

**INDEPENDENT LIQUOR AND GAMING AUTHORITY**

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**THE STAR CASINO: LICENCE REVIEW**

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**A review to assist the Independent Liquor and Gaming Authority with its periodic investigation pursuant to section 31(1) of the *Casino Control Act 1992 (NSW)***

28 November 2016

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# INDEPENDENT LIQUOR AND GAMING AUTHORITY

## THE STAR CASINO: LICENCE REVIEW

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## I. EXECUTIVE SUMMARY

### A. Introduction

1. This is the report of an Inquiry under s 143(5) of the *Casino Control Act 1992* (NSW). It concerns the licence held by The Star Pty Limited (ACN 060 510 410) (**The Star**). That licence authorises it to operate The Star Casino at Pyrmont in Sydney.

### B. Summary of findings

2. The Star is resistant to infiltration by organised crime and other criminal influences. It, and those closely associated with it, appear to be of good repute, seem to have sound and stable financial backgrounds. The Star has no business association, so far as I have been able to ascertain, with a person or body that is not of good repute or which has undesirable or unsatisfactory financial sources. It has systems and practices that reasonably ensure the honest conduct of gambling and the minimisation of harm to the public.
3. This Inquiry comes in a period of transition. The Star is the only casino that presently operates in Sydney. A second casino-like operation is in the course of being established. The Star Casino, and casinos like it, are becoming more technologically-based, and increasingly they seek to attract, in addition to customers from the domestic market, gamblers – especially ‘high rollers’ – and visitors from overseas. This greater complexity justifies a regulatory framework better directed to the regulation of different, and perhaps more elaborate, threats to the integrity of those businesses and to the public interest.
4. This evolution in The Star’s business calls for changes in the regulatory approach, which is another of the transitions I observed. The independent regulator once had its own inspectors and staff, but now relies upon the Government Department (Liquor & Gaming NSW) for that support. Moreover, the office the regulator once held on the Casino premises is now hardly utilised. This regulatory transition presents challenges but also offers opportunities for new approaches.

5. It is too early to know whether the regulatory transition will be successful in achieving all of its aims. The regulator, the Independent Liquor and Gaming Authority (**ILGA**) and those who assist it in its functions (predominantly Liquor & Gaming NSW) are attentive to the risks accompanying this transition and are working to fill any shortcomings that result from it.
6. The Star has a history (better now than in the past) of cooperation with law enforcement agencies. It has, in the period of the review, conducted its affairs largely without major public incident or controversy. I qualify this owing only to the matters that were investigated and dealt with by ILGA in 2012, which, because of that earlier treatment, formed no part of my Inquiry.
7. The Star has acted appropriately in response to the recommendations made by the previous Inquiry. It cooperated fully with my Inquiry, in many cases not insisting upon rights it could have exercised, such as having lawyers accompany staff to interviews I conducted.
8. Suggestions were made that The Star has under-reported violent incidents to Police and internally, and that figures made public as to the occurrence of violence there present a picture more favourable than is actually the case. I investigated these claims, including by convening an oral hearing and compelling the attendance of persons to give evidence. Improvements are needed to overcome shortcomings in The Star's internal reporting of violent incidents, and steps ought be taken to ensure the Police are aware of all violent incidents, whether or not constituting a definition of assault that has been devised for a particular purpose (and which I consider in detail in Part IX). The shortcomings that call for correction are, however, not ones that appear materially to have affected the publicly-reported figures of violent incidents at or near The Star.
9. The public interest, so far as I am capable of assessing it, favours the continuation of The Star's licence. The Star Casino, apart from being, so far as I could ascertain, well run, appears to be resistant to criminal influence. It meets, to some extent at least, demand from overseas visitors who wish to gamble and to stay at, visit and dine in the facilities that the Casino offers and is proposing to develop further. Those activities result in the payment to Government, as taxes and levies, of some hundreds of

millions of dollars. It is likely that the State and its business people benefit from other expenditures beyond the Casino of these overseas visitors. None of this is to ignore the inherent susceptibility of casino businesses to criminal influence, social harm, as well as organised (and *ad hoc*) crime.

10. A discussion of my conclusions on each of the Terms of Reference is set out in Part XIV, 'Conclusions – Terms of Reference', below.
11. There are ways in which the regulatory oversight of the Casino can be better maintained and otherwise improved, and some aspects of the Casino's business (its 'junket' operations especially and also its recording and reporting of violent incidents) that warrant particular attention. They are the subject of my recommendations.

### **C. Recommendations**

12. **Recommendation 1:** Liquor & Gaming NSW ought ensure regular and effective liaison with law enforcement by maintaining strong links between its staff and those bodies so that information sharing does not suffer as a result of the recent changes to regulatory arrangements. The Executive Intelligence Meeting referred to in the Confidential Appendix ought take place at least quarterly.
13. **Recommendation 2:** The function of the two officers presently allocated to the investigation of persons identified for possible exclusion from the Casino by the exercise of the Police Commissioner's powers under s 81 of the *Casino Control Act* ought be preserved, funded and administered so as to permit those officers to give their full attention to that task, including the clearing of backlogs and the expeditious processing of any new proposals for exclusion. That will necessitate that referrals for such exclusions be made less unevenly and more regularly and by setting a requirement that the backlog be cleared within 12 months from now.
14. **Recommendation 3:** The Star and Liquor & Gaming NSW ought give focus to non-punitive ways substantially to reduce the occasions upon which persons who have excluded themselves from the Casino gain re-entry to it.

15. **Recommendation 4:** The Star ought continue to investigate, test and develop the reliability and utility of facial recognition technology. ILGA ought be consulted before any installation (other than for any trial) of it.
16. **Recommendation 5:** Footage presently available via the ILGA office (now the office of Liquor & Gaming NSW) at the Casino ought be available off-site, subject to the provision of means of ensuring its security.
17. **Recommendation 6:** The Star ought use descriptors that more clearly state the character of incidents and their nature. Any revision of descriptors ought meet the reasonable requirements of regulators, and the Police. This is one way by which all incidents involving violence would come to the attention of Police, whether or not in the Crime Review meeting, and furnish Police with all relevant data from which they might assess which incidents ought be recorded on COPS.
18. **Recommendation 7:** In particular, the Casino's Asset Protection Monthly Reports ought refer expressly to incidents involving violence (whether or not constituting assault however defined) and give a clear description of the relevant conduct which is neither euphemistic nor overly general.
19. **Recommendation 8:** The Star consult with Police to secure agreement as to the threshold for the making of reports to Police or calls for attendance, and those criteria be clearly stated and recorded.
20. **Recommendation 9:** The regulator may wish to require The Star to submit a programme for approval by it of the changes it proposes to make to its system of recording and reporting violent incidents, in its Asset Protection Monthly Reports, its Regulator's Summaries and in its dealings with Police.
21. **Recommendation 10:** The Star has many overlapping obligations to record and report incidents. The utility and accuracy of each may be improved if the obligations were to be centralised and harmonised, and adopting descriptors which are directed to, and clearly inform, the functions that each regulator, as the recipient of such reports, is vested to discharge

22. **Recommendation 11:** The regulatory agreements between The Star and ILGA ought be revised and renegotiated as necessary, and as opportunities arise to do so, to achieve, where possible, modernisation, simplification and the elimination of duplication.

## II. INTRODUCTION AND CONTEXT

### A. Appointment

23. I was appointed on 4 August 2016 by ILGA under s 143(1) of the *Casino Control Act* to preside over an Inquiry for the purpose of the exercise of ILGA's functions under s 31 of that Act. A copy of the instrument of appointment is **Annexure A**. Mr Caspar Conde of Counsel was appointed to assist me. These arrangements were published on ILGA's website on 10 August 2016.<sup>1</sup>
24. I am grateful for Mr Conde's considerable assistance.
25. Section 143 of the *Casino Control Act* provides:

#### **143 Authority may hold inquiries**

- (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) Evidence may be taken on oath or affirmation at an inquiry, and for that purpose:
  - (a) the person presiding at the inquiry may require a person appearing at the inquiry who wishes to give evidence to take an oath or to make an affirmation in a form approved by the person presiding, and
  - (b) a key official may administer an oath or affirmation to a person so appearing at the inquiry.
- (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) A reference in this section to an inquiry includes a reference to an inquiry held for the purpose of enabling a person to make submissions to the Authority and a reference to the giving of evidence includes a reference to the making of those submissions.
- (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.

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<sup>1</sup> See [www.liquorandgaming.justice.nsw.gov.au/Pages/ilga/news-and-media/news/regular-review-of-star-casinos-licence.aspx](http://www.liquorandgaming.justice.nsw.gov.au/Pages/ilga/news-and-media/news/regular-review-of-star-casinos-licence.aspx).

26. My appointment carried with it some of the powers of a Commissioner under the *Royal Commissions Act 1923* (NSW). I was not given, and nor did I consider it necessary to have, ‘special powers’ under that Act.<sup>2</sup> Had I encountered resistance to my Inquiry, or found it desirable for any other reason to have those additional powers, I would have requested them. As will appear, The Star co-operated fully with my Inquiry and answered my requirements of it (so far as I could ascertain) candidly.

**B. Statutory basis for the Inquiry**

27. Section 31 of the *Casino Control Act* provides:

**31 Regular investigation of operator’s suitability etc.**

- (1) Not later than 3 years after the grant of a casino licence, and thereafter at intervals not exceeding 5 years, the Authority must investigate and form an opinion as to whether or not:
  - (a) the casino operator is a suitable person to continue to give effect to the casino licence and this Act, and
  - (b) it is in the public interest that the casino licence should continue in force.
- (2) The Authority is to report its findings and opinion to the Minister, giving reasons for its opinion, and is to take whatever action under this Act it considers appropriate in the light of its findings.
- (3) If a restricted gaming licence is granted before 15 November 2019, the licence is, for the purposes of this section, taken to have been granted on that date.

28. The test of suitability is also found in s 12 of the *Casino Control Act*, which applies to the consideration of applications for a casino licence:

**12 Suitability of applicant and close associates of applicant**

- (1) The Authority must not grant an application for a casino licence unless satisfied that the applicant, and each close associate of the applicant, is a suitable person to be concerned in or associated with the management and operation of a casino.
- (2) For that purpose the Authority is to consider whether:
  - (a) each of those persons is of good repute, having regard to character, honesty and integrity, and
  - (b) each of those persons is of sound and stable financial background, and

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<sup>2</sup> See Part 2, Division 2.

- (c) in the case of an applicant that is not a natural person, it has or has arranged a satisfactory ownership, trust or corporate structure, and
- (d) the applicant has or is able to obtain financial resources that are both suitable and adequate for ensuring the financial viability of the proposed casino, and
- (e) the applicant has or is able to obtain the services of persons who have sufficient experience in the management and operation of a casino, and
- (f) the applicant has sufficient business ability to establish and maintain a successful casino, and
- (g) any of those persons has any business association with any person, body or association who, in the opinion of the Authority, is not of good repute having regard to character, honesty and integrity or has undesirable or unsatisfactory financial sources, and
- (h) each director, partner, trustee, executive officer and secretary and any other officer or person determined by the Authority to be associated or connected with the ownership, administration or management of the operations or business of the applicant or a close associate of the applicant is a suitable person to act in that capacity.

29. Section 11 of the *Casino Control Act* sets out the matters to which regard must be had when ILGA considers an application for a licence:

**11 Matters to be considered in determining applications**

In considering an application for a casino licence, the Authority is to have regard to the following matters:

- (a) the requirements of section 12 (Suitability of applicant and close associates of applicant),
- (b) the standard and nature of the proposed casino, and the facilities to be provided in, or in conjunction with, the proposed casino,
- (c) the likely impact of the use of the premises concerned as a casino on tourism, employment and economic development generally in the place or region in which the premises are located,
- (d) the expertise of the applicant, having regard to the obligations of the holder of a casino licence under this Act,
- (e) such other matters as the Authority considers relevant.

30. The provisions of ss 11 and 12 arise for consideration under s 31(1)(a) of the *Casino Control Act* as relevant considerations, although not expressly imported by it.

## C. Terms of Reference

31. The Terms of Reference for ILGA's investigation (and for my Inquiry) are as follows:

1. The suitability of The Star, and each close associate of it, as nominated by ILGA from time to time, as being concerned in, or associated with, the management and operation of the Casino, having regard to whether:
  - 1.1 The Star:
    - (a) has, or has arranged, a satisfactory ownership trust or corporate structure;
    - (b) has or is able to obtain financial resources that are both suitable and adequate for ensuring the financial viability of the casino;
    - (c) has or is able to obtain the services of persons who have sufficient experience in the management and operation of a casino;
    - (d) has sufficient business ability to maintain a successful casino;
  - 1.2 The Star and each close associate of it:
    - (a) are of good repute, having regard to character, honesty and integrity;
    - (b) are of sound and stable financial background;
    - (c) have any business association with any person, body or association who, in the opinion of the authority, is not of good repute, having regard to character, honesty, integrity, or has undesirable or unsatisfactory financial sources;
  - 1.3 each director, partner, trustee, executive officer and secretary, and any other officer or person determined by ILGA to be associated or connected with the ownership, administration or management of the operations, or business of The Star, or a close associate of it, is a suitable person to act in that capacity.
2. The standard and nature of the Casino, which commenced operation on 26 November 1997 and the facilities provided in, or in conjunction with it.
3. The expertise of The Star, having regard to the operations that attach to the holder of a casino licence under the Casino Control Act, including the extent to which The Star has complied with:
  - 3.1 its obligations under the Casino Control Act;
  - 3.2 its obligations under the licence;
  - 3.3 legal agreements between ILGA and The Star.
4. The contribution made by the Casino, and its impact upon, the public interest, including by reference to:
  - 4.1 the matters in 1 to 3 above;
  - 4.2 the effects, potential and actual, upon individuals who attend, and may attend the Casino, and their families;

- 4.3 the impact or potential impact of the Casino on the public interest, having regard to submissions made to ILGA by the public.
5. The maintenance and administration of systems by The Star to:
  - 5.1 ensure that the management and operation of the Casino remains free from criminal influence or exploitation;
  - 5.2 ensure that gaming in the Casino is conducted honestly;
  - 5.3 contain and control the potential of the casino to cause harm to the public interest and to individuals and families.
6. The presence and detection of illegal and undesirable activities and people in the Casino.
7. The recommendations made by the investigation carried out in 2011, pursuant to section 31 of the Casino Control Act.
8. The investigation will:
  - 8.1 have regard to, and not revisit, matters which have already been sufficiently examined and dealt with, and in respect of which there have been no apparent material changes, by the reports of the inquiries under the Casino Control Act into the Casino in 1997, 2000, 2003, 2006 and 2011 (and particularly the latter);
  - 8.2 in particular, consider:
    - (a) the operation of junket programs and the integrity of their settlement;
    - (b) the nature and adequacy of liaison between ILGA and law enforcement authorities;
    - (c) the vulnerability of gaming (and especially high-stakes gaming) carried on at the Casino to money laundering;
    - (d) whether, and to what extent, gaming in the Casino is conducted honestly;
    - (e) controls on access to, and the availability of, high-stakes gaming.
9. Such other matters as ILGA considers relevant.

**D. Earlier periodic inquiries**

32. This Inquiry is the sixth of its kind which ILGA, by force of s 31 of the *Casino Control Act*, periodically institutes. The previous Inquiries were conducted every three years following the Casino's establishment, except for the most recent Inquiry, which was conducted five years after the one before it, following an amendment in 2009 to which I refer below. The inquirers and the reports each produced are as follows:
  - a. P D McClellan QC, report dated December 1997;

- b. P D McClellan QC, report dated December 2000;
  - c. Bret Walker SC and Ms Furness of Counsel, report dated December 2003;
  - d. Bret Walker SC and Ms Furness of Counsel, report dated December 2006;
  - e. Gail Furness SC, report dated December 2011.
33. Section 31 was amended in 2009 to extend the time between periodic inquiries from three to every five years for reasons of efficiency and economy.<sup>3</sup> The efficiencies include enabling the investigator and inquirer to have regard to, and not revisit, matters which have already been sufficiently examined and dealt with, and in respect of which there have been no apparent changes. Paragraph 8.1 of my Terms of Reference restates this object.

**E. Commercially sensitive and law enforcement material**

34. In the course of my Inquiry, I received some information about pending investigations by law enforcement authorities, activities of Liquor & Gaming NSW and of ILGA in respect of the Casino, and some material of a commercially sensitive nature concerning the Casino's operations. I have included in the main body of this report as much of the information relevant to the various topics as I could. The public interest or exceptional circumstances,<sup>4</sup> however, require that some information not be included in the body of this report, to avoid prejudice to investigations by law enforcement and like agencies. It would be highly undesirable if, having received the cooperation and assistance of law enforcement and like bodies, my report were to impair the exercise of their functions. So too the Casino's lawful and legitimate

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<sup>3</sup> Speaking to the Casino Control Amendment Bill 2009 (NSW), the then Minister for Gaming and Racing told Parliament that:

The last two such reviews conducted by the authority in 2003 and 2006 found that [The Star], which is the licensee, has operated in a responsible manner, consistent with the objectives of the Act. These statutory reviews are extremely thorough, but they are also extremely resource intensive for both the authority and the casino operator. Therefore, conducting reviews more often than necessary is an unjustifiable regulatory burden on both parties. Given the authority's long experience with these reviews and its continuous assessment of the casino's operations, the authority has advised the Government that extending the statutory licence review period from three to a maximum of every five years will not in any way compromise the objectives of the Act, or reduce the degree of oversight of the casino's operations.

*Hansard*, NSW Parliament, 17 June 2009, accessed via [www.parliament.nsw.gov.au](http://www.parliament.nsw.gov.au). The next s 31 review after that amending legislation was in 2011, five years after the 2006 review.

<sup>4</sup> See *Casino Control Act*, s 143B, 'Restriction on publication of information'.

commercial operations ought not be prejudiced by revelation of matters in this report that ordinary commercial considerations require be kept confidential. The Star has several major commercial partnerships or joint ventures, some of which are at an early stage, or in the course of being negotiated.

35. I have set out in the Confidential Appendix to this report the material which, in my view, ought not be made publicly available. It has two parts. Part A contains matters relevant to regulatory or law enforcement activities at or involving the Casino. It does not contain matters adverse to the Casino, but rather matters which I was satisfied, if made public or made available to The Star, might impair law enforcement activities by revealing pending investigations or surveillance and law enforcement techniques. Part B contains material commercially sensitive to The Star and which ought remain confidential so as not to impair its lawful and legitimate dealings with other commercial entities. It also contains some matters concerning law enforcement that ILGA and The Star ought know, but not the public generally, lest persons criminally inclined be assisted in avoiding detection by knowing more about law enforcement activities at or involving the Casino. This material is available to both ILGA and The Star.
  
36. I have directed, pursuant to s 143B of the *Casino Control Act*, that the contents of certain documents produced to the Inquiry are not to be published at all. The written direction is **Annexure B**. The documents covered by it:
  - a. are ones that I am satisfied are commercially sensitive for The Star or The Star Group and contain information of such currency as to be valuable to competitors and potential competitors of The Star or which would be likely to cause commercial damage to The Star if they were disclosed including because they reveal pending, initial or proposed commercial arrangements;
  
  - b. are notes of certain of my interviews with law enforcement officers which the public interest demands be kept confidential so as not to reveal law enforcement techniques, pending investigations and other intelligence known to them.

37. The direction also restricts the publication of the matters the subject of Parts A and B of the Confidential Appendix to the intended recipients (ILGA in the case of the former, and ILGA and The Star for the latter).

### III. PRINCIPAL ISSUES: SUITABILITY AND PUBLIC INTEREST

#### A. The legal tests

38. The questions to which the Terms of Reference are primarily directed find their origins in s 31 of the *Casino Control Act*, namely:
- a. whether The Star is a suitable person to continue to give effect to its licence and the *Casino Control Act*;
  - b. whether it is in the public interest that the Casino's licence should continue in force.
39. The Casino's licence was granted on 14 December 1994. It is for a period of 99 years, unless cancelled or surrendered. It grants a licence to operate the Casino, subject to the conditions stated in it. Clause 12 of the licence requires the licensee to comply with provisions of the *Casino Control Act* (see also, eg, cll 9, 10, 11 and 13). Clause 15 of the licence requires compliance with what were then styled the 'accounting and internal controls' as recognised by the *Casino Control Act*. Clause 17 refers to certain provisions of various s 142 agreements, and imports them also as conditions of the licence. The licence was amended on 5 June 2009 by way of a 'Notification of Amendment of the Casino Licence under Section 22 of the Casino Control Act'. The amended licence is in terms similar to the original licence. Some additional provisions of the *Casino Control Act* are now mentioned as conditions (see, eg, cll 12(f) and (j)). The provisions of the s 142 agreements amounting to conditions were adjusted.
40. Compliance with the licence, therefore, in large part imports an assessment of compliance with the provisions of the *Casino Control Act* identified as conditions of the licence.

## B. Suitable person

41. The test of a ‘suitable person’ is common in statutes that govern liquor and gaming licences.<sup>5</sup> It imports many of the same kinds of inquiries (in similar or other legislative contexts) as those requiring that persons be fit and proper to hold certain licences, or that they be of good fame and character.<sup>6</sup> The similarities between these various tests appears also from s 12(2)(a) of the *Casino Control Act*, which provides that, when considering whether an applicant for a casino licence is a suitable person, ILGA is to consider whether he, she or it is ‘of good repute, having regard to character, honesty and integrity’.

42. Justices Toohey and Gaudron explained in *Australian Broadcasting Tribunal v Bond* that tests of this kind are to some extent directed to ascertaining the likely future behaviour of a person in connection with the relevant activities:<sup>7</sup>

The expression ‘fit and proper person’, standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of ‘fit and proper’ cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.

43. Repute, fitness and propriety are matters of public interest. Concepts of reputation, fitness and propriety ought not be ‘narrowly construed or confined’ and may extend to ‘any aspect of fitness and propriety that is relevant to the public interest’.<sup>8</sup>

44. The discretion vested in a decision-maker in determining whether a person is fit and proper, in any given context, was considered by the Full Court of the Federal Court in

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<sup>5</sup> See, eg, *Casino Control Act* 1982 (Qld) s 20; *Liquor Act* 1992 (Qld) s 173EQ; *Casino Act* 1997 (SA) s 21; *Gaming Control Act* 1993 (Tas) s 76G; *Casino Control Act* 1991 (Vic) s 25; *Liquor Control Reform Act* 1998 (Vic) s 41; and *Casino Control Act* 1984 (WA) s 19(1a).

<sup>6</sup> See, eg, *Biosecurity Act* 2015 (Cth) s 530; *Customs Act* 1901 (Cth) s 102CF; *Legal Profession Uniform Law* (NSW) s 15; *Liquor Licensing Act* 1997 (SA) s 56; *Liquor Licensing Act* 1990 (Tas) s 22; and *Liquor Control Act* 1988 (WA) s 33.

<sup>7</sup> (1990) 170 CLR 321 at 380.

<sup>8</sup> *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at 348 per Mason CJ.

*Commissioner for ACT Revenue v Alphaone Pty Limited* to give wide scope for judgment and allow broad bases for rejection.<sup>9</sup>

45. 'Fame' refers to a person's *reputation*, whereas 'character' refers to a person's *nature*, and good character involves the acceptance of high standards of conduct and acting in accordance with those standards under pressure.<sup>10</sup> The qualities of honesty and integrity and a preparedness to comply with the law are essential requirements of a fit and proper person.<sup>11</sup>

### C. Public interest

46. The expression 'public interest' imports evaluative judgments. The High Court said this of the expression in *O'Sullivan v Farrer* (a case about approval to remove a liquor licence (an off-licence) from smaller to larger premises):<sup>12</sup>

[T]he expression 'in the public interest', when used in a statute, classically imports a discretionary value judgment to be made by reference to undefined factual matters, confined only 'in so far as the subject matter and the scope and purpose of the statutory enactments may enable ... given reasons to be [pronounced] definitely extraneous to any objects the legislature could have had in view'.

47. Such a discretionary judgment may extend to an evaluation of the likely reaction of the community to the action proposed.<sup>13</sup>
48. The *Casino Control Act* states expressly its primary objects in s 4A. They emphasise the importance of honest and crime-free gaming at the Casino, and controlling its capacity for social harm:

- (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

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<sup>9</sup> (1994) 49 FCR 589 at 389 per Northrop, Miles and French JJ.

<sup>10</sup> *Prothonotary of the NSW Supreme Court v Da Rocha* [2013] NSWCA 151 at [17], [21] per Basten, Meagher and Ward JJA.

<sup>11</sup> *Prothonotary of the NSW Supreme Court v Montenegro* [2015] NSWCA 409 at [66] per Meagher, Leeming JJA and Emmett AJA.

<sup>12</sup> (1989) 168 CLR 210 at 216 per Mason CJ, Brennan, Dawson and Gaudron JJ. See also *Harburg Investments Pty Limited v Mackenroth* [2005] 2 Qd R 433 at 436 [3].

<sup>13</sup> *South Australia v O'Shea* (1987) 163 CLR 378 at 388.

- (c) containing and controlling the potential of a casino to cause harm to the public interest and to individuals and families.
- (2) All persons having functions under this Act are required to have due regard to the objects referred to in subsection (1) when exercising those functions.

49. Several factors inform the evaluation of the public interest in this case. The previous investigations and inquiries by and on behalf of ILGA considered this question and the factors that inform it. Casino operations have been conducted under the licence at this site for more than 20 years. The Terms of Reference do not require me to form an opinion whether it is in the public interest that the Casino licence should continue in force. That is a question properly for ILGA, albeit assisted by the Inquiry I have undertaken on its behalf, and may involve a highly evaluative assessment, among other things, of a large and diverse range of financial, social and other factors.
50. I have not identified a material change in community sentiment since the preceding Inquiries, serious wrongdoing or impropriety by the Casino operator or persons or entities associated with it. Nor have I discerned any other change of a material kind that would lead me to approach those parts of the Terms of Reference that touch upon an assessment of the public interest any differently from earlier inquirers or to reach a conclusion different from theirs on the question of public interest.
51. A further factor relevant to the assessment of public interest is that a ‘restricted gaming licence’ was granted on 8 July 2015 for the operation of a casino or casino-like business at Barangaroo, to the immediate west of the Central Business District. That licence, although not a casino licence, is similar in nature to it and is treated as a casino licence for the purposes of the *Casino Control Act*.<sup>14</sup> The grant of that licence and the likelihood of its utilisation in connection with major gaming activities may have a bearing on whether it is in the public interest that The Star’s licence ought continue in force. Some of the earlier inquirers noted the importance of there being only one casino in Sydney as giving rise to the question whether the public interest is served by the existence of a casino licence at all.<sup>15</sup>
52. Casinos, just as they are capable of causing social harm and being places that attract persons with criminal intent, also make positive contributions. Governments derive

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<sup>14</sup> See the definition of ‘casino’ in s 3.

<sup>15</sup> See, for example, the report of P D McClelland QC of December 1997, sheet 19.

large revenues from the Casino operations. The Star paid \$321 million in government taxes and levies in the 2014/15 financial year. Gaming tax alone accounted for \$222.1 million of this.<sup>16</sup> It is the sole contributor to the Responsible Gambling Fund which stood at \$21.4 million in 2015. The Star is a large employer. Associated with the Casino's operations themselves are services that are of public benefit: the Lyric Theatre is a successful and well-attended part of the complex and the event facilities are of a high standard and attract a very large number of concerts, conferences and banquets, many of which attract a great number of patrons and participants. One weekday afternoon I noticed a large gathering of young retirees. They were playing bingo in the Sports Bar. The atmosphere was social, all tables were full, and the players were drinking non-alcoholic beverages. The numbers were being drawn and called by a person at the front of the room. This is an example only of the opportunities for social interaction that the Casino offers to some, and the choice some people make to visit the Casino as an outing or a place at which to be entertained and to socialise.

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<sup>16</sup> Star Supplementary Information 2 June 2016 p 2.

#### IV. INQUIRY METHODOLOGY

53. Upon my appointment I read each of the reports of the inquiries previously undertaken on ILGA's behalf, giving particular attention to the most recent of them, that of Ms Furness SC in 2011. I then arranged to interview officials from Liquor & Gaming NSW, who had some knowledge of the compliance, licensing and revenue implications of the Casino's operations over the last five years. I did so to inform myself about those matters and the approach that had been taken to the regulation of them, and to identify those matters of concern to persons vested with regulatory oversight of the Casino. These interviews also helped me identify any material changes there may have been since the previous Inquiry in 2011.
54. I interviewed Mr Sean Goodchild (Director of Compliance, Liquor & Gaming NSW) and two staff who report to him, Mr Darren Duke and Mr Matt Weber (both Investigators) and, later, Ms Jodie Camden (at that time Director of Licensing) and several of the staff who reported to her. I also interviewed Mr Brendan Walker-Munro (Manager, Revenue Assurance and Integrity) who was then about to finish his employment with Liquor & Gaming NSW and commence employment for the casino regulator in another State. I later (on 4 October 2016) met with him again to seek clarifications of some matters and pursue others further than I had in my initial interview of him. Mr Walker-Munro explained the revenue implications of the Casino's operations, including its junket arrangements. Following these interviews, I enquired of law enforcement and like agencies as to any aspects of the Casino's operation or activities, or of those visiting the Casino, had been or were of concern to them.
55. Ms Furness's 2011 report was of particular interest given, in particular, clause 8.1 of my Terms of Reference which require that I not revisit matters already sufficiently examined and dealt with, and in respect of which there have been no apparent material changes. Ms Furness SC made 17 recommendations in her report. They have been implemented to the extent that circumstances have reasonably permitted. I discuss the nature and degree of that implementation in Part V of this report.

56. A public Inquiry was conducted in 2012 under s 143 of the *Casino Control Act* into particular aspects of The Star's conduct. It was called because ILGA considered that it had not received a full and timely account of the cessation of the employment of the former Managing Director of The Star. That Inquiry (also conducted by Mr Furness SC) concluded that there had been prompt, proper and thorough investigation (free of external influence) of the allegations made by two of The Star's managers of sexual harassment against the Managing Director. I have not revisited those matters. They were fully dealt with by Ms Furness SC and there was no suggestion they had any continuing relevance. Ms Furness SC considered it a matter for ILGA whether or not there were grounds for disciplinary action against The Star. ILGA considered there were, and imposed a considerable fine (\$100,000).
57. I also met with the Casino's General Counsel, Mr Andrew Power, and two senior employees, one of whom (Mr Graeme Stevens) has responsibilities for The Star's regulatory affairs and the other (Mr Chris Downy) for government relations. This was an introductory meeting only, in which I outlined, in necessarily general terms, the course I expected my Inquiry might take and requested that certain preliminary documents and answers to particular questions be provided. Some short time later, I issued a Summons to The Star to compel production of these documents and the giving of this evidence. I later requested (on one further occasion by Summons) further documents and information from The Star as the need arose. My requests (always in writing) were answered, as far I could ascertain, forthrightly.
58. In this initial period, I was provided with a large number of documents, including those comprising the system of internal controls and administrative and accounting procedures that the Casino is required to have in place.<sup>17</sup> Those procedures are known as the Internal Control Procedures (**ICPs**) and are subject to approval by ILGA. The Star is required to ensure that the system comprising the ICPs is implemented.<sup>18</sup>
59. Tobias AJA considered this aspect of the regulatory structure in *Hinkley v Star City Pty Limited* and regarded it as being close.<sup>19</sup>

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<sup>17</sup> *Casino Control Act*, s 124(1).

<sup>18</sup> *Casino Control Act*, s 124(4).

<sup>19</sup> (2011) 284 ALR 154 at 163 [50].

[I]t would be fair to say that although the casino operator conducts and manages the casino and carries out 'operations' (as defined) in relation to it, the actual control of the casino and its operations is vested solely in the authority to the point where there is little a casino operator can do without the prior approval of the authority.

60. I read these ICPs, 17 in number. The 'General ICP' contains definitions and gives some structure to the treatment of specific topics. The remaining 16 are directed to particular aspects of the Casino's operations, services offered, and management functions. Where it becomes relevant to know what the ICPs provided with respect to a particular Casino activity, I make reference to them.
61. ILGA provided me with the Minutes of the meetings of its Board for the preceding five years. Those Minutes reveal those issues which had come to ILGA's attention and allowed me to make some assessment of recurring themes and the nature of the matters that come, routinely or otherwise, before the regulator and the way in which ILGA had responded to them and approached its functions. A number of matters mentioned in the Minutes, some historical, some current, provoked or informed lines of inquiry. I refer in more detail to the Board Minutes later in this report.
62. I also had access, as I say below when dealing with the issue of assaults and violent behaviour in and around the Casino, to the submissions made to the Review by The Hon I D F Callinan AC pursuant to, among other things, cl 47 of Schedule 1 of the *Liquor Act 2007* (NSW) and, ultimately, his report dated 13 September 2016. This was one instance where the materials available to me (including Mr Callinan AC's report and the published statistics and analysis of the NSW Bureau of Crime Statistics and Research (**BOCSAR**)) had such currency that I did not consider it worthwhile to inquire again into those matters at least to the same extent as Mr Callinan AC had. I was satisfied I was able to draw conclusions from that material without further detailed inquiry of particular witnesses or compelling the production of further documents by The Star on that topic.
63. Mr Bryce Wilson, ILGA's General Counsel, gave assistance as Secretariat and provided valuable input. He attended some of the meetings I had with staff of Liquor & Gaming NSW, and with some law enforcement officers. He was a source also of information given his eight years of involvement with ILGA. Mr Wilson assisted by,

among other things, providing documents likely to be relevant to my Inquiry and identifying persons likely to be knowledgeable about specific matters.

64. I visited the Casino premises, and spoke with staff there (mainly senior staff) on several occasions. I also attended the Casino premises (particularly the retail and food service area, and the main gaming floor) on several occasions without alerting Casino staff or management, so that I could form my own views about the mix and density of patrons and customers there and the services offered without any mediating influence.
65. I attended (with Mr Conde) a simulated ‘junket’ (I explain this term below) at the Casino on 27 September 2016. We undertook that simulation to gain a better understanding of the Casino’s processes for establishing a relationship with a junket promoter, the legal and other controls involved, the checks made of junket promoters and the participants in them, as well as their practical operation including settlement upon conclusion and the associated financial arrangements and reporting. Junket operations are the subject of Part X of this report.
66. Later in the Inquiry I convened an oral hearing and compelled the production of documents and the attendance of persons to give evidence. The purpose was to explore allegations (considered in Part IX of this report) that The Star had not reported violent incidents at or near the Casino as fully and as accurately as it ought.
67. This is a summary only of the activities comprising the Inquiry. I mention some other ways in which I went about my task at other places in this report. A table of meetings that Mr Conde and I (or, on occasion, only one of us) had to inform ourselves and to interview persons is **Annexure C**. I had all but finalised this report on 21 November 2016 but had not been able to inspect some documents held by the Queensland regulator, which I mention below in paragraph 94 and following. I inspected those documents on 24 November 2016 and updated this report accordingly. I have taken the opportunity to make reference to a study by BOCSAR published in that period, which warranted mention.
68. The ILGA Board regularly and intensively reviews the Casino’s operations. The following matters are broad categories of the more important matters that the Minutes reveal have arisen for its consideration in the preceding five years:

- a. compliance with and attitudes towards the responsible service of alcohol and gambling;
  - b. anti-social behaviour and violence at the Casino or its surrounding areas and consideration of the conduct of the Casino to minimise, prevent and deal with such incidents;
  - c. minors entering or attempting to enter the Casino's gaming floor or consuming alcohol and the Casino's approach to preventing, minimising and responding to such incidents;
  - d. the honesty and integrity of gaming (covering matters such as incomplete decks of cards and faulty machines);
  - e. the character of particular Casino employees and their ongoing suitability for employment at the Casino (by reference principally to convictions for driving offences and, on isolated occasions, more serious matters such as the supply of a prohibited drug and possession and use of a prohibited weapon);
  - f. exclusions by police of undesirable persons from the Casino;
  - g. investigations into associates and proposed associates of the Casino and matters that bear on the approval of them; and
  - h. the implementation of recommendations made in previous investigations or inquiries under the *Casino Control Act*.
69. From time to time over the past five years, ILGA has censured or imposed fines upon The Star, typically in amounts between \$5,000 and \$20,000 for incidents concerning specially licensed employees or access by minors. In August 2012, as I have mentioned, ILGA imposed a \$100,000 penalty for the failure to provide the information the subject of the Inquiry by Ms Furness SC undertaken in 2012. This was the largest of the fines imposed in the preceding five years. ILGA accepted that the breach had not been the product of systemic or deliberate misconduct. The fine, nevertheless, reflects serious wrongdoing.

70. The Minutes show that ILGA has been kept informed (with the exception of the matter just mentioned) about the Casino's operations and activities.
71. In the April 2013 minutes, the ILGA Board 'noted the increase to the number of Police Commissioner exclusions issued following the national policy to exclude all outlaw motorcycle gangs from all casino properties nationally'. The Board reviewed BOCSAR crime statistics in June 2013 to ascertain whether they gave an accurate representation of conditions at the Casino. There had been a reported 16% increase in 'alcohol related incidents of violence'. The Board resolved to request the Casino to respond to, and if possible, explain that increase.
72. Earlier this year, ILGA imposed a \$25,000 penalty for a contravention by The Star of requirements to the effect that gaming equipment and software be kept within the designated casino boundary. A workshop containing these things was located outside of that boundary.
73. I deal with one further aspect of the ILGA Board Minutes in Part A of the Confidential Appendix.

## V. DEVELOPMENTS SINCE THE PRECEDING REVIEW

### A. Status of recommendations

74. The preceding Inquiry was undertaken five years ago. Ms Furness SC made 17 recommendations at the conclusion of it. Paragraph 7 of my Terms of Reference directs me to consider the recommendations made by that investigation.
75. I asked The Star to state what action had been taken in respect of each recommendation and, for those recommendations that The Star considered did not warrant action, the reasons why.
76. The Star responded to my enquiry, drawing my attention to reports made in 2012 and 2013 to ILGA about those recommendations. It provided a table which, Mr Power said, summarised The Star's responses to my enquiry. I have combined the reports provided in 2012 and 2013 by The Star with that table. The resulting summary is mine.

Recommendation	Action and Status
<p>1. The Authority provide the names of and transactions conducted by individual junket participants to the Australian Transaction Reports and Analysis Centre (AUSTRAC).</p>	<p>The recommendation was directed to ILGA.</p> <p><i>The Star provides the names of and transactions conducted by individual junket participants to ILGA (and now Liquor &amp; Gaming NSW) as part of its standard practice and reporting.</i></p> <p><i>The Star offered to discuss the format and nature of this information with ILGA to assist with information sharing between it and AUSTRAC. No changes were sought.</i></p> <p><i>AUSTRAC obtains this information from The Star.</i></p> <p><i>This recommendation has been met, albeit directly between AUSTRAC and The Star, which is appropriate given the current regulatory arrangements that place the onus on The Star for such matters.</i></p>
<p>2. The Authority consider whether any aspect of the marketing referral arrangement entered in to by the casino operator in 2010 requires its</p>	<p>The recommendation was directed to ILGA.</p> <p><i>ILGA commenced a review of the arrangements contained in the marketing referral agreement in February 2012. It was with a company known as 'Silkstar'. The Star Entertainment Group no longer has any continuing relationship with that company.</i></p> <p><i>The Star submitted updates to its internal controls in December</i></p>

Recommendation	Action and Status
approval.	<p><i>2011 concerning the operation of agreements of this type. ILGA approved the changes to The Star's internal controls in June 2012. I was provided with a copy of those internal controls and in particular those for the 'Table Performance Rebate Program' dealing with marketing referral arrangements within the scope of this recommendation.</i></p> <p><i>This recommendation has been met, partly owing to the change in circumstances I have identified.</i></p>
<p>3. The Authority should monitor the implementation of a single unified system across Echo casinos to ensure that The Star's Management Risk and Compliance Committee regularly receive reports of complaints made about the casino's operations.</p>	<p>The recommendation was directed to ILGA.</p> <p><i>The Echo General Manager Compliance at the time recommended the Sage Sales Logix Web version 7.5.4 as the preferred application to host the divisional feedback functionality. This system was implemented and Sales Logix continues to be used by The Star Entertainment Group as a feedback handling system in its three casino properties (including at Pymont).</i></p> <p><i>This recommendation has been met.</i></p>
<p>4. I suggest that the Authority puts in place a system to periodically review the need for a waiver of The Star's obligations under the Casino Operations Agreement.</p>	<p>The recommendation was directed to ILGA.</p> <p><i>Waivers for clause 12 of the Casino Operations Agreement (COA) were obtained in 2012, 2013, 2014, 2015 and, most recently 2016.</i></p> <p><i>This recommendation has been met. Periodic review has occurred systematically.</i></p>
<p>5. The s.31 investigation required to be conducted before December 2016 should consider the usefulness of facial recognition technology in detecting excluded persons entering the casino.</p>	<p>The recommendation was directed to this Inquiry.</p> <p><i>I deal with facial recognition technology in Part XI.B.2.f below.</i></p> <p><i>I have met this recommendation.</i></p>
<p>6. The Star and the Authority agree on</p>	<p><i>The Star has arrangements in place with independent gambling counselling services to assist casino customers to initiate a self-</i></p>

Recommendation	Action and Status
<p>triallying a process whereby those wishing to self-exclude can do so externally, preferably by use of technology and with satisfactorily identifying the patron.</p>	<p><i>exclusion order. This enables customers who may be experiencing difficulty with controlling their gambling to exclude themselves from the Casino without attendance there.</i></p> <p><i>The Star has a process for ‘third party exclusions’, whereby a person other than the affected gambler may approach the Casino and, subject to The Star being able to verify matters, and confirmation with the person concerned, an exclusion issues.</i></p> <p><i>The ‘Third Party, Remotely Assisted Self Exclusions, Venue Exclusions Standard Operating Procedures’ and ‘The Star Entertainment Group’s Exclusions and Contact Policy’ outline the relevant procedures. I dealt with this topic in my interview with the Casino’s Mr Wagemans, and discuss it below in Part XI.B.2.</i></p> <p><i>This recommendation has been met.</i></p>
<p>7. The Authority conduct audits on private gaming room access periodically and consider disciplinary action against the casino operator in the event that excluded persons are granted entry to the private gaming room [area].</p>	<p>The recommendation was directed to ILGA.</p> <p><i>Liquor &amp; Gaming NSW has access to The Star’s Surveillance network. The Star has received show cause notices about excluded patrons gaining access to a private gaming area.</i></p> <p><i>The Star conducts its own audits of compliance requirements for access to the private gaming area.</i></p> <p><i>This recommendation has been met.</i></p>
<p>8. I recommend that the Authority meet on a regular basis with the Australian Crime Commission and the NSW Crime Commission.</p>	<p>The recommendation was directed to ILGA.</p> <p><i>The Casino Intelligence Committee is a means by which ILGA and the NSW Police share operational information.</i></p> <p><i>I deal with liaison between ILGA and law enforcement authorities in Part XIII below.</i></p> <p><i>This recommendation has been met, but more should be done. This is the subject of my recommendation 1.</i></p>
<p>9. I recommend that the Authority meet on a regular basis with AUSTRAC</p>	<p>The recommendation was directed to ILGA.</p> <p><i>This does not occur.</i></p> <p><i>I deal with the topic of liaison between ILGA and law enforcement authorities in Part XIII below. AUSTRAC’s function is to make available to law enforcement and other agencies information on relevant transactions. Liaison between ILGA and law enforcement bodies provides the means of access to information that has come to AUSTRAC’s attention. The Star has obligations to notify AUSTRAC of certain matters.</i></p>

Recommendation	Action and Status
	<p><i>The intent of this recommendation has been met, albeit by other means.</i></p>
<p>10. The PCRIU consider and prepare criteria to be provided to The Star which, when satisfied would result in it being made quickly aware of incidents occurring at The Star which may involve a criminal offence. Those criteria would need to be flexible while screening out matters which would not result in any Police action.</p>	<p>This recommendation was directed, primarily, to the NSW Crime Commission.</p> <p><i>Regular meetings take place between NSW Police, ILGA and Liquor &amp; Gaming NSW. They ought continue.</i></p> <p><i>Criteria have been developed that identify incidents and events likely to be of interest to the Police Casino and Racing Investigation Unit (PCRIU). The timing of The Star's reporting for each of those categories has also been agreed. I set them out in Part B of the Confidential Appendix.</i></p> <p><i>This recommendation has been met.</i></p>
<p>11. The Authority should explore with the casino operator whether the processes followed by the casino operator could be varied so that the business records of the casino can be of greater assistance to law enforcement agencies.</p>	<p>The recommendation was directed to ILGA.</p> <p><i>The Star points out that the nature and content of its business records are subject to limitations.</i></p> <p><i>The size and scale of The Star's business means it is not always feasible to generate accurate table games records for individual members from records which may have as their primary purpose, for example, marketing. While such records are useful to indicate a member's level of gambling activity, they are not always reliable as actual figures.</i></p> <p><i>See further Part B of the Confidential Appendix.</i></p> <p><i>This recommendation has been met in the sense that law enforcement agencies are receiving records and information which assists them in the exercise of their functions as required.</i></p>
<p>12. The Authority should consider taking any action available to it to pursue with the appropriate authorities the creation of an offence of loan sharking.</p>	<p>The recommendation was directed to ILGA.</p> <p><i>This is a matter for Parliament. Responsibility for regulating consumer credit and finance broking was transferred to the Commonwealth on 1 July 2010. The Australian Securities and Investments Commission (ASIC) is now the national regulator on these matters under the National Credit Code.</i></p> <p><i>The Interactive Gambling Amendment (Sports Betting Reform) Bill 2015 is presently before the Commonwealth Parliament (the Senate). It regulates the provision of credit, but not for on-site casino gambling. Loan sharking did not emerge in my Inquiry as</i></p>

Recommendation	Action and Status
	<i>a pressing problem.</i>
<p>13. The Authority should periodically carry out an analysis of reported incidents relating to the responsible service of alcohol.</p>	<p>The recommendation was directed to ILGA.</p> <p><i>ILGA does so. Director of Compliance of Liquor &amp; Gaming NSW showed me examples of the analysis of such incidents and the resulting reports. In 2012, The Star initiated a quarterly review meeting between the ILGA Inspectorate, The Star Regulatory Affairs Manager and The Star's Appointed Liquor Manager to review all RSA matters for the relevant period.</i></p> <p><i>This recommendation has been met.</i></p>
<p>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.</p>	<p>The recommendation was directed to ILGA.</p> <p><i>ILGA has been provided with copies of external assessments relating to Responsible Service of Alcohol. I called for those documents and discuss the effect of them in Part XI below.</i></p> <p><i>This recommendation has been met.</i></p>
<p>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.</p>	<p><i>The Star engaged Professor Delfabbro from the University of Adelaide to review the criteria used by The Star as indicators of problem gambling.</i></p> <p><i>That review produced indicators of possible problem gambling risk. The Star has updated its training and processes to take account of the findings of this review.</i></p> <p><i>I was provided with a copy of the Possible Problem Gambling Risk Indicators. Mr Wagemans (the Casino's Patron Liaison Manager) utilises appropriate and well-accepted criteria to assess problem gambling and its severity. He engages outside specialists to assist in such assessments (namely BetCare).</i></p> <p><i>This recommendation has been met.</i></p>
<p>16. The Authority should review any changes to Key Performance Indicators for The Star's senior managers.</p>	<p>The recommendation was directed primarily to ILGA.</p> <p><i>Compliance Key Performance Indicators (KPIs) were applied to Senior Managers and they were provided to ILGA in 2012.</i></p> <p><i>A copy of the KPI scorecard template for all senior Managers was provided to me, which included the timely and accurate reporting of incidents (being breaches and near misses), including appropriate escalation where appropriate.</i></p> <p><i>This recommendation has been met.</i></p>

Recommendation	Action and Status
<p>17. The Authority should review the use by the casino operator of cash disbursements and lucky money to ensure that they are governed by appropriate internal controls.</p>	<p>The recommendation was directed primarily to ILGA.</p> <p><i>Following the making of this recommendation, The Star reviewed its procedures and revised the documents that govern the operation and use of these aspects of its business.</i></p> <p><i>A copy of the 'Gaming Voucher Policy for International Rebate Patrons' and an extract from the 'Cage Operations Standard Operating Procedure' were provided to me. No one suggested these controls were other than appropriate</i></p> <p><i>This recommendation has been met.</i></p>

**B. Approvals of major shareholdings**

77. On 10 May 2013, ILGA approved an application by Crown Limited to acquire more than 10% (and up to 23%) of the issued share capital of The Star Entertainment Group Limited (ACN 149 629 023) (formerly named Echo Entertainment Group Limited) (**The Star Group**), subject to certain conditions. On 3 September 2015, ILGA approved an application by Genting Hong Kong Limited to acquire more than 10% (and up to 23%) of the issued share capital of The Star Group, again on conditions.
78. According to The Star Group's 2015 Annual Report (pp 110-111), Genting Hong Kong Limited and its associates hold approximately 6.6% of its issued share capital, and Crown Limited holds none. In other words, neither party has acted on the approvals. This fact was confirmed to me by The Star in answer to my letter dated 10 August 2016 (and associated Summons), in which I requested a brief description of any change to the corporate structure of The Star Group since 2011, including any change under, or giving effect to, the approvals to which I have referred.

## VI. CORPORATE STRUCTURE

79. Paragraph 1 of my Terms of Reference directs an assessment of The Star's suitability, and of its 'close associates'. The Casino produced documents and answered questions I put to it on this topic.
80. The Star is a wholly owned subsidiary of The Star Entertainment Sydney Holdings Limited (ACN 064 054 431) (**Star Holdings**), which in turn is a wholly owned subsidiary of The Star Group. The Star Group is listed on the Australian Securities Exchange.
81. The Star identified the following as its 'close associates' for the purposes of s 5 of the *Gaming and Liquor Administration Act 2007* (NSW):
- a. members of The Star Group's Board:
    - i. Mr John O'Neill AO – Chairman and Non-Executive Director;
    - ii. Mr Matt Bekier – Managing Director and Chief Executive Officer;
    - iii. Ms Katie Lahey AM – Non-Executive Director;
    - iv. Mr Richard Sheppard – Non-Executive Director;
    - v. Mr Gerard Bradley – Non-Executive Director;
    - vi. Ms Sally Pitkin – Non-Executive Director; and
    - vii. Mr Greg Hayes – Non-Executive Director.
  - b. members of The Star Group's Executive Committee and those who report directly to the Chief Executive Officer:
    - i. Mr Matt Bekier (see above)
    - ii. Mr Chad Barton – Chief Financial Officer
    - iii. Mr Greg Hawkins – Managing Director, The Star
    - iv. Mr Geoff Hogg – Managing Director, Queensland
    - v. Ms Paula Martin – Group General Counsel & Company Secretary
    - vi. Mr Geoff Parmenter – Executive General Manager Group Marketing and Corporate Affairs
    - vii. Ms Kim Lee – Group Executive Human Resources
    - viii. Mr Paul McWilliams – Chief Risk Officer

- ix. Mr John De Angelis – Chief Information Officer
- x. Mr John Chong – President International Marketing

82. Section 5 of the *Gaming and Liquor Administration Act* defines ‘close associate’ as follows:

**5 Meaning of ‘close associate’**

(1) For the purposes of the gaming and liquor legislation, a person is a ‘close associate’ of an applicant for, or the holder of, a gaming or liquor licence if the person:

- (a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in his or her own right or on behalf of any other person), in the business of the applicant or licensee that is or will be carried on under the authority of the licence, and by virtue of that interest or power is or will be able (in the opinion of the Authority) to exercise a significant influence over or with respect to the management or operation of that business, or
- (b) holds or will hold any relevant position, whether in his or her own right or on behalf of any other person, in the business of the applicant or licensee that is or will be carried on under the authority of the licence.

(2) In this section:

‘**relevant financial interest**’, in relation to a business, means:

- (a) any share in the capital of the business, or
- (b) any entitlement to receive any income derived from the business, or to receive any other financial benefit or financial advantage from the carrying on of the business, whether the entitlement arises at law or in equity or otherwise, or
- (c) any entitlement to receive any rent, profit or other income in connection with the use or occupation of premises on which the business of the club is or is to be carried on (such as, for example, an entitlement of the owner of the premises of a registered club to receive rent as lessor of the premises).

‘**relevant position**’ means:

- (a) the position of director, manager or secretary, or
- (b) any other position, however designated, if it is an executive position.

‘**relevant power**’ means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others:

- (a) to participate in any directorial, managerial or executive decision, or
- (b) to elect or appoint any person to any relevant position.

- (3) For the purposes of this section, a financial institution is not a close associate by reason only of having a relevant financial interest in relation to a business.
83. Both The Star Group and Star Holdings are also close associates of The Star for the purposes of s 5(1)(a) above. Star Holdings owns 100% of the share capital of The Star. The Star Group owns 100% of the share capital of Star Holdings and is The Star's ultimate holding company.
84. As will be apparent from s 5(1)(a) of the *Gaming and Liquor Administration Act* and the definitions of 'relevant financial interest' and 'relevant power' in s 5(2), a person or entity is a close associate of The Star if two tests are satisfied:
- a. *first*, the person has either:
- i. a 'relevant financial interest' in that the person has any entitlement to receive any rent, profit or other income in connection with the use or occupation of the Casino; or
  - ii. a 'relevant power' in that the person has any right to participate in any directorial, managerial or executive decision of The Star or to elect or appoint any person to such a position; and
- b. *secondly*, by virtue of the above interest or power, the person does or will be able (in the opinion of ILGA) to exercise a significant influence over, or with respect to, the management or operation of the Casino (ie the business carried on under the authority of the Casino's licence, as distinct from other parts of The Star's business).
85. The antecedents of these provisions were considered by the High Court in *Darling Casino Limited v NSW Casino Control Authority*.<sup>20</sup> The Court considered there to be a two-stage process in ascertaining 'close associates'.<sup>21</sup> The second stage was described by the Court as 'subjective in the sense that the opinion of the Authority [ie

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<sup>20</sup> (1997) 191 CLR 602.

<sup>21</sup> (1997) 191 CLR 602 at 626-628 per Gaudron and Gummow JJ (Brennan CJ, Dawson and Toohey JJ agreeing).

ILGA] is necessary as to the ability of a person to exercise significant influence by virtue of relevant financial interest or relevant power'.<sup>22</sup>

86. The High Court in that case dismissed an allegation of jurisdictional error in relation to a decision by the authority that is now ILGA to grant a casino licence to the entity that is now The Star.<sup>23</sup> The Star at that time had two main shareholders: *first*, an entity associated with the 'Showboat' casino group from the United States; and *secondly*, an entity associated with the Leighton Group. The latter had been alleged to have issued false invoices and charged undisclosed tender fees in the course of its activities in the NSW building industry. Mr M H Tobias QC, after presiding over a public Inquiry under s 143 of the *Casino Control Act*, presented a report in which he found companies within the Leighton Group not to have been of good repute.<sup>24</sup> In response, the Leighton Group had placed its shareholding and management interests into a trust pursuant to which the trustee was to dispose of those interests within five years. Accordingly 'the Leighton Group had ceased to be a close associate of [The Star]'.<sup>25</sup>
87. The case is of interest because the Justices there seemed to have proceeded on the basis that Leighton had a 'relevant financial interest' for the purposes of the first stage of the close associate test. The second stage (significant influence), however, was not satisfied because, as their Honours held, 'the only continuing direct business association is the development and building obligations of the Leighton Group' and there was nothing to indicate to the Court that the Authority had failed to consider the question of influence.<sup>26</sup>
88. The Star has announced that it intends to undertake a proposed development known as 'Modification 13' as a joint venture with Chow Tai Fook Enterprises Limited (**Chow Tai Fook**) and Far East Consortium (Australia) Pty Limited (a wholly owned subsidiary of Far East Consortium International Limited) (**Far East**). The first and last of these entities are Hong Kong-based. The Star Group is a partner with them in

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<sup>22</sup> (1997) 191 CLR 602 at 628 per Gaudron and Gummow JJ (Brennan CJ, Dawson and Toohey JJ agreeing).

<sup>23</sup> The challenge was brought by an entity that is now a wholly owned subsidiary of entities within the group of companies for which The Star Group is the ultimate holding company.

<sup>24</sup> (1997) 191 CLR 602 at 614-615.

<sup>25</sup> (1997) 191 CLR 602 at 615.

<sup>26</sup> (1997) 191 CLR 602 at 629.

the Destination Brisbane Consortium announced by the Queensland Government on 21 July 2015 as the successful bidder for the Queen's Wharf Brisbane project, which will include a casino, and involve the relocation of an existing casino licence to the new development, or the grant of a new one. A conditional casino licence was granted on 13 October 2016.

89. I inquired into the nature of the assertion that these entities would be 'partners' in that development, to ascertain whether they might be considered close associates of The Star by reason of that relationship. By letter of 7 October 2016 I sought from The Star for 'Modification 13':
- a. copies of any written agreements between The Star or a member of The Star Group and Chow Tai Fook and/or Far East;
  - b. a summary of the effect of any oral agreements or arrangements between The Star or a member of The Star Group and Chow Tai Fook and/or Far East.
90. I also asked, in relation to the Queen's Wharf Brisbane project, for a description of the rights and obligations arising under all agreements (whether written or oral) between The Star Group and Chow Tai Fook and/or Far East. I wished to ascertain whether the nature of the association for that project might either bear upon The Star's activities and proposals at its Pyrmont site, or themselves be a close associate for the purposes of the provisions set out above.
91. The Star provided me with the information I requested under cover of a letter dated 20 October 2016, including an explanation why Chow Tai Fook and Far East are not, in its view, close associates. This material is commercially sensitive. I consider there are exceptional circumstances justifying its not being made public. I have concluded on the material available to me that neither Chow Tai Fook nor Far East is a 'close associate' of The Star for the purposes of the *Casino Control Act*. I have set out my analysis in Part B of the Confidential Appendix. No written agreement has been entered into, and none has been notified to me as proposed, which will involve Chow Tai Fook or Far East Consortium in the *casino operations* of The Star at its Pyrmont site.

92. Other arrangements and associations exist between The Star and Chow Tai Fook and Far East. A development proposal is being pursued involving Jupiters Casino on the Gold Coast. No part of it involves the partners in the existing casino or hotel complex there. I was provided with two agreements confirming this to be the case, at least at the early stage at which arrangements presently stand. The Star itself is not a party to these arrangements. Very recently, The Star announced a possible joint venture, again with Chow Tai Fook and Far East, to purchase the Sheraton Mirage hotel on the Gold Coast. There is no suggestion that the development would include a casino. The arrangements are at an early stage. The Star Group has a joint venture arrangement in Brisbane with Chow Tai Fook and Far East in Brisbane, but it is for a standalone carpark (in Brisbane).
93. The Queens Wharf Development is a joint venture for an integrated resort. The Star Group has a 50% interest, Chow Tai Fook 25% and Far East 25%. There is a separate residential component of the project, which is the subject of a separate joint venture to which neither The Star Group nor its subsidiaries are parties. The Star advised ILGA of these arrangements before the commencement of my Inquiry. The fact that, at a separate site, The Star or other members of its corporate group have arrangements that give Chow Tai Fook and Far East a direct interest in the casino operations there means that The Star's association is *closer* than it may otherwise, in totality, be. That fact, however, does not alter the fact that the casino operations carried on under the authority of the licence with which I am concerned are not ones in respect of which either Chow Tai Fook or Far East have the requisite control, involvement or interest. The Queensland regulator, the Office of Liquor and Gaming Regulation, has approved these arrangements. The test in that State for suitability of an associate does not require that the association be 'close' (as is the case in New South Wales).<sup>27</sup>
94. If Chow Tai Fook or Far East have, in reality, a closer association with The Star's casino business than I presently appreciate, then it would be relevant to know assessments of their probity had been undertaken by a casino regulator in another Australian State and did not prevent approval of them as partners in a casino operation. I sought, and was granted, access to the Probity Reports prepared by the Queensland Office of Liquor and Gaming Regulation for Chow Tai Fook and Far

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<sup>27</sup> See *Queen's Wharf Brisbane Act 2016* (Qld), especially s 24.

East. Those reports were prepared at the conclusion of a detailed and apparently thorough investigation which included interviews, inquiries made by law enforcement bodies, as well as financial, legal and forensic assistance. I am not at liberty to reveal the detail of those reports. They do show, however, that Chow Tai Fook and Far East were considered to be suitable to be associated with a casino licence. That assessment does not of course resolve the question in the context of New South Wales (if it falls to be answered). Nevertheless, the assessments show that one well-informed regulator, upon a considered assessment, and by reference to a similar statutory regime, regarded those entities to be suitable to be associated with a casino licence.

95. The approval of my access to the reports necessitated Chow Tai Fook, Far East and one natural person who has some significant control over them giving their consent to my doing so. That was a requirement because the Queensland regulator had obtained sensitive information on the condition that any access of the kind I sought would not be granted without consent. That Chow Tai Fook and Far East and their natural person associates would give consent in the manner they did tends to bear positively on their suitability and to suggest a degree at least of openness and honesty. I am grateful to the Queensland Regulator for granting me access to the Probity Reports which I found to be of considerable assistance on this topic.
96. I took these steps and inquired more closely into the facts than I may otherwise have done because it was urged on me by a solicitor who professed knowledge of the arrangements that Chow Tai Fook and Far East may have an interest of a kind which ought to give rise to concern about the business carried on under the authority of the Casino's licence. He also suggested to me that Chow Tai Fook and Far East were not suitable persons. I will not record here each of the serious suggestions that were made to me to advance that allegation because I have, despite giving the matter some considerable attention in my Inquiry, been unable to find any other support for them. Had my Inquiry revealed reasonable grounds to suspect the truth of what was urged on me, I would have disclosed the nature of the allegations.
97. I have included above such of the facts and analysis as I consider appropriate given the ordinary entitlement of The Star to keep its commercial arrangements, especially incomplete ones, to itself unless the regulatory regime requires otherwise. One benefit of this Inquiry is that it affords an opportunity to scrutinise such arrangements

without commercial confidentiality being lost. Were it otherwise, The Star's ability to engage in ordinary commercial negotiations might unfairly be prejudiced.

98. I am satisfied that The Star's close associates are those advised to me on 23 August 2016 by Mr Power, along with The Star Group and Star Holdings. I am not satisfied that Chow Tai Fook and Far East are close associates because, although having a business association with The Star (by various development and building agreements), no part of those arrangements appear to confer upon Chow Tai Fook or Far East a financial interest in the *Pymont* Casino (as opposed to a hotel attached to it or indeed a casino in another State) or a role in decision-making of the relevant kind by The Star. The decision-making that s 5 of the *Gaming and Liquor Administration Act* contemplates as relevant for this purpose is of a kind that the *Corporations Act* 2001 (Cth) would recognise as being vested in the officers of the company or within senior management. Neither entity, on any of the agreements produced to me, acquired any right or capacity to particulate in decision-making of that kind or to appoint anyone to do so. None of the agreements appeared to give either Chow Tai Fook or Far East capacity to exercise influence (significant or otherwise) over, or with respect to, the management or operation of the Casino (as distinct from the development, or other aspects of the business conducted at the Pymont site).
99. I provided law enforcement officers with a list of persons (both corporate and natural) who were either close associates of The Star or might, on a wide reading of that term, be regarded as such. The list is set out in Part B of the Confidential Appendix. No response that I received was adverse such as to conclude any close associate of The Star is unsuitable. I asked each of the members of law enforcement and like bodies that were interviewed as part of the Inquiry if they had any information that gave rise to a material concern that The Star and certain of its associates was other than honest. No response that I received suggested that I ought regard The Star or any close associate as not being of good repute.
100. The conclusions I express above are not, and could never be, an assurance of Chow Tai Fook's or Far East's honesty and integrity. They are, however, conclusions made after having gained access to and considered all information reasonably accessible to me.

101. I also made enquiries of law enforcement authorities in relation to The Star's notified close associates. No information was returned which justified my concluding that any of them is not suitable in the relevant sense.

## VII. PENDING PROPOSALS AND TRANSITIONS

### A. Introduction

102. This Inquiry comes at a time of change for The Star, for casinos in Sydney and for the regulatory environment governing their affairs.

### B. Modifications to the Casino Development

103. When the previous s 31 Inquiry was conducted in 2011, a major redevelopment of the Casino was in contemplation. The Star, in its submission to that Inquiry, set out a broad description of what was then foreshadowed.<sup>28</sup> Those plans are now more advanced, and some of them have been completed.
104. There are two main proposals. The *first* is ‘Modification 13’. It is for construction of a large hotel and residential tower and a ‘ribbon development’. The tower will include a Ritz-Carlton Hotel and expanded food and beverage, retail, function and event components. This development will cost of the order of \$500 million. During the course of my Inquiry, Modification 13 was the subject of some news articles and media coverage. The focus of it was the architectural competition for the design of a proposed new tower for which three architectural firms had been shortlisted.
105. The *second* is ‘Modification 14’: a proposal only at this stage. It is for alterations and upgrades to the premises including, principally, additional gaming floor area (an extension to the ‘Sovereign Room’) and a *porte cochere* improvement. The former would increase the footprint of that room by 3,500 square metres (doubling its area). The number of table games will increase, as will indoor and outdoor gaming areas, as well as provision for food and beverage consumption and, it is hoped, new restaurants and some further retail tenancies. One aim of this to improve the ‘arrival experience’ for visitors and to manage vehicular traffic better. Modification 14 will cost about \$250 million.
106. Both proposals require ILGA’s consent as lessor or owner of the premises, including because of cl 5.16 of the lease terms exhibited to the Casino Operations Agreement.

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<sup>28</sup> See Star City Public Submission to the 2011 Casino Licence Review pp 2, 6-7.

107. A number of other capital projects are in progress or have been recently completed. On my inspection of the Casino on 20 September 2016, I was shown the Darling VIP gaming salons, which are used exclusively for junket patrons. Construction of them was completed late last year.
108. The 500 seat 'Harvest Buffet' has been completed (also late last year), as has a car park upgrade. The 'Astral Residences' are being refurbished, with the completion of that work due early next year. The Astral Hotel (the largest of the Casino's three hotels) has recently been refurbished.
109. I was shown (on 27 September 2016) the expansion and upgrade to the northwest main gaming floor which is nearing completion. It was separated in part by hoarding at the time of my visit. That project will create a new entry-level member zone to be known as 'Vantage', it will improve the Astral Lobby access to the main gaming floor and it will create a new bar and lounge. These works were expected to be completed in October 2016 at the time of my visit.
110. The works that I have just referred to are of interest to ILGA. Whether or not it has any substantial objection to them is yet to be decided. Modification 13 does not appear to involve any alterations to gaming areas, or the creation of new ones.

**C. Regulatory transition**

111. Regulation of the Casino has moved from a reactive model, in which ILGA's inspectors are physically present around the clock within the Casino's premises, to one that is more proactive, and in which inspectors attend, but are not always stationed at, the Casino. ILGA is now assisted by staff within the office of Liquor & Gaming NSW, and especially that agency's 'compliance officers'. That change has meant some 'corporate memory' has been lost. It has allowed, however, fresh regulatory approaches and offers an opportunity to re-focus those efforts.
112. It is understandable that, with the Casino having now been in operation for over two decades, different regulatory models might be thought appropriate from previous ones. So too it is understandable that with technological changes, different regulatory difficulties might emerge, as well as opportunities to deploy technology as part of the regulatory response. For example, the Casino has recently installed a more

sophisticated system of closed circuit television (CCTV). It is now digital, much clearer, more accurate and has greater reach. This raises the prospect of remote real-time monitoring of the Casino, but it also means that CCTV footage of incidents in the Casino is more likely than before to show the detail necessary for the thorough investigation of incidents and, if appropriate, the taking of disciplinary and other action.

113. ILGA has had an office within the Casino premises since the commencement of operations in 1995. That office adjoined the Casino's own security centre. ILGA's inspectors had access to CCTV screens in their office. Up to 20 inspectors were stationed there. Their physical presence permitted an opportunity for immediate response to incidents and a point also for patrons who might have a complaint against the Casino to make their grievances known. Offices of this kind were not unusual around the world in casinos until relatively recent times. They are, I was told, less common now, and it is rare for them to be staffed by officers around the clock. I sought to ascertain exactly what the position was with respect to on-site offices of regulators in other jurisdictions. That information was not readily available. I was satisfied, however, that there is not one preferred or uniformly accepted model for the presence and staffing arrangements of such offices.
114. The inspectors formerly at the Casino were made redundant. That decision was made as part of a change to the way in which way the Casino is regulated, monitored and supervised. It is part of the change from shifting the onus from the regulator to the Casino, to require the latter to notify non-compliances and routine activities for the more risky of its activities (eg with respect to junkets). This change has been counterbalanced by some different regulatory modes and exploration of new ones.
115. The advances in technology at the Casino necessitate change in the manner by which its activities are policed. Physical presence might be desirable for activities that are capable of personal inspection and attendance. But there seem to me to be such a range of activities that are necessarily technological and for which physical presence is unnecessary.
116. I interviewed two people who had close personal knowledge of the transition from ILGA's on-site office fully staffed to its newer form. I saw the office and the record

keeping systems that were used. I formed the clear impression from the discussions that I had and the (albeit brief) inspection of the record keeping and other systems that the format was somewhat outmoded and although no doubt suitable for its day, required modernisation. Those arrangements lacked, for example, so far as I could ascertain, the technological sophistication with which gaming machines and the Casino's own internal systems operate.

117. If the ILGA office at the Casino is no longer to be staffed, then the capability to access surveillance footage presently available from that room ought be made available, if it can be achieved without the risk of interception and with proper controls, remotely from a place readily accessible by the regulator. Doing so will utilise technology to save cost (physical presence of officers) and it will also place remotely-located staff in much the same position as if they were on-site.
118. So too, the business of casinos in Sydney is changing, with the approval of a casino or casino-type business at Barangaroo to be operated by Crown Resorts. Sydney will, it is expected, have two casinos or casino-like businesses in 2021.
119. These changes: in the mode of regulation; the nature of the development from which The Star operates; and in the number of casino businesses in Sydney, differentiated this Inquiry from preceding ones in which there existed greater stability in those matters.

## VIII. CONTROL OF ANTI-SOCIAL BEHAVIOUR AND DISTURBANCE

120. The Casino lies just outside Sydney's central business district. Near the Casino are some other licensed venues that are not part of it: the Pyrmont Bridge Hotel is one example.
121. BOCSAR monitors reports of violent incidents in or near the Casino and publishes regular analyses of them. BOCSAR studied the impact of the imposition a lockout at 1.30am in the Kings Cross and CBD precincts and a requirement that sales of alcohol cease at 3am. One purpose was to determine if violence had been displaced from those areas to others nearby, such as Newtown, Pyrmont and Bondi.
122. BOCSAR's analyses appear in a paper published in 2015, *Lockouts and Last Drinks: The impact of the January 2014 liquor licence reforms on assaults in NSW, Australia* (Crime and Justice Bulletin No 183), and one in April 2016, *Did the 'lockout law' reforms increase assaults at The Star casino, Pyrmont?* (Issues Paper no 114). The second of these concluded that the lockout and cease sales measures may have increased the number of assaults in Pyrmont, particularly at the Star Casino, and that the increase was much smaller than the decrease in assaults recorded in the Kings Cross and Sydney CBD entertainment precincts following the reforms.
123. BOCSAR's work records a total of 154 non-domestic assaults in Pyrmont in 2015. 76 of them were attributed to the Star itself.
124. I respectfully adopt the conclusions reached by Mr Callinan AC in his review of (among other things) the lockout and cease sales measures. His recent report (dated 13 September 2016) concluded, relevantly (and with footnotes omitted):

The imposition of a lockout and of a requirement of last drinks at 3am were likely in my view to have some impact on the Casino and its environs. Pyrmont is within walking distance of Sydney. As I suggest elsewhere, the Amendments provide opportunity for some, including licensees outside their areas of operation, as well perhaps as for some within them. It is difficult to think of a locality near central Sydney to which the boundary of operation might have been moved to avoid some displacement of people.

It was stated to be an objective of the Amendments to disperse visitors and to reduce their density in the Precincts. The small (to use BOCSAR's description) increase in non-domestic assaults in Pyrmont is similar to the increase in Newtown, Double Bay and Bondi. Had the result been an increase

in non- domestic assault anywhere near the levels that had been experienced in Kings Cross and central Sydney before the Amendments came into effect, then one or more of their policy objectives would have been questionable.

The effect of the Amendments on the Casino has, its management says, not been entirely beneficial. Although a larger number of patrons have sought entry to the Casino following the Amendments, so too did more ‘unsuitable’ persons (aggressive, intoxicated). The Star said that refusals on the basis of responsible service of alcohol rose from 15,956 in 2013 to 23,318 in 2014. The situation later stabilised, with refusals in 2015 returning almost to the levels of 2013, that is of 16,320.

Star says that, statistically speaking, there are very few (maybe as low as 1) incidents per 211,000 visitors. The numbers of assaults, whether they are as BOCSAR reported them or lower, do not of themselves justify change to the terms of the Amendments. As BOCSAR has noted, the increase in assaults ‘around’ the Casino was much smaller in absolute terms than the fall in assaults in the Kings Cross and CBD Precincts.

125. Mr Callinan AC’s ultimate conclusion on this point was that there may have been an increase in violence in the close vicinity of the Casino, but any such increase is much smaller than the decreases in assault recorded in the Kings Cross and Sydney CBD precincts following the introduction of the measures with which his report was concerned.<sup>29</sup>
126. I deal specifically with the question of the adequacy of The Star’s recording and reporting of incidents involving violence in Part IX below. As part of that component of my Inquiry, a question arose whether the figures relied upon by BOCSAR are reliable if, as was suggested, the Star’s reporting to Police of violent incidents at the Casino were inadequate or incomplete.
127. These questions go to paragraphs 3, 4 and 5 of the Terms of Reference, namely the extent to which The Star has complied with its obligations under the *Casino Control Act* and its licence (para 3); the Casino’s impact upon individuals who attend, and may attend, the Casino, and their families (para 4); and The Star’s maintenance and administration of systems to contain and control the potential of the casino to cause harm to the public interest and to individuals and families and detect the presence of undesirable activities and people in the Casino (para 5).
128. The Casino is not free from violent incidents. It has its share of them. The number of those incidents may have increased slightly with the introduction of the lockout and

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<sup>29</sup> See The Hon I D F Callinan AC, *Review of Amendments to the Liquor Act 2007 (NSW)*, 13 September 2016 at, eg, pp 94-95, 120-124, 133-136 and 147, paras 5.12-5.17, 5.92-5.105, 6.17-6.27 and 9.6.

cease sales measures introduced in Kings Cross and the CBD in February 2014, but any increase is well short of the decrease experienced overall. Foot traffic in Pyrmont increased, and the casino refused entry to many who presented as intoxicated or unruly. The Casino seems to have managed adequately this change and the effects which might otherwise have produced greater problems and threats to safety and good order.

129. There are other aspects of the Casino's handling of antisocial behaviour and of its security arrangements generally that require consideration in this context.
130. I interviewed Mr John Lomax, the Casino's General Manager, Asset Protection. He is responsible for security and surveillance at the Casino and for the principal contract with the Casino's security provider.
131. Since the previous Inquiry (and only very recently), the Casino has changed its provider of security services for the areas outside the casino boundary (ie outside the perimeter of the gaming areas). The Casino invited tenders for the new security contract. The new contract began in the first week of August 2016. The new company was chosen in part so that the Casino could minimise, or avoid entirely, the use of subcontractors. Mr Lomax explained that he had found the use of subcontractors sometimes gave rise to difficulties because the Casino had less control over such workers. Subcontractors may, he said, be poorly paid and have inadequate experience or credentials. He explained problems he had experienced with subcontractors, including that some had not lodged tax returns, which impeded licensing and probity checks of them. The use of subcontractors ought be discouraged, for the reasons Mr Lomax gave. The Casino told me that all security at entry points and within the casino itself are employees of the Star. Contracted security operates only in the nightclub, for events, in the retail areas and at the perimeter of the building.
132. The Casino is well advanced on 'embedding' (this is Mr Lomax's description) the new contractor. Mr Lomax expects this process to take until the end of the year. The performance of the new contractor has not been problem-free, but he is attentive to the matters to be resolved and improved upon, and matters seem to be progressing adequately.

133. I discussed with Mr Lomax the Casino's policies and procedures for escalating disputes with patrons because some persons I interviewed told me that security within the Casino could be better on occasion in the way in which such encounters are handled. Mr Lomax said that there is a policy that security officers will ordinarily not approach a patron unless a supervisor is present. He said this procedure works well. About 800 patrons are asked to leave the Casino each month, and eight to 12 of those per month involve physical removals. He said that the challenge is to remove promptly and without disruption. Physical removal is, however, the last resort. That is as it should be.
134. Mr Lomax and those under his supervision try to identify guards' skills and to assign them accordingly. He said that some are better with communication and public interaction than others, for example, so might be placed in areas in which those skills are called for.
135. Mr Lomax reports to Mr Greg Hawkins, the Managing Director of The Star. He said, and I agree, that this structure for reporting facilitates impartiality and frankness. Five people report directly to Mr Lomax, one of whom is a Risk and Compliance Manager.
136. I have concluded, on the basis of what is set out above and in Part IX below, that the Casino's systems for the prevention of, and response to, anti-social and violent incidents on and near its premises are adequate. They meet The Star's obligations under the *Casino Control Act* and its licence, and minimise the harm to those who attend or might attend the Casino and its environs. These systems detect undesirable persons and lead to their removal.

## **IX. THE STAR'S REPORTING AND RECORDING OF INCIDENTS INVOLVING VIOLENCE**

### **A. Introduction**

137. In Part VIII of this report I considered the Casino's performance in relation to anti-social behaviour and disturbance, including violence in and near its premises. The findings I reached there in part depend upon The Star's accurately and fully recording and reporting incidents involving violence. In this Part, I set out the way in which I inquired into these matters and the results of that investigation.
138. Early in my inquiry I interviewed Mr Goodchild, Director of Compliance within Liquor & Gaming NSW, and also Mr Matt Weber, a Compliance Officer (the latter twice). They provided me with documents that recorded and reported on incidents at the Casino. At that stage, neither Mr Goodchild nor Mr Weber suggested any fundamental shortcomings in the way in which the Casino did so. They did however explain why some of the descriptors used in The Star's recording and reporting of incidents were not always clear and consistent. They suggested that the characterisation of incidents with the label 'medic' or 'behaviour' insufficiently described what actually took place. 'Medic' often meant intoxication; and the latter, incidents of violence. Some violent incidents were reported as assaults, and others as 'behaviour' only. I say more about this below, because late in the course of my Inquiry, material came to light which suggested further and larger problems with the way in which the Casino records and reports, in particular, incidents involving violence.
139. My Terms of Reference direct consideration of the adequacy of The Star's recording and reporting of violent incidents. They require me to inquire into the impact of the Casino upon the public interest by reference to the effects, potential and actual, upon individuals who attend and may attend the Casino, and their families, as well as the impact or potential impact of the Casino on the public interest (paragraphs 4.2 and 4.3). Also relevant are: the maintenance and administration of systems by The Star to contain and control the potential of the Casino to cause harm to the public interest, to

individuals and families (paragraph 5.3); and, the nature and adequacy of liaison between ILGA and law enforcement authorities (paragraph 8.2(b)).

140. It will be seen from what I presently explain, that shortly before I was to report to ILGA, the contents of a document that had been prepared by Liquor & Gaming NSW came to attention. It warranted further investigation. I explain now how that came about, the steps I took to inquire into those matters, and the conclusions I reached as a result of having heard oral evidence under oath, compelled the production of further documents, interviewed further persons and considered submissions about my draft findings and recommendations.
141. On 25 October 2016 I met with senior Casino staff, including its Chief Executive Officer, Mr Bekier, to discuss the manner in which the Casino would be afforded procedural fairness in commenting upon my draft report which was then nearing completion. In the course of that meeting, The Star (Ms Martin and Mr Power) indicated to me that it had received a letter and supporting document from Liquor & Gaming NSW asserting shortcomings in its recording and reporting of incidents involving violence at or near the Casino. They explained that the document stated it had been prepared as a basis for discussion, and The Star would be making a response to it. I did not request a copy of those documents on that occasion. ILGA was content to allow the response to be made without any intervention by it or me at that stage. Were it not for events which later occurred, and having regard to the explanations offered on the Casino, that is where the matter would probably have rested. I would have been content, given the preliminary nature of the concerns, and there being no apparent impediment to their discussion between The Star and the taking of any necessary regulatory action, to have left matters where they stood.
142. On 30 October 2016, an Australian Broadcasting Corporation news report referred to a 'leaked' in-house Government report which suggested that the Casino might be under-reporting incidents of violence. Some short time later, the Review document was made publicly available by the ABC on its website and I obtained a copy (which had some parts redacted) from its website. A short time later, I requested, and was provided with, an unredacted copy of the document by Liquor & Gaming NSW

entitled 'Review of violent incidents at The Star casino' (**the Review**), accompanied by an explanation which confirmed my earlier understanding that.<sup>30</sup>

[t]his preliminary internal report was prepared to guide ongoing discussions with the casino operator and was intended to be the first step in ongoing dialogue to better understand existing reporting arrangements and identify any potential gaps. As a preliminary and internal working document the report in its current form was not designed for public release and has precipitated premature and misconceived commentary and conclusive statements from some commentators.

143. The Review, once in the public domain, understandably sparked commentary. I sought from ILGA, and was immediately granted, an extension of time by which to report to it. I would have preferred to have been asked by Liquor & Gaming NSW to look into the matters the subject of the Review at an earlier stage of my Inquiry, thereby perhaps avoiding the need for an extension of time.
144. An understanding of the central allegations made by the Review is necessary before I explain the steps that I took to investigate the matters it raised and determine their validity.
145. The Review was prepared by the Compliance Operations Unit, which is managed by Mr Goodchild. That Unit, the Review says, had completed a review of violent incident reports recorded in the Casino's Daily Regulator's Summary for the period March to August 2016 inclusive. Data was drawn from The Star's internal electronic incident recording system. The aim was to determine if incidents were being accurately reported to Police and internally within the Casino. It was also said that this permitted an analysis of the times and locations within the Casino that might be linked to a higher incidence of violence. Once the accuracy of the recording and reporting of incidents can be assured, conclusions about times and locations and associated risk levels is a matter of mathematical calculation.
146. The Review contains four key findings, two of which relate to the issue just mentioned (and over which I therefore pass) and two to the focus of my Inquiry:

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<sup>30</sup> Letter, Liquor & Gaming NSW to Horton QC 2 November 2016, p 1.

### **1. 79% of violent incidents not reported in Asset Protection Monthly Report**

The review identified that during a six-month period between March and August 2016, 24 violent incidents were reported in the *Asset Protection Monthly Report* prepared by the casino. After an analysis of other data sourced from the casino the review identified an additional 87 violent incidents from the six-month period was 111, as opposed to 24, meaning that 79 percent of violent incidents are not being reported in the *Asset Protection Monthly Report* which is used to inform the casino executive.

### **2. No Police attendance at 67% of violent incidents**

Seventy-five of the 111 violent incidents for the period reviewed did not result in Police attendance, despite the severity of the incident involved or the injuries incurred by the parties. This included, for instance, an incident where a patron broke his leg during an altercation in the Marquee nightclub and a melee involving up to five patrons.

147. Finding 1 suggests that the Casino's internal reporting is incomplete in failing to refer to a large percentage of violent incidents. This issue was said to be important because, if the assertion were correct, it 'reduces the oversight of violent incidents at the casino, which in turn precludes internal processes and procedures to deal with the causes of the violent incidents'.<sup>31</sup> That proposition seems to be correct, and raises a question whether the Casino's systems are maintained and administered adequately to contain its potential to cause harm.
148. Finding 2 alleges that Police are not called regularly enough to violent incidents at The Star. The body of the Review takes the matter further. The concern expressed is that if violent incidents are not being reported to Police, then this affects the violent incident data captured by BOCSAR and 'paints an inaccurate picture of the level of violence occurring at the casino'.<sup>32</sup> Police knowledge of incidents, and the public reporting about their numbers is a matter of public interest, especially in light of recent governmental and public attention given to the 'lockout' laws and their effect. In February 2014 State Parliament enacted measures, among other things, requiring that venues with a liquor licence within the Central Business District and the Kings Cross Precinct of Sydney cease serving alcohol at 3am, and that they allow no new entrants to premises from 1.30am. The Casino is not within either of those precincts and so is not subject to those measures. The Minister appointed the Honourable I D F Callinan AC to conduct a review required by the relevant laws to be undertaken to

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<sup>31</sup> Review, p 8.  
<sup>32</sup> Review, p 8.

determine whether the policy objectives of those measures remained valid, and whether the terms of them remained valid for securing those objectives. Mr Callinan found the objectives of the Amendments to include, relevantly, the elimination of alcohol and drug-fuelled assaults (and not merely the displacement to other areas).<sup>33</sup> BOCSAR analyses data for purposes which include measuring any displacement of alcohol and drug-fuelled assaults from the lockout areas. Mr Callinan had regard to those analyses in concluding that ‘the statistics provided by BOCSAR have been reaffirmed by it and indicate no significant displacement of violence to other Precincts’.<sup>34</sup> Mr Callinan went on to observe as follows:

5.100 The imposition of a lockout and of a requirement of last drinks at 3am were likely in my view to have some impact on the Casino and its environs. Pyrmont is within walking distance of Sydney. As I suggest elsewhere, the Amendments provide opportunity for some, including licensees outside their areas of operation, as well perhaps as for some within them. It is difficult to think of a locality near central Sydney to which the boundary of operation might have been moved to avoid some displacement of people.

5.101 It was stated to be an objective of the Amendments to disperse visitors and to reduce their density in the Precincts. The small (to use BOCSAR’s description) increase in non-domestic assaults in Pyrmont is similar to the increase in Newtown, Double Bay and Bondi. **Had the result been an increase in non-domestic assault anywhere near the levels that had been experienced in Kings Cross and central Sydney before the Amendments came into effect, then one or more of their policy objectives would have been questionable.** [my emphasis]

149. This question then arises: if the data which finds its way to BOCSAR in calculating any displacement is inaccurate, have BOCSAR’s conclusions been, and will they continue to be, reliable in comparing the relative non-domestic assaults within the lockout area and those in displacement areas. I am conscious of the proposition that emerges from Mr Callinan’s review of the lockout laws: that the mere existence and attraction of venues and the locality in which they are situated may operate as a ‘magnet’ for patrons, both desirable and undesirable. In short, that without any fault on its part, a venue may unwittingly or undeservingly be regarded as a place in which anti-social behaviour will occur in or near it.

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<sup>33</sup> Callinan Review, p 28.

<sup>34</sup> Callinan Review, p 6.

150. I interviewed Dr Weatherburn on 8 November 2016 with Mr Conde (and again on 11 November 2016). For assessments of displacement, BOCSAR sources its figures from a system known as the Computerised Operational Policing System (**COPS**). BOCSAR has no control over what is entered into that system. It merely takes from it, reports of incidents involving violence, and then ascertains whether they occurred within the relevant ‘domain’, using a geo-locator adopted by police when entering the report. BOCSAR does not apply subjective judgements which incidents are, in the sense of blameworthiness or legal responsibility, to be utilised as the basis for analysis. Judgements about what incidents find their way to that system are for the Police. COPS is, primarily, a policing tool and must have serve that end. BOCSAR’s interest is in knowing if the policy changes by which incidents are added to that system. The reason is that the BOCSAR analysis shows, among other things, trends. If the policy for entry of incident onto COPS changes, then the reliability of trends derived from it may suffer. If the policy change is made known, then BOCSAR can take it into account, or qualify its conclusions as required.
151. I also interviewed Superintendent Donohue of NSW Police along with Detective Chief Inspector John Maricic and Detective Inspector Richards. I did so to learn more about COPS and the criteria by which incidents are entered onto it. I also inquired about another process with which Police are involved, which I now explain.
152. In 2008, Parliament enacted amendments to the *Liquor Act*, by which licensed premises, by force of s 11(1A) and Schedule 4 to that Act, could be made subject to additional measures, relevantly a ‘lockout’, the maintenance of an incident register for events during the standard trading period, the prohibition on the supply of certain drinks (eg shots) during a restricted service period and other matters. The Casino has never been subject to those arrangements, but has voluntarily assumed some of them, relevantly for present purposes, the maintenance of a register of incidents occurred *within* standard trading hours.<sup>35</sup> That seems to have come about in part because the Minister directed a review of some kind be conducted analogous to that applicable when a decision is made whether or not to subject a venue to that Schedule’s requirements.

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<sup>35</sup> The distinction between being inside and outside standard trading hours (the former being the focus of the obligation to keep an incident register under Schedule 4 and the latter being arising under s 56 of Schedule 6 of the *Liquor Act*) may not matter because the Casino can (and does) trade 24 hours per day, 7 days per week.

153. An explanation of the steps by which assessments are made (in March and September each year) which venues ought be brought within Schedule 4 is explained fully in Fact Sheet FS3006 produced by Liquor & Gaming NSW. BOCSAR provides figures of alcohol-related violent incidents (from COPS). If 12 or more incidents are attributed to a venue, an invitation is extended to the venue to review the incidents with Police. The purpose of that review is to assess what incidents ought be attributed to a particular licensed premises, by reference to criteria that include whether the incident is alcohol-related and ‘whether the incident has occurred on the premises, applying the police concept of “on licensed premises” ’.
154. The process is directed to the specific purpose of Schedule 4 and is known as the ‘Violent Venues Scheme’. It should not be taken (and nor does it purport to be) a generally-accepted measure of violent incidents. It is, self-evidently, different from BOCSAR’s purposes, being sub-set of the data provided by it.
155. The process of attribution under the Schedule 4/Violent Venues Scheme process employs methodology well established in liquor licensing policing and administration. To decide if a venue is dangerous or poses a risk above others, it is necessary to assess whether an occurrence is relevantly attributable to a venue, not just whether it occurred in, or in proximity to, that venue, but what nexus there is between that venue and the incident. For example, if a person comes to a venue already intoxicated, and is denied entry on the grounds of intoxication but becomes disappointed at being refused entry and assaults a passer-by, that is not an incident for which one would attribute responsibility to the premises. On the other hand, a person who becomes intoxicated at a premises who is then asked to leave and becomes violent is an incident for which a venue ordinarily should and ought be held responsible.
156. The Police are experienced in undertaking such exercises, involving, as they do, assessments of legal responsibility and practical connection between the incident and a particular licensed premises. It is a useful way of distinguishing between sheer numbers of incidents, and those in respect of which views might be formed about the adequacy of management at the relevant venue. The exercise is different, however, from an assessment of displacement or otherwise from the lockout areas. The displacement effect is of absolute numbers of incidents involving violence as recorded on COPS. Thus it follows that if there is a policy for recording such incidents which

is more or less essentially the same for Kings Cross and the CBD as for Pymont, then conclusions might be reliably drawn. If, however, the criteria for entry onto that system would differ from place to place or venue to venue, then a different result would follow. Detective Chief Inspector Maricic attends 'Crime Review' meetings with the Casino and a representative of Liquor & Gaming NSW.<sup>36</sup> At that meeting, an exercise of this nature takes place. The Police have available to them the incidents then recorded in COPS which will involve a mixture of incidents that the Casino has reported to them, incidents which they have been called to attend and incidents brought to their attention by complainants (other than the Casino).

157. The Police are not aware of any under-reporting by the Casino of violent incidents. If there were underreporting it would likely come to their attention because complainants would be attending Police stations and making reports of previously unmentioned incidents. Moreover, ambulance and hospitals data (which the Police cross-check) might also indicate omissions. Neither is happening.
158. I have not been able to detect any change in policy by which violent incidents are recorded on COPS. In the end, the judgement to be exercised in that regard is one for Police. COPS is, after all, primarily a policing tool, and is intended primarily to serve Police purposes.

**B. The issues**

159. The issues raised by the Review, in my view, raised a case for the Casino to answer. I issued a Summons on 2 November 2016 to The Star compelling the production of documents I considered necessary to investigate the matters raised by the Review. The Summons resulted in the production of the relevant Regulator's Summaries, the Asset Protection Monthly Reports and printouts from The Star's main internal incident recording keeping system for the relevant period.
160. I also requested of Liquor & Gaming NSW that it produce documents relevant to my consideration of the Review. I asked a series of written questions in correspondence in order to help me understand better some of the assertions made in the Review

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<sup>36</sup> Ms Clark of the Star described them as 'Monthly Operational Meetings': Exhibit 4, para 30.

which were unclear and the analysis underlying some of its claims. Those documents and answers to my questions were produced.

161. Following my interview of Dr Weatherburn and NSW Police I convened an oral hearing (on 9 November 2016), having summonsed three witnesses from The Star to a hearing to give evidence: Mr Greg Hawkins, its Managing Director, Mr Beni Joseski, Director of Security and Ms Catherine Clark, Director of Surveillance. The latter two report to Mr John Lomax, General Manager Asset Protection, who in turn reports to Mr Hawkins. Leave was given for The Star to be represented by lawyers at that hearing, and also to Liquor & Gaming NSW to appear, also represented by lawyers. Ms Kelly Rees SC appeared for the Casino and Ms Kate Richardson SC appeared for Liquor & Gaming NSW. The Review's findings 1 and 2 were put to the Casino's witnesses by Mr Conde and the parties given an opportunity to ask questions and make submissions. The issues explored at the oral hearing were:

- a. whether the Casino's Asset Protection Monthly Reports contain reference to all incidents involving violence at or near the Casino. (These reports are one means by which the General Manager Asset Protection reports such incidents to senior management);
- b. whether reports made to Liquor & Gaming NSW by the Casino properly describe incidents involving violence;
- c. whether such incidents involving violence as ought be drawn to Police attention (whether by a report or a request for Police attendance) have been so notified. (This issue goes to whether COPS records all relevant incidents).

**1. Issue 1 – Completeness and accuracy of the Asset Monthly Protection Reports**

162. The Asset Protection Monthly Reports are approved by Mr John Lomax, and contain an Executive Summary, being an aggregation of incidents falling within various categories. One such category is 'assault' and another is 'medical incidents'.

163. It became apparent in the oral evidence that 'assault' as defined or used in the compilation of these reports represents a sub-set only of the number of incidents involving violence. The test adopted by The Star for inclusion as an assault in the

Asset Protection Monthly Report appears to be: an incident resulting in more than trivial injury, in relation to which there is a complainant and where one or more parties could be identified. It excludes incidents of a less serious nature, or those where no person involved in the incident wished to take the matter further, and where the injury sustained was not very serious, or did not otherwise warrant such a designation.

164. Many incidents involving violence do not find their way into the Asset Protection Monthly Reports under the descriptor ‘assaults’. Other incidents are not taken into account in those Reports, whether under the category of ‘behaviour’, ‘medical incidents’, ‘medics’, or otherwise. Mr Lomax’s statement, as Liquor & Gaming NSW submitted, and The Star accepted, makes this clear.<sup>37</sup>
165. The reader of those reports, if not otherwise apprised, would be likely to assume that ‘assaults’ included all violent incidents. The descriptor ‘medic’ is uninformative, perhaps even misleading. It does not communicate that the incidents within its reach may have involved violence.
166. Mr Hawkins accepted candidly and correctly in his oral evidence that there exists a lack of clarity in the Asset Protection Monthly Report in these respects.<sup>38</sup> Ms Richardson SC drew to his attention numerous incidents which involved violence which on their face ought to have found their way into some clear reporting in the Asset Protection Monthly Reports. Without accepting each instance to evidence a shortcoming, Mr Hawkins properly conceded, in effect, the inadequacy in general terms.<sup>39</sup> One example suffices to demonstrate the problem.
167. The Asset Protection Monthly Report for March 2016 discloses four incidents of ‘assault’ for that month. There were, however, 17 or so incidents involving violence for that period according to the Casino’s internal records. The four most serious incidents found their way into the Asset Protection Monthly Report, but it is not clear to me, and nor was it clear to Mr Hawkins, where or indeed if, the other 13 find expression in the monthly report. There are 102 ‘medical incidents’ disclosed in the

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<sup>37</sup> Statement of Mr Lomax, paras 45 and 48. Submissions from Liquor & Gaming NSW dated 17 November 2016, paras 3 and 4; Submissions of The Star (Ms Rees SC) para 8.

<sup>38</sup> Transcript, p 20 line 21; lines 23-30.

<sup>39</sup> See, eg Transcript, p 36 line 32.

Asset Protection Monthly Report for that month, but that descriptor does not disclose to the reader which, if any, involved violence. ‘Medic’ or ‘medical’ can be no more than a euphemism, in many instances, for drunk and/or disorderly.

168. I find that the Asset Protection Monthly Reports incompletely and inadequately record incidents of violence. That is because ‘assault’ carries a far too restricted definition and imports (wrongly in my view) a definition applicable to a different purpose, namely the Violent Venues Scheme. The use of that definition results in fewer than the full number of violent incidents being recorded in that Report. It is a problem compounded by the fact that, as Liquor & Gaming NSW submitted, there is no other category in the Reports that convey to management that other violent incidents occurred during the reporting period. Taken together, the problems mean that the Asset Protection Monthly Reports have the potential to mislead management.
169. To find shortcomings in the Asset Protection Monthly Reports (and even that they have the potential to mislead) although calling for change, is not to say that senior management has in fact been misled. There are means other than the Asset Protection Monthly Reports by which the number and type of incidents involving violence come to the attention of senior management (which includes Mr Hawkins).
170. Mr Hawkins’s statement tendered during the oral hearing explained these ways.<sup>40</sup> He is in contact daily with the General Manager of Asset Protection and is briefed regularly about incidents that occur. He receives out-of-hours briefings about incidents. He gave as an example, a call he received at 4.30am on Saturday 29 October 2016, advising him of an incident involving a patron who had been punched. Mr Hawkins also has day-to-day general interactions with other staff in what he described as the General Management and Property Leadership teams. He produced to the Inquiry as annexures to his statement, examples of emails and other documents describing fights, conduct of security officers, police attendances, guest complaints, bad behaviour and so forth.<sup>41</sup> Mr Hawkins also produced an example of ‘Daily Incident Summaries’ which are provided to him. It refers to more than one physical altercation and other events which attract the general descriptor ‘behaviour’.<sup>42</sup> Mr

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<sup>40</sup> Ex 1.

<sup>41</sup> Exhibit 1 Tab 1.

<sup>42</sup> Exhibit 1 Tab 3.

Lomax said in his statement, and I accept, that ‘less serious incidents’ are made available to Mr Hawkins in reports other than the Asset Protection Monthly Reports.<sup>43</sup>

171. Mr Hawkins was asked specifically by Mr Conde in the oral hearing about the means by which incidents involving violence (whether or not described as assaults) come to the attention of those senior to him. He attends meetings of the Management Risk and Compliance Committee of The Star Entertainment Group. Also in attendance (as Chair) is Mr Bekier, the Chief Executive Officer of The Star Group and Mr Chad Barton, Chief Financial Officer, each of whom attends the meetings of The Star Group’s board either as a director (Mr Bekier) or as an observer (Mr Barton). Mr Hawkins referred to an example of ‘Operational Risk Reports’ submitted to that meeting which gives statistics of abusive/offensive behaviour.<sup>44</sup> It seems to record incidents in a more general way, and not limited to assault.<sup>45</sup> Mr Hawkins explained in his oral evidence that there are more informal means by which reporting is made to that committee meeting which in turn reports to the Group Board. Mr Hawkins speaks with Mr Bekier each day about specific incidents, either in person or by telephone.<sup>46</sup> Their offices are not far from each other.<sup>47</sup> Mr Hawkins said he was confident that he is made aware of the incidents occurring across the property and that the details of incidents make their way to him promptly.<sup>48</sup>
172. I would not go so far as submitted by Liquor & Gaming NSW to say that because the Asset Protection Monthly Reports are the ‘key managerial report in which information is synthesised and converted to a form ... meaningful ... to assist senior management’ casino management is not given information in way that allows it accurately to ascertain violent incident levels and respond appropriately.<sup>49</sup> Mr Hawkins’s evidence satisfied me that he is apprised of the detail of incidents, that he brings them to the attention of the Chief Executive Officer, and that he is briefed regularly enough and in sufficient for casino management (of which he is a member) to come to know violent incident levels and respond appropriately. It is relevant to note in this regard my Inquiry did not reveal any serious shortcomings, practically

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<sup>43</sup> Statement of Mr Lomax para 45.

<sup>44</sup> Exhibit 1 Tab 6.

<sup>45</sup> See eg pp 2, 4 and 8 of that report.

<sup>46</sup> Transcript, p 27 from line 43.

<sup>47</sup> Transcript, p 28, lines 3-4.

<sup>48</sup> Transcript, p 23, lines 6-28. See also Submissions on behalf of The Star (Ms Rees SC), para 11.

<sup>49</sup> Submission of Liquor & Gaming NSW dated 17 November 2016, paras 14 to 17.

speaking, in the systems maintained and administered by Casino management for preventing or dealing with violent incidents.

173. Immediately after the oral hearing, Mr Conde asked questions of Mr Lomax about the Crime Review meeting and the data available to those in attendance. The response was a statement from Mr Lomax given on 15 November 2016. He confirmed my tentative views about what occurs, namely the Police have available to them before the meeting the incidents entered onto COPS. The Star does not, before that meeting, or during it, provide the Police with all incidents involving violence that have been recorded as having occurred in or near the Casino.<sup>50</sup> One main purpose of the meeting is to decide which *of those* incidents ‘ought be regarded as an “assault” attributable to The Star’.<sup>51</sup> Mr Lomax goes on to explain that the reason for the classification of ‘assaults’ at the Crime Review Meeting is because there is no process for the tracking of incidents and the opportunity review them with Police because the Casino is not subject to the Schedule 4 process.<sup>52</sup> Mr Lomax gives this as the definition of assault that is adopted:<sup>53</sup>

... the view of Police as to whether the incident relates to The Star. So, for example, if the incident involved people approaching The Star but who had not been customers, it may not be counted. Likewise, if the incident did not occur on The Star’s premises it may not be regarded as an assault occurring at The Star.

174. The similarity to, if not the complete adoption of, the Schedule 4 process discussed above is obvious. I make no criticism of that process so far as it is directed to the violent venues scheme.
175. I have, however, formed the view that the definition of assault and the process undertaken at the Crime Review meetings have come to have a significance beyond that which they ought. The Schedule 4 process is directed to a limited and focussed end: the Violent Venues Scheme. It has infiltrated, however, other recording and reporting when it ought to have been kept separate.

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<sup>50</sup> Statement of Mr Lomax para 38.

<sup>51</sup> Statement of Mr Lomax para 28(a)).

<sup>52</sup> Statement of Mr Lomax para 35.

<sup>53</sup> Statement of Mr Lomax para 34.

176. I am satisfied that through the means Mr Hawkins described, violent incidents come to the attention of the Board of both The Star and The Star Group. Mr Hawkins himself is a senior manager with authority to impose or recommend the adoption of appropriate systems to prevent, contain and control incidents involving violence.
177. Nevertheless, The Star's internal reporting of violent incidents is less than adequate. The Board and senior management may come to know about undesirable conduct as a result of an unstructured, opaque and not always traceable process. Because of this and the inadequate nature of the descriptors, there ought to be a clear paper trail recording relevant matters, enabling proper redress by the Board and senior management, and reforms to undesirable conduct. I say more about this below.

## **2. Issue 2 – Reporting to ILGA / Liquor & Gaming NSW**

178. The Star must maintain the incident register required by clause 56 of Schedule 6 to the Casino Control Regulation 2009. That Schedule contains provisions of the *Liquor Act* which apply (as modified) to the Casino. The requirement is to keep a register of incidents that records 'details' of the following incidents that occur outside the standard trading period for the licensed premises:<sup>54</sup>
- (2) (a) any incident involving violence or anti-social behaviour occurring on the licensed premises,
  - (b) any incident of which the licensee is aware that involves violence or anti-social behaviour occurring in the immediate vicinity of the licensed premises and that involves a person who has recently left, or been refused admission to, the premises,
  - (c) any incident that results in a person being turned out of the licensed premises under section 77.
- (3) The incident register must also record details of any action taken in response to any such incident.
179. The register is to be in a form approved by the Secretary. I say more elsewhere in this Part of the approval of that Form and its contents. The purpose of this reporting is to permit assessment of undesirable behaviour which occurs on or near licensed premises. It may form part of an assessment of whether a licensed premises is

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<sup>54</sup> The requirement is to maintain a register of incidents 'that occur outside of the standard trading period for the licensed premises', which means midnight to 5am on weekdays and Saturday mornings and 10pm to 10am on Saturday nights and Sunday mornings: *Liquor Act* s 12(1).

discharging its functions for the purposes of the *Liquor Act*, including the duty to prevent the excessive consumption of alcohol and of the numerous obligations cast upon licensees in the Regulations directed to the requirement or encouragement of the adoption of responsible practices in the sale, supply and service of liquor.

180. The Star must also maintain an incident register under Regulation 34 of the Security Industry Regulation 2016 (NSW) as the holder of a master licence under the *Security Industry Act 1997* (NSW). The form of it is that approved by the Commissioner of Police. That register is directed, in particular, to the recording of forcible contact with a security officer, or physical restraint of a person, or action taken to eject a person from the premises.
181. A general obligation exists upon the Casino to make information or records (including incident registers) available to police and casino inspectors by force of s 21 of the *Gaming and Liquor Administration Act* if a notice in writing requires it.
182. The Star says it voluntarily assumes the obligations under Schedule 4 of the *Liquor Act* and for present purposes, clause 7A, which provides for a standard trading period incident register. That clause picks up the requirements of s 56 of the *Liquor Act*, which is in terms relevantly the same as clause 56 earlier mentioned.
183. The Star, as with all other persons, must report to Police any knowledge or belief of the commission of a serious indictable offence by reason of s 316 of the *Crimes Act*. I deal elsewhere with that provision and its effect.
184. ILGA and Liquor & Gaming NSW have available to them all incidents of violence, however so described, made within The Star. In order to explain this it is necessary to understand a little about The Star's internal systems.
185. The Star has two main databases for the recording of incidents. The first is the Casino Internal Database (**CID**). Surveillance operators use this to create a daily log of what they do. They enter a brief description of their review of a particular situation, generally a couple of sentences only.<sup>55</sup> There is also a database called 'Protect'. Incident reports are entered on it. They are more detailed than the entries made on the CID and may run to many pages. The Casino has written 'Standard Operating

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<sup>55</sup> Statement of Clark, Exhibit 4, para 17.

Procedures for Surveillance’ that govern the preparation of such reports. It identifies (at p 23) the standards that are expected of surveillance officers. Incident reports are to be completed ‘giving a detailed account of specific incidents which have been recorded’. A number of situations are identified which require an incident report to be completed. They include, relevantly, ‘[i]ncidents involving physical removals or assaults’ and ‘[a]ny other incident that may possibly result in court action’. Surveillance is not required to complete a separate report for each incident but may add to incident reports originating from another department at the Casino (most likely the security department). Surveillance is to maintain independence from other departments throughout the process.

186. Categories and subcategories that describe the incident may be selected. There are 11 categories and 94 possible subcategories. CID and Protecht are separate databases. Ms Clark explained that Protecht provides more information than does CID.<sup>56</sup> A Regulator’s Summary is produced daily by The Star’s Regulatory Affairs Manager, Mr Graeme Stevens. It is sent to the Compliance Operations Unit within Liquor & Gaming NSW using extracts from CID. The descriptors used are ones said (by Ms Clark) to have been agreed with Liquor & Gaming NSW.<sup>57</sup>
187. There is a Daily Asset Protection Summary also drawn from CID. It is prepared each day and sent to Mr Hawkins. Those summaries, as I have said, do clearly record ‘physical altercations’, albeit characterised by the descriptor ‘behaviour’. Nevertheless, it is clear on its face which incidents do and do not involve violence.
188. The Asset Protection Monthly Reports are prepared by Mr Bob Inman. They are provided to Mr Hawkins, and also to Liquor & Gaming NSW. Mr Lomax approves those reports, as the front cover of each records.
189. Each month a meeting occurs between Liquor & Gaming NSW, the Police, Mr Lomax, Mr Inman and Ms Clark. Before that meeting, Mr Lomax, Mr Inman and Ms Clark examine each incident bearing the descriptor behaviour, patron altercation or

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<sup>56</sup> Transcript p 56 from line 31.

<sup>57</sup> Transcript p 79 line 29.

forced removal. They assess which ones may be regarded as assaults. Ms Clark describes what happens at that meeting in these terms:<sup>58</sup>

John Lomax, Bob Inman and I then meet with Liquor & Gaming and NSW Police ... and view the footage, and agree whether it is an assault, talk about what we can learn from that incident, and provide any updates in respect of it.

190. Ms Clark explains in her statement that, in preparing the Monthly Asset Protection Report, she, Mr Lomax and Mr Inman look at incidents from CID and CCTV footage and identify 'what we regard as assaults'.<sup>59</sup>

191. On occasion, the reporting to Liquor & Gaming NSW does not fully describe the nature of the incident. For example, in the Regulator's Summary containing reference to an incident in July 2016,<sup>60</sup> the following appears:

An altercation occurred in Pit 08 between husband and wife. Review conducted confirmed male on table 0824 pushed his wife in the neck resulting in her falling to the ground. Medic attended but female denied any treatment. Male and female were off site via Grand [Entrance].

192. The entry in Protecht records that the woman, after being pushed in the neck, fell backwards and hit her head on what was described in a surveillance officer's report as a 'bollard'<sup>61</sup> (Ms Clark described it as a 'pole' in her oral evidence<sup>62</sup>). The incident did not lead to any known injuries but could easily have done so. The Regulator's Summary does not mention the bollard or pole. Ms Clark accepted in the examination of her by Counsel Assisting<sup>63</sup> that for this incident (to which Police were not called) reasonable minds might differ about whether Police ought in fact to have been called.

193. Shortcomings of this kind (ie, omission of critical facts in the Regulator's Summary, here, mention of the bollard or pole on which the woman hit her head, or, indeed, the fact she hit her head, or may have done so<sup>64</sup>) are by no means common. There are isolated examples only of it. In any event, as events have shown, the Regulators

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<sup>58</sup> Exhibit 4, para 31.

<sup>59</sup> Exhibit 4, paras 28 to 32.

<sup>60</sup> Incident 1345805, 24 July 2016, 1.24am.

<sup>61</sup> Protecht report, Incident 1345805, p 2.

<sup>62</sup> Transcript, p 75, line 34.

<sup>63</sup> Transcript, p 76, line 24.

<sup>64</sup> I add this rider because The Star submitted that it was 'inconclusive' whether the woman had hit her head: Submissions on behalf of The Star (Ms Rees SC), paras 20 and 21. Even if that be the case, the report of the incident in the Regulator's summary ought to have said something of this. As it was, the entry in the Regulator's Summary was silent on the topic.

might readily access the Casino's incident reporting systems which I have seen and am satisfied, accurately and clearly describe incidents that involve violence. With that said, The Star's reporting ought not depend upon the regulator having to intervene in this manner. The Star's systems ought be mature enough fully to apprise the regulator of the real state of affairs.

194. There is one remaining observation to make on this topic. Page 9 of the Review lists descriptors used in the Regulator's Summary which Ms Clark said had been agreed with Liquor & Gaming NSW.<sup>65</sup> Those descriptors include relevantly 'behaviour', 'forced removal' and 'code medic'. There is no category for assault, for violence or other like descriptor. I was uncertain at the conclusion of the oral hearing whether those descriptors had in fact been approved by Liquor & Gaming NSW, principally because I had requested the production of the form approved by the Secretary under Clause 56 of Schedule 6 of the Casino Control Regulation. That provision, as I explain later, picks up an obligation under the *Liquor Act* for licenced premises to maintain an incident register 'in the form approved by the Secretary'. The relevant approval seems to have been given on 29 October 2009 by the then Chairperson of ILGA's predecessor.<sup>66</sup> That register contains perfectly clear descriptors, relevantly being 'violence/aggression', 'inappropriate conduct' and 'intoxication'. I have not been able to ascertain whether the descriptors at page 9 of the Review were ever approved by Liquor & Gaming NSW.<sup>67</sup> For this reason, I have been more restrained in the conclusions I have reached about the adequacy of the descriptors used by The Star. There is a possibility that they were approved by Liquor & Gaming NSW (albeit perhaps not formally). Whether or not they were, those descriptors (eg 'medic' and 'behaviour') ought be abandoned as insufficiently descriptive and unclear. The Star, in my view, ought adopt the descriptors in the form approved by the Secretary, in substitution for those at page 9 of the Review. Much more explicit definition is required, eg 'intoxicated', 'partially intoxicated', 'unruly', 'threats', 'minor assault', 'assault other than minor', 'other disorderly conduct'. These only examples. They are indications, however, of what is needed. Consistency of classification, accuracy of recording and accessibility of clear and current written records are essential.

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<sup>65</sup> Transcript, p 79, line 29.

<sup>66</sup> See letter from Mr Goodchild, Liquor & Gaming NSW to Counsel Assisting (Mr Conde) dated 10 November 2016.

<sup>67</sup> Letter from Liquor & Gaming NSW to Mr Conde, dated 10 November 2016.

### 3. Issue 3 – Reporting to Police

195. The threshold for reporting is a reasonably high one, and calls for the exercise of judgement.
196. The Star, as with all other persons, must report to the police any knowledge or belief of the commission of an indictable offence by reason of s 316 of the *Crimes Act*, which provides:
- (1) If a person has committed a serious indictable offence and another person who knows or believes that the offence has been committed and that he or she has information which might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender for it fails without reasonable excuse to bring that information to the attention of a member of the Police Force or other appropriate authority, that other person is liable to imprisonment for 2 years.
  - (2) A person who solicits, accepts or agrees to accept any benefit for himself or herself or any other person in consideration for doing anything that would be an offence under subsection (1) is liable to imprisonment for 5 years.
  - (3) It is not an offence against subsection (2) merely to solicit, accept or agree to accept the making good of loss or injury caused by an offence or the making of reasonable compensation for that loss or injury.
  - (4) A prosecution for an offence against subsection (1) is not to be commenced against a person without the approval of the Attorney General if the knowledge or belief that an offence has been committed was formed or the information referred to in the subsection was obtained by the person in the course of practising or following a profession, calling or vocation prescribed by the regulations for the purposes of this subsection.
  - (5) The regulations may prescribe a profession, calling or vocation as referred to in subsection (4).
197. The Casino has a ‘Security’ Standard Operating Procedure that deals with this topic. Section 4.2 of it states:

#### **Mandatory Notification of Police in Serious Matters**

1. In cases of serious offences (eg ... sexual assaults, serious assaults occasioning serious injury or serious grievous bodily harm, malicious wounding ...) alleged to have been committed, Police must be notified immediately and without delay. ...
2. In instances where a patron requests Police attendance this should be arranged immediately and the Security Operations Manager, Security Duty Manager or Security Supervisor be notified immediately.

3. Patrons are at will to notify Police of their own accord but under no circumstances are patrons who request Police attendance to be informed by Security Staff that they must contact Police themselves.  
...
4. Otherwise the routine responsibility for notifying police should be the Security Operations Manager, Security Duty Manager or on the advice received from a Security Supervisor or other Security Officer as the circumstances dictate.
5. In other cases Surveillance will notify the Police as requested by the Security Operations Manager, Security Duty Manager or Security Supervisor or this can be arranged by the above Security Management Team directly.
6. In incidents where it is obvious that a serious offence has been committed Surveillance should contact Police immediately and advise the Security Operations Manager or Security Duty Manager of this action and log the time of the call to Police in CID and the relevant IR.
7. In serious matters, it is also important to articulate to Police as the extent of the injuries sustained especially in any serious assaults or life threatening situations and as to the exact location of the crime scene.
8. It is imperative that in any case where alleged offenders or involved witnesses are involved or implicated in any serious offence and are attempting to flee the crime scene or become violent that this information be immediately conveyed to Police or the Triple 000 Operator.
9. Offences which fall into the category of serious indictable offences (ie those offences which carry penal servitude from 5 years to life imprisonment) must be reported to Police in accordance with Section 316 of the Crimes Act.

...

198. Section 4.3 of that same Standard Operating Procedure deals with ‘Police Attendance at The Star’, and section 4.4, ‘Notification [internally] of Serious Incidents at The Star’. Under the latter, any incident of a serious nature which involves Police is required to be communicated to the General Manager Asset Protection [currently Mr Lomax] or Director of Security or the Director of Surveillance in a timely manner.
199. These procedures are not inconsistent with The Star’s legal obligations and offer some detailed guidance about the appropriate responses in particular situations.
200. The Police say they do not have the resources to be called to every incident, however minor. Mr Hawkins said in his oral evidence that this is one of the factors to be balanced in deciding whether to report a matter to police. Questions were directed to The Star’s witnesses at the oral hearing about whether particular incidents ought to have been reported to Police by The Star, or their attendance requested. Ms Clark in

particular pointed out that such decisions are often made under severe time pressures under rapidly changing conditions. Two examples were the subject of appropriate concessions by Mr Joseski as ones which might have been appropriate subjects for Police notification or attendance. Ms Clark referred to a third as, in effect, one about which reasonable minds could differ in this respect.

201. Mr Joseski referred in his statement<sup>68</sup> to incident number 1323078. One man in a group of men who appeared to know one another hit one of the men who dropped to the ground. The CCTV footage shows that the victim may have lost consciousness for a short time. He may have regained consciousness by the time the security officer arrived on the scene, but did not wish to involve Police in the matter. He did not wish to pursue the matter any further, and the alleged offender was told to leave.
202. Another incident to which he refers is incident number 1316954. A man was struck with a closed fist on his jaw after he was asked for money and declined the request. The victim did not know the assailant. The wrongdoer was seen speaking to passers-by outside the Casino and entering and emerging from a nearby residential property. These incidents are ones where The Star could or should probably<sup>69</sup> have informed the Police in Mr Joseski's view.
203. Ms Clark pointed to incident number 1353120. An altercation occurred in the retail section of the Casino complex. A melee broke out and involved about five people. Two men wrestling on the ground were separated. One was bleeding from a gash on his forehead. He insisted on leaving and refused to provide identification. This incident, Ms Clark says, was one that prompted her to query why the police had not been involved, although she ultimately agreed with the decision not to call Police, principally because of the person's insistence that Police not be called, and because the injury did not appear to be sufficiently serious.
204. I have not found it possible on the material available to me to conclude that The Star has incorrectly not decided to call Police to attend or failed to report incidents. That question depends upon a balance between the benefit of incidents being made known to policing agencies, and the fact of their limited resources to attend and give attention

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<sup>68</sup> Exhibit 5.

<sup>69</sup> See The Star's submissions (Ms Rees SC), para 19 as to the effect of Mr Joseski's evidence, which I accept.

to every violent incident. I accept that judgements about whether to call Police, or to make reports to them, may in some cases have been made differently. In those cases identified by Mr Joseski, the Casino should have exercised that judgement in favour of calling the police.

205. I mention for completeness, a study undertaken by BOCSAR in November 2016 and released at the very end of my Inquiry entitled ‘Reporting rates of assault at *The Star* Casino by licensed premises staff’ (Issue Paper No 121). BOCSAR set out to determine if there had been any change in the rate of reporting of assaults at the Casino by staff before and after the ‘lockout’ laws were introduced in February 2014. It concluded that there has been no such change. The analysis was based upon a review of the narrative descriptions of 278 non-domestic assaults in COPS as having occurred at The Star between January 2012 and June 2016. This study assists in showing that staff at The Star are not being discouraged from reporting assaults to Police.<sup>70</sup> That study, however, was not directed to the question whether, for example, all the violent incidents at The Star that ought be characterised as assaults and find their way onto COPS in fact do so. I had access to the narrative descriptions for all violent incidents (albeit for a limited period), whereas the data which BOCSAR had available to it was limited to that on COPS (and for a much longer period). Our exercises were therefore different.

### **C. Conclusions**

206. The Star has not been under-reporting incidents involving violence to Liquor & Gaming NSW or to ILGA. It should, however, use clearer terminology when doing so.
207. In its Asset Protection Monthly Reports, The Star reports only, relevantly, incidents satisfying the restricted definition of ‘assault’ (a definition directed to the Violent Venues Scheme) that excludes other – lesser – incidents involving violence.
208. This inadequacy in the Asset Protection Monthly Reports does not mean that The Star is under-reporting incidents involving violence either internally or externally: there

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<sup>70</sup> Supplementary Submission from The Star dated 25 November 2016.

are other sources of reporting of violent incidents, none of which appeared deficient. It is nevertheless, something which must be more accurate and complete.

209. The Star has a difficult judgement to make in deciding in what circumstances Police ought be called to attend or a contemporaneous report ought be made to them. The Star may not have always exercised that judgment by erring on the side of caution: there are, perhaps, two incidents which ought to have been reported to Police that were not.<sup>71</sup> If there were a systemic problem, it would have manifest itself through complaints directly to Police by victims of such incidents, ambulance and hospitals data would suggest a disparity that warranted attention, or the rate of reporting by staff at The Star would show a change. None of these factors show there to be serious deficiencies in this regard.
210. The matters raised by the Review show aspects of The Star's reporting that ought be improved, especially by clearer and more consistent descriptors, and more cautious use of the special definition of assault.
211. I did not discern any deliberate concealing by The Star from regulators or police of incidents involving violence at or near the Casino.

#### **D. Recommendations**

212. The Star ought use descriptors that more clearly state the character of an incident and its nature. Any revision of descriptors ought meet the reasonable requirements of regulators, and the Police. This is one way by which all incidents involving violence would come to the attention of Police, whether or not in the Crime Review meeting, and furnish Police with all relevant data from which they might assess which incidents ought be recorded on COPS.
213. In particular, the Casino's Asset Protection Monthly Reports ought refer expressly to incidents involving violence (whether or not constituting assault however defined) and give a clear description of the relevant conduct, and not euphemistic and generalised descriptions such as 'medic' and 'behaviour'.

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<sup>71</sup> I accept in this respect The Star's submission that there are differences in the judgement calls that competent and experienced surveillance and security operatives may make, here, evidenced by the approaches of Mr Joseski and Ms Clark: Submissions on behalf of The Star (Ms Rees SC), para 24.

214. The Star should consult Police to secure agreement as to the threshold for the making of reports to Police or calls for attendance, and those criteria ought be clearly stated and recorded.
215. The regulator may wish to require The Star to submit a programme for approval by it of the changes it proposes to make to its system of recording and reporting violent incidents, in its Asset Protection Monthly Reports, its Regulator's Summaries and in its dealings with Police.
216. The Star has many overlapping obligations to record and report incidents. The utility and accuracy of each may be improved if the obligations were to be centralised and harmonised, and adopting descriptors which are directed to, and clearly inform, the functions that each regulator, as the recipient of such reports, is vested to discharge.

## X. JUNKET OPERATIONS

### A. Introduction

217. Clause 8.2(a) of my Terms of Reference requires me to give particular consideration to the operation of junket programmes and the integrity of their settlement. They are important to the Casino's operation and are likely to be an important component of the business it draws from overseas.
218. The term 'junket' is defined in s 76(3) of the *Casino Control Act* as:
- (a) an arrangement involving a person (or a group of people) who is introduced to a casino operator by a promoter who receives a commission based on the turnover of play in the casino attributable to the person or persons introduced by the promoter (or otherwise calculated by reference to such play), or
  - (b) an arrangement for the promotion of gaming in a casino by groups of people (usually involving arrangements for the provision of transportation, accommodation, food, drink and entertainment for participants in the arrangements, some or all of which are paid for by the casino operator or are otherwise provided on a complimentary basis).

### B. History of junkets and issues arising

219. Junkets (derived from the notion of a pleasure trip) are a relatively recent phenomenon. Their origins are sometimes traced to the Flamingo Casino in 1961:<sup>72</sup>

In 1961 a stockholder in the Flamingo Casino Hotel flew a planeload of wealthy friends from Miami to Los Vegas for the ego-fulfilling purpose of showing them his hotel. The hotel's management observed the event with glee, as the casino consequently sold an unusually large amount of chips. The Flamingo soon began experimenting with expenses-paid, four-day trips for premium players on chartered planes. Thus was born the junket.

...

As the junket idea grew, a new travel intermediary between the casino's marketing department and the premium player emerged, namely, the 'junket rep'. The primary function of a junket rep is to bring known gamblers, including premium players, to a casino.

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<sup>72</sup> Makens and Bowen, 'Junket Reps and Casino Marketing', *Cornell Hotel and Restaurant Administration Quarterly*, (October 1994) at 63-64.

220. A junket promoter is the ‘face’ for a particular travelling group and acts as its principal. He or she assumes contractual liability for any debts of the junket’s members and makes the logistical arrangements with the casino and negotiates terms. The casino nevertheless conducts anti-money laundering, counter-terrorism financing and other such checks for each junket participant. ‘Faces’ enable the casino to have a central point of contact for the junket group and make it easier to minimise the risk of bad debts. The junket promoter will, in almost every case, be known to the casino, to have established creditability and credit, and will have brought groups to it in the past. These past dealings and the experiences of them help the casino to judge the character of the promoter and that of the participants they are likely to introduce.
221. The risk of bad debts is acute in respect of casino patrons from China, where gambling debts are unenforceable, other than in the special administrative regions of Macau and Hong Kong. The fact of unenforceability can, in turn, give rise to other risks, in particular that junket promoters might seek to procure the payment of debts by illicit or undesirable means.
222. Shortly before I completed my Inquiry, there were reports of a number of persons having been taken into custody in China for reasons related to the promotion of junkets.<sup>73</sup> Media reports suggest the action was connected to the prohibition in mainland China on the promotion or marketing of gambling (other than in limited circumstances). In mid-October 2016, a report in the *Financial Times* referred to a ‘legal blitz launched by China last year against foreign casinos that contravene its laws by seeking to lure its citizens overseas to gamble’, which, as ‘part of Beijing’s wider move to clamp down on corruption, last year led to the arrest of more than a dozen South Korean casino managers’.<sup>74</sup> None of these events involved, to my knowledge, The Star or any of its staff. The persons detained in China were reported to be associated with a casino operator unrelated to The Star. The Star assured me (which I have no reason to disbelieve) that its business model differs from that operator. The matter was raised at the Annual General Meeting of The Star Entertainment Group on 28 October 2016. The Chief Executive Officer informed that

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<sup>73</sup> See, for example, ‘Three Australians Crown Resorts employees “detained in China”’, *The Australian*, 15 October 2016, accessed via [www.theaustralian.com.au](http://www.theaustralian.com.au); and ‘Crown employees held in China after late-night raids on homes’, *Sydney Morning Herald*, 16 October 2016, accessed via [www.smh.com.au](http://www.smh.com.au).

<sup>74</sup> ‘Crown Resorts falls 14% as staff detained in China’, *Financial Times*, 17 October 2016, accessed via [www.ft.com](http://www.ft.com).

meeting that the Group has no offices in mainland China, that it has had no staff member detained or questioned by Chinese authorities, and that it works within the parameters determined by the Chinese authorities.

223. More recent reports<sup>75</sup> suggest that the problem may be specific to that other operator because it had been doing more direct marketing to Chinese VIPs over the past year. The issue is predominately one of concern in terms of adherence (or otherwise) to Chinese law. Less directly, it may have a bearing upon the integrity of gaming for the purposes of the *Casino Control Act* because, it could be said, activities ought not be carried on in this State which involve foreign nationals whose home country prohibits such conduct. I need not express any conclusion on that topic, other than to observe that the issue, even framed in this way, arguably only arises under my Terms of Reference.
224. Singapore takes a strict approach to junkets. A 2015 *Bloomberg Businessweek* article claimed that the approach of the regulators there had lost valuable business for Singaporean casinos.<sup>76</sup> The authors of the article acknowledged the risks associated with giving free rein to junket operators to enforce gambling debts extra-legally.
225. A further risk associated with junkets is the large amounts of money involved. The Star's minimum 'buy in' for a junket is, generally speaking, \$500,000, and the sums wagered in some junkets can exceed tens of millions of dollars. This poses questions for law enforcement and anti-money laundering bodies whether the funds were derived lawfully and the destination of them. As was noted in *The Economist*.<sup>77</sup>

[I]t is not just a passion for cards that brought more than 13.2m mainlanders to Macau in the first ten months of [2011]. Many come to elude China's strict limits on the amount of yuan people can take out of the country. A government official who has embezzled state funds, for example, may arrange to gamble in Macau through a junket. When he arrives, his chips are waiting for him. When he cashes out, his winnings are paid in Hong Kong dollars, which he can stash in a bank in Hong Kong or take farther afield.

226. Junkets and their promoters present two competing interests for casinos, regulators and law enforcement:

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<sup>75</sup> See Damon Kitney, *Australian*, 28 October 2016, p 21: 'Macau casinos warned after Crown arrests'.

<sup>76</sup> 'Singapore's Casinos Made a Mistake: Cutting Out the Junkets', *Bloomberg Businessweek*, 9 April 2015, accessed via [www.bloomberg.com](http://www.bloomberg.com).

<sup>77</sup> 'Macau's gambling industry: A window on China', *The Economist*, 10 December 2011, accessed via [www.economist.com](http://www.economist.com).

- a. junket promoters can be of real benefit to a casino's business, by bringing high value people into the casino who wish to gamble large sums of money, assuming any credit risks associated with those people, facilitating the orderly and careful assessment of junket participants and establishing longer-term relationships that give incentives to the promoter, in order to protect his or her livelihood and reputation, to ensure that the persons he or she brings to the casino are of good character;
- b. junkets introduce idiosyncratic risks relating to the junket promoters themselves and the junket participants, such as their associates and business practices, as well as the source of funds. They facilitate the introduction to the casino of large amounts of money, the source of which may be unknown – and unascertainable.

**C. Procedures at the Casino for junkets**

227. I attended a simulated junket on 27 September 2016 with Mr Conde. Doing so helped me understand The Star's procedures and checks for junkets, which I summarise below, and which are set out in further detail in ICP 4. That ICP is entitled 'Rebate Play', which is another name for the gaming that takes place under junket arrangements. The simulation assisted me better to understand the practical arrangements for junkets and their establishment and settlement.
228. At the outset, and as I have mentioned earlier, all transactions relating to the junket are as between The Star and the relevant junket promoter (either directly or through a representative of that promoter). The Star has no contractual involvement in arrangements between the junket promoter and the junket participants, and nor between the participants themselves except for their activities at the tables.
229. Junket promoters and their representatives (if applicable) must first be approved. The promoter must submit personal details with supporting documentation, employment history, business associations, information about junkets with other casinos, any litigation details, financial details, character references, notices of consent for The Star to conduct an investigation into them, and a release and indemnity. The supporting documentation includes a police clearance certificate, photo identification

and a certified copy of the applicant's passport. I saw specimens of these documents when I attended the junket simulation.

230. The Star then conducts anti-money laundering and counter-terrorism financing checks. The Star reviews the 'World-Check' database of politically exposed persons and heightened risk individuals and organisations, and also conducts internet searches. The Star's investigators conduct a review of this and other sources and may recommend further due diligence as appropriate by an external consultant. The Star convenes a regular junket and player monitoring meeting to discuss information received in relation to a proposed promoter or representative, or junket participants.
231. Subject to any findings from the checks just mentioned, the Gaming Manager reviews the junket promoter's application forms and if there is no information indicating that the junket promoter or representative is unsuitable to conduct a junket, the Gaming Manager will provide provisional approval at that time.
232. All junket promoters' representatives are subjected to the same checks as are undertaken for junket promoters.
233. At this point the junket promoter enters into discussions with The Star's international team to organise a particular junket and reach agreement with The Star in respect of the rebate rate, complimentary inclusions and the length of stay. The Star's offer will depend upon the proposed buy-in and number of players. There are set terms and arrangements for particular types of arrangements, but approval can be obtained, if appropriate, for arrangements that do not fit within established categories. ILGA is given at least 24 hours' notice of the junket's arrival.
234. Any cheque cashing facility is established before the junket arrives in Australia. A credit check would be conducted that includes contacting local and international casinos to verify creditworthiness, and to gather any other information of use and determine the limit of the facility. A 'World-Check' search is performed on any further persons or associates identified at this stage.
235. When the junket participants arrive in Australia, they must clear customs and border control and, normally, obtain a visa.

236. Upon arrival at the Casino, if they have not already done so, junket participants complete a membership application for the Sovereign Room. If access is granted to the Casino's private gaming areas, junket participants' details are later sent to ILGA as part of The Star's monthly reporting.
237. A junket agreement is executed, and a copy of it, together with a manifest of each junket participant's contribution to the overall junket buy-in figure, is provided to ILGA. So long as ILGA has by that time received at least 24 hours' notice of the junket, the junket may then proceed.
238. The junket transfers funds to The Star. On rare occasions, cash is used. If a junket group were to present a large amount of cash, or there were otherwise any suspicions about the money brought into the Casino, then quite apart from The Star's statutory reporting obligations discussed below, The Star will immediately notify the Australian Federal Police. The Star also reports events to law enforcement in accordance with recommendation 10 of the previous s 31 Inquiry, referred to in paragraph 76 above.
239. The Star reports to AUSTRAC in accordance with its statutory obligations relating to anti-money laundering and counter-terrorism financing. In particular, The Star provides:
- a. threshold transaction reports for any cash transactions of \$10,000 or more by any junket promoter, representative or participant;
  - b. suspicious matter reports for any suspicious matter identified by The Star's staff, who have received training for this purpose; and
  - c. international funds transfer instructions for any international funds transfers, other than those made through an established bank transfer, for which there is no reporting obligation.
240. The gaming in the junket utilises identified non-negotiable chips (not themselves able to be exchanged for cash) for betting and wins will be paid in premium chips. Those premium chips can be exchanged for non-negotiable chips at the gaming tables

(known as ‘rollover’) and the rebate commission is calculated on those exchanges. The commission is paid to the junket promoter.

241. At the end of the junket, settlement occurs. All ‘rollovers’ associated with the junket promoter’s account are totalled. All in-house and travel expenses incurred by the junket are added up. Room charges, airfares and the like are deducted from any expense allowance (‘comps’) in the junket agreement, or are otherwise added to the bill. There is a reckoning of whether the junket or The Star is to be paid in final settlement, depending on who won, and calculation of the amount of the commission payable to the junket promoter.
242. After the junket concludes and the participants leave, The Star conducts a further World Check search on all participants and any findings are sent to The Star’s investigators. A settlement report is given to ILGA within seven days after its occurrence. That report will include details about any instructions received by The Star about disbursement of junket funds. The Star also provides a monthly report of all concluded junkets to ILGA.
243. The Star also provides a weekly junket report to AUSTRAC, which includes the details of the junket participants (including their passports), and all threshold transactions.
244. Finally, The Star lodges an annual return with the Australian Taxation Office, which includes details of all junket promoters, the annual amounts paid in cash and in kind to non-residents, and the amount of withholding tax deducted.

**D. Some statistics relating to junkets**

245. The Star provided me with some statistics about the size and nature of the junket market which I have no reason to doubt.
246. Chinese outbound tourism increased from about six million persons in 1995 to 98 million in 2013. By 2020, the number of outbound Chinese tourists is expected to be 200 million. A high proportion (80%) of first-time outbound Chinese tourists visit a casino.

247. Australia receives about 840,000 inbound Chinese tourists per year, who spent more than \$5.7 billion here in 2014.
248. For the 2015/2016 financial year, junkets represented 4.4% of actual earnings before interest, tax, depreciation and amortisation (**EBITDA**) for The Star Group, or 15.9% of normalised EBITDA (ie controlling for non-recurring expenses or revenue). In the last five years, The Star's share of the Australian junket market, based on turnover, has grown from 28% to 43%.

**E. Views of law enforcement and like agencies**

249. I spoke with various members of law enforcement bodies about junkets, their operation and the risks they posed. Detective Acting Superintendent Kelly Mansfield, the National Coordinator of Money Laundering, Organised Crime and Cyber operations of the Australian Federal Police, is aware of the many junkets that originate in China. He said that in the last five years or so, with a corruption crackdown occurring in China, wealthy Chinese gamblers may have tended to stay away from Macau, and instead gravitated towards countries such as Australia. Australia has the advantages of being reasonably proximate to China, a pleasant climate, a thriving property market, and good educational institutions for those seeking to educate children here.
250. DAS Mansfield said that junkets present an opportunity for the introduction of tainted funds at various entry points. For a junket from China, for example, being the most common, tainted funds might come from:
- a. the junket participants in China (money taken out of that jurisdiction may be a bribe or an unlawful appropriation);
  - b. the junket operator (an operator might have received tainted funds in Macau or Hong Kong from a nefarious associate);
  - c. whether or not known to the junket operator and participants – a source in Australia (eg an Australian account made available to the junket to act as collateral for the Casino while the junket gambles in Australia, which contains tainted funds).

251. Wherever there are drug flows, money inevitably follows. A great deal of tainted cash is thought to come from southern China that criminal groups will seek to sanitize. It is not difficult, DAS Mansfield (of the Australian Federal Police) told us, for people in southern China holding such cash there to look at ways to move that cash into Macau and Hong Kong in the first instance, before proceeding further afield.
252. Junkets are also an area of interest for AUSTRAC. The Casino is under notification obligations in respect of them. The use of ‘non-negotiable’ chips in junkets helps maintain scrutiny of money won or lost during the junket. AUSTRAC is concerned to know also the destination of funds *after* the junket. I gained the impression that this aspect of AUSTRAC’s work is more difficult and less routine than scrutinising the junket itself.
253. Part of the proper scrutiny of junkets, as I have explained, is knowing who are the junket representatives. AUSTRAC monitors and investigates these persons also.

#### **F. Discussion**

254. Junkets present a risk to the integrity of the Casino, by virtue of the very large amounts of money involved, the potential illicit sources of those funds, and issues relating to junket promoters and the nature of their business. They also represent an important, and growing, part of the Casino’s business, and are one means by which international visitors, and business, is attracted.
255. The Star is aware of the risk of junkets and has taken steps to protect the integrity of its operations. The pre-arrival checks, the ICPs, the liaison that takes place between The Star and law enforcement bodies, the repeated contact that the Casino has with junket promoters, the sources of intelligence at the Casino’s disposal, and the Casino’s own self-interest in ensuring proper controls over those who engage in rebate-play, are all protections against the misuse of junket arrangements. They seem adequate to manage the risk, but can never offer of course a watertight assurance against misuse and even criminality.
256. I deal later in this report with the specific comments that I received from law enforcement bodies and the like. I simply note at this stage that no person

communicated material concerns with me about the adequacy of The Star's procedures or reporting practices in this respect.

257. As I have mentioned, one of the most obvious risks that attend junkets is money laundering. But The Star has procedures to address that risk, as I have set out above. Another obvious risk relates to junket promoters. But again, The Star has procedures in place to vet them, and the Singaporean experience suggests that the over-regulation of junket promoters may have the consequence of pushing bad debt risks entirely onto the Casino and giving rise to other opportunities for criminal conduct.
258. I make no recommendations in relation to junkets, being satisfied that, for the purposes of paragraph 8.2 of my Terms of Reference, junket programmes appear to be conducted properly, honestly and with proper protections by The Star, and that their settlement is reliable and honest. Junkets are vulnerable to money laundering and exploitation by criminal influences. The experience of rebate-play at the Casino, including as viewed by law enforcement authorities, suggests that it can be conducted honestly and free enough from criminal influence. Part of ensuring this is The Star's practices and procedures and a maintenance of the diligence it has exhibited in closely monitoring its rebate-play business. External regulation remains necessary.
259. It was suggested to me that one way of increasing the scrutiny of junkets and the source and destination of junket funds would be to require junket promoters to be incorporated in Australia. Doing so would certainly facilitate law enforcement bodies having access to business records and give the capacity more readily to inquire into their affairs. Such a move would be a marked change from present arrangements and may bring about a decline in the junket component of casino businesses. I am not sufficiently confident I am apprised of all the factors that bear upon this question to recommend one way or another whether this suggestion ought be further considered. It would seem to me to be a regulatory arrangement that requires reflection, discussion and consultation beyond the means of this Inquiry. And, in any event, what substantial as opposed to formal inquiries could be made is questionable. Those present in Australia could be questioned and subjected to the corporations law. If their activities are founded upon offshore persons, these will be likely to be and compliance relatively easily avoided. Even if incorporated in Australia, the names of

the real controllers might be difficult to ascertain. It is onerous enough to regulate onshore activities without attempting to do so elsewhere.

260. In conclusion, I note that in all the interviews with law enforcement and like bodies, there was no assertion made that the junket component of The Star's business is being conducted less than honestly.

## XI. RESPONSIBLE PROVISION OF GAMBLING AND SERVICE OF ALCOHOL

### A. Introduction

261. The responsible provision of gambling and service of alcohol are issues that arise for consideration by reason of paragraphs 3, 4 and 5 of the Terms of Reference, namely the extent to which The Star has complied with its obligations under the *Casino Control Act* and its licence (para 3); the Casino's impact upon individuals who attend, and may attend the Casino, and their families (para 4); and The Star's maintenance and administration of systems to contain and control the potential of the casino to cause harm to the public interest and to individuals and families and detect the presence of undesirable activities and people in the Casino (para 5).

### B. Gambling

#### 1. Casino's obligations

262. Part 4 of the Casino Control Regulation 2009 (NSW) provides for 'responsible gambling practices' (otherwise known as the responsible conduct of gambling (RCG)). Those requirements include, for example, that there be displays of information concerning the chances of winning prizes on gaming machines,<sup>78</sup> that there be notice on gaming machines about the dangers of gambling<sup>79</sup> and that clocks be displayed where there are gaming machines.<sup>80</sup> There are also prohibitions on certain gambling-related advertising.<sup>81</sup> The Regulation provides for junkets in the context of RCG, including that ILGA be notified of the conviction of a junket promoter or representative,<sup>82</sup> and that notice and a report be given to ILGA of each junket.<sup>83</sup> The Star is prohibited from offering or supplying any free or discounted liquor as an inducement to participate in gambling activity at the Casino, free credits

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<sup>78</sup> Casino Control Regulation, reg 21.

<sup>79</sup> Casino Control Regulation, reg 25.

<sup>80</sup> Casino Control Regulation, reg 28.

<sup>81</sup> Casino Control Regulation, regs 33-36.

<sup>82</sup> Casino Control Regulation, reg 17.

<sup>83</sup> Casino Control Regulation, reg 18-19.

of gaming machines, or ‘any prize or free give-away that is indecent or offensive in nature’.<sup>84</sup>

263. I compelled the production to me of any review or audit undertaken by consultants or external advisers of the adequacy of compliance with RCG procedures and policies. The Star produced four such reports. Three were reviews by Neill Buck and Associates Pty Limited dated October 2013, June 2015 and January 2016. The fourth was a review by Dowse CSP dated November 2014.
264. The Neil Buck and Associates Pty Limited review of October 2013 concluded that ‘[o]n balance we are satisfied that [The Star Group] has a suitable compliance and risk framework, a competent compliance team and a commitment to compliance from the Board and Executive’ (p 30). The authors also concluded that ‘it is likely that the organisation and its managers and staff understand their obligations and have systems and processes that will ensure that for the most part the obligations are met’ (p 30). There remained, however, too many show cause incidents (p 31). The reviewer thought the number of minors entering the property to be too high (p 31).
265. The Dowse CSP review of November 2014 is presented in a landscape PowerPoint style. A number of graphs and analogies are drawn between the issues of problem gambling and alcohol. The review contains no specific findings or recommendations for The Star and appears to be more of a theoretical analysis than the reviews by Neil Buck and Associates.
266. In the second Neil Buck and Associates Pty Limited review, dated June 2015, The Star Group was said to have ‘improved its [RCG] system’. The Review makes the assertion ‘there are a number of [RCG] officers ... overall I think the changes of staff and the work of the Responsible Gambling team has changed the processes for the better’ (p 26).
267. Finally, in the Neil Buck and Associates Pty Limited review of January 2016, the author/s said that ‘The Star has a clear and well documented Responsible Gambling Compliance Program’ (p 5). On minors and unattended children, this was said: ‘[t]he problem is detection and it seems to me that the Casino does try hard in this area’

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<sup>84</sup> Casino Control Regulation, reg 20.

(p 8). It was also said that '[t]he compliance programs at The Star are robust, well administered and as effective as can be expected in the environment of a busy entertainment facility' (p 9). The review concluded (p 12):

I found that The Star has taken its obligations under the objectives of Responsible Gambling seriously. Consistent with the usual benchmarks we apply for assessing the process, The Star has taken reasonable steps to put in place arrangements to assure that the process is compliant.

268. Detection of the presence of persons at the Casino who ought not be there is something I consider to be a problem for self-excluded persons. I deal with this issue presently. The detection of minors seems to be improving. ILGA, it can be seen, imposes fines where minors have gained access.

## **2. Exclusions**

### **a. Introduction**

269. The regulatory regime includes mechanisms for excluding people from the Casino. That may be for a range of reasons, including problem gambling. Although the reasons for exclusion are wider than just responsible gambling, it is convenient to consider the minimum question of exclusions together as a topic.

270. The Casino's Patron Liaison Manager is Mr Ron Wagemans. He has the function of ensuring that gambling is conducted responsibly at the Casino. Mr Wagemans chairs the Exclusion Review Committee within the Casino. It meets every month and has as its members Mr Wagemans, two investigators (Mr Kevin Houlihan and Ms Amanda Judd), Mr Jason Yates (VIP Services), Ms Catherine Clark (Director of Surveillance), Mr Graeme Stevens (Regulatory Affairs Manager) and Mr Graham Burns (Asset Protection Risk & Compliance Manager). Mr Wagemans manages The Star's database of excluded persons.

### **b. Commissioner's Exclusions**

271. The NSW Police Commissioner may direct that a person be excluded from the Casino and its precinct.<sup>85</sup> There are no enumerated criteria by reference to which the

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<sup>85</sup> *Casino Control Act*, s 81.

Commissioner may make such a direction and it is expressed to be unchallengeable.<sup>86</sup> The giving of such directions, I was told, is principally to persons with associations with outlaw motorcycle gangs or organised crime, or because of their criminal history. The Commissioner's direction is made to The Star in writing and it is a condition of The Star's licence that the direction be complied with. ILGA or the Casino must then orally or in writing prohibit the person from entering or remaining in the Casino. Once that order is given, it may not be revoked except with the Commissioner's approval.<sup>87</sup> It is a criminal offence for the subject to enter or remain in the Casino to which the order relates.<sup>88</sup>

272. There were 285 Commissioner's exclusions in force at the end of 2011 and 536 as at 27 September 2016. 251 were issued in the period 2012 to 27 September 2016.
273. I discuss elsewhere in this report some practical aspects of the operation of Commissioner's exclusions, which emerged as an issue in the course of my Inquiry.

### **c. Self-exclusions**

274. Another means by which a person may be excluded is of their own volition. ILGA or The Star may give a written order to a person, on their voluntary application, prohibiting the person from entering or remaining in the Casino.<sup>89</sup> The Star must notify ILGA of the giving of any order by it.<sup>90</sup> It is not an offence for a self-excluded person to enter or remain in the Casino.<sup>91</sup> Those persons may, however, as with all excluded persons, be removed from the Casino using reasonable force.<sup>92</sup> 2,278 people had excluded themselves as at the end of 2011. 3,007 people were excluded on this basis as at 27 September 2016. 1,124 people excluded themselves in the period 2012 to 27 September 2016.
275. Self-exclusion can be effected by patrons either at the Casino or elsewhere. The capacity for the latter was one recommendation of the previous Inquiry.

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<sup>86</sup> *Casino Control Act*, s 81(7A). The principles in *Kirk v Industrial Court of NSW* (2010) 239 CLR 531 might mean a court may review such decisions for jurisdictional error.

<sup>87</sup> *Casino Control Act*, s 82(3).

<sup>88</sup> *Casino Control Act*, s 84(1).

<sup>89</sup> *Casino Control Act*, s 79(3).

<sup>90</sup> *Casino Control Act*, s 79(4).

<sup>91</sup> *Casino Control Act*, s 84(1).

<sup>92</sup> *Casino Control Act*, s 85.

276. If exclusion is to be effected at the Casino, the person is taken to an interview room and signs an exclusion form. A photograph is taken of the person, who is given a list of counselling services and encouraged to utilise them. Their name is entered on the Casino's database of excluded persons. For exclusions effected off-site, Mr Wagemans requires receipt (for example by mail) of a copy of the person's identification, a photograph of them and a recommendation from a counsellor. Mr Wagemans will himself meet with the person away from the Casino premises if required. In the last two and a half years, about fifty people have been remotely excluded in this way.
277. Sometimes Mr Wagemans receives requests from family members that a person be excluded. Such requests might be based upon genuine concerns about a family member's welfare. Others are, he said, less clear and call for scrutiny to ascertain that the request is directed in truth to the person's welfare and not for ulterior purposes. Requests of the first kind ordinarily result in exclusion. Those of the second kind do not.
278. Mr Wagemans said that self-exclusion is for 12 months and there may be some benefit in allowing patrons to nominate a shorter period.
279. I had learned before I interviewed Mr Wagemans that all too regularly self-excluded persons try to enter the Casino. Mr Wagemans said a balance is required between wanting to give effect to the exclusion and not wanting to punish such persons for fear of discouraging self-exclusion by them or other persons generally. He correctly identifies that difficult tension. He has had discussions with ILGA and Liquor & Gaming NSW. A policy has been settled upon that if a voluntarily excluded person attempts to re-enter the Casino ten times then they will be excluded involuntarily, breach of which attracts fines and other punishments.
280. The reversal of a self-exclusion requires more than just that the individual wishes that it be lifted. This is as it ought to be. The whole purpose of self-exclusion is to provide some external control that the individual has invited due to a fear that, from time to time, the urge to gamble will overcome them. Self-excluded persons wishing to lift that restriction are referred by the Casino to BetCare (or other appropriate organisation). Often the counselling agency will tell Mr Wagemans that the relevant

patron ought not be permitted to return. In such cases, the exclusions remain in place. If the person is assessed as being at a moderate or high risk of problem gambling, he or she will not be allowed back into the Casino. A low risk does not prevent re-entry.

281. Before a self-exclusion is lifted, Mr Wagemans would ordinarily require a letter of support from a problem gambler's 'significant other': usually a wife, husband, partner, girlfriend, parent and so forth. If a person has no such relationship, that may be an indicator of past relationship-destructive behaviour and, possibly, problem gambling.
282. I also discussed this issue with Professor Alexander Blaszczynski (Professor & Director, Gambling Treatment Clinic, School of Psychology, University of Sydney) and Dr Christopher Hunt (Clinical Psychologist, Gambling Treatment Clinic, School of Psychology, University of Sydney). Both have clinical experience with problem gambling and are, as well, researchers in the field.
283. Professor Blaszczynski considered that the Casino ought make public its figures for persons excluding themselves and attempts to re-enter. That data ought be available to give the community a sense of the extent of problem gambling and better inform the debate. He is of the view that imposing a criminal sanction for re-entry, or attempts to do so, is inappropriate for persons who excluded themselves voluntarily. It might well be pointless, he said, and I agree, to impose a fine on persons who could ill-afford it. Neither Professor Blaszczynski nor Dr Hunt has experienced (through clients or otherwise) particular problems with The Star's self-exclusion arrangements.
284. I deal further with the self-excluded persons seeking to re-enter the Casino and the response to those occasions below.

#### **d. Other types of exclusion**

285. A third possible means for the exclusion of persons from the Casino has two possible limbs. The first is that The Star may, on its own initiative, prohibit a person from entering or remaining in the Casino.<sup>93</sup> Once such an order is given, it constitutes an exclusion order, breach of which attracts criminal sanction. Mr Wagemans issues what he called 'RG' exclusion orders. 243 people were excluded on his basis as at 27

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<sup>93</sup> Casino Control Act, s 79(1).

September 2016 (compared to 152 at the end of 2011). 108 people were excluded on this basis in the period 2012 to 27 September 2016. These might be issued on a variety of bases, including anti-social conduct. Recently Mr Wagemans excluded an 82 year old man who had a condition that affected his personal hygiene. Mr Wagemans discussed with the man various options to address or mitigate that concern but he refused. There were 2,786 ‘venue exclusions’ in force as at 27 September 2016, which are non-voluntary exclusions for grounds other than responsible conduct of gambling. 1,736 were issued in the period 2012 to 27 September 2016.

286. This system appears to give statutory recognition to rights that exist at common law for The Star as occupier of the premises. The relevant principles were the subject of consideration by the NSW Court of Appeal in *Hinkley v Star City Pty Limited*.<sup>94</sup> In that case a regular gambler at the Casino was issued with an exclusion order on the basis of the statutory scheme. The gambler claimed a denial of natural justice and The Star withdrew the order but sought to exercise the rights of an owner or occupier at common law to revoke a subsisting implied licence of entry to the Casino. The gambler again claimed a denial of natural justice. The Court of Appeal held that in neither case was there an obligation to afford natural justice.<sup>95</sup>
287. Mr Wagemans issues what he describes as ‘Withdrawals of Licence’. These tend to be issued when he receives notice of a person’s bankruptcy or similar status. Once such a withdrawal is issued, the relevant individual is regarded as a trespasser if he or she re-enters the Casino. Mr Wagemans says he issues about one of these each month on average. The first withdrawal of licence was issued on 26 April 2012. 76 persons were subject to such a withdrawal as at 27 September 2016. 83 withdrawals occurred in the period 2012 to 27 September 2016.
288. The point I wish to draw from this is one that was mentioned to me by Mr Weber, an Inspector with the regulator, which is that there exist sound and efficacious legal alternatives by which The Star can exclude persons who, whether by reason of their

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<sup>94</sup> (2011) 284 ALR 154.

<sup>95</sup> See (i) in relation to the statutory scheme: (2011) 284 ALR 154 at 157 [15] per Giles JA and 161 [36] per Young JA (Tobias AJA not deciding, as noted at 195 [191]); and (ii) in relation to the common law: (2011) 284 ALR 154 at 159-160 [26] per Giles JA, 160-161 [28], [35] per Young JA and 193 [180] per Tobias JA.

own circumstances or the threat they pose to the integrity of gaming operations, ought to be kept out of the Casino and its precinct.

289. Mr Wagemans can also suspend people from the Sovereign Room. (See further Part B of the Confidential Appendix.) There have been 297 such suspensions in the past 12 months, and 76 patrons stood suspended from the Sovereign room and VIP areas as at 5 October 2016.

**e. Key issues relating to exclusions**

290. Two issues emerge from my Inquiry into these matters.
291. *First*, a number of persons I interviewed said there had been inordinate delay in the making of exclusion orders by the NSW Police Commissioner. Both Mr Weber (an Inspector) and Detective Superintendent Cook said that it had in the past taken up to two years for an exclusion order to be made from the time material was drawn to the attention of NSW Police. That delay is unacceptable, which both accepted. I asked Detective Superintendent Cook about the problem. He identified it as not having staff dedicated to the task within his office and the continuity of them. Historically, the officers responsible for that function had other responsibilities also which distracted them from this important task. There was a tendency for them to be promoted out or otherwise deployed. He now has two staff dedicated to this task (funded by ILGA) who are, he said, clearing the backlog relatively rapidly. Those officers need to make the relevant probity checks and collect and review intelligence and make appropriate inquiries. It is all the more important that this task be properly carried out given the statutory exclusion of challenge and the sparse guidance given by the statute to the criteria to be applied. I therefore recommend that the functions of those who consider and advise the Commissioner on exclusions under s 81 of the *Casino Control Act* be not only preserved but properly funded and that those officers be dedicated to the task. If that is not possible, then more staff ought to be deployed to that function in sufficient number to clear the backlog and achieve a processing time of no more than three months for the ordinary case.
292. One major contributor to the problem seems to be that referrals come in large batches: there are periods of no referrals, then in very large number. More even and regular referrals would serve to assist the officers performing the checks to better and more

efficient use of their time. A *second* issue that emerged was in the course of my interview with Mr Weber. He has observed and knows from his review of records that it is not uncommon for self-excluded persons to enter or attempt to enter the Casino on a great many occasions. On 1,824 occasions between 2012 to 27 September 2016, the Casino detected a *re-entry* by self-excluded persons. In that same period, only 84 *attempted* such re-entries were detected, with entry being denied to those self-excluded persons. There is an obvious disparity between the number of self-excluded persons who gain entry when they ought to have been stopped and those whose attempts to enter are detected and prevented.

293. He says that the only sanction that he has observed the Casino imposing is writing to these people advising them that they should not continue to come to the Casino. In one sense this is a function of there being no criminal sanction for a self-initiated exclusion order but it is highly undesirable that persons who have at least at one stage felt themselves so affected by gambling and to have called upon help in that regard to be allowed to enter the Casino. Mr Weber is in the course of instituting a stricter system for self-excluded persons as a way of bringing greater discipline in that system. One option that he has raised is the greater utilisation of exclusion orders by ILGA or The Star under s 79 of the *Casino Control Act* or the common law principles to which I refer above. Doing so would engage the criminal sanction in s 84 of the *Casino Control Act* as the person would no longer be a self-excluded person for the purpose of that section. Care should be taken, however, not to deploy criminal sanction on these vulnerable people too readily. Section 84 of the *Casino Control Act* renders relevant upon sentence that a person might have a problem with gambling, which supports the observation that I have just made. It may well discourage persons from excluding themselves if they knew that doing so would be likely to invoke an order, breach of which carries a criminal sanction. Often overlooked perhaps is that s 84(2) empowers the Court to order that a person undergo gambling counselling. This offers one non-punitive alternative that might be pursued in appropriate cases.
294. The purpose of self-exclusion is to invoke protective assistance from the Casino, not punishment if the person continues to act on his or her propensity.
295. Mr Wagemans' skills would be well adapted to a greater focus upon a strict but appropriate enforcement of exclusion orders, adapted to particular circumstances.

Accordingly I recommend that self-excluded persons be afforded less leeway than at present by the use of exclusion orders and by their removal from the precinct and for these steps to be conducted in consultation with the Patron Liaison Manager. The solution in the end is preventing re-entry of such persons, which brings me to the next topic.

**f. Facial recognition technology**

296. The principal means by which persons, by one avenue or another and for whatever reason, who have been excluded from the Casino, might be detected when seeking to enter it, is by facial recognition. That may be done manually or with the assistance of technology.
297. It was a Recommendation (No 5) of the previous Inquiry that I consider the usefulness of facial recognition technology in detecting excluded persons entering the Casino. That Recommendation was made because the technology was not then sufficiently advanced accurately to detect excluded persons entering the casino.<sup>96</sup> I inquired into the utility of facial recognition technology and its state of development.
298. The Star has undertaken assessments of facial recognition technology since 2011. This testing, The Star says, suggests that recent developments are improving detection rates. It wishes, however, to achieve higher detection rates in a live environment before installing the technology. Better detection rates are necessary in its view before the requisite capital expenditure would be justified. That expense would include the need to integrate the new technology with The Star's existing Surveillance operation.
299. In July 2014, NEC and Cognitec conducted onsite testing of different facial recognition systems. The Star arranged for the systems to be trialled at staff entry points and utilising camera locations and surveillance infrastructure so that some assessment could be made of the extent to which facial recognition software could make use of existing hardware. One of the systems tested returned promising results, and warranted further testing in a live environment. The other system did not perform

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<sup>96</sup> As Ms Furness SC observed at page 57 of the report of the December 2011 Inquiry.

adequately. The Star reported to ILGA in mid-2015 as to the implementation of Ms Furness SC's Recommendation No 5.

300. Testing of pilot facial recognition technology took place in March 2016. It was trialled in two VIP reception areas. 130 photographs of members were used. Photographs from The Star's Casino Management System were unable to be used for the purposes of the test due to their lack of quality. As part of the pilot, The Star installed new cameras and new server infrastructure. The testing process included both individuals and groups of registered members walking through the reception areas.
301. The pilot returned a 61% success rate, meaning that it detected accurately the identity of a person in that percentage of cases out of 576 instances at two low-volume entry points. I was provided with a copy of the report of that testing. The real concern is that, once the system is loaded with the 5,000 or so images that the Casino holds, the accuracy of the system would be lower, because it would return an even greater number of false positives.
302. This testing shows that facial recognition technology shows promise as a tool to be utilised by The Star's surveillance operations to alert it to attempted or actual entry to the Casino of a person who ought not be there. It would not, however, relieve operators and security officers of the need to ascertain and confirm the identity of such a person.
303. Mr John Lomax, the Casino's head of Asset Protection, said that he welcomed facial recognition technology, but that, until its accuracy improves, it will not be of any net benefit, because it will produce large numbers of false positives and add to the burden upon staff rather than relieve it. I accept this. He has working for him one operator in particular who has an unusual ability to recall and match faces. His skills are much needed.
304. The Star's commercial and practical judgment is that until facial recognition technology can be shown to have an accuracy rate of 75% or greater, financial and practical considerations do not justify its installation. Without interposing myself in those judgments (which I am in no better position than The Star to assess) I am satisfied that, while the technology returns so many false positives even before the full

complement of The Star's photograph database is loaded, its premature utilisation would impair rather than assist in the detection of relevant persons. The technology does not yet appear to have reached the stage where its installation at the Casino can be recommended.

305. Before any such system could be introduced, further testing will be needed, including how it works with The Star's existing equipment. In particular, it will have to be shown that the system can function well with the volume of excluded customer data held by The Star.
306. Mr Lomax told me that The Star will continue to test facial recognition systems and to work with providers of that technology and accepted that those systems are one measure that will assist in detecting excluded patrons who seek to gain entry to the Casino. In the interim, The Star is preparing for the implementation of this type of technology by, for example, phasing out of analogue cameras (currently 1,200 cameras in The Star's network have been replaced by digital cameras) and retaining better quality (digital) photos of persons excluded from the venue.
307. I mention one matter relevant to this topic in Part A of the Confidential Appendix.

**g. Identification Scanners**

308. Another means by which persons excluded from the Casino might be detected in any attempt to enter is by the use of 'ID scanners'. Technology of this kind is used in Kings Cross and the CBD by reason of measures introduced into the *Liquor Act* for those precincts. Those systems notify police when a person who has been banned from them attempts to enter a licensed venue.
309. The casinos in Singapore employ this technology at their entrances and their exits. There, all bankrupts and recipients of State welfare are precluded from entering a casino and this technology assists not only with the enforcement of those rules, but also in order that casino management distinguish between citizens and tourists.
310. It was suggested to me only once in the course of my Inquiry that technology of this kind (with appropriate adaptations, including not having a direct link to Police) might have utility. Requiring each and every patron entering the Casino to produce their

driver's licence or the like for scanning would, no doubt, be a more accurate way than at present to identify excluded persons and minors. Doing so would, however, require patrons to carry one such form of identification and restrict free movement around The Star complex. It would mean, so far as I could observe, structural alterations to limit access to the main gaming floor to a few entry points only.

311. I make no recommendation about this, being insufficiently apprised of the factors that inform its utility and the difficulties that might attend its installation and use. It seems to me something which Casino patrons are likely to find intrusive.

### **3. Experience of The Star's responsible gambling practices and procedures**

312. I interviewed Mr Ronald Wagemans (the Casino's Patron Liaison Manager). He has worked at the Casino since about 2000. He has held his present role for some five and a half years. His responsibilities are for persons coming to the Casino who might have gambling problems. He has various options at his disposal. He can refer a person to counselling; he can exclude them from the Casino. He encounters people with various other behavioural issues from time to time. Those issues are not always ones related to problems with gambling. Sometimes the problems are more closely related to general mental health. It is a role which he said, and I accept, is not a role that can be definitely and exhaustively discharged by reference to prescriptive policies and procedures. He takes a flexible approach given the need for his close involvement with people's personal affairs and the inherent variations in human nature and disposition.
313. 191 (or so) Responsible Gaming Liaison Officers assist Mr Wagemans. Most of these have wider responsibilities but have training in the field and have correlative responsibilities. Mr Wagemans reports to Paul McWilliams, the Chief Risk Officer.
314. The Casino engages an external counselling agency, BetCare, which has a three year contract (recently renewed). Mr Wagemans has flexibility, however, to refer a patron to an organisation that is better suited to that person's needs. Examples include Hope Street, the Asian Welfare Centre in Auburn, Lifeline and Wesley Mission. The most

commonly used service is that offered by BetCare. He makes assessments, assisted by these services, by reference to the Canadian Problem Gambling Index.<sup>97</sup>

315. Loyalty cards are used widely at the Casino and are an important source of information. Mr Wagemans has access to, and utilises, those records to identify spikes in play by patrons as possible indicators of problem gambling.<sup>98</sup>
316. I also enquired whether a Ministerial Direction given under the *Casino Control Act*<sup>99</sup> removing bet limits on a number of gaming machines at the Casino posed a threat to responsible gambling practices. Mr Wagemans had no concerns. He is consulted before new games are installed in the Casino. He recently opposed a new game that allowed patrons to play more than one game at a time. He did so on the grounds that gamblers could lose their money four times as quickly and there were insufficient opportunities for responsible gambling intervention. His opposition was one factor in the Casino's decision not to install that game.

**a. Casino-arranged buses**

317. When I commenced this Inquiry, I read a news article that reported The Star offered bus services from areas of Sydney in which migrants and the less advantaged live, in an attempt, the article suggested, to bring people who are vulnerable or who can least afford it to the Casino to gamble.<sup>100</sup> Having seen the article, I asked Mr Wagemans about these buses, and requested that he produce some figures about their use, the cost of them and timetables for the various routes. The focus of my request to him was buses that run from and to suburbs lying outside a 15 kilometre radius from the Casino. I thought this the best way of focussing upon the routes more likely to give rise to problem gambling.

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<sup>97</sup> And, within it, the Problem Gambling Severity Index (PGSI).

<sup>98</sup> I was assisted in understanding what constitutes problem gambling by, in particular, not only the PGSI, but also by two articles on the topic: one by Peter Collins, Professor Blaszczynski et al, 'Responsible Gambling: Conceptual Considerations' (2015) 19 *Gaming Law Review and Economics* 594 and the other by Professor Blaszczynski and Lia Nower, 'A Pathway Model of Problem and Pathological Gambling' (2002) 97 *Addiction* 487.

<sup>99</sup> Direction dated 12 May 2016.

<sup>100</sup> <http://www.smh.com.au/nsw/casino-buses-in-migrants-who-hope-to-live-beyond-their-means-20111210-1000i.html>.

318. The response from The Star showed there to be four main routes in this category: Riverwood (via Campsie and Lakemba); Bankstown (via Campsie); Cabramatta (via Granville and Fairfield); and Hurstville (via Marrickville and Kingsgrove). The price for a return journey is \$10. They operate at (roughly) two-hourly intervals starting at about 7.30am and finishing at about 10pm on some routes, with the last bus leaving the Casino at about 1am.
319. I also asked Mr Wagemans about buses organised by the Casino to carry passengers from Royal Randwick racecourse, on race days, to the Casino.
320. I was concerned to know whether Mr Wagemans, having responsibility for responsible gambling, was aware of these services and whether and to what extent they made his task more difficult. He said that bus transport of this kind is often safer than public transport, that many of the users of it are likely in any event to make their way to the Casino or indeed to a registered club or hotel, and that some use the service to come to the Casino but do not gamble when they arrive, finding it to be a convenient means of transport to a place close to the City. Some use the bus service to attend Bingo games and other social events. The risk that attends the bus services from outer Sydney is that it might induce persons to visit the Casino who are more readily disposed to gamble in an excessive or problematic way because of what is perceived to be their vulnerability, either because of economic disadvantage or some other characteristic. I do not, despite having given the matter some attention, make any criticism of these bus services.
321. There were no specific instances of exploitation, and no demonstrable examples of bus patrons gambling other than in a responsible manner. I would have expected, if the contrary were the case, for one or more of the welfare groups (mentioned presently) to have drawn them to my attention. Neither Professor Blaszczynski nor Dr Hunt (from the School of Psychology at Sydney University) expressed concern about these bus services, about which I inquired of them specifically. They pointed out that clubs offer similar services and that many of the problem gamblers they see do not utilise this service.
322. There was a suggestion in the news article mentioned above that the Casino was targeting people who aspire to live beyond their means knowing they are not fully

appreciative of the consequences of playing poker machines. The report said to reveal that concerning intention appears to be that of a market research company, and is not a document produced or sanctioned by The Star.

323. The Casino arranges, as I mentioned above, buses to take passengers from Royal Randwick on race days to the Casino. Security guards from the Casino work at the pickup point at the racecourse and conduct assessments as people board the bus. Intoxicated people are refused access. I wanted to know more about these arrangements and made further enquiries of Mr Wagemans in writing after my interview of him.
324. He responded by letter dated 5 October 2016, to the effect that the Casino had provided buses to Royal Randwick on 2 April 2016 (477 passengers), 9 April 2016 (601 passengers) and on 1 October 2016 (373 passengers) (my focus was the preceding 12 months). On each occasion that buses were offered, 14, 15 and 18 people respectively were refused access for showing signs of intoxication. I am satisfied that this service is being responsibly managed to minimise or exclude the possibility of helping persons access the Casino who might gamble other than responsibly by reason of their being intoxicated.

**b. Contact with welfare groups**

325. I drew the existence of my Inquiry to the attention of four welfare groups, who I thought may wish to make submissions or offer comment on the matters the subject of it. I invited those groups to make contact with me. They were the Multicultural Problem Gambling Service, Lifeline, the Auburn Asian Welfare Centre and Mission Australia.
326. Mission Australia has a reasoned policy of opposition to gambling. That body did not seek to make any specific submissions or comment upon The Star's operation of the Casino. The Multicultural Problem Gambling Service said similarly that it did not wish to provide any comments. No response was received from the other two organisations.
327. Dr Hunt from the School of Psychology at Sydney University said that most people seen at the Clinic he supervises who attend the Casino tend to play table games. They

tend to be from lower to middle socio-economic backgrounds. The problem gamblers who play poker machines tend to go to clubs or hotels. He said that the majority of their clients who attend the Casino are not in the Oasis or Sovereign Rooms. Problem gamblers from those demographics often use paid private counselling. I asked Dr Hunt whether his clinical work had revealed particular problems with gambling at the Casino or with the way it offers gambling to its patrons. His response was that the Casino's gambling business is no more problematic than gambling is at other places.

### C. Responsible service of alcohol

328. Part 5 of the Casino Control Regulation provides for the responsible service of alcohol (**RSA**) at 'licensed premises' within the Casino.<sup>101</sup> A 'licensed premises' is 'the premises or part of the premises in the Casino or Casino environs on which the sale or supply of liquor is authorised by a licence'.<sup>102</sup>
329. The Casino has within it three bars (the Sports Bar, the Cherry Bar and the Rock Lilly Bar). It also has a nightclub (Marquee). In addition, there are numerous restaurants that serve alcohol. Alcohol is also served on the main gaming floor for those playing table games and slot and poker machines as well as in the VIP gaming areas, being the Sovereign Room, the Mai Vang Lounge and the Oasis Gaming Salon.
330. The Star has in place policies and procedures for RSA which meet the standards required of it. As part of ensuring compliance with those requirements, The Star engaged external consultants, the Barringtons Group, to review its compliance with these measures.
331. I compelled, at the start of my Inquiry, production of any review or audit undertaken by consultants or external advisers of the adequacy of compliance with RSA procedures and policies. The Casino produced three such documents, being compliance audits conducted by Barringtons in February 2013, July 2014 and December 2015. For each of these audits, Barringtons had 'operatives' or covert

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<sup>101</sup> More precisely, s 89(1) of the *Casino Control Act* provides that the *Liquor Act* does not apply to or in respect of the Casino except as provided by the Regulations. The Casino Control Regulation sets out, in reg 45 and Schs 5 and 6, applicable provisions of the *Liquor Act*. Clause 99(1) in Pt 6 of Sch 6 to the Casino Control Regulation provides that regulations under the *Casino Control Act* may make provision for or with respect to requiring or encouraging the adoption of responsible practices in the sale, supply, service and promotion of liquor. That is then the basis for the regulations in Pt 5 of the Casino Control Regulation in respect of RSA.

<sup>102</sup> Casino Control Regulation, Sched 6, cl 4.

surveillance assist with the investigation. They went to entrance points at the Casino and also to the bars and nightclub, the gaming floor, the poker room and the Sovereign Room.

332. The February 2013 audit report did not observe any persons showing signs of intoxication in the relevant sense and no persons being asked to leave as a result of such intoxication. That audit report is favourable. It was accompanied by log records for each of the observations from the covert surveillance.
333. The July 2014 audit detected occasions where intervention might have been necessary. This audit takes the form of a log and running commentary on the audit results. The expression of concern seems to relate to an incident at the Sports Bar and gaming floor. A male showed clear signs of being affected by alcohol. He sat down and the operative saw him drink a full glass of Coke with spirits in one mouthful. Bar staff seemed inattentive to him. The man was by himself. He was swaying on his feet and stumbled shortly after consuming the drink. His eyes were glazed and his complexion red. He made his way to the gaming floor and was followed by the operative, passing a number of staff on the way. Two male security staff observed the man and another with whom he had met up. The security staff followed the man and kept him under surveillance until he left the gaming floor and did not re-enter.
334. On another occasion the operative observed a male who appeared to be intoxicated on a gaming machine located outside the Cherry Bar. He was with two friends who did not appear to be affected by alcohol. The intoxicated man was not drinking alcohol at the time. Safety team and security staff were occupied on other matters. At the same time, the operative observed five safety team employees removing a male person from the venue who was resisting. The removal was effected reasonably and swiftly in that operative's opinion. These events occurred during the 2014 FIFA World Cup when, as the audit noted, patronage of the Casino was 'extremely high'.
335. The December 2015 audit concluded that security at the Casino was of a high standard and that no occasions were identified where RSA practices had compromised the safety of patrons or employees. One operative in the course of that audit identified a male person who appeared intoxicated on a gaming machine near the 'Fish Tank' area. That operative saw the person get up and leave the Casino but did

not notice any safety team members there at the time. Later that evening, the operative saw another man being physically escorted from the venue, violently resisting.

336. My observations regarding these audits identify the worst of the incidents I could find in the audit reports.
337. The audits are not the only means by which compliance with RSA can be assessed. I also interviewed a number of people with day-to-day knowledge of compliance by the Casino with its RSA obligations. Marquee nightclub was identified as historically problematic in this regard. That nightclub changed its RSA practices in recent times. Any bottle of alcohol ordered is placed in a locked cabinet to which a waiter only has the key. Each table is attended by a dedicated staff member who monitors guests' drinking habits, unlocks the cabinet and pours drinks. Drink stockpiling is prevented by refusing to serve guests at the table who already have a drink that is more than half full. I was provided with a detailed document prepared by the Star setting out statutory requirements and good practice considerations, along with the additional and extended strategies that the Casino has implemented to meet, and hopefully exceed, its strict legal obligations.
338. In the course of my Inquiry I became aware of an incident in which a man who seemed to be intoxicated was permitted entry to the Sovereign Room to gamble. This matter had already come to the attention of Liquor & Gaming NSW and was the subject of consideration by it. The Star was fined \$2,500 and ILGA noted that there had been a reasonable opportunity to prevent the apparently intoxicated man gaining access to gambling services which was not taken. The man played only one hand before measures were taken to remove him.
339. I discovered no material in the course of the Inquiry which suggested the position with respect to RSA was worse than when previous Inquiries were undertaken or that there were incidents of such gravity or frequency that posed some systemic concern. Moreover, such incidents as there were had come to the attention of ILGA and were dealt with by it, in my respectful view, in an appropriate manner.

#### **D. Ambulance call-outs and related allegations**

340. Towards the latter part of my Inquiry, a news article was posted claiming that<sup>103</sup> a former games dealer at the Casino had alleged that the Casino had pressured staff to encourage gamblers to continue betting, even if showing signs of problem gambling, and that it was common to see gamblers displaying erratic or desperate behaviours at the Casino. The article said that documents obtained from NSW Ambulance showed, among other things, that paramedics had been despatched to the Casino 48 times in the past five years for abnormal and psychiatric behaviour, including attempted suicide, and 177 times for overdose or poisoning by ingestion.
341. The article quoted a clinical psychologist at the University of Sydney's gambling treatment clinic, Dr Christopher Hunt, as saying that problem gamblers could be hard immediately to identify at a venue like a casino and that problem gambling could often lead to thoughts of suicide and suicide attempts.
342. I was not able to make contact with the former Casino games dealer mentioned in the article. Inquiries I made suggested that the person had 'gone to ground'. I considered there were other ways I could inquire into the allegations she is reported to have made.
343. I interviewed Professor Alexander Blaszczynski (Professor & Director, Gambling Treatment Clinic, School of Psychology, University of Sydney) and Dr Christopher Hunt (Clinical Psychologist, Gambling Treatment Clinic, School of Psychology, University of Sydney) about the news article and about any knowledge they had, through their clinical treatment of persons seeking help with problem gambling or through their research, of problems with The Star's business model or the lived experience of it.
344. The Gambling Treatment Clinic was established in 1999. It offers gambling treatment and conducts research. The Clinic assists clients at Camperdown, Lidcombe, Parramatta and Campbelltown. It is funded by a grant from the Responsible Gaming Fund. It sees (for no fee) some 200-300 clients per year.

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<sup>103</sup> Tom Joyner, 'Suicide attempts, overdoses at Star Casino among reason for 173 ambulance calls a year, FOI documents show', posted 1 October 2016. Available at <http://www.abc.net.au/news/2016-10-01/suicide-attempts-at-casino-as-gamblers-'encouraged-to-play'/7895044>.

345. We discussed games dealers' capacity and training to identify problem gamblers. Professor Blaszczyński says that they can be good in identifying the regular patrons who are unhappy, depressed and losing money. The proper course in those instances is for croupiers to bring to the attention of someone trained to intervene, the problem they suspect. Professor Blaszczyński is aware of a chaplaincy programme being trialled in five clubs around the State. He described it as an 'ideal' staff intervention programme, in which staff who identify potential problems can have direct contact with a chaplain, who is trained and skilled to assess the reality of the problem and can take steps to deal with it. Game dealers, Professor Blaszczyński said, may not be well placed to identify problem gamblers including because some people may have overt reactions that can be observed, while many others may not. Some people who are problem gamblers may be lucid, relaxed and in good spirits *while gambling*.
346. Professor Blaszczyński speaks well of the Casino's Mr Wagemans whom, he says, he has found knowledgeable and responsive. Mr Wagemans had provided an opportunity for counsellors to go through the Casino's VIP rooms, and explained the way in which complimentary services and offerings are made available, as well as other features of the Casino and its business so that counsellors are better placed to understand better what their clients may be talking about.
347. Dr Hunt said that casinos are places at which patrons can lose a lot of money very quickly. That said, people tend to gamble at the Casino for less time than gamblers at a club or a hotel. He said that there is no reason to suspect that casinos cause or exacerbate problem gambling any more or less than other places at which wagering is available.
348. Neither Professor Blaszczyński nor Dr Hunt said they had any particular concerns regarding the Casino as distinct from other places at which gambling takes place.
349. I discussed with them the news article mentioned above. The author of it had interviewed both Professor Blaszczyński and Dr Hunt, but neither were shown the NSW Ambulance figures beforehand. They have since seen those figures, and consider that the unqualified conclusions of the kind expressed in the news article cannot reliably be drawn on that data alone. More detail and explanation about them would be required before being able to do so.

350. I required production from NSW Ambulance of these figures by way of Summons so I could ascertain for myself what information they contained. The figures are given at the most abstract level. For example, there were 117 incidents for 'Psychiatric / Abnormal Behaviour / Suicide Attempt' over a five year period. Those incidents are said to be 'by chief complaint'. It is not apparent whether these figures are for call-outs or only those calls that resulted in aid being provided. Twenty three incidents per year may not be concerning given the many millions of people who visit there each year. It would be necessary, before forming any reliable opinions on the ambulance figures, to know what the alleged abnormal behaviour was, and the circumstances in which the suicide attempts (and how many) were made. It is not clear from the figures which, if any, of the incidents arose because of gambling and especially irresponsible gambling or the Casino's encouragement of it.
351. Professor Blaszczyński said that suicide rates linked to gambling are often loosely, or mis-, reported. He referred me to a report of the Victorian Coroner which he said had found there to be one such death per month. I later obtained a copy: Data Summary: Coroners Prevention Unit; Gambling-related Suicides Victoria 2000-2012. It says there were 128 'gambling-related' suicides reported to the Court in the 12 year period between 2000 and 2012.
352. The ambulance figures do not, without further explanation and analysis, offer any assistance in forming views as to responsible gambling practices at the Casino.

## XII. LEGAL AGREEMENTS INVOLVING THE STAR

### A. Introduction

353. My Terms of Reference direct me both expressly and indirectly to consider two particular types of legal agreements to which The Star is a party. The *first* are ‘controlled contracts’ under s 36 of the *Casino Control Act*. Those are contracts of sufficient materiality, going to the integrity of operations at the Casino, such as to warrant the regulation of them as explained in further detail below. My consideration of them is required by paragraph 1.2(c) (and others) of the Terms of Reference.
354. The *second* are contracts between ILGA and The Star, pursuant to s 142 of the *Casino Control Act*. I am directed to consider these agreements by paragraph 3.3 of the Terms of Reference.

### B. Controlled contracts

355. A ‘controlled contract’ is defined in s 36 of the *Casino Control Act* as either:
- a. a contract that relates to the supply or servicing of gaming equipment that has been approved by ILGA; or
  - b. a contract, or class of contracts, that, in the opinion of ILGA, is materially significant to the integrity of the operation of a casino and that ILGA declares, by notice in writing to The Star, to be a controlled contract.
356. Such contracts and the arrangements for them are within my Terms of Reference because of the need to consider whether The Star has any business association with any person, body or association who, in the opinion of the authority, is not of good repute, having regard to character, honesty, integrity, or has undesirable or unsatisfactory financial sources (para 1.2); The Star’s expertise, having regard to the extent to which it has complied with its obligations under the *Casino Control Act* (para 3); and the maintenance and administration of systems by The Star 5.1 to ensure that the management and operation of the Casino remains free from criminal influence or exploitation and that gaming in the Casino is conducted honestly (para 5).

357. One purpose of these arrangements is to undermine the potential influence of organised crime or otherwise undesirable persons on the Casino's operations. The focus is on materiality, not monetary thresholds, unlike in some other areas of regulation.<sup>104</sup> The legislation contemplates that there may be contracts affecting the integrity of the operation of the Casino even though they be for goods or services of relatively little value.
358. Section 37 of the *Casino Control Act* precludes The Star from entering into or becoming a party to a controlled contract, or the variation of a controlled contract, until ILGA has been notified of the details of it, and 28 days (or a different time if ILGA allows) had elapsed.
359. By letter dated 11 July 2013, ILGA notified The Star of the manner in which it intended to administer these provisions. It identified the goods and services it considered to be materially significant to the integrity of the operations of the casino, for the purpose of the second limb of the definition of controlled contract in s 36 of the *Casino Control Act*:
- a. agreements to appoint an agent for a wagering system;
  - b. appointment and maintenance of a data warehouse;
  - c. information technology systems or services used or procured for the purposes of gaming;
  - d. security systems and services used or procured for use within or at the egress of the Casino premises; and
  - e. surveillance equipment used or procured for use within or at the egress of the Casino premises.
360. ILGA's letter also stated that the Casino ought report to it on a quarterly basis.
361. I interviewed Mr Vithiyan Jeya (Acting Manager, Revenue Assurance & Integrity Unit, Liquor & Gaming NSW) to, among other topics, controlled contracts. He told me that there are about 58 controlled contracts at present, but there are also variations

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<sup>104</sup> See, eg, the \$100,000 threshold that appears in the definition of 'controlled contract' in s 62 of the *Public Lotteries Act 1996* (NSW).

of them, giving a grand total of 114. He said that by consent, The Star's reporting on controlled contracts had not been at quarterly intervals. No difficulty was identified as flowing from this given, I assume, the in-built mechanism in s 37 of the *Casino Control Act* precluding The Star from entering into a relevant contract without first notifying ILGA.

362. When introducing the Casino Control Amendment Bill 2010 (NSW), the then Minister for Gaming and Racing said:<sup>105</sup>

In future, controlled contracts will only be contracts for the supply or servicing of approved gaming equipment and contracts that the authority declares by notice in writing to the casino operator as being materially significant to the integrity of the operation of the casino. This more contemporary risk-based approach to the review of contracts by the authority will result in far fewer controlled contracts as existing contracts end or are replaced by new contracts and each of those contracts being more intensely scrutinised.

[T]here are currently approximately 160 controlled contracts. This amendment should reduce that number to approximately 30 controlled contracts. This change will occur over time but is unlikely to occur in the short term.

363. The policy of the amendment was to vest in the Casino the responsibility for identifying and notifying controlled contracts, rather than (as previously) that task falling to ILGA.
364. I enquired of Mr Jeya whether he had concerns about the Casino's handling of controlled contracts. Neither he nor others I interviewed held such concerns. Mr Jeya told me that ILGA and Liquor & Gaming NSW take some comfort from the fact that The Star appears, in the main, to be entering into controlled contracts with major, reputable counterparties. He holds no material concerns at the present time about The Star entering into controlled contracts with suspicious or illegitimate businesses.
365. When assessing and reviewing controlled contracts, Mr Jeya said that Liquor & Gaming NSW pays close attention to the directors and other officers and known associates of the proposed counterparty, and performs credit, bankruptcy and police checks. Liquor & Gaming NSW searches ASIC's databases, and reviews the profit and loss statements and balance sheets of proposed counterparties to assess viability and apparent creditworthiness.

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<sup>105</sup> *Hansard*, NSW Parliament, 25 February 2010, accessed via [www.parliament.nsw.gov.au](http://www.parliament.nsw.gov.au).

366. I would only comment that the terms of the letter of 11 July 2013 ought not be regarded as foreclosing for all time the kinds of contract capable of falling within the scope of s 142 of the *Casino Control Act*. For example, the Casino's contracts with other companies for the construction and development of Modification 13 and 14 may be of a kind that fall for consideration under s 142, albeit that they are not within any of the five categories set out in the July 2013 letter. I express, however, no concluded view on this item.

### C. Agreements between ILGA and The Star

367. Clause 3.3 of my Terms of Reference direct an inquiry into the expertise of The Star, having regard to the operations that attach to the holder of a casino licence, including the extent to which The Star has complied with legal agreements between it and ILGA. Those agreements are subject to s 142 of the *Casino Control Act*, which is in these terms:

#### **142 Authority may conduct negotiations and enter into agreements**

- (1) With the approval or at the direction of the Minister, the Authority may conduct negotiations and enter into agreements on behalf of the State for or in connection with the establishment and operation of a casino and any development of which a casino or proposed casino forms part.
- (2) Such an agreement may contain only terms that are approved by the Minister and that are not inconsistent with this Act.
- (3) Such an agreement may provide that all or specified obligations imposed by the agreement are to be considered to be conditions of the relevant casino licence and such a provision has effect accordingly.
- (4) An assignment or encumbrance of the rights and obligations conferred or imposed by such an agreement is void unless the Minister consents to the assignment or encumbrance and any conditions subject to which the consent is given are complied with.
- (5) The Minister may vary or revoke a condition referred to in subsection (4).

368. I obtained 12 documents available on the website of Liquor & Gaming NSW<sup>106</sup> as those comprising the agreements for the purposes of this provision. They are as follows:

- a. Casino Licence;

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<sup>106</sup> <https://www.liquorandgaming.justice.nsw.gov.au/Pages/casinos/casino-licensing/regulatory-agreements/the-star.aspx>.

- b. Casino Exclusivity Agreement;
- c. Casino Regulatory and Compliance Deed;
- d. Casino Operations Agreement;
- e. Continuity and Cooperation Agreement – 2<sup>nd</sup> Deed of Amendment;
- f. Continuity and Cooperation Agreement – 3<sup>rd</sup> Deed of Amendment;
- g. Continuity and Cooperation Agreement – 4<sup>th</sup> Deed of Amendment;
- h. Casino Taxes Agreement;
- i. CCA Charge;
- j. Echo Deed;
- k. Compliance Deed; and
- l. Liquor Licence Agreement.

369. There are other agreements in addition to those identified above, but those available on ILGA's website are the principal ones. Three of those mentioned above (in subparas (d), (h) and (k)) have, however, been superseded. The 'Casino Operations Agreement' was replaced by a 'Deed of Amendment and Release between Executing Parties (Casino Operations Agreement)' dated 20 May 2011, and the 'Deed of Amendment and Restatement (Casino Taxes Agreement)' was replaced by a 'Second Deed of Amendment and Restatement (Casino Taxes Agreement)' dated 20 May 2011. The version of the 'Compliance Deed' on ILGA's website is undated and unexecuted; I obtained the final, executed copy of that document.

370. A subsidiary of Star Holdings and The Star Group, namely Sydney Harbour Casino Properties Pty Limited (**SHC Properties**), leases the Casino premises from ILGA under a long-term, 99 year lease that expires in 2093. That company is a party to various agreements involving The Star, which have the effect of linking The Star's rights and obligations as Casino operator to the lease. In that regard, the lease may be terminated early in certain circumstances of non-compliance by The Star.

371. The s 142 agreements that exist between ILGA and The Star (or other relevant subsidiary of The Star Group) fall in five categories:
- a. *first*, agreements requiring compliance by The Star with the *Casino Control Act* and related laws, regulations and governmental directions. Examples include the ‘Continuity and Co-operation Agreement’ (as amended), the ‘CCA Charge’ and the ‘Casino Operations Agreement’. These agreements appear to add little to the requirements of the legislation, but they do provide a contractual basis for The Star’s various rights and obligations, giving rise to rights in contract for ILGA to enforce, as necessary, if there is a breach;
  - b. *secondly*, agreements that define the fundamental basis for The Star’s business, such as that it be the sole operator of a casino until 13 November 2019. The principal agreements are the ‘Casino Exclusivity Agreement’ and the ‘Casino Regulatory and Compliance Deed’. (The exclusivity period is provided for in the latter.) These agreements also contain other assurances, some of which continue until 13 November 2025. For example, for that period, there is agreement that casinos will not be prohibited in the State either generally or at the Casino premises, Ministerial directions will not reduce the scale of gambling that is permitted, and the Casino has an entitlement to be open around the clock. In 1995, The Star paid \$256 million for its exclusivity and related rights, some of which expired in 2007. In that year, it paid \$100 million for exclusivity for a further 12 years and for a continuation of the related rights summarised above;
  - c. *thirdly*, agreements relating to the Casino premises, including the 99 year lease to SHC Properties referred to above and agreements relating to the various businesses at the Casino, such as restaurants, bars and shops that take a sub-lease for the areas in which they operate those businesses. The principal lease terms relating to The Star are attached to the ‘Casino Operations Agreement’ (as amended), to which The Star and SHC Properties are a party;
  - d. *fourthly*, agreements relating to taxes, duties and levies paid by The Star, including a levy for the Responsible Gambling Fund;

- e. *fifthly*, an ‘Echo Deed’, executed as part of the demerger of Tabcorp’s casino businesses from its wagering, gaming and keno businesses in 2011. The entity that is now The Star Group was incorporated as Echo Entertainment Group Limited on 2 March 2011, to facilitate that demerger. On 20 May 2011, what are now ILGA and The Star Group executed the ‘Echo Deed’, which addresses a number of compliance matters of the kind referred to in the first category of agreements above. The Echo Deed appears to focus mainly on compliance, albeit addressing particular demerger-related issues which arose at the time.
372. This summary of the relevant agreements shows that there are too many, and that they are complex and unclear in their interaction. It can be readily understood how this came about. Matters arose that could not have been foreseen or dealt with earlier, this was the first casino that operated lawfully in the State, so both The Star and the State Government were to some extent in new territory, and the subject-matter of the agreements is often not only complicated, but call for the making of fine judgments and balances between the competing commercial interests of The Star and the Government’s concern to protect the public interest.
373. The agreements should, at the next convenient opportunity, be re-negotiated so as to be more simply expressed, and hopefully amalgamated into one document in order to harmonise the terms, bring them into conformity with current conditions and avoid overlap and duplication. Expiry of The Star’s exclusivity in three years may provide not only that opportunity, but there is sufficient time before then to undertake the necessary preparatory work and have the negotiations. It seems to me that the second, third and fourth categories of agreements that I have identified above are necessary and ought continue in some (preferably simplified and harmonised) form.
374. It may be that the first and fifth categories of agreements referred to above are now unnecessary. It may not be necessary for agreements to repeat requirements imposed by the *Casino Control Act*. Ordinarily, the force that statutory obligations have by reason of being a command of Parliament are sufficient for that reason. So far as the ‘Echo Deed’ is concerned, there may not be any purpose to be served by continuing arrangements associated with the demerger.

375. I asked both ILGA and The Star whether either was aware of any material breaches of the s 142 agreements that are presently in force. None of my enquiries revealed such non-compliances. For completeness, The Star disclosed to me that it was aware of some minor or technical breaches, which it did not consider to be material. An example is that there is an obligation on The Star to maintain insurances for, *inter alia*, infectious diseases, and no such insurance is available in NSW (at least not on ordinary commercial terms). The Star does not have it, and ILGA is aware of that as a result of past notifications. I do not consider such a breach to be material, but I am grateful for the candour shown by The Star in drawing my attention to it.

### **XIII. HONESTY AND THE STAR'S SUSCEPTIBILITY TO CRIMINAL INFLUENCE**

#### **A. Introduction**

377. I interviewed with Mr Conde (and in some cases he did alone) members of law enforcement and like bodies as part of ascertaining the presence and detection of illegal and undesirable activities and people in the Casino (Terms of Reference, para 6) and the nature and adequacy of liaison between ILGA and law enforcement authorities and whether, and to what extent, gaming in the Casino is conducted honestly (para 8).
378. Some of the matters relevant to these topics are highly sensitive given they concern pending investigations, law enforcement intelligence and investigative techniques. I have included within Part B of the Confidential Appendix that part of the material that I consider the public interest demands be made available only to ILGA, as the Casino regulator, and The Star. One of the principal reasons why this information ought be kept confidential is that the release of it may assist criminals to avoid detection by law enforcement authorities. Some is so sensitive that even The Star should not see it. Those matters are in Part A of the Confidential Appendix.
379. Casino businesses are inherently susceptible to criminal influence and they tend to attract, for example, persons seeking to launder money. One example of this in the period which my review is concerned was the conduct the subject of the criminal charges *R v Jiao* [2015] NSWCCA 95. There, a woman was convicted of dealing with money reasonably suspected to be the proceeds of crime. The matter came to the attention of the Australian Federal Police through assistance provided by The Star.<sup>107</sup> The case is one example, therefore, both of the kind of criminal activity that a casino might attract, and how a casino operator might properly act to bring such conduct to the attention of the authorities.

#### **B. Australian Federal Police**

380. Mr Conde met with Detective Acting Superintendent Kelly Mansfield, the National Coordinator of Money Laundering, Organised Crime and Cyber operations. He is a

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<sup>107</sup> [2015] NSWCCA 95 at [8].

counterpart of Detective Superintendent Scott Cook of the NSW Police and NSW Crime Commission (see Part XIII.G below, under the heading ‘New South Wales Police’).

#### **1. General comments**

381. DAS Mansfield and those who assist him have responsibility for money laundering and organised crime of an interstate and international nature. For money laundering, his focus is at the stages of tainted money being moved from one place or account to another, and when tainted money is sought to be exchanged for untainted money, or is sought to be given the appearance of legitimacy in other ways.

382. Part B of the Confidential Appendix sets out some detail that supports the view that The Star is not involved, at least not knowingly, in money laundering.

#### **2. Known or potential associates of The Star**

383. Mr Conde provided DAS Mansfield with a list of persons (both corporate and natural) who were either known or potential associates of The Star. The list is reproduced in Part B of the Confidential Appendix. DAS Mansfield confirmed that the AFP presently had no concerns or issues in relation to any of those persons so far as The Star is concerned.

#### **3. Excluded persons**

384. DAS Mansfield said that there are people who have come to the attention of the AFP who are also persons excluded from the Casino (some of whom are overseas residents).

#### **4. Liaison with ILGA**

385. See Part A of the Confidential Appendix.

### **C. Australian Taxation Office (ATO)**

386. I met with Mr Nicholas Roussos, the National Director of Complex Assurance, Indirect Taxation. He and the 60 or staff who assist him have responsibility for the goods and services tax (GST) and other excises (eg fuel tax credits, luxury car tax).

They look at income tax when examining potential tax evaders and avoiders. They use modelling to identify higher risk persons based on certain factors. Mr Roussos liaises with other federal and State agencies, including Liquor & Gaming NSW and NSW Fair Trading.

387. A 'private groups assurance area' focuses its attention on, among other businesses, The Star. A 'small business and individuals assurance group' focuses its attention on junket operators, distinguishing between residents and non-residents (the latter are subject to a non-resident withholding tax). The ATO sees a very large amount of money going through the Casino, often from patrons originating from China and the Middle East.
388. Mr Roussos considers that the liaison as between the federal and State agencies could be better. Not all agencies have statutory and administrative arrangements for exchanging information with the ATO as freely as they might wish. NSW Fair Trading is one agency that has legislative authorisation to share information with the ATO. Liquor & Gaming NSW, by contrast, does not.
389. The ATO may freely share information with the NSW Office of State Revenue, but otherwise faces restrictions under applicable federal legislation. The ATO may share information more freely where there is criminal activity (or a reasonable suspicion of it) involved. Information sharing between the ATO and the NSW Police (and in particular its organised crime division) is, he thought, adequate.
390. Nothing which was discussed in the interview gave me reason to question The Star's integrity, that of its 'close associates' or the way in which it operates the Casino. See further Part B of the Confidential Appendix.

#### **D. AUSTRAC**

391. Mr Conde met with representatives from AUSTRAC. AUSTRAC had provided information and assistance to previous Inquirers under the *Casino Control Act* and was therefore acquainted with the matters within my Terms of Reference.

## 1. Background

392. AUSTRAC administers obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and the *Financial Transaction Reports Act 1988* (Cth). The Casino falls under the first of these because it offers a ‘designated service’ (here, gambling). The Casino must, among other things, identify customers using \$10,000 or more, adopt and implement an anti-money laundering and counter-terrorism financing programme, establish and maintain a transaction monitoring programme and identify and consider transactions of an unusual nature.
393. The legislative regime adopts a risk-based approach with four elements, being assessments of:
- a. money laundering and terrorism financing risks of persons, including politically exposed persons;
  - b. risks arising from the regulated entity’s activities and services;
  - c. risks arising from how the regulated entity’s services are delivered (eg those services that are delivered face-to-face or in cash); and
  - d. assessment of foreign risks.
394. To address these matters, the Casino has reporting obligations of three general kinds:
- a. *first*, threshold reporting (eg transactions over \$10,000);
  - b. *secondly*, reporting of international transfers; and
  - c. *thirdly*, and of particular importance for present purposes, suspicious matter reports.
395. Different timeframes apply to the various reporting obligations. Money laundering-related reports are due within three business days. Terrorism-related matters attract a shorter period 24 hours, and threshold reports must be made within 10 business days. These timeframes commence with the Casino’s becoming aware of the relevant information.
396. Four specific topics arose to be explored with AUSTRAC.

## **2. The Casino's compliance with its reporting obligations**

397. The Casino makes the requisite reports and, in particular, suspicious matter reports to AUSTRAC, which assesses compliance not only with the terms of the legislation, but also according to a risk approach. Adopting that perspective also, AUSTRAC does not hold concerns of relevance to my exercise.
398. Persons attend the Casino from time to time with large amounts of cash to gamble. The Casino has processes to report these as appropriate. AUSTRAC's relationships with the ACCC, AFP, ATO, NSW Crime Commission, NSW Police and NSW Office of State Revenue assist with monitoring and sharing information relating to activities at the Casino.
399. In the last five years, AUSTRAC said, the Casino's reporting had increased proportionately to its reported business results.

## **3. Testing of the Casino's compliance**

400. AUSTRAC monitors the Casino's compliance with the obligations of the kind referred to above, using both on-site and desktop methods. It recently (2013-2014) undertook a compliance assessment of the Casino.
401. AUSTRAC has powers to compel the provision of information and can require those subject to the legislation to undergo external audits. AUSTRAC may issue remedial orders and can apply to the Federal Court of Australia for civil penalty orders. AUSTRAC's compliance assessment was, accordingly, undertaken in circumstances where sanctions could result for the Casino for any non-compliance.
402. The Casino's responses satisfied AUSTRAC and as a result AUSTRAC closed the compliance assessment. (See further Part B of the Confidential Appendix.)

## **E. NSW Crime Commission**

403. Detective Superintendent Scott Cook, the Commander of the Organised Crime Squad at NSW Police, is charged with monitoring of the Casino's activities at the NSW Crime Commission. I refer to my interviews of him and issues arising in Part XIII.G below, under the heading 'New South Wales Police'.

## **F. NSW Fair Trading**

404. I met with representatives of NSW Fair Trading. I did so because of a suggestion made to me that this office operated under a model which best facilitated the exchange of information with law enforcement agencies (including of the Commonwealth) and its development of a system, 'Project Sentinel', that better allowed government agencies to search existing information sources.

### **1. Project Sentinel**

405. Project Sentinel uses advanced software to search databases and other information sources to collate and link that information for particular persons and companies the subject of inquiry. At present, the project draws on 23 data sources. I was shown examples of the output that the system is able to provide. It has been of assistance, I was told, and I accept, in alerting authorities to potential outstanding warrants, leads for locating missing persons, incidences of possible collusive tendering and in identifying possible persons of interest in connection with revenue defaults for the ATO.

406. Project Sentinel commended itself to me as a possible economical means by which ILGA's functions might be enhanced or assisted. If there is available a ready means of searching and gathering together information of relevance, for example, to the dealings of Casino employees, persons and companies who contract with the Casino or associates of it and those who gamble there, then it seemed to me to be one that ought be explored.

407. The project may have capability in due course to accommodate CCTV footage (live or archived), which might be supplemented with facial recognition software.

408. I asked those who run Project Sentinel to query the system for a selection of persons and companies that I had made (assisted by Mr Bryce Wilson) to test whether the claims made for Project Sentinel were ones that could in reality be demonstrated.

409. The results of that test are discussed in Part A of the Confidential Appendix. In summary, Project Sentinel identified no particular concerns for the persons and companies who were nominated but the system did identify some further lines of

inquiry. In this regard Project Sentinel would appear to be a useful tool in distilling from complex corporate structures particular persons and companies who are potential controllers or are otherwise noteworthy and warrant further investigation. Project Sentinel is, however, only as good as its data inputs and cannot represent a standalone solution for evaluating persons and companies who may be of interest at a particular time.

## **2. Information sharing**

410. NSW Fair Trading is party to various memoranda of understanding and ‘section 9A Agreements’. They permit the sharing of information with Commonwealth and NSW Government agencies. NSW Fair Trading is not regarded as a law enforcement agency and so does not possess all the powers and protections that such agencies often do. Section 9A of the *Fair Trading Act 1987* (NSW) was drawn to my attention as a model by which to permit better sharing of information by and to an agency. That section provides:

### **9A Exchange of information**

- (1) The Secretary may enter into, or approve of, an arrangement (an “information sharing arrangement”) with a relevant agency for the purposes of sharing or exchanging information held by the Secretary and the agency.
- (2) The information to which an information sharing arrangement may relate is limited to the following:
  - (a) information concerning investigations, law enforcement, assessment of complaints, licensing or disciplinary matters,
  - (b) probity assessments and reference checks concerning persons who provide, or propose to provide, goods or services to consumers,
  - (c) any other information affecting the interests of consumers,
  - (d) any other information of a type prescribed by the regulations.
- (3) Under an information sharing arrangement, the Secretary and the relevant agency are, despite any other Act or law of the State, authorised:
  - (a) to request and receive information held by the other party to the arrangement, and
  - (b) to disclose information to the other party,  
but only to the extent that the information is reasonably necessary:
  - (c) to assist in the exercise of functions (“existing NSW fair trading functions”) under this Act (or any other Act administered by the Minister, whether solely or jointly with

- another Minister) or of the functions of the relevant agency concerned, or
- (d) to assist in a proposed transfer of existing NSW fair trading functions to the relevant agency concerned or a proposed transfer of functions of the relevant agency concerned to the Minister, Secretary or other fair trading agency of the State.
- (4) The Secretary may also (whether as part of an information sharing arrangement or otherwise):
- (a) refer any matter (including any complaint) with respect to fair trading or that affects the interests of consumers to a fair trading agency or law enforcement agency, and
- (b) receive any such matter from a fair trading agency or law enforcement agency, and
- (c) conduct a joint investigation into any such matter with a fair trading agency or law enforcement agency.
- (5) Any such fair trading agency or law enforcement agency is, despite any other Act or law of the State, authorised to refer such a matter to the Secretary or to conduct an investigation into the matter jointly with the Secretary.
- (6) This section does not:
- (a) limit the functions that may be exercised by the Secretary under section 9, or
- (b) require the Secretary to provide information to a relevant agency only in accordance with an information sharing arrangement where that information can otherwise be lawfully provided, or
- (c) limit the operation of any other Act or law under which a relevant agency is authorised or required to disclose information to another person or body.
- (7) In this section:
- “fair trading agency” means an agency of the State, or of the Commonwealth, another State or Territory or an overseas jurisdiction, that exercises functions under an enactment with respect to fair trading.
- “information” includes reports, recommendations, opinions, assessments and operational plans.
- “law enforcement agency” means:
- (a) the NSW Police Force or the police force of another State or Territory or of an overseas jurisdiction, or
- (b) the Australian Federal Police, or
- (c) the New South Wales Crime Commission, or
- (d) the Australian Crime Commission, or
- (e) any other authority or person responsible for the investigation or prosecution of offences against the laws of the State or of the Commonwealth, another State or Territory or an overseas jurisdiction.

“relevant agency” means:

- (a) a fair trading agency, or
- (b) a law enforcement agency, or
- (c) any other agency of the State or of the Commonwealth, another State or Territory or an overseas jurisdiction, or
- (d) any other person or body that exercises functions, in the public interest, that involve protecting the interests of consumers.

411. I simply note this model as one which it is open to adopt. Information sharing about the Casino’s activities does not seem to be inadequate as matters presently stand.

## **G. New South Wales Police**

### **1. Introduction**

412. The principal NSW Police officers with relevant fields of responsibility for The Star are:

- a. Detective Superintendent Scott Cook, Commander of the Organised Crime Squad, who also has responsibility for the Casino and Racing Investigations Unit, and divides his time between NSW Police and the NSW Crime Commission in his work targeting serious organised crime; and
- b. Superintendent David Donoghue, the Commander of the Sydney City Local Area Command;
- c. Detective Chief Inspector Maricic, Crime Manager, Sydney City Local Area Command.

### **2. Organised Crime Squad**

413. The Organised Crime Squad works with the NSW Crime Commission, the AFP and other agencies, as appropriate (including Supt Donoghue at Sydney City Local Area Command). DS Cook’s focus is on ‘highly organised crime in a transnational environment’.

414. DS Cook has a good working relationship with The Star. He is aware of the importance of constant vigilance by the Casino’s management, given the large sums of money that pass through it (often cash), and the attraction for organised crime. DS

Cook estimated that the Australian economy loses \$15-20 billion per year to money laundering. One solution, he said, is to have a focus on a robust and resistant culture. The Star, he said, at least at present meets that description. I am satisfied that is the case.

415. See further Part B of the Confidential Appendix.

### **3. Casino and Racing Investigations Unit**

416. DS Cook told me that this unit is dedicated principally to ensuring the integrity of activities at the Casino and upholding strict probity standards for The Star's employees and patrons. The unit has responsibility for the Commissioner's exclusions from the Casino. He drew to my attention a relatively recent arrangement as between NSW Police and ILGA, in which two full-time employees at NSW Police have assisted with probity checks of The Star's employees and patrons on behalf of ILGA for the purposes of ss 50 and 79 of the *Casino Control Act*, and NSW Police is paid (by ILGA) an amount equivalent to those two persons' salaries.
417. Probity checks take too long (up to two years), something which DS Cook considered (and I agree) to be unsatisfactory. The situation has improved this year with the two full-time employees, who are making headway through the backlog. DS Cook identified two factors that contributed to the creation of that backlog: (i) not having full time employees dedicated to that task, and that task alone; and (ii) routinely, no names would be received for processing for months at a time, followed by the receipt of thousands at a time.
418. It is undesirable that the checking of persons identified for exclusion by the Police Commissioner is not occurring more promptly. The delay risks an exclusion being ordered well after information capable of supporting such action is received. There ought to be relatively prompt checking and processing of the material necessary to assess whether the Commissioner ought, in the exercise of his powers under s 81 of the *Casino Control Act*, exclude a person from the Casino. This is the subject of one of my recommendations, which I discussed earlier in this report.

#### **4. Sydney City Local Area Command**

419. Supt Donoghue told me that a lot of resources are committed to The Star, owing to the size of the venue and the number of people there. He said that his team conducts random walk-throughs of the Casino with sniffer dogs, to detect any drugs. He said that there are occasionally people of ill repute who attend the Casino, and it is therefore important for law enforcement to be vigilant.
420. Supt Donoghue said that the number of incidents at the Casino need to be understood in the context of the sheer size of the venue. He has responsibility for some 1,000 licensed venues in Sydney. If there are, for example, five incidents at the Casino, as compared with one or none at other venues, although that might seem to be a poor outcome for The Star, such figures need to be understood on a per capita basis, having regard to the many tens of thousands of people who attend the Casino each day.

#### **H. Regular meetings involving law enforcement and The Star**

421. See Part B of the Confidential Appendix.

#### XIV. CONCLUSIONS – TERMS OF REFERENCE

422. I discuss below each of the Terms of Reference and a summary of my response to them.

	<b>Term of Reference</b>	<b>Discussion</b>
1.	The suitability of The Star, and each close associate of it, as nominated by ILGA from time to time, as being concerned in, or associated with, the management and operation of the Casino, having regard to whether:	
	<p>1.1 The Star:</p> <p>(a) has, or has arranged, a satisfactory ownership trust or corporate structure;</p> <p>(b) has or is able to obtain financial resources that are both suitable and adequate for ensuring the financial viability of the Casino;</p> <p>(c) has or is able to obtain the services of persons who have sufficient experience in the management and operation of a casino;</p> <p>(d) has sufficient business ability to maintain a successful casino;</p>	<p>The Star has a satisfactory ownership and corporate structure. It is of the ordinary kind for a business of this nature and is not unorthodox. The Star's ultimate holding company is The Star Group. The group's arrangements are such that The Star has financial resources both suitable and adequate for ensuring the Casino's financial viability. Those responsible for The Star's business, both within The Star itself and in The Star Group, possess the requisite business experience and ability to maintain the Casino's operation in a successful manner. The Casino staff with whom I had interaction presented as professional, well-organised and forthright.</p>
	<p>1.2 The Star and each close associate of it:</p> <p>(a) are of good repute, having regard to character, honesty and integrity;</p> <p>(b) are of sound and stable financial background;</p> <p>(c) have any business association with any person, body or association who, in the opinion of ILGA, is not of good repute, having regard to character, honesty, integrity, or has undesirable or unsatisfactory financial sources;</p>	<p>The Star and those I can be satisfied are close associates of it appear to be of good repute, having regard to character, honesty and integrity. Each appears to have, from the information available to me, a sound and stable financial background. Nor am I aware of any business association with a person or entity who is not of good repute or is otherwise undesirable, or has unsatisfactory financial sources.</p> <p>This conclusion must be qualified by the limits of my capacity fully to scrutinise every dealing and every person or body with whom The Star might have some business association, especially overseas companies and persons.</p>
	<p>1.3 each director, partner, trustee, executive officer and secretary, and any other officer or person determined by ILGA to be associated or connected with the ownership, administration or management of the operations or</p>	<p>So far as I have been able to determine, each of the persons to whom this Term of Reference direct attention is suitable to act in the role that they do.</p> <p>I have not made an exhaustive inquiry into every such person or entity, but my inquiries in</p>

	<b>Term of Reference</b>	<b>Discussion</b>
	business of The Star, or a close associate of it, is a suitable person to act in that capacity.	particular of law enforcement bodies and of staff of Liquor & Gaming NSW enable me to express the conclusion above with sufficient satisfaction. The Casino staff I met seemed competent, professional, well-organised and forthright
2.	The standard and nature of the Casino, which commenced operation on 26 November 1997, and the facilities provided in or in conjunction with it.	The Casino is of a reasonably high standard that offers public and private gaming which, at its higher end, is well adapted to its purpose. A range of facilities are provided in conjunction with the Casino business, including live entertainment, dining, a nightclub, bars, social activities and conference and event facilities. The standard of the Casino and its precinct is undergoing improvement.
3.	The expertise of The Star, having regard to the operations that attach to the holder of a casino licence under the <i>Casino Control Act</i> , including the extent to which The Star has complied with: 3.1 its obligations under the Act; 3.2 its obligations under the licence; 3.3 legal agreements between ILGA and The Star.	The Star has a high level of expertise in the operations to be conducted under the <i>Casino Control Act</i> and its licence. Its level of compliance with the <i>Casino Control Act</i> and its licence, while not blemish-free, is good, and reflects a high level of adherence to such obligations. I have not been able to detect any material non-compliance with agreements between The Star and ILGA.
4.	The contribution made by the Casino towards, and its impact upon, the public interest, including by reference to: 4.1 the matters in 1 to 3 above; 4.2 the effects, potential and actual, upon individuals who attend, and may attend, the Casino, and their families; 4.3 the impact or potential impact of the Casino on the public interest, having regard to submissions made to ILGA by the public.	<p>The Casino contributes hundreds of millions of dollars to government revenue. It attracts not just gambling business from overseas and provides those who wish to gamble with a well-run and safe place to do so. Gambling can be a problem for some and their families. All too frequently, gambling may be undertaken to the serious detriment of relationships, financial well-being, and family and personal commitments.</p> <p>The Casino manages problem gambling satisfactorily. Those who offer emotional and psychological support to such persons either had no comment to make about the Casino's handling of this issue, or commented but not adversely. The Casino therefore has both a positive and negative impact upon the public interest. No part of the Terms of Reference call for me to form a moral or personal view of the propriety of gambling.</p> <p>So far as I am equipped to ascertain it, and recognising that reasonable minds might differ on the subject, it remains in the public interest that the Casino licence should continue in force. (This conclusion is offered to inform ILGA's opinion under s 31(1)(b) of the <i>Casino Control</i></p>

	<b>Term of Reference</b>	<b>Discussion</b>
		<i>Act</i> and are not intended as a substitution for it, recognising ILGA's statutory function and composition.)
5.	<p>The maintenance and administration of systems by The Star to:</p> <p>5.1 ensure that the management and operation of the Casino remains free from criminal influence or exploitation;</p> <p>5.2 ensure that gaming in the Casino is conducted honestly;</p> <p>5.3 contain and control the potential of the Casino to cause harm to the public interest and to individuals and families.</p>	<p>The Star's systems to ensure its Casino remains from criminal influence or exploitation are adequately maintained and administered. The experience of them by law enforcement bodies confirms this. Gaming in the Casino is not always conducted honestly, but I found no evidence of the Casino's involvement in any dishonesty, which dishonesty in any event has been detected by law enforcement bodies, and has been or is being investigated and dealt with by them. The incidents of dishonest gaming are not such as could reasonably support some conclusion of inadequacy in that regard on the part of The Star. The Star contains and controls the potential of the Casino to harm the public interest and individuals and families in several ways, including through systems of exclusion (about which I have made a recommendation). The Star has demonstrated a particular focus on promoting responsible gambling, and taking steps where necessary to control or limit the harm resulting to individuals.</p> <p>Aspects of The Star's recording and reporting of violent incidents could be improved.</p>
6.	The presence and detection of illegal and undesirable activities and people in the Casino.	Sophisticated systems exist at The Star to detect the presence of undesirable activities and people in the Casino, in addition to a pervasive CCTV system. There are many checks and many independent sources of knowledge about such matters. They seem to have proved effective.
7.	The recommendations made by the investigation carried out in 2011, pursuant to s 31 of the <i>Casino Control Act</i> .	The recommendations made by the Inquiry conducted by Ms Furness SC in 2011 have been satisfactorily implemented.
8.	The investigation will:	
	8.1 have regard to, and not revisit, matters which have already been sufficiently examined and dealt with, and in respect of which there have been no apparent material changes, by the reports of the inquiries under the <i>Casino Control Act</i> into the Casino in 1997, 2000, 2003, 2006 and 2011 (and particularly the latter);	I have sought to focus my inquiries on those matters in relation to which there is likely to have been material change since, in particular, the previous Inquiry of 2011 by Ms Furness SC. This has allowed me to give some focus to, in particular, junket programmes and regulatory transition, which are topical issues that have emerged as more important ones than was previously the case.
	8.2 in particular, consider: (a) the operation of junket	Junket programmes and their settlement are managed appropriately so as to minimise the risk that they pose for criminal influence and honesty

	<b>Term of Reference</b>	<b>Discussion</b>
	<p>programmes and the integrity of their settlement;</p> <p>(b) the nature and adequacy of liaison between ILGA, Liquor &amp; Gaming NSW and law enforcement authorities;</p> <p>(c) the vulnerability of gaming (and especially high-stakes gaming) carried on at the Casino to money laundering;</p> <p>(d) whether, and to what extent, gaming in the Casino is conducted honestly;</p> <p>(e) controls on access to and the availability of, high-stakes gaming.</p>	<p>in gambling. They are an important and growing part of the Casino's business. I am satisfied that the arrangements which The Star has in place are adequate, having regard to the nature and extent of the risks posed to the honest conduct of gaming and to resist criminal influence and exploitation. The same conclusions apply to general gaming at the Casino, including 'high stakes' gaming, which I take to be that made available to so-called 'high rollers'.</p> <p>Liaison between ILGA, Liquor &amp; Gaming NSW and law enforcement authorities is adequate, but careful attention ought to be given to ensure that in the process of regulatory transition presently being experienced, important linkages and opportunities to exchange information are not lost or overlooked.</p>
9.	Such other matters as ILGA considers relevant.	ILGA did not direct me to consider any matters other than those the subject of my Terms of Reference, but did extend the time for my reporting to it to permit exploration of the matters the subject of Part IX of this report and approve that exercise.

423. I make the following recommendations.

424. **Recommendation 1:** Liquor & Gaming NSW ought ensure regular and effective liaison with law enforcement by maintaining strong links between its staff and those bodies so that information sharing does not suffer as a result of the recent changes to regulatory arrangements. The Executive Intelligence Meeting referred to in the Confidential Appendix ought take place at least quarterly.

425. **Recommendation 2:** The function of the two officers presently allocated to the investigation of persons identified for possible exclusion from the Casino by the exercise of the Police Commissioner's powers under s 81 of the *Casino Control Act* ought be preserved, funded and administered so as to permit those officers to give their full attention to that task, including the clearing of backlogs and the expeditious processing of any new proposals for exclusion. That will necessitate that referrals for such exclusions be made less unevenly and more regularly and by setting a requirement that the backlog be cleared within 12 months from now.

426. **Recommendation 3:** The Star and Liquor & Gaming NSW ought give focus to non-punitive ways substantially to reduce the occasions upon which persons who have excluded themselves from the Casino gain re-entry to it.
427. **Recommendation 4:** The Star ought continue to investigate, test and develop the reliability and utility of facial recognition technology. ILGA ought be consulted before any installation (other than for any trial) of it.
428. **Recommendation 5:** Footage presently available via the ILGA office (now the office of Liquor & Gaming NSW) at the Casino ought be available off-site, subject to the provision of means of ensuring its security.
429. **Recommendation 6:** The Star ought use descriptors that more clearly state the character of incidents and their nature. Any revision of descriptors ought meet the reasonable requirements of regulators, and the Police. This is one way by which all incidents involving violence would come to the attention of Police, whether or not in the Crime Review meeting, and furnish Police with all relevant data from which they might assess which incidents ought be recorded on COPS.
430. **Recommendation 7:** In particular, the Casino's Asset Protection Monthly Reports ought refer expressly to incidents involving violence (whether or not constituting assault however defined) and give a clear description of the relevant conduct which is neither euphemistic nor overly general.
431. **Recommendation 8:** The Star consult with Police to secure agreement as to the threshold for the making of reports to Police or calls for attendance, and those criteria be clearly stated and recorded.
432. **Recommendation 9:** The regulator may wish to require The Star to submit a programme for approval by it of the changes it proposes to make to its system of recording and reporting violent incidents, in its Asset Protection Monthly Reports, its Regulator's Summaries and in its dealings with Police.
433. **Recommendation 10:** The Casino has many overlapping obligations to record and report incidents. The utility and accuracy of each may be improved if the obligations were to be centralised and harmonised, and adopting descriptors which are directed to,

and clearly inform, the functions that each regulator, as the recipient of such reports, is vested to discharge

434. **Recommendation 11:** The regulatory agreements between The Star and ILGA ought be revised and renegotiated as necessary, and as opportunities arise to do so, to achieve, where possible, modernisation, simplification and the elimination of duplication.
435. I have concluded that The Star is a suitable person to continue to give effect to the Casino licence and the *Casino Control Act*. It appears to me, so far as I am equipped to determine it, that it is in the public interest that the Casino licence continue in force.

Signed:

A handwritten signature in black ink, appearing to read 'J M Horton', written in a cursive style.

**J M HORTON QC**

## XV. GLOSSARY

<b>ACCC</b>	Australian Competition and Consumer Commission.
<b>AFP</b>	Australian Federal Police.
<b>ATO</b>	Australian Taxation Office.
<b>AUSTRAC</b>	Australian Transaction Reports and Analysis Centre.
<b>BOCSAR</b>	NSW Bureau of Crime Statistics and Research.
<b>Casino</b>	The Star Casino, operated by The Star.
<b><i>Casino Control Act</i></b>	<i>Casino Control Act 1992 (NSW).</i>
<b>Casino Control Regulation</b>	Casino Control Regulation 2009 (NSW).
<b>CID</b>	Casino Internal Database.
<b>CBD</b>	central business district.
<b>CCTV</b>	closed circuit television.
<b>Chow Tai Fook</b>	Chow Tai Fook Enterprises Limited.
<b>COPS</b>	Computerised Operational Policing System.
<b>EBITDA</b>	earnings before interest, tax, depreciation and amortisation.
<b>Far East</b>	Far East Consortium (Australia) Pty Limited (a wholly owned subsidiary of Far East Consortium International Limited).
<b><i>Gaming and Liquor Administration Act</i></b>	<i>Gaming and Liquor Administration Act 2007 (NSW).</i>
<b>ICPs</b>	The Star's internal control procedures, which are subject to approval by ILGA.
<b>ILGA</b>	Independent Liquor and Gaming Authority, constituted under s 6(1) of the <i>Gaming and Liquor Administration Act</i> .
<b>Liquor Act</b>	<i>Liquor Act 2007 (NSW).</i>
<b>Liquor &amp; Gaming NSW</b>	Liquor & Gaming NSW, a part of the NSW Department of Justice, whose role includes compliance, enforcement and licensing functions, as well as the provision of advice and support to ILGA and the NSW Government.
<b>RCG</b>	responsible conduct of gambling.
<b>Review</b>	the review of Liquor & Gaming NSW referred to in paragraph 142.
<b><i>Royal Commissions Act</i></b>	<i>Royal Commissions Act 1923 (NSW).</i>
<b>RSA</b>	responsible service of alcohol.
<b>SHC Properties</b>	Sydney Harbour Casino Properties Pty Limited (ACN 050 045 120), which is wholly owned by Star Holdings.

<b>Star Holdings</b>	The Star Entertainment Sydney Holdings Limited (ACN 064 054 431), of which The Star is a wholly owned subsidiary. Star Holdings is a wholly owned subsidiary of The Star Group.
<b>Terms of Reference</b>	Terms of Reference dated 4 August 2016 and reproduced in this report at paragraph 31.
<b>The Star</b>	The Star Pty Limited (ACN 060 510 410).
<b>The Star Group</b>	The Star Entertainment Group Limited (ACN 149 629 023) (formerly named Echo Entertainment Group Limited), which is listed on the Australian Securities Exchange and trades under the code 'SGR'. The Star Group is the ultimate holding company of The Star.

**Annexure A: Instrument of Appointment**

(Attached.)



**INSTRUMENT OF APPOINTMENT**

The Independent Liquor and Gaming Authority, constituted under section 6(1) of the *Gaming and Liquor Administration Act 2007* (NSW) appoints **JONATHAN MARK HORTON QC** under section 143(1) of the *Casino Control Act 1992* (NSW) to preside over an inquiry for the purpose of the exercise of the Authority's functions under section 31 of that Act.

The Terms of Reference pursuant to which the inquiry is to be undertaken are annexed hereto.

A report on the results of the inquiry is to be made to the Authority by 4 November 2016.

Dated: 4 August 2016

.....  
Philip Crawford

**Chairperson**

For and on behalf of the **Independent Liquor and Gaming Authority**

## Annexure

### TERMS OF REFERENCE

1. The suitability of The Star Pty Limited (as Casino operator) (**The Star**), and each close associate of it, as nominated by the Authority from time to time, as being concerned in, or associated with, the management and operation of The Star Casino, having regard to whether:
  - 1.1. The Star:
    - (a) has, or has arranged, a satisfactory ownership trust or corporate structure;
    - (b) has or is able to obtain financial resources that are both suitable and adequate for ensuring the financial viability of the casino;
    - (c) has or is able to obtain the services of persons who have sufficient experience in the management and operation of a casino;
    - (d) has sufficient business ability to maintain a successful casino;
  - 1.2. The Star and each close associate of it:
    - (a) are of good repute, having regard to character, honesty and integrity;
    - (b) are of sound and stable financial background;
    - (c) have any business association with any person, body or association who, in the opinion of the authority, is not of good repute, having regard to character, honesty, integrity, or has undesirable or unsatisfactory financial sources;
  - 1.3. each director, partner, trustee, executive officer and secretary, and any other officer or person determined by the Authority to be associated or connected with the ownership, administration or management of the operations, or business of The Star, or a close associate of it, is a suitable person to act in that capacity.
2. The standard and nature of the casino, which commenced operation on 26 November 1997 and the facilities provided in, or in conjunction with it.
3. The expertise of The Star, having regard to the operations that attach to the holder of a casino licence under the Act, including the extent to which The Star has complied with:
  - 3.1. its obligations under the Act;
  - 3.2. its obligations under the licence;
  - 3.3. legal agreements between the Authority and The Star.
4. The contribution made by the casino, and its impact upon, the public interest, including by reference to:
  - 4.1. the matters in 1 to 3 above;
  - 4.2. the effects, potential and actual, upon individuals who attend, and may attend the casino, and their families;

- 4.3. the impact or potential impact of the casino on the public interest, having regard to submissions made to the Authority by the public.
5. The maintenance and administration of systems by The Star to:
  - 5.1. ensure that the management and operation of the casino remains free from criminal influence or exploitation;
  - 5.2. ensure that gaming in the casino is conducted honestly;
  - 5.3. contain and control the potential of the casino to cause harm to the public interest and to individuals and families.
6. The presence and detection of illegal and undesirable activities and people in the casino.
7. The recommendations made by the investigation carried out in 2011, pursuant to section 31 of the Act.
8. The investigation will:
  - 8.1. have regard to, and not revisit, matters which have already been sufficiently examined and dealt with, and in respect of which there have been no apparent material changes, by the reports of the inquiries under the Act into the casino in 1997, 2000, 2003, 2006 and 2011 (and particularly the latter);
  - 8.2. in particular, consider:
    - (a) the operation of junket programs and the integrity of their settlement;
    - (b) the nature and adequacy of liaison between the Authority, Liquor and Gaming NSW and law enforcement authorities;
    - (c) the vulnerability of gaming (and especially high-stakes gaming) carried on at the casino to money laundering;
    - (d) whether, and to what extent, gaming in the casino is conducted honestly;
    - (e) controls on access to, and the availability of, high-stakes gaming.
9. Such other matters as the Authority considers relevant.

**Annexure B: Directions as to Publication**

(Attached.)

*Casino Control Act 1992 (NSW)*

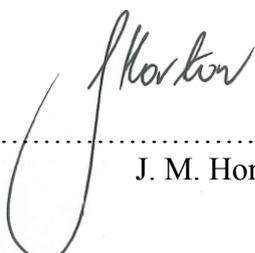
**THE STAR CASINO: LICENCE REVIEW**

**Restriction on Publication of Information**

Pursuant to s 143B(1) of the *Casino Control Act*, I, JONATHAN MARK HORTON QC, the person appointed under s 143(1) of that Act to preside over the above Inquiry for the purpose of the exercise of functions of the Independent Liquor and Gaming Authority (**ILGA**) under s 31 of the Act, direct that:

1. Part A of the Confidential Appendix to my report entitled 'The Star Casino: Licence Review' dated 21 November 2016 (**the Report**) is not to be published except to ILGA, Liquor & Gaming NSW, the Australian Federal Police, NSW Police, the NSW Crime Commission and the respective legal advisors of those bodies and agencies.
2. Part B of the Confidential Appendix to the Report is not to be published except to ILGA, Liquor & Gaming NSW, The Star, the Australian Federal Police, NSW Police, the NSW Crime Commission and the respective legal advisors of those bodies and agencies.
3. The direction given on 9 November 2016 and recorded at page 4 (lines 30-36) of the Transcript of the hearing on that day be vacated and in substitution thereof:
  - a. Annexures 6 and 7 to the Statement of Ms Gregory Hawkins, received and marked as Exhibit 1 during the oral hearing on 9 November 2016 not be published at all;
  - b. Annexure 3 to the Statement of Catherine Clark, received and marked as Exhibit 4 during the oral hearing on 9 November 2016 not be published at all.
4. The documents produced by The Star in answer to paragraph 7 of the Schedule to a Summons issued by me and dated 17 August 2016 are not to be published except to ILGA and Liquor & Gaming NSW.
5. The letter and attached materials dated 20 October 2016 entitled 'The Star Casino Inquiry 2016' produced by The Star in answer to a letter issued by me dated 7 October 2016.
6. The documents and materials referred to in 4 and 5 above may be published with prior written consent of The Star.
7. All notes taken by me or by Mr Conde of interviews with Mr Scott Cook, Mr Kevin Houlihan, any member of the Australian Federal Police or AUSTRAC not be published at all.

Dated: 21 November 2016

  
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J. M. Horton QC

## Annexure C: Interviews

Unless otherwise indicated, I attended all interviews with Mr Conde, Counsel Assisting.

Date	Attendees
04 Aug 2016	<ul style="list-style-type: none"> <li>• Mr Bryce Wilson (General Counsel, ILGA).</li> </ul>
05 Aug 2016	<ul style="list-style-type: none"> <li>• Mr Sean Goodchild (Director Compliance, Liquor &amp; Gaming NSW);</li> <li>• Mr Darren Duke (Investigator, Liquor &amp; Gaming NSW);</li> <li>• Mr Matt Weber (Investigator, Liquor &amp; Gaming NSW); and</li> <li>• Mr Bryce Wilson (General Counsel, ILGA).</li> </ul>
09 Aug 2016	<p><i>Mr Horton QC only</i></p> <ul style="list-style-type: none"> <li>• Mr Andrew Power (General Counsel, The Star);</li> <li>• Mr Chris Downy (General Manager, External Affairs, The Star);</li> <li>• Mr Graeme Stevens (Regulatory Affairs Manager, The Star);</li> <li>• Mr Brendan Walker-Munro (Manager, Revenue Assurance and Integrity, Liquor &amp; Gaming NSW); and</li> <li>• Mr Matt Weber (Investigator, ILGA).</li> </ul>
10 Aug 2016	<ul style="list-style-type: none"> <li>• Ms Jodie Camden (Director of Licensing, Liquor &amp; Gaming NSW);</li> <li>• Mr Luke Freeman (Gaming Licensing Manager, Liquor &amp; Gaming NSW);</li> <li>• Ms Kylie Grant (Manager, Reviews and Secretariat Unit, Liquor &amp; Gaming NSW);</li> <li>• Mr Peter Wicks (Individual Licensing Manager, Liquor &amp; Gaming NSW); and</li> <li>• Mr Bryce Wilson (General Counsel, ILGA).</li> </ul>
15 Aug 2016	<p><i>Mr Horton QC only</i></p> <ul style="list-style-type: none"> <li>• Mr James Toomey (by telephone) (Executive, Mission Australia).</li> </ul>
17 Aug 2016	<ul style="list-style-type: none"> <li>• Board meeting of ILGA.</li> </ul>
17 Aug 2016	<ul style="list-style-type: none"> <li>• Detective Superintendent Scott Cook (Commander, Organised Crime Squad, NSW Police and NSW Crime Commission).</li> </ul>
18 Aug 2016	<p><i>Mr Conde only</i></p> <ul style="list-style-type: none"> <li>• Detective Superintendent Murray Reynolds (Commander, Drug &amp; Alcohol Command, NSW Police).</li> </ul>
23 Aug 2016	<ul style="list-style-type: none"> <li>• Mr Nicholas Roussos (National Director, Complex Assurance, Indirect Tax, ATO).</li> </ul>
25 Aug 2016	<ul style="list-style-type: none"> <li>• Mr Wally McDonald (Partner, Piper Alderman);</li> <li>• Mr Simon Morris (Partner, Piper Alderman);</li> <li>• Mr Chris Lyons (Senior Associate, Piper Alderman); and</li> <li>• Mr Bryce Wilson (General Counsel, ILGA).</li> </ul>
01 Sep 2016	<ul style="list-style-type: none"> <li>• Ms Valerie Griswold (Executive Director, Compliance &amp; Enforcement, NSW Fair Trading);</li> <li>• Mr Mitchell Stitt (Manager, Intelligence Branch, NSW Fair Trading);</li> <li>• Mr Peter Britt (Principal Intelligence Officer, NSW Fair Trading); and</li> <li>• Mr Bryce Wilson (General Counsel, ILGA).</li> </ul>
01 Sep 2016	<ul style="list-style-type: none"> <li>• Mr Robert Petherick (former Manager, Casino Compliance, ILGA); and</li> <li>• Mr Bryce Wilson (General Counsel, ILGA).</li> </ul>

<b>Date</b>	<b>Attendees</b>
13 Sep 2016	<i>Mr Conde only</i> <ul style="list-style-type: none"> <li>• Mr Shane Campbell (Acting National Manager, Compliance, AUSTRAC);</li> <li>• Mr Tony Prior (Director, Compliance, AUSTRAC);</li> <li>• Mr Mark Wilson (Senior Manager, Compliance, AUSTRAC);</li> <li>• Mr Anthony Helmond (Director, Intelligence, AUSTRAC); and</li> <li>• Mr Bryce Wilson (General Counsel, ILGA).</li> </ul>
20 Sep 2016	<ul style="list-style-type: none"> <li>• Mr Kevin Houlihan (Group Investigations Manager, The Star Group).</li> </ul>
20 Sep 2016	<ul style="list-style-type: none"> <li>• Mr John Lomax (General Manager, Asset Protection, The Star).</li> </ul>
20 Sep 2016	Inspection of the Casino with: <ul style="list-style-type: none"> <li>• Mr Gregory Hawkins (Managing Director, The Star);</li> <li>• Mr Chris Downy (General Manager, External Affairs, The Star); and</li> <li>• Mr Andrew Power (General Counsel, The Star).</li> </ul>
21 Sep 2016	<ul style="list-style-type: none"> <li>• Mr Ronald Wagemans (Patron Liaison Manager, NSW at the Casino).</li> </ul>
27 Sep 2016	Junket Simulation at the Casino with: <ul style="list-style-type: none"> <li>• Ms Paula Martin (Group General Counsel, The Star Group);</li> <li>• Mr Saro Mugnaini (VIP Marketing International, The Star);</li> <li>• Ms Sandra Thefs (Operations Manager, Premium and VIP, The Star);</li> <li>• Mr Graeme Stevens (Regulatory Affairs Manager, The Star); and</li> <li>• Mr Andrew Power (General Counsel, The Star).</li> </ul>
29 Sep 2016	<ul style="list-style-type: none"> <li>• Mr Vithiyam Jeya (Acting Manager, Revenue Assurance &amp; Integrity Unit, Liquor &amp; Gaming NSW); and</li> <li>• Mr Bryce Wilson (General Counsel, ILGA).</li> </ul>
12 Oct 2016	<ul style="list-style-type: none"> <li>• Professor Alexander Blaszczynski (Professor &amp; Director, Gambling Treatment Clinic, School of Psychology, University of Sydney); and</li> <li>• Dr Christopher Hunt (Clinical Psychologist, Gambling Treatment Clinic, School of Psychology, University of Sydney).</li> </ul>
14 Oct 2016	<i>Mr Conde only</i> <ul style="list-style-type: none"> <li>• Detective Acting Superintendent Kelly Mansfield (National Coordinator, Money Laundering, Organised Crime &amp; Cyber, AFP); and</li> <li>• Mr Bryce Wilson (General Counsel, ILGA).</li> </ul>
20 Oct 2016	<ul style="list-style-type: none"> <li>• Detective Superintendent Scott Cook (Commander, Organised Crime Squad, NSW Police and NSW Crime Commission).</li> </ul>
20 Oct 2016	<ul style="list-style-type: none"> <li>• Superintendent David Donoghue (Commander, Sydney City Local Area Command, NSW Police); and</li> <li>• Detective Inspector David Richards (Licensing Inspector, Sydney City Local Area Command, NSW Police).</li> </ul>
08 Nov 2016	<ul style="list-style-type: none"> <li>• Dr Don Weatherburn (BOCSAR)</li> <li>• Superintendent David Donoghue (Commander, Sydney City Local Area Command, NSW Police); and</li> <li>• Detective Inspector David Richards (Licensing Inspector, Sydney City Local Area Command, NSW Police).</li> <li>• Detective Chief Inspector John Maricic</li> </ul>
09 Nov 2016	<ul style="list-style-type: none"> <li>• Oral hearing (three witnesses called: Mr Greg Hawkins, Ms Catherine Clark and Mr Beni Joseski).</li> </ul>
10 Nov 2016	<ul style="list-style-type: none"> <li>• Dr Don Weatherburn (BOCSAR).</li> </ul>