extent there are further incidents they were "in a similar vein".
3. Ms Soraya's made contemporaneous notes of the incidents, made some complaints and in respect of one incident received an apology.
4. The incidents occurred which must be taken to have occurred include:
 - (a) Ms Soraya being asked in her initial interview about her "racial background".
 - (b) A trainer referring to "lebs" or "lebo's" in her presence suggesting that would be used to describe them.
 - (c) A fellow trainee subjected her to embarrassing jokes.
 - (d) Another employee asking her if she would become romantically involved with another female staff member.
 - (e) A reference to her having "bladder problem".
 - (f) A cleaner saying to her as she passed male toilets: "Go on in, you look like a bloke".
 - (g) The same cleaner objecting her to vacuuming around her in a distressing manner.
 - (h) A staff member asking her to put washing away.

The submissions do not cast doubt on the above factual matrix. No evidence was called to the contrary. Indeed it was not put to her by Counsel assisting that her version of the facts was false, fabricated, conflated or inaccurate.

Of particular note are the exchanges in the transcript which show concerning the interview and the training incident. (Annexure "A" to these submissions.)

The exchanges extracted in Annexure "A" establish that Ms Soraya was uncomfortable about being asked about her racial background whilst applying for employment, she found the comments made by the trainer deeply offensive and she did not complain at the time because the trainer had told them not to repeat what was said in training with the implicit threat of loss of employment.

At no stage did the Inquiry challenge this evidence or suggest she was not offended or intimidated.

The examination of Ms Soraya was limited to suggesting that the words were not directed to her, the persons to whom they were directed were not offended and she had failed to make a timely complaint notwithstanding the implicit threat made by the trainer. It was not put to her the event did not occur which no doubt would have been put if there was any available evidence to the contrary. The examination seems more concerned to establish no complaint was made by her at the time of the incident notwithstanding the disturbing evidence that the trainer made an implicit threat of termination should a complaint be made by anyone present.

Evidence is sufficient to found an objective complaint of Bullying and discrimination

What is abundantly clear is that these events took place whatever Ms Soraya's views or conclusions were of them and that the Inquiry has no information to the contrary.

Notwithstanding that the submissions about the series of incidents state that they could not found a complaint of unlawful harassment or bullying and are therefore "objectively unreasonable".

That submission sits uncomfortably against the only available evidence namely:

- (a) Casino management asking Ms Soraya in during her interview for employment what her racial profile was;
- (b) During induction, the Casino's trainer saying to two of the new employees:
"Here at Star City we don't worry about political correctness too much, so I hope you two blokes don't mind if I refer to your mob as Lebs or Lebos."
- (c) Frequent queries from colleagues about Ms Soraya's racial background "nash" or "breed";
- (d) Colleagues making jokes Ms Soraya found embarrassing, including:
 - (i) a fellow trainee commenting as Ms Soraya headed to the bathroom "look at the princess gone off to brush her teeth."

- (ii) a colleague asking friends to approach Ms Soraya while she was on duty to ask her about her national origin;
 - (iii) a colleague arriving to provide coverage during a toilet break asking "bladder problems?"
 - (iv) colleagues asking on a number of occasions whether Ms Soraya would like to be romantically involved with another female staff member.
- (e) A cleaner at the Casino saying as Ms Soraya walked past the men's toilets "Go in, you look like a bloke";
 - (f) The same cleaner at the Casino vacuuming the area around Ms Soraya excessively;
 - (g) Another employee in the Casino changeroom saying "Hey Annika, pick up my dirty washing off the floor".

Further the submission is inconsistent with bullying and discrimination laws. Ms Soraya's conclusions are irrelevant to the application of those laws and these multiple events are sufficient to objectively found a complaint of bullying and discrimination.

Bullying

Workplace bullying is a well-recognised health and safety risk. There is no statutory definition of bullying conduct, but the commonly cited definition published by WorkCover NSW states:

Bullying is repeated unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety. Bullying can occur wherever people work together. Under certain conditions, most people are capable of bullying. Whether it is intended or not, bullying is an OHS hazard.

A broad range of behaviours can be bullying, and these behaviours can be direct or indirect.

Examples of direct forms of bullying include:

- verbal abuse,
- putting someone down,
- spreading rumours or innuendo about someone,
- interfering with someone's personal property or work equipment.

Single incidents

A single incident of unreasonable behaviour may have the potential to escalate into bullying and therefore should not be ignored as being insignificant. Single incidents can

still create a risk to health and safety. However this matter was not limited to either a single incident or even eight specific incidents.

She was subjected to verbal abuse, constant questioning about her "nash", a put down by a cleaner and repeated innuendo about her sexuality.

Repeated and cumulative behaviour of the type she described, and which embarrassed and offended her, could objectively found a complaint of bullying and constitute a breach of the *Work Health and Safety Act 2011* (NSW) by the Casino and individual workers.

The fact her employer required at least one miscreant to apologise demonstrates it was alive to the potential risk of this type of behaviour being found to be in breach.

Anti-discrimination laws

Sexual discrimination and harassment

Under state and federal sex discrimination statutes, a person engages in sexual harassment if the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or engages in other unwelcome conduct of a sexual nature in relation to the person harassed, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

The sex, age, sexual preference, religious belief, race, colour, or national or ethnic origin of the person harassed are relevant to the test of what a reasonable person would have anticipated.

Exposing an employee to a hostile working environment, characterised by sexual remarks, gestures, posters and the like, has been long recognised as a form of sex discrimination: *Bennett v Everitt* (1988) EOC 92-244.

In *Horne v Press Clough Joint Venture* (1994) EOC 92-556 it was found that:

[I]t is now well established that one of the conditions of employment is quiet enjoyment of it. That concept includes not only freedom from physical intrusion or from being harassed, physically molested or approached in an unwelcome manner, but extends to not having to work in an unsought sexually permeated work environment.

Significantly it is not necessary for the unwelcome conduct to be directed at the complainant for the work environment to be hostile: *G v R and Department of Health, Housing and Community Services* [1993] HREOCA 20.

The repeated questions about whether Ms Soraya would like to be in a relationship with another female staff member were clearly sexual in nature. It is also clear this was unwelcome and disturbed her quiet enjoyment of her employment and was said to offend and humiliate her. These repeated statements similarly provide an objective basis for a complaint of a breach of sexual discrimination laws.

Race Discrimination

A racist remark can constitute an act of race discrimination within the meaning of the *Race Discrimination Act 1975* (Cth): *Qantas v Gama* [2008] FCAFC 69.

The Full Federal Court found that denigration of an employee on the grounds of that person's race can have the effect of impairing that person's enjoyment of his or her right to work or to just and favourable conditions of work, which breaches the Act.

The unwelcome conduct need not be directed at the complainant for the work environment to be hostile or for it to be an act of race discrimination. It merely needs to be in the complainants presence.

The series of questions and comments about Ms Soraya's racial origin, the use of racial discrimination by the trainer causing her distress and offence, could similarly provide an objective basis for a complaint of a breach of race discrimination laws.

Demeanour irrelevant to the objective basis for complaint

Her demeanour in giving evidence is only used to 'raise clear concerns' about the credibility and reliability of the "conclusions she draws and the opinions she expresses". However it is not expressed so as to cast doubt on the truth of the underlying events which occurred from which Ms Soyara's conclusions were drawn. To our knowledge, no other information is available to the Inquiry which casts doubt on the events.

The above facts demonstrate Ms Soraya has an objective basis for complaints based on bullying, sexual harassment and racial discrimination.

Submissions relating to Nationwide News not founded on any demonstrable facts

The submission relating to Nationwide News and its journalist are founded on the premise that the incidents do not support her claims of racist bullying and workplace harassment and that her conclusions from the incidents are 'objectively reasonable'.

That premise is not available to the Inquiry.

No other facts are relied on or are available to the Inquiry to support the submissions.

The submission's flawed conclusion is used as the springboard for the improper and misconceived attack on the journalist who wrote the article. The Article is incorrectly described in the submissions and no attempt has been made by the Inquiry to establish the circumstances relating to the publication by contacting the journalist.

The above facts support the conclusions that Ms Soraya at a minimum has an objective basis for claims of bullying, discrimination and harassment. Further it is understandable a person subjected to an interview and 'training' of this type may interpret all subsequent events in the context she appears to have done so. At a minimum her conclusion that all the incidents were of that nature is understandable and sufficient for her to commence proceedings.

It is abundantly clear that Nationwide was justified in accepting the information from Ms Soraya as it remains totally unchallenged. Her opinions based on the events are clearly open to her even if they are not opinions others may hold based on the same information. The law recognises that a comment can be expressed notwithstanding the exaggerated or even prejudiced the language of the opinion.

The only information in the article that is incorrect is the information provided by the Casino that no complaint was made by Ms Soraya.

The flawed conclusion in paragraph 42 is of grave concern to Nationwide News as in its view it displays a lack of understanding of the potential legal and practical effect of the events. The submissions are therefore not reasonably capable of supporting the conclusion reached, based on any logically probative material and are contrary to the facts.

They failed to point to any evidence from Nationwide News or the journalist concerning publication or of any other person involved in the events involved preferring to engage in speculation. Ms Soraya's demeanour in the witness box is used to impute that Nationwide News acted capriciously and improperly despite the acceptance of the underlying events.

It is also apparent from the transcript that Ms Soraya did not wish to be called to give evidence and was in dispute with the Inquiry over the expense and inconvenience of her attendance.

The extent of Ms Soraya's distress at being called to give evidence is clear at transcript 327;20-21 where she states: "I am getting very annoyed. I'm really very upset". Counsel assisting acknowledged this by stating: "You obviously want to be somewhere else and so do we". This no doubt affected her demeanour before the Inquiry but that remains irrelevant to the determination of the real issue before the Inquiry. The reasonableness of at least some of Ms Soraya's conclusions about her working environment are supported by the facts.

Submissions on Power

The Inquiry has the power under Section 143 (3) to inform itself on any matter in such manner as the person deems appropriate. This freedom does not give the Inquiry a totally unfettered power of inquisition, submission or decision making.

A submission and any decision or finding must ordinarily be based on evidence which is reasonably capable of sustaining that decision. This principle is of special importance in inquires of the nature of licence hearings.

Section 143 does not overcome the need for the Inquiry to gather relevant information on a matter or make findings supported by the available information. It is not a licence to engage in speculation.

A minimum requirement of procedural fairness is that the decision-maker must have based his or her findings on fact and the ultimate decision upon some probative evidence. This requirement also extends to Counsel assisting making public submissions which affect the rights and reputations of individuals. The rationale for this was explained by Deane J in *Minister for Immigration and Ethnic Affairs v Pochi* 1979 44 FLR 41 at 67 :

It would be both surprising and illogical if, in proceedings before a statutory tribunal involving an issue of the gravity of deportation of an established resident, the rules of natural justice were restricted to the procedural steps leading up to the making of a decision and were completely silent as to the basis upon which the decision itself might be made. There would be little point in the requirements of natural justice aimed at ensuring a fair hearing by such a tribunal if, in the outcome, the decision maker remained free to make an arbitrary decision. If [the] decision, in such a case, were to be based on mere suspicion or speculation, the rules of procedure aimed at governing the process of making findings of material fact would involve no more than a futile illusion of fairness..... Implicit both in Diplock LJ's conclusion and in that well-established principle are both the requirement that findings of material fact of a statutory tribunal must ordinarily be based on logically probative material and the requirement that the actual decision of such a tribunal must, when relevant questions of fact are in issue, ordinarily be based upon such findings of material fact and not on mere suspicion or speculation.

It is clear that the Inquiry must base its findings upon some evidence, even though it need not be evidence which would be admissible in a court of law, they must be supported by material which has 'some probative value' namely 'material which tends logically to show the existence or non-existence of facts relevant to the issues to be determined'.

An Inquiry will be found to have engaged in jurisdictional error if there is no evidence to support its findings of fact. Further, the High Court in *Minister for Immigration – Rajamanikkam* (2002) 210 CLR 222 found that irrationality or illogicality in a decision-maker's fact-finding process can amount to jurisdictional error.

At a minimum before the Inquiry or Counsel Assisting would embark on a finding or submission adverse to any party, witness or other person unconnected with the Inquiry it would have to be satisfied that there was information that supported the finding or submission.

In this instance the Inquiry could not be so satisfied based on the information before the Inquiry and the manner in which the examination proceeded. Simply put the basic facts are not nor were they in examination disputed. It was accepted that the incidents occurred. Counsel Assisting the Inquiry at no stage put to Ms Soraya that her allegations were false indeed he only seeks to challenge her conclusions from those facts based on her demeanour in giving evidence.

However, her demeanour is irrelevant to whether the incidents could objectively find a complaint of bullying or other discriminatory behaviour. At no stage was it put Ms Soraya's that her conclusions from the incidents were unreasonable or fanciful. There was no challenge her truthfulness about the incidents or that she fabricated them or any other matter. Nor was it put that she did not hold the opinions expressed. The only basis for rejecting her opinions is her demeanour.

The submission states unfairly to the witness, given this was never put to her, that her conclusions of bullying and discrimination are objectively unreasonable.

Standing alone the incident whilst in training shows that any objective observer could and indeed is likely to conclude that the trainer engaged in discriminatory speech and

sought to avoid the consequences of that speech by threatening those present so they would not repeat the incident.

Further the Inquiry has no information from Nationwide News or the journalist and its information is limited to the uncontested evidence of Ms Soraya.

Despite the Casino's investigation officer being called he gave no evidence on these matters, nor were any other employees called in relation to the incident. Ms Soraya's evidence confirms that the relevant article faithfully records the substance of her allegations. The training and interview incidents are sufficient to support Ms Soraya's view concerning the workplace environment which was published in the Article.

Accordingly there is no substratum of material which would support the submission made against Nationwide News and its journalist and the Inquiry has no power to receive or act on it. To do so would be procedurally unfair.

Submissions are beyond the terms of reference

The extent to which the Inquiry may act is established by taking into account the particular statutory function being performed, the nature of the issues to be decided, the character of the tribunal and the general tenor of the statutory provisions appointing the Inquiry including the relationship between the Inquiry and the Authority. The precise relationship is defined by the terms of reference of the Inquiry which is as follows:

The Inquiry is to inquire into, and report upon, the following matters:

- *the circumstances surrounding the cessation of the employment with Echo Entertainment Group of Mr Sid Vaikunta as Managing Director of The Star casino, including in relation to Echo Entertainment's obligations under the Casino Control Act 1992 and otherwise to inform the Authority of relevant information;*
- *any issues relevant to the Authority's responsibilities under the Casino Control Act 1992 that arise from information received by the Authority or the Inquiry in relation to The Star casino since 2 December 2011; and*
- *any matters relevant to the above.*

The allegations made by Ms Soraya clearly relate to the second term of reference. The Inquiry would be entitled to make findings about the information she has provided.

However, the Inquiry is not empowered to Inquire into any publication by the media generally or more specifically into the media's actions in preceding any particular publication. Any submission about the conduct of a journalist or newspaper concerning matters of public interest including any Casino are clearly well beyond the scope of the terms of reference of the Inquiry. It is simply not open to the Inquiry to investigate or report on the activities of any media outlet which publishes material relating to the conduct of the Eco Entertainment Group including the specific article referred to.

The Inquiry cannot acquire that power to itself and by its own motion by seeking to obtain information from person who may have provided information to the media at some prior time. It is not nor could it be suggested that the media was responsible for Ms Soraya's claims as the evidence shows she initiated contact with the journalist and has maintained her claims before the Inquiry. Neither term of reference extends to

empower an Inquiry into the reliability of material published in the media or a particular article.

The matters that are relevant to the Inquiry are limited to the authorities responsibilities under the Casino Control Act as set out in the sections 140 and 141 of the Act.

There is nothing in section 141 which confers any power or authority to investigate the media or any specific publication. Section 141 (1) provides the authority to engage such functions as are necessary or convenient to enable it to achieve its objects under this Act.

There objects are:

The objects of the Authority under this Act are to maintain and administer systems for the licensing, supervision and control of a casino, for the purpose of:

- (a) ensuring that the management and operation of the casino remains free from criminal influence or exploitation, and
- (b) ensuring that gaming in the casino is conducted honestly, and
- (c) (Repealed)
- (d) containing and controlling the potential of a casino to cause harm to the public interest and to individuals and families.

The proposed submission is that the Inquiry would be 'entitled' to make a finding that the reporting of Ms Soraya's conclusions was sensationalist and not supported by objective factors and invites the Inquiry to criticise the journalist. None of those matters can be properly described as falling under the rubric of any of the above objects and functions of the Authority or the Inquiry. Such a finding is not within the terms of reference, consistent with any objective under the Act or the Authorities function.

The Inquiry has no such power or 'entitlement' and if it were to publish the submission it would be acting beyond power and without the protection offered to the Inquiry.

Annexure A

Q. Was the fact that you were asked this during your interview a matter of concern for you?

A. It sure was, but what can you do?

.....

Q. I understand. But you could have said to them, "Well, I don't want to tell you what that is. What's that got to do with it?" You didn't do that?

A. Of course, that was an option, but given I was at the point of interview, I quite - I just - I quite couldn't bring myself to tell them to fuck off at that point.

Q. -- did you tell them that it wasn't appropriate, or that you shouldn't be asked about those things?

A. No, I didn't. I think it was quite obvious to them that I was perhaps a bit uncomfortable just with my delay in response, et cetera.

Q. You didn't say anything to those interviewing officers? Is this a matter that you ever took up with anyone else with a position of authority at the start, that is, a concern about this being raised with you in the initial interview?

A. At this point in time, I do not have any current recollection of that today to bring to your attention.

Q. The second specific matter that you told Ms Furness about previously was the one that we've already referred to a little bit in evidence, and that is where, during the induction program, the person that was running the training said:

Here at Star City we don't worry about political correctness too much, so I hope you two blokes don't mind if I refer to your mob as Lebs or Lebos.

Do you remember giving that evidence to Ms Furness?

A. Yes, I do, yes.

Q. May we take it that that statement, if it was made, was made specifically by reference to some other people in the induction group, not to you?

A. Yes. In regards to that statement being made, the trainer was standing at the time and he used his hands and pointed "you two blokes". So he definitely didn't point at me. I was offended all the same, but he did not --

Q. The comment obviously wasn't directed at you; is that right?

A. I mean, one might assume so, because it actually says "you two blokes", so I can only, you know, arrive at that assumption, naturally.

Q. Your recollection is that the officer pointed to two people that were in your induction training program – two blokes; is that right?

A. That's correct, and these two particular new recruits had - previous to his statement here in regards to, you know, where he refers to "mob as Lebs or Lebos", these two gentlemen, prior to this, had previously said that they had volunteered their racial ancestry background, whatnot, to the group on several different occasions. So, I mean, I know that the trainer would have known that they were of this particular racial group before he made these comments. He would have been fully aware of this.

.....

Q. This is something I think you already said offended you. You considered it inappropriate, did you?

A. I deemed his comments to be grossly, grossly inappropriate. I was deeply offended.

Q. Did you raise with either the person who made these comments, or to his or her superior or anyone in management at Star City, that you considered these comments to be grossly inappropriate or offensive?

A. Pardon, did I communicate my concerns to anyone?

Q. Yes.

A. At this point in time I cannot provide you a list of my recollections in regards to this matter as to perhaps whom I may or may not have communicated my concerns to in regards to this. However, I would say this to you: I believe that at the time we were told there was 14 positions available - a combination of casual, part-time and full-time positions - and we were also reminded on a few occasions throughout the induction period that there were some 300-plus applicants for these roles which they considered and further to that, the particular trainer in question reiterated on several occasions - **at least three occasions that I was there during this induction period, he said "We work on a basis of trust here and what we say in this room does not leave this room" and he said that on several occasions. So one would assume they may feel intimidated, you know, some of the new recruits may feel intimidated by his constant reminders, at least on three occasions, that I can recall during this period to not mention anything at all that was said in this room with him to anyone outside of the room who was not present at the time.**

Q. Is that a very long way of saying that you now, as you sit in the witness box, don't remember whether you took it any further, that is you reported it to anyone, but based on those things that you have just referred to that you don't think --

A. It may be the case that simply did it, that may have been the case, I'm just - sorry, I-

Q. You just don't remember?

A. I can't give you a precise exact recollection. This was - now it was two years ago and already I know that I was somewhat stunned by some of these events that happened during these inductions.

Q. What offended you about this particular incident is you considered that matters of race shouldn't be raised at all in this employment context. Is that a fair summary of what your concern or offence was related to?

A. Of course, because then you have 40 new security recruits in the room and the trainer stands up with this address, it really - I was somewhat thrown by it. I was really quite surprised.

Q. Even though it wasn't at all directed at you?

A. Look, I don't feel it was directed at me personally, that's - I don't feel that it was but at the same time I don't need to be Lebanese to feel offended by this creature's comments.

Inquiry pursuant to section 143 of the *Casino Control Act 1992*

Submissions on behalf of Ms Elizabeth Ward
re statements by Mr Basic, Ms Judd, Mr Erskine and Ms Lloyd

Mr Basic's statement

1. Mr Basic's statement is confined to a specific about sexual harassment and sexual assault. Ms Ward made no allegation that Mr Basic had engaged in sexual harassment or sexual assault.

Ms Judd's statement

2. Ms Judd asserts in her statement that Ms Ward gave evidence that "there were a 'number of complaints about Frank Basic' for sexual harassment". That is not a correct characterisation of Ms Ward's evidence.

Mr Erskine's statement

3. In light of Mr Erskine's statement, Ms Ward accepts that the conversation was not with Mr Erskine and apologises to Mr Erskine and the Inquiry for that error. She is not now able to identify the person with whom she had the conversation.

Ms Lloyd's statement

4. Ms Ward did not assert that the "Pop Star" was intoxicated. Instead, it was her evidence that "... on 90 per cent of those instances he was obnoxious and that it was possibly from intoxication".
5. There is also a real doubt as to the identity of the person to whom Ms Lloyd refers. It is not possible to conclude that she is referring to the same person as Ms Ward did in the course of her evidence. Instead, the identification is entirely dependent upon Ms Lloyd's assumptions and her statement does not set out any basis for testing those assumptions.

Conclusion

6. The statements of Mr Basic, Ms Judd and Ms Lloyd do not respond to the evidence given by Ms Ward. As such, they are of little, if any, assistance to the Inquiry.

19 April 2012



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Inquiry pursuant to section 143 of the *Casino Control Act 1992*
Submissions on behalf of Ms Elizabeth Ward and Mr Greg Culpan

Introduction

1. These submissions are made in relation to what are understood to be paragraphs 57 to 106 of the submissions of Counsel Assisting the Inquiry, relating to the second of the Inquiry's terms of reference and the third aspect of the Inquiry's public hearing (the "Inquiry's Hearing Terms"). These submissions assume that no other parts of the submissions of Counsel Assisting affect, or are relevant to, Ms Ward or Mr Culpan.

Paragraphs 57-78 of the submissions of Counsel Assisting - The substance in the bathroom

2. At the outset, it is plain from the broadcast of the items by Channel 7 that neither Ms Ward nor Mr Culpan made any public allegation that the substance in the bathroom was a drug. Instead, it was a journalist who, on the Channel 7 broadcast on 20 February 2012, described the matter as a "suspected drug scandal" (emphasis added). There can be no doubt that that characterisation was entirely accurate.¹
3. In that regard, the questioning of Ms Ward and Mr Culpan went beyond the scope of the Inquiry's Hearing Terms. Accordingly, no findings should be made in respect of either Ms Ward or Mr Culpan on this issue.
4. If that submission is not accepted, the following submissions are, respectfully, made.

¹ See, for example, Section 31 Report, p 67 (last sentence of second last paragraph)

5. It appears that the submissions of Counsel Assisting on this topic are directed to:
 - (a) Whether the substance found on 30 October 2010 in the bathroom between two pits in the inner sanctums of the Private Gaming Rooms was an illegal drug; and
 - (b) Whether there had been an attempt by some employee or employees of the Casino to "cover-up" the matter.
6. In relation to identification of the substance, Counsel Assisting may be correct in their submission that there is no material before the Inquiry to permit it to conclude that the substance was cocaine. There is, however, also no material before the Inquiry which would permit a conclusion that it was some particular substance.
7. In that regard there is conflicting evidence as to the description of the substance. The Section 31 Report records the descriptions of the substance found on 30 October 2010 as follows:²
 - (a) "white dust ... gathered together in a line";
 - (b) "a line of white powder ... that looked like the line had been scraped together with a card";
 - (c) "a powdered substance in a neat fine line, about 5-6 cms in length"; and
 - (d) "a powdered substance which was grey/white".
8. Additionally, Senior Counsel for the Casino made reference to:
 - (a) the "view" of a Mr Dos Santos that the substance looked like a "creamy grey white kind of beach sand, it looked granulated, not real fine";³ and

² Section 31 Report, p 67

³ Transcript, 10.4.12, p 403.16

(b) Mr Craig Dunn's observation that the substance was "grey/white in colour."⁴

9. Next, it appears that the evidence concerning the custody of the substance was that it was placed in a plastic bag on 30 October 2010 which was then placed in a locked tin in a drawer in the security duty manager's office.⁵ There is then no evidence as to who accessed the drawer or who had access to the draw. It is then not until 8 November 2010 that the plastic bag containing the substance was collected by Mr Houlihan, the Investigations manager.⁶
10. Consequently, there is doubt as to whether the substance that was tested by Mr Houlihan was the same substance that was originally found in the bathroom.
11. The Section 31 Report expressed no conclusion (and it is submitted that it was most proper for that Report not to do so) as to whether the substance was a drug or not. Instead, that Report criticised the casino operator's handling of the matter, observing:⁷

The Police or at least the Investigators should have been alerted when the substance was found, and the substance should have been photographed and properly secured. It should then have been given to the Police for testing.
[Emphasis added]

12. It is, respectfully, submitted that the Section 31 Report acknowledges that there is uncertainty as to whether the substance tested on 8 November 2011 was the substance that was found on 30 October 2010.
13. In the absence of any evidence establishing a chain of custody of the substance, it is respectfully submitted that the same uncertainty remains and

⁴ Transcript, 10.4.12, p 404.33

⁵ See Section 31 Report, p 67 (last paragraph) and p 69 (first paragraph)

⁶ Section 31 Report, p 69 (first paragraph)

⁷ Section 31 Report, p 70 (last paragraph)

that, therefore, no conclusion can be drawn as to the nature of the substance. To do so would amount to an exercise in speculation.

14. The only possible matter that can have been the subject of a "cover-up" is the identification of the substance found in the bathroom on 30 October 2010. For the reasons set out above, it is not possible, on the evidence available, to be satisfied as to what that substance was.
15. As there remains doubt over the identification of the substance, there must also be doubt as to whether there was a "cover-up". Accordingly, it is respectfully submitted that the only finding that ought to be made on this issue is the finding in the Section 31 Report. Namely, that the circumstances had the "appearance" of a cover up.⁸

Paragraphs 79-87 of the submissions of Counsel Assisting – Allegations about complaints and reporting

16. The submissions of Counsel Assisting and the questioning of Mr Culpan relating to his statement "*No matter what you report, no matter what you see, no matter what you say, nothing is ever done about it*" were focussed on establishing that the statement could not literally be true.
17. It is submitted that the statement as made and broadcast was not one that an ordinary, reasonable viewer would have construed as an absolute statement. Instead, it is respectfully submitted, that the ordinary, reasonable viewer would have acknowledged the plainly apparent hyperbole and regarded it in the way an ordinary, reasonable person regards the statement "I have told you a million times ..."

⁸ Section 31 Report, p 70 (last paragraph)

18. The submission that the statement was hyperbolic is supported by the following matters:
- (a) the issues raised by Mr Culpan with management were issues that he was raising on behalf of other staff because they feared retribution that may affect their careers if they had raised the allegations;⁹
 - (b) Mr Culpan was asked to raise issues by other employees because nothing had been done when they had raised them;¹⁰ and
 - (c) whilst some people within the Casino (specifically Ms Aliosis and Mr Power) were very responsive in dealing with issues raised, other areas of the casino, such as table games, do not respond to allegations made by employees.¹¹
19. No challenges were made to those parts of Mr Culpan's evidence.
20. It is respectfully submitted that there is no basis for making any finding that Mr Culpan's statement was "sensationalist". Not only was that allegation not put to Mr Culpan but the assumption underlying the approach adopted by Counsel Assisting, it is respectfully submitted, is misconceived by reason of the incorrect interpretation of the statement.

Paragraphs 88-96 of the submissions of Counsel Assisting - Other drug allegations

21. Two separate statements are dealt with in this section. The submissions of Counsel Assisting seek to treat them as related. It is respectfully submitted that it is incorrect to do so.

⁹ Transcript, 10.4.12, p 464.25

¹⁰ Transcript, 10.4.12, p 441.39-445

¹¹ Transcript, 10.4.12, p 453.5-25

Ms Ward's statement

22. The submissions of Counsel Assisting concerning Ms Ward on this issue are not in fact concerned with her statement "*It's party town in there, it's a permanent party.*" Instead, the submissions are focussed on her belief that Mr Vaikunta was under the influence of drugs on several occasions.
23. There was no allegation made by Ms Ward that was broadcast by Channel 7 that Mr Vaikunta was using drugs. Accordingly, the questioning of Ms Ward and the submissions of Counsel Assisting on that matter fall outside the Inquiry's Hearing Terms.
24. In any event, it is plain that Ms Ward's *public* statement only concerned the behaviour of guests that stepped over the boundaries of common decency.¹² There was no challenge to her evidence in that regard. Nor was there any challenge to her comparison of the culture at The Star to the culture she had observed at the other casinos in which she had worked.
25. There is, therefore, no basis for concluding that her statement was in any way sensationalist.

Mr Culpan

26. The submissions of Counsel Assisting relating to Mr Culpan's statement fail to consider the entire context his *public* statement. The relevant passage of the Channel 7 broadcast was:

"Reporter: And there were many breaches including *earlier* warnings to the casino of a culture of drug abuse amongst senior managers.

Are we talking chronic drug abuse?

Mr Culpan: We're talking chronic drug abuse yeah." [emphasis added]

¹² Transcript, 10.4.12, p 378.21-35

27. That Mr Culpan was referring to events which occurred in an "earlier" period was made plain by his evidence, where the first example he proffered concerned events in 2000.¹³
28. There was no *public* allegation made by Mr Culpan that Mr Vaikunta used cocaine. Accordingly, the questions to Mr Culpan and the submissions of Counsel Assisting concerning that matter are outside the Inquiry's Hearing Terms.

Paragraphs 97-106 of the submissions of Counsel Assisting - Allegations about Responsible Gaming, RSA and Culture Change

29. This section of the submissions of Counsel Assisting appears to criticise the evidence of Ms Ward and Mr Culpan but fails to articulate any reason why particular parts of their evidence should not be accepted.

Ms Ward's statements

30. In relation to Ms Ward's evidence concerning her taking action against patrons of the casino remaining at tables too long or otherwise being incapable of playing, or reporting that behaviour to her superiors, there was no challenge to such evidence. Nor was there any evidence to the contrary. Accordingly, there is no basis for any conclusion that her statement was in any way sensationalist.
31. The public allegations involving a foreign politician were first raised on 20 February 2012. They were, however, revisited on 21 February 2012. During the broadcast on that day, the Channel 7 reporter stated:

"But Seven News has obtained copies of the Casino's own internal incident reports, no less than 5 documents detailing the minister's actions.

¹³ Transcript, 10.4.12, p 455.7-17

The documents reveal the incident took place on a day early last year at about 7 o'clock in the morning. The politician who rose to become a Deputy Prime Minister simply wouldn't stop propositioning a dealer for gay sex.

32. Accordingly, there is independent corroborative evidence of Ms Ward's statements and, as such, there is no basis for dismissing Ms Ward's allegations as mere hearsay or being without substance.
33. Again, it is respectfully submitted that there is no basis concluding that Ms Ward's statements were sensationalist. It is not the statements of Ms Ward that are sensational but the conduct of a person in the position of the foreign minister.
34. In relation to Ms Ward's evidence concerning the pop star, there was no challenge to her observation that the person had behaved in an obnoxious manner on many occasions and that it was possibly as a result of intoxication. As there is no basis for doubting the veracity of her evidence in that regard, there is no basis for concluding that her statement was sensational.
35. As to Ms Ward's statements on the 7.30 Report, it is submitted that the context of the statement of Mr Vaikunta and Mr Tiffany plainly related to uniforms and how employees may be required to dress. That submission is reinforced when the balance of Ms Ward's statement is considered. She said:¹⁴

"I think that they [sic] came in thinking that they were the school mums. You know, here we are, we've got a bunch of rules and they were saying, "Forget the rules. We'll take care of that. Don't worry about it." ***They thought we were the ugly country town hicks. We got a bunch of ugly people working for us.***" [emphasis added]

36. It is respectfully submitted that it cannot sensibly be suggested that the ordinary reasonable viewer would have understood that statement to mean that new management was intending to ignore all rules applicable to the

¹⁴ <http://www.abc.net.au/7.30/content/2012/s3469446.htm>

casino. Nor would an ordinary, reasonable viewer have understood the statement to mean that the applicable dress regulations would be ignored. Instead, it is submitted that the ordinary, reasonable viewer would have understood the statement to mean that Mr Vaikunta and Mr Mullins were suggesting that whilst the intended uniforms and dress standards may go close to the limits of the requirement of any applicable rules, they would not breach them.

37. Consequently, there is nothing sensationalist about Ms Ward's statements on the 7.30 Report. Instead and to the contrary, dress standards are notoriously a matter of concern among employees of many organisations.
38. Finally, it is, with respect, absurd to suggest that Ms Ward ought to have raised concerns about the casino in her application for a gaming manager in March 2011. Apart from questions of relevance, criticising the intended employer will rarely, if ever, be conducive to such an application.

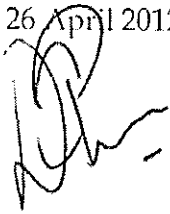
Mr Culpan

39. In relation to Mr Culpan's statement that high rollers "just wee under the table", Mr Culpan made it plain in his evidence that his knowledge in that regard was based upon reports of such events that he had seen.¹⁵ There was no challenge to the veracity of that evidence. As the allegation was not challenged it would be inappropriate to find that it was sensational when there is evidence available to substantiate it.
40. Mr Culpan's statements broadcast by Channel 7 or by the ABC on the 7.30 Report contained no reference to Mr Vaikunta at all, let alone any reference to Mr Vaikunta being intoxicated a number of times at the casino. The submissions of Counsel Assisting on this point are therefore outside the Inquiry's Hearing Terms. It is respectfully submitted that in those circumstances no finding should be made by the Inquiry on this point.

¹⁵ Transcript, 10.4.12, p 461.34

41. Further, none of the material relied upon in paragraph 102 of the submissions of Counsel Assisting concerning Mr Houlihan's actions were put to Mr Culpan. It cannot be ascertained whether the people to whom Mr Houlihan spoke were the same people who raised the issue with Mr Culpan. In such circumstances, it would be improper to make a finding that Mr Culpan's statements were sensationalist.
42. There is no criticism of Mr Culpan contained in paragraph 105 of the submissions of Counsel Assisting. Consequently, there is no basis upon which to conclude that his statements identified in that paragraph were sensationalist.
43. It is apparent from the matters set out above that the statements of Ms Ward and Mr Culpan (insofar as they are within the Inquiry's Hearing Terms) were either supported by independent material or were not the subject of challenge by Counsel Assisting or by any other party. As such, there should not be any finding that either Ms Ward's statements or Mr Culpan's statements were "sensationalist".
44. In relation to paragraph 106 of the submissions of Counsel Assisting, these are matters outside the Inquiry's Hearing Terms. They are not matters in respect of which public allegations have been made by either Ms Ward or Mr Culpan.

26 April 2012



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INQUIRY UNDER SECTION 143 OF THE CASINO CONTROL ACT 1993

Submissions of Mr Robins

1. Mr Robins has been provided with Counsel Assisting's submissions on the evidence of Ms Ward, which refer to his evidence (at [64(c)], [69]-[70]). He has been invited to make submissions in response if appropriate.
2. Counsel Assisting has submitted that Mr Robins' evidence that he did not taste the substance in the bathroom should be accepted (at [70]). Mr Robins agrees with that submission, and notes that the following further considerations make it even more improbable that he tasted the substance in the bathroom:
 - a) A number of other people were present with Mr Robins in the bathroom when he saw the substance, including a security duty manager, several security guards, the gaming manager with whom Mr Robins attended, and possibly a butler (Robins, T271.10-12; s 31 Report at pp 67-68). There is no evidence from any of the persons present that Mr Robins tasted the substance and no evidence that any of those persons told others that Mr Robins had tasted it. It is objectively unlikely that Mr Robins would have tasted the substance when a number of people were present, particularly without them later commenting upon it.
 - b) There is no objective basis for the assertions of Ms Ward and Mr Culpan that Mr Robins tasted the substance (Ward at T367.28-29; Culpan at T423.40). The assertions are mere speculation. Neither is in a position to say whether Mr Robins tasted the substance or whether he was joking when he later told Ms Ward that he had. Ms Ward did not point to any objective circumstance which made it unlikely or improbable that Mr Robins was joking.
3. Mr Robins has not had an opportunity to respond to the further evidence about him given by Mr Culpan (Culpan at T423-425). That further evidence should not be accepted. If it is proposed to be accepted, Mr Robins should first be given an opportunity to respond to it.

26 April 2012

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**SUBMISSIONS ON BEHALF OF CHANNEL SEVEN
IN RESPONSE TO PARAGRAPHS 79 TO 106 OF SUBMISSIONS
OF COUNSEL ASSISTING THE INQUIRY**

A. INTRODUCTION

- 1 These submissions are made on behalf of Channel Seven in response to a portion of the written submissions of counsel assisting an inquiry under s.143 of the *Casino Control Act* 1992 (“the Inquiry”). The portion of counsel assisting’s submissions (“CAS”) provided to Channel Seven comprises paragraphs 79 to 106, which are submissions concerning Mr Culpan and Ms Ward, two casino employees.
- 2 Just as with the submissions concerning the evidence of Mr Boyd (which have been the subject of prior submission by Channel Seven), Channel Seven does not make submissions on behalf of Mr Culpan or Ms Ward, nor seek to make submissions as to whether the allegations made by those persons have been made out by the evidence heard by the Inquiry.
- 3 However just as with the submissions concerning the evidence of Mr Boyd, Channel Seven takes issue with the three places in the present submissions where counsel assisting the Inquiry contends that the Inquiry would be entitled to make findings that Channel Seven’s reporting of the allegations of Mr Culpan and Ms Ward was “sensationalist”: CAS, paragraphs [87] (Mr Culpan), [96] (Ms Ward) and [106] (Mr Culpan and Ms Ward). A similar submission was made by counsel assisting in relation to Channel Seven’s reporting of the allegations of Mr Boyd: CAS, paragraph [56].
- 4 The repeated submission of counsel assisting on this issue seems to reflect a concern or even a preoccupation with the way in which allegations about the Casino were reported, rather than what is submitted to be the proper focus of the Inquiry, namely the allegations themselves (together with the other matters forming part of the Amended Terms of Reference).
- 5 Although the issues on which Channel Seven therefore makes submissions to the Inquiry are restricted, nevertheless, within their scope, they are matters of considerable significance from Channel Seven’s point of view. The repeated references by counsel assisting to the nature of the reporting by Channel Seven, and the repeated implicit

invitation to the Inquiry to make findings accordingly, may fairly be characterised as an attack on Channel Seven in its news reporting activities. That the Inquiry may be about to embark on a course of wholesale criticism of Channel Seven's reporting is surprising, having regard to the constitution of the Inquiry and the evidence before it. Yet that is what is presaged by the submissions of counsel assisting.

- 6 Faced with this attack, as in relation to Mr Boyd, Channel Seven's submissions are two-fold:
- (a) An assessment of the *reporting* of Mr Boyd's allegations (as opposed to the correctness of those allegations) is not a matter on which the Inquiry ought to make findings, having regard to its functions and terms of reference; and
 - (b) If despite the foregoing submission, the Inquiry is to make a finding, it ought not make a finding that the reporting of the allegations in question was sensationalist, but that it was appropriate, accurate and responsible reporting by Channel Seven, having regard to the circumstances of publication.
- 7 Having regard to the prominence given to this attack in the present portion of the submissions for counsel assisting, the first of these submissions is developed at greater length than was the case in relation to Mr Boyd. They apply in their extended form to the attack on Channel Seven's reporting of his allegations as well as the reporting of the allegations made by Mr Culpan and Ms Ward.

B. ASSESSMENT OF REPORTING OF ALLEGATIONS NOT A MATTER FOR THE INQUIRY

- 8 Channel Seven does not of course make the assumption that submissions by counsel assisting represent the views of the Inquiry itself – such an approach would be erroneous: *Police Integrity Commission v Shaw* (2006) 66 NSWLR 446, at [33] (per Giles JA, with whom Hodgson JA agreed, at [38]). Nevertheless, the submissions by counsel assisting give rise to a perceptible risk that the Inquiry is about to exceed its jurisdiction, to the extent to which the Inquiry makes the findings which counsel assisting contends are “open”: CAS, paragraphs [56] (Mr Boyd), [87] (Mr Culpan),

[96] (Ms Ward) and [106] (Mr Culpan and Ms Ward). “Open” in this sense appears to mean:

- (a) Appropriately a matter upon which the Inquiry might make a finding; and
- (b) A matter on which a particular finding (namely, that Channel Seven’s reporting was “sensationalist”) is supported by the evidence.

9 It will be seen that these two senses correspond with the two limbs of the argument now advanced by Channel Seven.

10 To appreciate why Channel Seven contends that the Inquiry ought not make any findings on the topic of the quality of Channel Seven’s reporting (or, more strongly, that it is not “open” to the Inquiry to make such findings) it is necessary to examine in some detail the constitution of the Inquiry.

Constitution of the Inquiry

11 The Inquiry is held under s.143(1) of the *Casino Control Act 1992* (“the CC Act”). The Act is part of a suite of legislation which includes the *Gaming and Liquor Administration Act 2007* (“the GLA Act”).

12 The general purposes of the CC Act are informed by s.4A(1) of the CC Act, which provides:

- (1) Among the primary objects of this Act are:
 - (a) ensuring that the management and operation of a casino remain free from criminal influence or exploitation, and
 - (b) ensuring that gaming in a casino is conducted honestly, and
 - (c) containing and controlling the potential of a casino to cause harm to the public interest and to individuals and families.

(“the CC Act objects”).

13 The CC Act contains provisions for the licensing of casinos (Part 2), supervision and control of casino operators (Part 3), licensing of casino operators (Part 4), the operation of casinos (Part 5), the exclusion of minors from casinos (Part 6), the

imposition of certain duties and levies on casinos (Part 8) and for the provision of systems of internal controls and accounting procedures at casinos (Part 9).

- 14 Part 10 of the CC Act deals with additional functions of the Independent Liquor and Gaming Authority constituted under the GLA Act, which is referred to as the “Authority” in the CC Act. Section 140 of the CC Act identifies the objects of the Authority under the CC Act, as follows:

“The objects of the Authority under this Act are to maintain and administer systems for the licensing, supervision and control of a casino, for the purpose of:

- (a) ensuring that the management and operation of the casino remains free from criminal influence or exploitation, and
- (b) ensuring that gaming in the casino is conducted honestly, and
- (c) (Repealed)
- (d) containing and controlling the potential of a casino to cause harm to the public interest and to individuals and families.”

It will be observed that the purposes for which the Authority is to maintain and administer systems etc. are the same as the CC Act objects, set out above.

- 15 The CCA then proceeds by s.141 to identify the *functions* of the Authority under the CCA:

“(1) The Authority has such functions as are necessary or convenient to enable it to achieve its objects under this Act.

(1A) (Repealed)

(2) Without limiting its functions under subsection (1), the Authority has the following specific functions:

- (a) at the direction of the Minister, to invite expressions of interest for the establishment and operation of casinos and applications for casino licences and to consider and determine those applications,
- (b) to consider and determine applications for other licences under this Act,
- (c) to keep under constant review all matters connected with casinos and the activities of casino operators, persons associated with casino operators, and persons who are in a position to exercise

direct or indirect control over the casino operators or persons associated with casino operators,

- (d) (Repealed)
 - (e) to advise the Minister on matters relating to the administration of this Act,
 - (f) to approve the games to be played in a casino and the rules under which such games are played,
 - (g) to approve gaming equipment for use in a casino,
 - (h) to approve the operating times of a casino,
 - (i) (Repealed)
 - (j) to inspect the operations of a casino and the conduct of gaming in a casino,
 - (k) to detect offences committed in or in relation to a casino and to prosecute offences under this Act.
- (3) The Authority may, with the approval of the Minister, acquire and hold land or an interest in land on behalf of the Crown for the purpose of providing a suitable location and premises for the establishment and operation of a casino.
- (4) In the exercise of its functions under this Act, the Authority is not required to observe the rules of natural justice (except to the extent that it is specifically required to do so by this Act).”

16 Section 143(1) confers a power on the Authority to arrange for the holding of inquiries “for the purpose of the exercise of its functions under this Act”. Section 143 relevantly provides:

- “(1) For the purpose of the exercise of its functions under this Act, the Authority may arrange for the holding of inquiries in public or in private presided over by a member of the Authority or by some other person appointed by the Authority to preside.
- (2) ...
- (3) The person presiding at an inquiry is not bound by the rules or practice of evidence and may inform himself or herself on any matter in such manner as the person considers appropriate.
- (4)
- (5) The person presiding at an inquiry is required to report to the Authority on the results of the inquiry and is subject to the control and direction of the

Authority with respect to the matters that are to be the subject of inquiry, the procedures to be adopted at an inquiry and the time within which the person is to report to the Authority.”

- 17 The present Inquiry was established by the Authority appointing Ms Gail Furness SC to preside over an inquiry, the scope of which is identified in the Amended Terms of Reference issued by the Authority on 26 March 2012. It would seem that that document records or reflects a direction from the Authority to Ms Furness under s.143(5) of the CCA with respect to the matters that are to be the subject of inquiry. The relevant portion of the Amended Terms of Reference has previously been set out in Channel Seven’s submissions in relation to Mr Boyd.
- 18 As the Authority is given the power to arrange for the holding of inquiries for the purpose of the exercise of its functions under the Act (s.143(1)) and not otherwise, and as those functions, in turn, are conferred on the Authority to permit it to achieve its objects under the Act, it follows that the proper scope of any inquiry under s.143 is informed by the objects of the Authority under the Act and by the scope of its functions under the Act. Further it may be noted that by s.4A(2) of the Act, all persons having functions under the Act are required to have due regard to the CC Act objects when exercising those functions.
- 19 For these reasons, it is submitted that there are multiple statutory restraints operating to preclude the Inquiry from engaging in fact-finding in relation to the nature and quality of media reporting of the allegations of Mr Boyd, Mr Culpan and Ms Ward:
- (a) **First**, such fact-finding is neither necessary nor convenient to enable the Authority to achieve its objects under the Act and so is not to be understood as being for the purpose of the exercise of the Authority’s functions under the Act, to the extent those functions are conferred by sub-s.141(1) of the Act.
 - (b) **Second**, such fact-finding cannot be seen as assisting in the discharge of any of the specific functions conferred on the Authority by sub-s.141(2), as further detailed below.
 - (c) **Third**, engaging in such fact-finding by the person presiding over the Inquiry would be conduct by a person having a function under the CC Act

and, as such, requires due regard to be had to the CC Act objects. As further detailed below, such fact-finding could not advance those objects.

- 20 As to the **first** of these (fact-finding outside requirements of sub-s.141(1)), the objects of the Authority are to maintain and administer systems for the CC Act purposes. Reflections upon the nature and quality of media reporting could have nothing to do with the maintenance and administration of systems, whatever purposes were involved. That consideration, alone, is sufficient to conclude that the fact-finding which counsel assisting invites the Inquiry to embark upon lies outside the Authority's functions, and so serves no proper purpose.
- 21 Further, once regard is had to the CC Act purposes, the position is even clearer – the manner in which allegations about a casino are reported by the media has nothing to do with ensuring that the management of a casino remains free from criminal influence, nor that gaming in the casino is conducted honestly, nor yet for containing the potential of a casino to cause harm
- 22 As to the **second** of these (not advancing the discharge of the specific functions conferred on the Authority by s.141(2)):
- (a) Fact-finding by the Inquiry as to the nature or quality of media reporting of allegations about Star could clearly have no bearing whatever on the specific functions conferred by paragraphs 141(2) (a), (b), (f), (g), (h) or (j).
 - (b) So far as s.141(2)(c) is concerned, such fact-finding could not reasonably be regarded as being part of a process of “keep[ing] under constant review all matters connected with casinos ... [or] persons who are in a position to exercise direct or indirect control over the casino operators”. “All matters” must be read subject to the CC Act objects, and (again absent considerations of the kind referred to above, such as a conspiracy between the media and the casino, or against the casino) so read, could not extend to media reporting of allegations, any more than it could extend to public opinion about casinos, or the views of foreign governments about casinos. Nor can it be reasonably considered that Channel Seven (or other media outlets) are persons in a position to exercise direct or indirect control over

the casino operators (it may be strongly doubted they could even exercise the slightest degree of influence, let alone control).

- (c) So far as s.141(2)(e) is concerned, it has no possible application, because media reporting of allegations about casinos does not relate to the administration of the CC Act. Not surprisingly, there are no provisions in the Act permitting the Authority (or anyone else) to censor or restrict such publications, nor to judge or punish the media (or any other persons) for choosing to publish such allegations. The only exception is the very narrow power conferred on the Inquiry by s.143B to restrict disclosure of evidence or the identity of witnesses before the Inquiry, and that power has nothing to do with fact-finding being urged on the Inquiry by counsel assisting. It is not remotely apparent that any advice could be given to the Minister as to the administration of the CC Act by reason of the fact-finding in question. (In contrast of course, fact-finding as to the allegations themselves, rather than the reporting of them, might fall squarely within s.141(2)(e)).
- (d) So far as s.141(2)(k) is concerned, there is not the slightest suggestion, neither in counsel assisting's submissions, nor in the evidence, that Channel Seven has been, or may have been, guilty of any offence by its reporting of the allegations in question, either under the CC Act, or more generally.

23 As to the **third** of these (the requirement for due regard to be had to the CC Act objects), the point has already been made that fact-finding about the nature or quality of media reporting of allegations about a casino could have no bearing on the CC Act objects, except perhaps in circumstances very far removed from the present Inquiry. For the Inquiry to stray into fact-finding on matters far beyond its remit would be fail to have due regard to the CC Act objects, and the Inquiry ought not take that course.

Further reasons why the Inquiry should not engage in the fact-finding in question

- 24 There are further reasons why the Inquiry ought not to accede to counsel assisting's invitation to engage in the fact-finding in question:
- (a) The attack on Channel Seven is selective;

- (b) The attack on Channel Seven is based on vague criteria;
- (c) The attack on Channel Seven is an attack on the freedom of the media;
- (d) The attack on Channel Seven reflects a preoccupation with political matters;
- (e) The attack on Channel Seven, if acted on by the Inquiry, would leave Channel Seven with limited redress.

25 **First**, the fact-finding invited is surprisingly selective, clearly singling out Channel Seven for attack and, for example, not exposing the ABC to similar scrutiny, despite the fact that similar allegations were reported (from some of the same witnesses) by the 7:30 broadcast of the ABC during the relevant period. Although the fact that Ms Ward made allegations on 7:30 is briefly noted by counsel assisting (CAS, paragraph 103), the passages cited are far from the most dramatic quoted from Ms Ward in that broadcast, which included, as the very first words attributed to a casino employee in the broadcast, the following words:

From the moment they walked in the door, we were seeing a completely different casino. It was, you know, "We want it to be a nightclub. We want 20-year-olds in here. We want short dresses, big breasts, lots of p***y, podium dancers. You know, sporting stars."

26 The same broadcast also featured attributed interview extracts with Mr Culpan, including these words:

Where you don't report things that happen, because if you do it has a negative impact on your pay, what do you do? You don't report it.

27 The point Channel Seven makes is not, of course, that the Inquiry ought to make findings that the ABC had engaged in "sensationalist" reporting of the allegations in question – it is submitted that it should not, for all the foregoing reasons. Rather the point is that counsel assisting appears to have singled out Channel Seven for attack, for reasons which are obscure (and are certainly not disclosed in counsel assisting's submissions). Were a consideration of the nature and quality of the reporting by the media of the allegations made against Star to fall within the remit of the Inquiry, it would only be appropriate to engage in such a consideration in circumstances where it was apparent that the consideration would be comprehensive, yet it appears to be

selective in the extreme. This serves to render any fact-finding in the area of no utility and further, might give rise to concerns, in a disinterested observer, as to why the Inquiry was embarking on such a selective exercise at all.

- 28 **Second**, the fact-finding invited by counsel assisting is made by reference to the criterion of “sensationalism”, with no definition or explanation, nor any indication how such a finding would bear upon any of the matters falling for report by the Inquiry. The use of such a vague, pejorative criterion of assessment can only give rise to findings which are devoid of utility and which would fall to be considered as nothing but an expression of personal opinion by the Inquiry, yet could be highly damaging to Channel Seven’s commercial reputation. (The difficulties with the criterion of “sensationalism” for fact-finding are the subject of further comment in the final part of these submissions below.)
- 29 **Third**, the fact-finding invited by counsel (whether restricted to Channel Seven, or extending to the ABC or other media outlets) is, in terms, a criticism of the media for reporting allegations. It necessarily involves the implication that such reporting ought not to have happened, notwithstanding the evident public interest in the operations of The Star (a public interest reflected of course by the terms of the CC Act, including s.4A, and the holding of the Inquiry itself). For the Inquiry to appropriate to itself the position of identifying what the media ought, or ought not, to publish, is a dangerous course, quite antithetical to the long-standing traditions of freedom of speech prevailing in the country. Such freedom is not absolute, but the limits on it (civil remedies, governmental regulation of newspapers and broadcasters) are always subject to close scrutiny. Such scrutiny is called for in the present circumstances, and leads to a further reason why the Inquiry should not stray into the area suggested by counsel assisting.
- 30 **Fourth**, a concern or preoccupation with how the media may present matters concerning The Star is apt to be seen as having a *political* character. The Inquiry is, within its terms of reference, independent. The provision by s.143(5) that the person presiding at an inquiry is “subject to the control and direction of the Authority” is strictly limited and does not extend to any power to direct or even influence the outcome of the Inquiry. Being independent, the Inquiry is unconcerned by the way in which the media may report on various matters, including allegations which may

come before it. For that reason, it is submitted that it is unbecoming to the Inquiry to be concerned with questions of media reporting, however much such matters may or may not concern the government of the day, or those with commercial interests affected by the Inquiry.

- 31 **Fifth**, for the foregoing reasons, the Inquiry would be travelling beyond appropriate bounds in making adverse factual findings about the nature and quality of Channel Seven's reporting of the allegations about The Star. Yet if the Inquiry were, nevertheless to include such findings in its report, the findings could still be highly damaging to Channel Seven's reputation, forcing Channel Seven to seek appropriate relief: see, for example, *Ainsworth v CJC* (1992) 175 CLR 564. This is a further reason not to engage in the fact-finding.

C. CHANNEL SEVEN'S REPORTING WAS APPROPRIATE, ACCURATE AND RESPONSIBLE

- 32 The reporting in question is comprised of three reports as part of Channel Seven's news service, on 20, 21 and 22 February 2012 respectively ("**the Channel Seven reports**"). Should the Inquiry proceed to make findings about the nature and quality of Channel Seven's reporting of the allegations against Star, it is submitted that the findings that the Inquiry should make are that such reporting:

- (a) was appropriate in the circumstances;
- (b) accurately reflected the information available to Channel Seven;
- (c) was balanced in its presentation, and
- (d) amounted to responsible news reporting

- 33 The circumstances of the Channel Seven reports included that Mr Culpan and Ms Ward had each worked at The Star, as Channel Seven was aware, and that each of them made the various statements attributed to them by Channel Seven, the truth of which they confirmed to Channel Seven in signed statutory declarations at the time of their interviews. There is no suggestion by counsel assisting that Channel Seven quoted either of them out of context, or otherwise misrepresented what they had told Channel Seven.

- 34 Prior to broadcasting the Channel Seven reports, Channel Seven confirmed the background of each of the interviewees, including that they had worked in their respective positions for well over a decade. Because the attack on Channel Seven has emerged only in final submission, Channel Seven has not had the opportunity to adduce evidence before the Inquiry of the extent of its pre-broadcast inquiries, but they were considerable. Not only were Mr Boyd, Mr Culpan and Ms Ward interviewed, but Channel Seven also interviewed, and had available to it information from, a number of other present and former employees and contractors of the casino by the time of broadcast, which was supportive of the types of allegations being made to Channel Seven by Mr Boyd, Mr Culpan and Ms Ward. The decision to broadcast was made only after consideration of all of that material.
- 35 Further, Channel Seven's reports, when they went to air, were balanced by putting the allegations to The Star and including The Star's response as part of the broadcasts. The broadcasts accurately identified The Star's position and set it out in detail, especially in the longer broadcast of 20 February 2012, which included the following material:
- “Well Chris a spokesman for The Star denies the allegations in our report and points out they are inconsistent with the findings of the last casino review completed just in December. The Star says it takes a hard line on drug and alcohol abuse, on sex harassment, on bullying and intimidation and the fact they sacked their managing director in recent weeks, Sid Vaikunta is proof of that ...”.
- 36 Thus, Channel Seven's broadcasts were made on a responsible basis, accurately reflecting the allegations which had been made to Channel Seven, and were presented to the public with balance. In those circumstances, the contention that Channel Seven's reporting of the allegations was “sensationalist” is (as previously noted) an allegation of uncertain import. This uncertainty might have been dispelled had there been questioning in the public hearings directed to the topic, or reference to the matter otherwise than in counsel assisting's closing submissions, but so far as Channel Seven is aware, the matter arose for the first time in that context.
- 37 To describe a media report as “sensationalist” (or, which is much the same thing, to charge a media organisation with engaging in “sensationalism”) is a different matter than to describe reported allegations as “sensational” – this latter contention merely points to the nature of the allegations themselves as being shocking, concerning or

quite out of the ordinary – in short, news-worthy. In contrast, a “sensationalist” report would usually be thought to be one which attributes a much greater prominence to a matter than it in fact deserves, including by using language (especially emotionally charged language) which is inappropriate to the subject-matter. Whatever counsel assisting meant by repeated use of the term “sensationalist”, it is difficult to see how that term could apply to reporting which did not involve a clear discrepancy between the seriousness of the allegations being made, on the one hand, with the *presentation* of those allegations, on the other. Since it is the *reporting* of the allegations that is the matter being focussed on by counsel assisting, it is not sufficient if the persons interviewed expressed themselves strongly – it is the conduct of the media outlet in the way it presented the allegations which is important.

38 The great bulk of paragraphs [79]-[106] of counsel assisting’s submissions is devoted to assessing the accuracy of the allegations made by Mr Culpan and Ms Ward – that is to say whether those allegations were substantiated. However, that sheds no real light on the accuracy of the *reporting* of those allegations, whether by Channel Seven or by others.

39 So far as the Channel Seven reports involved extracts from interviews with Mr Culpan and Ms Ward (and Mr Boyd, for that matter), they revealed allegations of a serious nature about events at The Star, which were fairly described, in summary, at the start of the broadcast of 20 February 2012 by Channel Seven’s Chris Bath as allegations of “a culture of illegal drugs, sexual harassment and bullying of staff”. The interview material quoted is, in the context of what the public would think ought properly to occur at a casino certainly “sensational”, but it is very hard to see why it is “sensationalist” – the broadcasts fairly reflect the substance of the allegations being made. Nor was it “sensationalist” to open the broadcast of 20 February 2012 by referring to “the scandal surrounding Sydney’s Star Casino” – that was an objectively reasonable assessment of the circumstances and would have been understood by viewers as such.

40 Having regard to the way in which counsel assisting’s submissions are framed, it is difficult to know what further aspects of “sensationalism” are being alleged against Channel Seven in respect of the Channel Seven broadcasts. The submissions do not assert that Channel Seven had a duty to carry out some particular level of investigation

prior to making the broadcasts in question, nor yet that Channel Seven fell short of that standard. Nor do the submissions assert that Channel Seven gave undue prominence to the allegations, either generally or in the run of the news available for reporting on the day. Nor do the submissions descend to identify any particular language which Channel Seven itself used (as opposed to the interviewees) which was unwarranted by the allegations being made, nor any particular qualification or omission made by Channel Seven which served to present the allegations to the public in a way which was unwarranted by their substance, as known to Channel Seven.

41 Indeed, all that the submissions do is to contend that Channel Seven's reporting "may wrongly have suggested" certain matters, but that is only (as the submissions are couched) on the basis that it is now possible for the Inquiry to see that those matters are not, in fact, objectively substantiated, having regard to the evidence available to the Inquiry. Exactly how that is supposed to have been apparent to Channel Seven at the time of broadcast is nowhere revealed, or even alluded to.

42 The submissions do not suggest that there was any feature of the allegations as made by the interviewees to Channel Seven that ought to have alerted Channel Seven to their falsity, nor that Channel Seven presented the allegations in such a way as to convey to viewers that Channel Seven in some fashion endorsed the allegations. (In putting the matter this way, Channel Seven is not making any submission as to the truth or falsity of the allegations themselves.)

43 In fact, it was clear that Channel Seven presented the allegations *as allegations* – the broadcasts were repeatedly cast in terms of former employees "telling of" certain matters, of "claims", of "allegations", of the denial of those allegations by The Star, and of the fact that the allegations were to be the subject of this Inquiry. If viewers found the allegations shocking, that is because they were, not because of Channel Seven had somehow distorted or presented them as being something other than they were, *as allegations*.

44 For these reasons, it is submitted that there is no basis for the Inquiry to find that Channel Seven's reporting of the allegations concerning The Star were "sensationalist"; rather any finding ought to be that the Channel Seven reports were

appropriate, balanced and responsible having regard to the allegations which had been made to Channel Seven.

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