



NEW SOUTH WALES INDEPENDENT CASINO COMMISSION

**THE INQUIRY INTO THE STAR PTY LTD & THE STAR
ENTERTAINMENT GROUP LIMITED**

**PUBLIC HEARING
DAY 7**

TUESDAY, 23 APRIL 2024

INQUIRY BEFORE MR ADAM BELL SC

COUNSEL ASSISTING:

MR C. CONDE WITH MR D. HABASHY AND MS E. HALL

**MR B. WALKER SC WITH MR I. AHMED SC, MR D. WONG AND MR H.
ATKIN FOR THE STAR PTY LTD AND THE STAR ENTERTAINMENT
GROUP LIMITED**

DR J. RENWICK SC WITH MS J. ROY FOR WITNESS ROBERT COOKE

MR R. HARRIS FOR WITNESS CHRISTINA KATSIBOUBA

MR D. McLURE SC FOR WITNESS NICOLA BURKE

MR L. GYLES SC FOR WITNESS NICHOLAS WEEKS

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<THE HEARING IN PUBLIC SESSION RESUMING 10.02 AM

MR BELL SC: Ms Burke, you remain bound by the affirmation you made yesterday. Do you understand?

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MS BURKE: Yes, I do.

MR BELL SC: Yes, Mr Conde?

10 **<EXAMINATION BY MR CONDE**

MR CONDE: Mr Bell, I note Mr Harris is - I see, sorry.

15 Ms Burke, do you recall a GLT meeting or session in mid-2023 where Ms Katsibouba shared her views on the financial condition of Star Entertainment?

MS BURKE: Mr Conde, you asked me that question yesterday and I don't recall the specific meeting.

20 **MR CONDE:** I'm sorry. You are aware, I take it, that the manager, Mr Weeks, provided reports to the NICC about Star Entertainment dated 3 October 2023 and 24 November 2023 and those reports were provided to Star Entertainment on 29 November 2023.

25 **MS BURKE:** I am aware of reports being produced, but I haven't seen these reports.

MR CONDE: Right. Is it correct that you - to this day, you have never seen a copy of the reports?

30 **MS BURKE:** I saw one report, but I'm not sure if Mr Weeks produced it for the NICC and it was dated back in I think July or August of 2023, and that was the only report that I have seen.

35 **MR CONDE:** Do you recall a GLT meeting around December 2023 where Ms Ivanoff asked Mr Cooke about the reports?

MS BURKE: Yes, I do.

40 **MR CONDE:** And what do you recall?

MS BURKE: I recall Mr Cooke informing the committee that he received a report and Ms Ivanoff requested if it could be shared with the GLT.

45 **MR CONDE:** And as far as you can recall, did Mr Cooke accede to that request?

MS BURKE: I personally did not receive a copy of that report.

MR CONDE: Right. But do you recall what Mr Cooke said in the meeting, if anything?

MS BURKE: I don't recall, no.

5

MR CONDE: When you were a member of the GLT, did you consider yourself to be a close associate of The Star Pty Ltd?

MS BURKE: Yes, and I received my close associate in December of 2023.

10

MR CONDE: So far as you are aware, Ms Burke, has notice of your resignation been provided to the NICC?

MS BURKE: I don't know.

15

MR CONDE: Ms Burke, why have you resigned?

MS BURKE: You know, I have been with the company for nearly six years. The past few months I have been reflecting on my role and I concluded that it was time for a change, particularly a change of sector.

20

MR CONDE: Thank you, Mr Bell. I don't have any further questions.

MR BELL SC: Yes. Mr Ahmed, do you have any questions?

25

MR AHMED SC: I do. Just a few.

<EXAMINATION BY MR AHMED SC

MR AHMED SC: Ms Burke, I think your evidence was that you started at Star in 2018. That's correct?

30

MS BURKE: Yes.

MR AHMED SC: Can I just ask you to think back to the period before the first Bell Inquiry? In the period since then, up until you left Star, did you see any changes in the culture at Star?

35

MS BURKE: Sorry, can you clarify - since the first Bell Inquiry changes?

40

MR AHMED SC: Correct, yes.

MS BURKE: Absolutely, yes.

MR AHMED SC: Could you just describe the sort of changes that you saw?

45

MS BURKE: There was a definite shift in terms of the risk culture and compliance. You know, there has been - immediately things were done, such as the separation of

the legal team from the risk team. There was very much a tone of raising issues. There was training that occurred to really uplift that risk culture and risk mindset, such as integrity training and conflict of interest training, the whistleblower hotline was refreshed. The raise-it campaign. So, yes, during that period there was a definite
5 shift and change for the better with culture.

MR AHMED SC: Yes. And can I just ask you a couple of questions about the resources that you had in your job? How would you describe the level of resources that you had to perform your role? And specifically there, your role as Chief
10 Transformation Officer?

MS BURKE: So can I clarify, are you talking about the number of resources or their role types?

MR AHMED SC: More your impression of did you think you had enough resources, not enough resources?

MS BURKE: Okay. Look, in the Transformation Office we were well-resourced. So, you know, I had the full support of the board to bring on the resourcing that I
20 needed. So I felt very able to bring on the relevant resources, such as project management, change management and communications management and so forth. So yes, I felt adequately resourced in my team.

MR AHMED SC: Thank you. I have no further questions, Mr Bell.
25

MR BELL SC: Yes. Dr Renwick, do you seek leave to ask any questions?

DR RENWICK SC: I do, on the usual basis if I can put it that way, Commissioner.

MR BELL SC: Yes, I grant that leave.
30

<EXAMINATION BY DR RENWICK SC

DR RENWICK SC: Ms Burke, just a couple of questions from me about your
35 interaction with Mr Robbie Cooke. So perhaps I can start with this. Did members of the board interact directly with you in your role as the Chief Transformation Officer?

MS BURKE: Yes. So I reported monthly. I provide a status to the board in respect of their remediation program. As required, the board made themselves available
40 should they be required to provide feedback or to sign off on a specific milestone in relation to the remediation program and occasionally I would have contact with Mr Foster as well.

DR RENWICK SC: When you say, "Contact with Mr Foster", was that typically
45 him initiating that contact or -

MS BURKE: Yes, yes. If he was in Sydney he would swing by for a chat, a conversation, yes.

DR RENWICK SC: Thank you. The next question is in relation to your membership of the GLT while Mr Cooke was in place. How would you describe Mr Cooke's management style in relation to the GLT as you observed it?

5

MS BURKE: You know, Robbie - his style was to - he - he didn't seem to be particularly intrusive or - he seemed like a friendly sort of a leader, you know, open door sort of policy. You know, affable. You know, from my perspective, you know, Mr Cooke - I felt empowered to do my job, to get on with it and if I had any particular issues or matters I needed to discuss with him outside of my fortnightly one-to-ones he would make himself available to me. So we would have occasional telephone calls early morning, late at night. So yes, so that was helpful.

10

DR RENWICK SC: One last matter just in relation to GLT process while Mr Cooke was the CEO. Did you feel free to add agenda items, if needed?

15

MS BURKE: Yes, I did, and when I came on board into this role I requested that there be standing agenda item in relation to remediation at the GLT and Mr Cooke agreed with that.

20

DR RENWICK SC: And the last question. Did Mr Cooke ever try to influence you in what you could put in a board paper or raise in the GLT?

MS BURKE: No.

25

DR RENWICK SC: No further questions, Commissioner.

MR BELL SC: Mr McLure, do you have any questions?

30

MR McLURE SC: Yes, Mr Bell.

MR BELL SC: Please proceed.

<EXAMINATION BY MR McLURE SC

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MR McLURE SC: Ms Burke, I just want to read to you a component of the evidence given by Dr Lagan given to the Inquiry last week, on day 4. Mr Bell, I'm referring to page 243 of the transcript, starting at line 37. The question was put to you, Ms Burke, from Mr Conde - sorry, the question was put to Dr Lagan by Mr Conde:

40

"What is the role of the Chief Transformation Officer. Is that not the sort of organisational development specialist."

45

And the answer was this:

"No, the Transformational Officer is just basically coordinating all the changes that are happening in the various functional areas and they would also coordinate whatever is happening in the cultural change area."

5 Do you wish to make any comment about that evidence?

10 **MS BURKE:** I disagree that the Chief Transformation Officer is responsible for the cultural change elements. Those specific deliverables as it relates to culture were the accountability of the Chief People Officer and her team. That was not part of my remit.

15 **MR McLURE SC:** Thank you. Yesterday when you were answering questions from Mr Conde you described your role, firstly, as providing project management expertise, systems and processes. You also said there was a leadership component to your role. Could you just elaborate on the leadership component?

20 **MS BURKE:** So, really, this was about ensuring that the processes from the project management governance perspective allowed the executive sponsors to effectively report on their progress with delivering their remedial actions.

25 **MR McLURE SC:** Thank you. And lastly, yesterday you were asked some questions about a GLT agenda which described the performance of certain milestones after you had left the role, but you said there was some cultural milestones which had been achieved. To your knowledge, what were they?

30 **MS BURKE:** Yes. So as I mentioned, a number of cultural milestones have been delivered through the organisational readiness workstream. So there was quite a number. They included the culture strategy, the culture measurement framework, the culture communications plan, establishment of a culture council, establishment of an influencer network. So yes, there was quite a significant number of cultural deliverables achieved through that workstream.

MR McLURE SC: Yes, nothing further. Thank you, Mr Bell.

35 **MR BELL SC:** Yes, Mr Conde, anything arising?

MR CONDE: No, Mr Bell.

40 **MR BELL SC:** Yes, Ms Burke. Thank you for your attendance and thank you for your evidence. The formal direction I will make is that your examination will be adjourned, which means it is possible that you may be asked to give further evidence. But unless you hear from the Solicitors Assisting the Inquiry, that won't be required. Thank you.

45 **<THE WITNESS WAS RELEASED**

MS BURKE: Thank you, Mr Bell.

MR BELL SC: Yes, Mr Conde?

MR CONDE: The next witness, Mr Bell, is Mr David Foster. We need to take an adjournment due to the changeover of witness.

5

MR BELL SC: Yes, I will have a short adjournment.

<THE HEARING ADJOURNED AT 10.16 AM

10 **<THE HEARING RESUMED AT 10.22 AM**

MR BELL SC: Mr Foster, can you hear me?

MR FOSTER: Yes, Mr Bell, I can.

15

MR BELL SC: Would you prefer to take an oath or affirmation?

MR FOSTER: An affirmation please.

20 **<DAVID ANDREW FOSTER, AFFIRMED**

<EXAMINATION BY MR CONDE

MR BELL SC: Yes, Mr Conde?

25

MR CONDE: Mr Foster, may I trouble you to state your full name please.

MR FOSTER: David Andrew Foster.

30 **MR CONDE:** Are you aware that your address has been made known on your behalf to the Solicitors Assisting Mr Bell's review?

MR FOSTER: Yes, I do.

35 **MR CONDE:** Have you been the Executive Chairman of Star Entertainment since 22 March 2024?

MR FOSTER: Yes, I have.

40 **MR CONDE:** And before that, were you the Chairman of Star Entertainment from 31 March 2023 to 22 March 2024?

MR FOSTER: Yes.

45 **MR CONDE:** Did you join The Star Entertainment board on 15 August 2022?

MR FOSTER: No.

MR CONDE: When did you join it?

MR FOSTER: 15 December '22.

5 **MR CONDE:** Sorry, Mr Foster. Now, you are aware, I take it, that a number of recent casino inquiries have emphasised that in order to be suitable a casino operator or close associate must cooperate fully with the regulator?

MR FOSTER: Yes.

10

MR CONDE: And you are aware I take it that in order to be considered suitable a casino operator or close associate must be completely honest, candid and transparent with the regulator?

15

MR FOSTER: Yes.

MR CONDE: Would you agree that a corollary of that proposition is that a casino operator or close associate must not mislead the regulator or participate in a misrepresentation to the regulator?

20

MR FOSTER: Yes.

MR CONDE: And it's the case, isn't it, that Star Entertainment's own risk appetite statement provides that the company seeks to have an effective and transparent relationship with its regulator?

25

MR FOSTER: Yes.

MR CONDE: Do you consider it essential that a casino operator and its close associates cooperate fully with the regulator?

30

MR FOSTER: Yes.

MR CONDE: Do you consider it essential that a casino operator and its close associates are completely honest, candid and transparent with the regulator?

35

MR FOSTER: Yes.

MR CONDE: Do you say that in your capacity as the Chairman of Star Entertainment and now as Executive Chairman that you have been completely honest, candid and transparent with the regulator?

40

MR FOSTER: Yes, I believe so.

45 **MR CONDE:** And do you say that in your capacity as the Chairman of Star Entertainment and now as Executive Chairman, that you have cooperated with the regulator at all times?

MR FOSTER: Yes, I do.

MR CONDE: Okay. If we can go back to the second quarter of 2023, just after you had started as Chairman. Do you recall authorising, with your board colleagues, an
5 ASX release from Star Entertainment dated 19 April 2023, which included a statement that:

10 "The group continues to work with regulators and the NSW Manager and Queensland Special Manager to remediate its businesses to support a return to suitability over time."

MR FOSTER: It sounds familiar without remembering it exactly.

MR CONDE: Well, was that statement correct at that time?
15

MR FOSTER: Yes, absolutely.

MR CONDE: Do you recall authorising, with your board colleagues, an ASX
20 release from Star Entertainment dated 29 August 2023, which included a statement in a director's report that the group:

"Works collaboratively with state and federal regulatory authorities to ensure that applicable laws and regulations are properly interpreted and applied."

25 **MR FOSTER:** Yes.

MR CONDE: Was that statement correct?

MR FOSTER: Yes.
30

MR CONDE: Those are public statements but privately you wanted to abolish the NICC, didn't you?

MR FOSTER: I understand having read a number of texts out of context that in the
35 heat of moments I did make some comments, but I'm very happy to explain any of those. But certainly with the benefit of hindsight, as I said, they were heat of the moment comments that as I have reflected on them, I would have been better served not to respond automatically. Because I do believe and continue to have a very constructive relationship with both of the state regulators and Mr Weeks and have
40 certainly acted in that way.

MR CONDE: Mr Foster, I will take you to the texts so that you can speak to them, but it's correct, isn't it -

45 **MR FOSTER:** Thank you.

MR CONDE: - that you wanted to abolish the NICC.

MR FOSTER: Well, in that particular context - and I have had this conversation with Mr Crawford directly is - it was in the context of an uneven playing field that existed and still does exist in New South Wales relative to the casinos to the clubs. And so in subsequent conversations with Mr Crawford I had suggested a good
5 outcome would be for the Commission, under a different name, possibly, would oversee the club operations as well as the casinos to ensure an even playing field.

MR CONDE: I will give you every opportunity to provide context, Mr Foster.

10 **MR FOSTER:** Thank you.

MR CONDE: But I will ask a third time. You wanted to abolish the NICC, didn't you?

15 **MR FOSTER:** Those were the words used in that text, yes.

MR CONDE: Well, I put it to you that you wanted to abolish the NICC. Do you agree?

20 **MR FOSTER:** Again, in the heat of the moment that was a comment made but as I explained, that's the - the outcome was around achieving a level playing field.

MR CONDE: If we can call up STA.8890.0001.0018, please. If we could enlarge the top message, please. These are text messages between you and Mr Cooke
25 commencing on 22 April 2023. The first one is from you to Mr Cooke:

"Other thing for New South Wales government is level playing field and timing on cashless and carded with pubs and clubs. Abolish NICC."

30 Do you see that?

MR FOSTER: Yes, I do.

MR CONDE: And Mr Cooke sent three replies. The first one, if we can scroll down,
35 it's the next message on this page, was:

"Yep, it is on my list."

And then:

40

"The carded cashless."

And then, if you can go over the page, please, Mr Cooke sent a third message. You will see up the top of page 0019, which is:

45

"Not the NICC..."

Do you see that?

MR FOSTER: Yes, I do.

MR CONDE: If we then go to the next message from you, you wrote:

5

"Might need to given independence."

Do you see that?

10 **MR FOSTER:** Yes, I do.

MR CONDE: Now what did you mean by that, "Given independence"?

15 **MR FOSTER:** Well, to facilitate regulation of the broader audience the scope or structure of it would need to change. But currently they were an independent Commission for the casinos.

MR CONDE: Were you suggesting you did not think the NICC was independent?

20 **MR FOSTER:** No, quite the opposite, that it was an independent organisation targeting casinos only as opposed to the broader sector that I raised earlier.

MR CONDE: I see. In the last message on this page, 0019, Mr Cooke wrote to you:

25 "I think a different forum for those conversations will discuss."

Do you see that?

MR FOSTER: Yes.

30

MR CONDE: Now, if we can go over to page 0020, please. This is a message from the next day where you wrote on the top - the first message on this page:

"Agree as long as in context of level playing field NICC is challenged to this."

35

Do you see that?

MR FOSTER: Yes.

40 **MR CONDE:** Do you agree, Mr Foster, there is a pretty big difference between public statements about working collaboratively with the regulator and private statements about abolishing that regulator?

MR FOSTER: Yes.

45

MR CONDE: Would you agree that in these exchanges Mr Cooke did not actually endorse your idea to abolish the NICC but notwithstanding that, you did not back down from this idea?

MR FOSTER: Well, I think the - well, the understanding is that we needed one regulator covering the clubs and the casinos was the objective.

5 **MR CONDE:** I see. But do you agree that Mr Cooke did not endorse your idea but you persisted with it?

MR FOSTER: Again my words were poorly chosen and provided in the heat of the moment. They did not properly reflect the point I was trying to make, which
10 Mr Cooke also understood.

MR CONDE: Well, I will put it to you, Mr Foster, that Mr Cooke did not actually endorse your idea to abolish the NICC but notwithstanding that, you did not back down from the idea. Do you agree?
15

MR FOSTER: As I mentioned, it was a particular statement which was poorly worded and didn't reflect the purpose of the discussion.

MR CONDE: Do you agree that it would be a challenge for a Chair of a company to work cooperatively with the regulator if in private the Chair is considering a need to abolish that regulator?
20

MR FOSTER: No, because as I mentioned, these were comments made in the heat of the moment which didn't clearly articulate the purpose of the discussion and at all times my interaction and approach with both the manager and all regulators is completely constructive, transparent and engaged.
25

MR CONDE: Well, in that regard, did you ever communicate to members of the NICC that the NICC might need to be abolished because, as you put it, of independence concerns?
30

MR FOSTER: No, the discussion I had with Mr Crawford was we would ideally like to see the scope broadened beyond just casinos to cater for the whole of the pubs - sorry, the casinos and the major clubs who, for all intents and purposes, operated as casinos.
35

MR CONDE: Did that not lack candour and transparency in the circumstances to be open about your concerns about the NICC?

40 **MR FOSTER:** Well, there wasn't concerns about the NICC. It was around a desire to broaden the scope of regulation in the industry.

MR CONDE: But you wanted to abolish it.

45 **MR FOSTER:** Again, that was poorly words used and the option which was a better one was to extend the scope of the NICC, which I discussed with Mr Crawford.

MR CONDE: Do you recall authorising with your board colleagues an ASX release from Star Entertainment dated 20 February 2024 which included a statement that The Star:

5 "Will continue to do all in its power to work cooperatively with all its regulators, including the NICC and its appointed manager."

MR FOSTER: Yes.

10 **MR CONDE:** And was that statement correct?

MR FOSTER: Yes.

15 **MR CONDE:** Now, despite that or public statements about working cooperatively, privately you had suggested to Mr Cooke that there could be a catalyst to get rid of Weeks in January 2024. Do you agree?

MR FOSTER: I don't recall specifically.

20 **MR CONDE:** If we can pull up STA.8100.0063.6873 and if we can go - sorry. Mr Foster, has that document come up for you. It is ending 6873?

MR FOSTER: Yes, it has.

25 **MR CONDE:** If we go down toward the bottom of the page, do you see a message from you to which Mr Cooke replies above. It is dated 23 January 2024 at 10.37 am and you say:

30 "I'm inclined to send, I wonder if worth meeting first. If done right could be a catalyst to get rid of Weeks."

MR FOSTER: I see that.

35 **MR CONDE:** So despite public statements about working cooperatively, do you agree that privately you had suggested to Mr Cooke of a catalyst to get rid of Mr Weeks in January 2024?

MR FOSTER: Yes, I read that.

40 **MR CONDE:** And this was in the context of responding to Mr Weeks's reports. Is that correct?

MR FOSTER: No, it wasn't.

45 **MR CONDE:** Sorry, in the context of finalising Star Entertainment's response to Mr Weeks's reports. Is that correct?

MR FOSTER: That wasn't the context for the discussion that we were having, albeit again, certainly the words used are words in the heat of the moment and I would certainly have chosen different words in hindsight. But it was a different purpose.

5 **MR CONDE:** Well, do you agree that around this time, as Chair you should have been considering other substantive matters in relation to the casino rather than looking for a catalyst to get rid of the manager?

10 **MR FOSTER:** It certainly wasn't and yes, we were looking at important issues within the business in the casino more broadly.

15 **MR CONDE:** Well, I put it to you that around this time as Chair you should have been considering other substantive matters in relation to the casino and not looking for a catalyst to get rid of the manager. Do you agree with that?

MR FOSTER: Yes, but the comments are out of context. But, yes, that's - wasn't the main focus at the time.

20 **MR CONDE:** What was the context, Mr Foster?

MR FOSTER: There was a complexity in the different roles that Mr Weeks undertook between his manager role and close focus in New South Wales, which certainly is an important role but a very different model within Queensland, which caused some complexity at times.

25 **MR CONDE:** And were you looking to get rid of him from both manager roles or just one, or something else?

30 **MR FOSTER:** No, the - the discussion was more around would it be a simpler model to have Mr Weeks focused on New South Wales and one of his team as the lead in Brisbane?

35 **MR CONDE:** So you wanted to get rid of him from the Queensland role, is that correct?

MR FOSTER: Well, "Get rid of" is poorly worded but a different structure to simplify the regulatory remediation efforts.

40 **MR CONDE:** You also exchanged private messages with Mr Cooke in January 2024, recording your prior knowledge of a meeting involving the manager, the NICC and lawyers. Do you agree?

MR FOSTER: Yes.

45 **MR CONDE:** Were you having the manager monitored?

MR FOSTER: No.

MR CONDE: So if we could bring up, please, STA.8890.0001.0094 and if we could go, please, to the first message on this page. It was recorded as read on 31 January 2024 from you to Mr Cooke and says:

5 "Just sent a message 2 law firms attending planning session NICC in our boardroom."

Now, how did you know that?

10 **MR FOSTER:** As I understand it, there is a mechanism that provides automatic alerts for all meetings in the boardroom and I believe the original booking was made with The Star's administrative staff. When that alert came up with that meeting in attendance I was asked was I meant to be at that meeting as I believed Mr Cooke was, to which I said "Not that I know of." But given that it was entitled "Star
15 Planning Session", I did look at that time to see if I knew what it was about.

MR CONDE: If we can go to page 0096 and enlarge that message. There are - there is information about one of the attendees. Did that information come out of the booking alert that you received?
20

MR FOSTER: The names of the attendees as per most meeting - all meeting requests listed the attendees, yes.

MR CONDE: But then, did you go and Google that name to produce the link and there appears to be a photo in the message?
25

MR FOSTER: Yes, to understand who was at that meeting. Because I was not familiar with the attendees.

30 **MR CONDE:** And if we go to page 0097. If we can enlarge that message, please. There are details there regarding another of the attendees. Did you also take that person's name from the booking alert, conduct a search of some kind and generate that information that is there?

35 **MR FOSTER:** Yes.

MR CONDE: Would you agree that this was not particularly cooperative behaviour in - as vis-à-vis the manager?

40 **MR FOSTER:** Well, at that time I did not have any understanding of what the meeting which was entitled "Star Planning Session". So it was driven by curiosity at that point.

MR CONDE: If we go to the - if we can scroll through the messages please. If you can go to the next page, there is further information. For my part, at least, I can't discern that information from the screen. But is it correct that that is information that you would have generated going through the booking alert, as per the last two messages?
45

MR FOSTER: Yes, I'm not sure what a lot of the information is, but it appears to be a screenshot of that attendee as well.

5 **MR CONDE:** Right. If we can go to the next message, do you see it says:

"We better brief KWM and KC."

And then there appears to be a comment about that person in the message?

10

MR FOSTER: Yes.

MR CONDE: So would you agree that this is beyond curiosity, it is now strategising?

15

MR FOSTER: Well, again it was to try and understand, given that we didn't know and it was in an environment of certainly high stress and a lot of things going on within the broader company. So we needed to - we wanted to understand what that meeting may have been about and, therefore, simply wanted to get an opinion of what that may be about.

20

MR CONDE: When you say you wanted to understand what that meeting may have been about, do you think a better way might have been to ask the manager and/or a contact at the NICC?

25

MR FOSTER: Possibly.

MR CONDE: If we go to the next message in this chain, there is some comment about the unidentified attendee. Do you see that?

30

MR FOSTER: Yes.

MR CONDE: And if we can then go to the next message, please. And, sorry, the next one after that. And again. It is over the page. Now, if we go to the second message on this page, do you see you wrote:

35

"Okay, they are prepping for war, we better do the same and should we talk to..."

And there is a name from KWM:

40

"...tomorrow."

Do you see that?

45 **MR FOSTER:** Yes.

MR CONDE: So from this time, 31 January 2024, you had decided to be prepping for war with the NICC and/or manager, is that correct?

MR FOSTER: No, again it was a comment made in the heat of the moment. There were, as far as I remember, three litigators or attendees at that meeting. So we did want to clarify and get some advice from our lawyers as to what the possible scenario they may be working on. They clarified that on the following day as I understand it with Mr Cooke and we just moved on from there.

MR CONDE: So, have I understood correctly? From 31 January 2024 - sorry, from 1 February, being the next day, you had moved on. Is that correct?

MR FOSTER: I can't remember the exact date, but I do know Mr Cooke had a conversation with KWM and sought their thoughts and that was clarified, and we just moved on from there without progressing this particular issue.

MR CONDE: Would you agree that privately prepping for war is the opposite of Star Entertainment's public statements about cooperation and transparency?

MR FOSTER: Well, as I said, it was a statement made in the heat of the moment. As I have reflected on it, I was a bit trigger-happy with a number of my texts. But as is the case, those immediate emotions were away and we just get on with the business as per normal. And I do stress that all of my engagement with the regulators and Mr Weeks has always been professional and constructive and focused on the same goal.

MR CONDE: Do you consider it appropriate to be trigger-happy in responses?

MR FOSTER: Well, in the context of a private conversation with one other person that was not involving a broader audience again, I regret doing it in the benefit of time but I think most people would have had that experience at some time. But with the - on reflection, that was the wrong thing to do and was based on the heat of the moment.

MR CONDE: Mr Foster, you have mentioned that it's a conversation with one person and that most people would have had that experience. But in this message that's on the screen you are initiating a process with external lawyers, aren't you?

MR FOSTER: Certainly not a process. It was just seeking some clarity and information.

MR CONDE: So that's beyond a conversation though with just the particular recipient of this message, is it not?

MR FOSTER: I thought were you referring to the characterisation of the word used, being "war".

MR CONDE: And do you agree that in February 2024 you researched the manager's deed of appointment to identify an exclusion from his indemnity?

MR FOSTER: Yes, I have not - yes.

5 **MR CONDE:** And if we can go, please, to page STA.8890.0001.0102_0001. Thank you. If we can - so I'm not sure if you can read that, Mr Foster, at the present size but down there, there is a marking that it was read on 1 February 2024 and it is recorded as a message from you to Mr Cooke. Can you see that?

MR FOSTER: Yes.

10 **MR CONDE:** And up the top of the page, if we can enlarge that, there is a box with some language in it, which is - if that could be enlarged, please. Do you see that that's language providing that an indemnity:

15 "Does not extend to claims relating to any act or omission by the manager that is found by a court to have breached the manager's duty to exercise the manager's powers in good faith."

Did you find this yourself or did someone find it for you?

20 **MR FOSTER:** No, I just found it myself.

MR CONDE: Did you have to hand the manager's deed of appointment?

25 **MR FOSTER:** No, I just found it online somewhere. I honestly can't recall where.

MR CONDE: Now, if we can scroll down in this message, please. Sorry, if we can go to page - it's STA.8890.0001.0102_0002 and if we can enlarge that please. Do you see a message? It is marked as having been read on 2 February 2024. It is from you to Mr Cooke and it says:

30 "Another angle is establishing grounds if possible for a class action for shareholders against NW and/or NICC."

35 **MR FOSTER:** Yes.

MR CONDE: Was that your idea, Mr Foster?

MR FOSTER: No.

40 **MR CONDE:** Whose idea was it?

45 **MR FOSTER:** It's a separate issue to the prior one, but we had had a number of engagements and feedback from investors, from other people in the financial markets. And given all of the activities preceding that back from early December, there was a lot of concern and angst raised amongst that broader community and they were becoming quite frustrated and wanted to know if they could and should do anything, which we obviously didn't provide any input to. But given that they are a

sort of core part of our responsibilities from a stakeholder perspective, that was something that I wanted to understand.

5 **MR CONDE:** Are you able to name any of the people in the financial markets or investor community who expressed this idea to you?

10 **MR FOSTER:** No, it wasn't a specific idea from an individual. It was just a broad, I guess, degree of anxiety and concern and questioning as to what they could and should do.

MR CONDE: And in the context of that discussion of anxiety and concern and questioning, do you say that an investor or financial community member suggested the idea of a class action from shareholders against Mr Weeks and/or the NICC?

15 **MR FOSTER:** Well, they are trying to understand what the impact and risk on the company may be. I was trying to understand if they were going to do something, what that may be and what the impact on the company would be.

20 **MR CONDE:** Well, I'm just trying to understand your evidence. Did this idea of a class action from shareholders against NW and/or NICC come from the investor and financial community to which you have referred, or did it come from you as an interpretation or following those comments?

25 **MR FOSTER:** I don't recall it specifically being mentioned but it was certainly something I interpreted as one of a number of things that was being bounced around.

MR CONDE: Do you agree that it is a bizarre idea?

30 **MR FOSTER:** I agree.

MR CONDE: And do you agree that this does not suggest that you had moved on from the war expressed a couple of days earlier?

35 **MR FOSTER:** No. I think that, together with the other item, is - it's been a very challenging environment and a lot of inputs, issues and other things are being either raised or discussed at various times and it's important for us to understand what the potential risks and issues associated with those are.

40 **MR CONDE:** Was this what you would call a heat of the moment idea?

MR FOSTER: To your point, I certainly didn't anticipate that it would be a viable option but as with many topics, I wanted to ensure that that wasn't something that we needed to be concerned about.

45 **MR CONDE:** Would you agree that it was not a heat of the moment idea because you have gone and researched an exclusion in the manager's deed of appointment?

MR FOSTER: That's a separate issue altogether, Mr Conde.

MR CONDE: Well, is it? Because to have such a claim you have - you need that hook of a lack of good faith.

5 **MR FOSTER:** I'm happy to explain the context for the issue with the indemnity, if you wish.

MR CONDE: Right. It's in this chain of texts. Do you wish to go back to it?

10 **MR FOSTER:** Yes, please.

MR CONDE: That's STA.8890.0001.0102_0001 and it is the box at the top of that page. If that could be enlarged for Mr Foster, please.

15 **MR FOSTER:** I can see it, thank you.

MR CONDE: Sorry, I think you wish to explain a different context, Mr Foster.

20 **MR FOSTER:** Thank you. Just in terms of that, that related to an issue around Workplace Health and Safety issues which emerged back in - I think it was around mid-December and a topic that I had raised with Mr Weeks in a - one of my catch-ups, regular catch-ups with Mr Weeks which was then followed by details that I provided in writing regarding to an emerging issue that we had with complaints
25 relating to psychosocial safety from a number of our employees with interactions with one of Mr Weeks' team. That was discussed at a number of times with the board and there was concern expressed at the board given the personal liability around psychosocial safety for directors. But a question was asked around whether or not, given the employee concerned was in the manager's office, whether that was covered under Mr Weeks' indemnity. That was a topic that I didn't pursue other than I had not
30 seen Mr Weeks' indemnity, which I had looked at in this case.

MR CONDE: I see. If we can go back then, please, to the one, with the underscore 0002. It is the one we were just looking at. Thank you. If we enlarge that message. So is it your evidence, Mr Foster, that this text was unrelated to the previous one?

35

MR FOSTER: It was obviously in the same chain but a different topic, yes.

MR CONDE: I see. But was it not - would you not have been aware this time that in order to have a class action from shareholders against Mr Weeks there would need to be an exception to his indemnity, because otherwise Star would be on the hook for it?

40

MR FOSTER: No, I didn't understand that at that point in time, no. They were separate issues.

45

MR CONDE: Right.

MR FOSTER: I didn't consider the two together.

MR CONDE: I think you have accepted earlier that this class action idea was a bizarre one, but you saw fit to convey it to Mr Cooke, correct?

5 **MR FOSTER:** Well, it's important as the Managing Director, he is aware of any discussion at the time, yes.

MR CONDE: So if you had any bizarre ideas, that should go to the CEO.

10 **MR FOSTER:** Certainly not all bizarre ideas went to the CEO. But given the environment and interaction with shareholders, I did share this in this case.

MR CONDE: But can you name any investor, financial market member or shareholder who has suggested to you a class action against Mr Weeks and/or the
15 NICC?

MR FOSTER: No, I cannot. There was a lot of meetings with various stakeholders around that time so I can't specifically nominate whether it was one or many. It was just a general sentiment around frustration, I believe.
20

MR CONDE: Well, I suggest to you that, in fact, no investor, shareholder or financial market member suggested to you a class action against Mr Weeks and/or the NICC. Do you agree?

25 **MR FOSTER:** No, I do not.

MR CONDE: Did you not - but you can't name anyone, is that correct?

MR FOSTER: No, as I mentioned, there was quite a large range of meetings, discussions, different perspectives, different issues raised but certainly frustration and concern about their investors and the funds that they have invested in the company and more broadly, and how they can protect those.
30

MR CONDE: Mr Foster, did you not have better things to be doing in February 2024 than to be contriving a way to sue the manager and/or the NICC?
35

MR FOSTER: Well, certainly in my role I have a broad range of stakeholders that I need to engage with and work with and certainly a very important one of those is the regulators and the manager, which I certainly continued to do, but I cannot ignore other stakeholders in that, in my role.
40

MR CONDE: If we can bring up STA.8100.0065.9375. Do you see, Mr Foster, this is a message from you to Mr Cooke at the top which says "Good faith?"

45 **MR FOSTER:** Yes.

MR CONDE: That's dated 15 February 2024 at 6.23 pm.

MR FOSTER: Yes.

MR CONDE: And it's in reply to a message from Mr Cooke dated 15 February 2024 at 5.11 pm.

5

MR FOSTER: Yes.

MR CONDE: And Mr Cooke had forwarded to you with two exclamation marks in the message, a message from Mr Weeks dated 15 February 2024 at 4.55 pm.

10

MR FOSTER: Yes.

MR CONDE: And do you see the message from Mr Weeks in the second paragraph he says:

15

"It is appropriate for the company to form its own views about the adequacy of its market disclosure..."

And so on?

20

MR FOSTER: Yes.

MR CONDE: Now, there is no reference in this email to psychosocial safety, is there?

25

MR FOSTER: No.

MR CONDE: So do you agree that you were still considering the issue of a claim against the manager for an alleged lack of good faith on 15 February 2024?

30

MR FOSTER: No.

MR CONDE: So how did this good faith issue arise?

35

MR FOSTER: Again, it was just a comment made in that heat of the moment and a level of frustration from the nature of Mr Weeks' reply, but that was the end of it.

MR CONDE: But Mr Weeks was correct, wasn't he, that he is not the person responsible for Star Entertainment's market disclosure?

40

MR FOSTER: No, absolutely.

MR CONDE: When you say - I think you said "No, absolutely" but you accept that Mr Weeks was correct?

45

MR FOSTER: In terms of that statement, correct.

MR CONDE: Right. Well, I put it to you that you were still considering whether the exclusion in Mr Weeks' deed of appointment could apply on 15 February 2024. Do you agree?

5 **MR FOSTER:** No.

MR CONDE: Do you agree though that this conduct in private is very different from Star Entertainment's public statements about cooperation and transparency?

10 **MR FOSTER:** I - as I mentioned, it is a response in the heat of the moment but it is in no way aligned to the reality of my constructive and open engagement with Mr Weeks and the regulators, which is absolutely critical. These are heat of the moment comments, which are made and moved on.

15 **MR CONDE:** But, Mr Foster, I think you said earlier you had moved on, on 1 or 2 February 2024. This is close to a fortnight later. It seemed that the heat of the moment was continuing, wasn't it?

20 **MR FOSTER:** There was a number of stresses and tensions over a long period of time since particularly December, but the issue was unrelated and was just a comment in relation to Mr Weeks' response. But that was a comment made, as I said, which, with the benefit of time, I shouldn't have made but again it was one made in the heat of the moment in a private engagement and no action was issued.

25 **MR CONDE:** How can people have confidence in Star's public statements about working cooperatively with the regulator and the manager in light of private statements as revealed during this Inquiry, which I have taken you to?

30 **MR FOSTER:** Well, because of all the actions and activities and time spent and effort to (a) have good and constructive actual dialogues with important regulators and the manager and all the work and prioritisation within the company to work on our remediation efforts and other initiatives more broadly. These, unfortunately, are a snippet of some in the heat of the moment comments made which I regret, but certainly as I said, do not in any way reflect on my actual activities and focus and
35 relationship that I have with Mr Weeks and the regulators, which is very focused, constructive and with only one outcome in mind, which is working with the company to achieve its remediation outcomes.

40 **MR CONDE:** Would you agree that these messages truthfully reflected your state of mind at the time?

MR FOSTER: No, I do not. They were heat of the moment statements made which, as I said, with the benefit of time I wished I had put my phone down or not
45 responded as quickly, because those heat of the moment expressions quickly passed and as I have said, follow-up actions were not pursued.

MR CONDE: It's correct, isn't it, that on 18 April 2024 Star Entertainment terminated Mr Cooke's consultancy?

MR FOSTER: Yes.

MR CONDE: What was the reason for that?

5

MR FOSTER: I believe it was becoming complex with some of the comments made in the Inquiry and we also were dealing with the need to originally manage our directorships for subsidiaries but we felt on advice from counsel that the better option at that point was to terminate that arrangement, is my understanding.

10

MR CONDE: When you mentioned originally managing directorships, was that not part of Mr Cooke's departure arrangements from 22 March 2024?

MR FOSTER: It was more a logistical issue. That wasn't explicitly one of the terms in his consulting agreement, but there was a transition required between Mr Cooke - excuse me - and replacement directors, whether we made urgent submissions in early April to both regulator to see approve replacements of existing non-Executive Directors. So it was just a logistics issue at that point.

MR CONDE: Is it correct that you were of the view that Mr Cooke had caused Star Entertainment to provide incorrect answers to the NICC and this Inquiry regarding Ms Betty Ivanoff's resignation?

MR FOSTER: I - I don't personally have a view one way or the other on that particular issue. I do know that both Mr - Ms Ivanoff has attended the Inquiry to date.

MR CONDE: So you are aware that Ms Ivanoff was recalled so that it could be put to her that she was mistaken?

30

MR FOSTER: Yes.

MR CONDE: And you are aware that Ms Ivanoff denied being mistaken?

MR FOSTER: Yes.

MR CONDE: Is it correct that Mr Cooke's consultancy continues to be terminated? To put it another way, it hasn't been re-enlivened as a result of Ms Ivanoff being recalled.

40

MR FOSTER: Correct.

MR CONDE: Is there any reason why no public announcement has been made regarding termination of Mr Cooke's consultancy?

45

MR FOSTER: I don't believe that we are required to from a disclosure perspective.

MR CONDE: Right. You are aware I take it that when Mr Cooke's departure as CEO was announced on 22 March, the announcement noted that Mr Cooke will remain a consultant to the company for a period of six months to enable an orderly leadership transition and provide continuity across business activities?

5

MR FOSTER: Yes.

MR CONDE: But is it correct that the termination of that consultancy did not warrant an announcement, in your view?

10

MR FOSTER: I'm happy to stand corrected, but that's my understanding.

MR CONDE: When Mr Cooke was a consultant, do you recall saying to Mr Weeks that Mr Cooke would not be involved in casino operations?

15

MR FOSTER: Yes.

MR CONDE: And to your knowledge, during Mr Cooke's consultancy between 22 March and 18 April 2024, was he involved in any casino operations?

20

MR FOSTER: Not to my knowledge.

MR CONDE: Are you aware of a suggestion of Mr Cooke being sent a focus group report in either late March or early April 2024?

25

MR FOSTER: No.

MR CONDE: Is it correct, in any event, that with the consultancy terminated Mr Cooke, so far as you are aware, has no ongoing role or relationship with Star Entertainment?

30

MR FOSTER: Sorry, could you repeat the question?

MR CONDE: Is it correct that with Mr Cooke's consultancy terminated, he has no ongoing role or relationship with Star Entertainment?

35

MR FOSTER: Yes.

MR CONDE: Now, you are aware I take it that Mr Bell's first Inquiry made recommendations for more autonomy at the licensee company level.

40

MR FOSTER: Yes.

MR CONDE: Do you recall that soon after you became Chairman, Star Entertainment announced to the ASX on 3 April 2023 that Mr Scott Wharton had resigned as Star Sydney CEO and as group Head of Transformation?

45

MR FOSTER: Yes.

MR CONDE: Do you recall that Mr Cooke was quoted in that company announcement as saying:

5 "We are well-positioned to announce shortly Scott's successor as CEO for The Star Sydney."

MR FOSTER: Yes.

10 **MR CONDE:** Now, close to 10 months later, on 25 January 2024, Ms Janelle Campbell was announced as the Sydney CEO pending regulatory approval. Do you recall that?

MR FOSTER: Yes.

15

MR CONDE: Is it correct that throughout this time the person who has been practically in charge of the Sydney property has been Mr Peter Humphreys?

MR FOSTER: Yes.

20

MR CONDE: When you came onto the board, were you aware that Star had received from King & Wood Mallesons, in May 2022, a form of declaration by which longer-serving senior executives could be asked to confirm that they had no knowledge of or involvement in the misconduct revealed by Mr Bell's first Inquiry?

25

MR FOSTER: No, I wasn't.

MR CONDE: Are you aware that it was only at the prompting of this Inquiry that Star Entertainment on 13 March 2024, asked its longer serving senior executives to sign such a declaration?

30

MR FOSTER: Yes.

MR CONDE: Are you aware that Mr Humphreys completed his declaration on 14 March 2024 and disclosed that he was aware of certain matters relating to China Union Pay?

35

MR FOSTER: Through the course of the Inquiry, yes.

40 **MR CONDE:** Right. If I can ask that STA.8000.0122.0014 be brought up. Do you see, Mr Foster, it says "I declare that" the document and then there is a list?

MR FOSTER: Yes, I do.

45 **MR CONDE:** If we could go over to page 0016 first of all to show who this is from. Well, there is a signature, but we are not going to discern much from that. If we could go to page 0015. Do you see down under number 3 there are some statements? It starts with 2(iii) and then it says "Was aware of"?

MR FOSTER: Yes.

5 **MR CONDE:** And Mr Humphreys has given evidence to this Inquiry to the effect that this was his declaration. But is it correct - sorry, have you seen this document?

MR FOSTER: I saw it in recent days through the Inquiry process.

10 **MR CONDE:** Is that in the context of Mr Humphreys giving his evidence and speaking about the document?

MR FOSTER: Yes, it was. But I didn't watch the - Mr Humphreys' piece, but I became aware of this document, yes.

15 **MR CONDE:** Right. So is it correct that at that time you were Chair but it had not been provided to you?

MR FOSTER: That's correct.

20 **MR CONDE:** Right. Are you aware of Mr Humphreys' evidence to this Inquiry, that since making his disclosure on 14 March 2024 nobody at Star Entertainment has come back to him to ask for further detail about the disclosure that he had made?

25 **MR FOSTER:** Yes, I do understand that until recently, yes.

MR CONDE: And what if any comment do you have on that?

30 **MR FOSTER:** Well, as I understand it, the declarations were facilitated and returned to Mr Cooke some time in March. I do know that I did inquire, either the board did or I did as to the return of the various declarations and were advised of all but two were returned, but there was no information provided around any additional information such as this at the time.

35 **MR CONDE:** Are you aware of Mr Humphreys' evidence to this Inquiry that in 2019 he was aware of funds going through a hotel account to come through to the cage to be used for gambling?

MR FOSTER: Yes, I do recall reading that.

40 **MR CONDE:** And are you aware that that was the structure that had been deployed to disguise gaming funds as hotel expenses?

MR FOSTER: From reading the original Inquiry, yes.

45 **MR CONDE:** And perhaps Mr Humphreys can explain himself, but are you not alarmed that nobody has followed him up about this?

MR FOSTER: Yes, it does need clarification, certainly.

MR CONDE: But are you alarmed?

MR FOSTER: It - yes, it needs clarification.

5

MR CONDE: Do you agree that in the absence of an adequate explanation it is inappropriate for Mr Humphreys to have been in charge of the Sydney casino?

10 **MR FOSTER:** It's - it's a bit early for me to jump to that conclusion, but it certainly warrants investigation.

MR CONDE: Well, it depends on whether an adequate explanation can be given. Do you agree?

15 **MR FOSTER:** Yes, I do.

MR CONDE: Are you aware that Mr Humphreys is also the interim Chief Operating Officer at the Star Sydney?

20 **MR FOSTER:** Yes, I am.

MR CONDE: Right. And he is also the General Manager Gaming Machines and Cashier Services.

25 **MR FOSTER:** Yes.

MR CONDE: What, if any, comment do you have on Mr Humphreys having all these roles at the same time?

30 **MR FOSTER:** Mr Humphreys has done a very credible role in standing in, in a challenging situation and has done a - provided a good support during that period. But obviously the ideal solution is having a permanent CEO in place, which based on some good conversations and the support of the Commission, hopefully the permanent replacement will receive probity tomorrow.

35

MR CONDE: I see. Is that your understanding of the status of the Sydney CEO?

MR FOSTER: Yes, it is.

40 **MR CONDE:** But do you agree it is not sustainable to have Mr Humphreys in all the roles that he presently has?

MR FOSTER: It's certainly not a long-term solution. I completely agree.

45 **MR CONDE:** So far as you are aware, Mr Foster, is it correct that since you have been Chairman of Star Entertainment from 31 March of last year, the board of the Sydney licensee, The Star Pty Ltd, has met twice?

MR FOSTER: Yes, that's true.

MR CONDE: Are you also aware that Mr Bell's first Inquiry recommended that The Star Sydney should have its own Risk Officer?

5

MR FOSTER: Yes.

MR CONDE: Would you agree, however, that in practice, at least at the moment, when important matters relating to risk at the Sydney property arise it is the Group Chief Risk Officer, Mr Saunders, and not the Sydney Risk Officer, Ms Vuong, who is dealing with these matters?

10

MR FOSTER: I think that situation is evolving but yes, that's probably fair at this point in time.

15

MR CONDE: And what is your expectation as to the evolution of that?

MR FOSTER: I - I have had discussions with both the Manager and the Commission and certainly Sydney is the priority in this regard, but having seen a lot more over the last month or so in terms of the operations and with the imminent appointment of a permanent CEO with significant capability and experience, I am very keen to evolve to a point where there is very significant shift in the business model, which was always the intent, to create an end-to-end business model in the properties with a shared services from the group, where appropriate, but aligned to the needs of each property and supported by a slimmer corporate core. So that would see full end-to-end accountability with all the appropriate roles and functions within each property and the appropriate delegations and authority of the relevant CEO. So those planning processes in organisational design is already underway.

20

25

MR CONDE: In terms of the Sydney Compliance Committee, are you aware that Ms Vuong, the Head of Risk at Star Sydney, does not have a standing invitation to meetings of that committee but Mr Saunders does?

30

MR FOSTER: Yes.

35

MR CONDE: And is that something that you also expect to see evolve?

MR FOSTER: Certainly Ms Vuong has been an attendee at those committees and that correction to the charter, I instructed that to occur yesterday.

40

MR CONDE: Right. So perhaps if I call up STA.5013.0001.0001. Is this the document to which you were referring, Mr Foster?

MR FOSTER: I'm not sure I referred to that document.

45

MR CONDE: Sorry, I think you said you had instructed a -

MR FOSTER: An adjustment to the charter, correct.

MR CONDE: Do you see in this document it says:

"Compliance Committee Charter."

5

And it says up the top:

"The Star Pty Ltd."

10 **MR FOSTER:** Yes.

MR CONDE: And if we can go, please, to page 0003, paragraph 5.10. There is a list of people with a standing invitation to committee meetings.

15 **MR FOSTER:** Yes.

MR CONDE: And is it your evidence that the Head of Risk for Star Sydney has now been added to that list or shortly will be?

20 **MR FOSTER:** Yes, it is.

MR CONDE: I want to suggest to you that it's not a surprise that incidents have emerged from the Sydney property in the absence of property level governance. Do you agree?

25

MR FOSTER: I think they - I don't think that's a related issue so no, I wouldn't jump to that assumption.

30 **MR CONDE:** Right. So whatever incidents there have been at the Sydney property, you would not consider relate, for example, to the absence of a permanent CEO?

MR FOSTER: It was certainly - not - not specifically but certainly I'm of the firm view that having a high performing, capable CEO with the business model I described will be a better model from a number of perspectives, including risk management.

35

MR CONDE: I take it you are aware of the, what is being called the TICO fraud event involving about \$3 million coming out of the ticket in, cash out machines in June and July 2023?

40

MR FOSTER: Yes.

MR CONDE: Do you agree this was a serious incident?

45 **MR FOSTER:** Absolutely.

MR CONDE: And do you agree that what is of concern is not so much - well, although the problem is with machines, that's a malfunction and can be addressed.

But it is more the fact it went undetected for months while \$3 million went out the door. Do you agree that that's the principal concern?

MR FOSTER: Yes.

5

MR CONDE: You are aware, I take it, that the former CFO, Ms Katsibouba, gave unchallenged evidence to this Inquiry about being asked by the General Manager of Investor Relations with the CEO at the time Mr Cooke present about booking the TICO losses against November rather than July and she said that if that had been done it would have caused a true and fair view of the company's financial position not to have been recorded? Are you aware of that evidence?

10

MR FOSTER: Yes, I am.

15

MR CONDE: And I take it, first of all, you would have been pleased when Ms Katsibouba said that the losses were ultimately correctly booked against July 2023?

20

MR FOSTER: My understanding is that was always the case, but yes.

MR CONDE: Were you otherwise concerned about Ms Katsibouba's evidence on this issue?

25

MR FOSTER: Yes.

MR CONDE: So far as you are aware, is this issue about the timing of booking losses being looked into?

30

MR FOSTER: No.

MR CONDE: Why?

35

MR FOSTER: It obviously needs to be investigated in more detail, but certainly through from a board perspective the losses, as far as I can recall, were always booked in July as the event had occurred. There was a correction at a board audit committee and apologies, I don't remember the exact date but which just corrected its presentation in a - along with a number of other items in the investor presentation.

40

MR CONDE: I accept there is no concern arising in relation to how the losses for the TICO fraud event were ultimately booked, but do you not agree there is also a concern arising from Ms Katsibouba's unchallenged evidence that she was asked to book them against a different month?

45

MR FOSTER: The accusation is concerning, yes.

MR CONDE: And as Executive Chair, do you not wish to be reassured that this conduct is not occurring?

MR FOSTER: Yes.

MR CONDE: And would it be fair to say that you will be actioning this when possible?

5

MR FOSTER: Yes.

MR CONDE: Also at the Sydney property has been the Guest Support Officer issue involving false entries in TrackVia to suggest patrons had been checked on when they had not, as first noticed by some Liquor & Gaming officers in late January 2024. Do you agree that that is a very serious issue?

10

MR FOSTER: Yes.

MR CONDE: You are aware, I take it, of Guest Support Officers' statements about being short staffed since day one and about it being physically impossible to do their job?

15

MR FOSTER: Yes.

20

MR CONDE: Do you agree that although there is no excuse for falsifying records, of course, if people don't have resources they need they are going - well, they are going to find a way of - perhaps - sorry. I will start again. Do you agree that although there is no excuse for falsifying records, if people do not have the resources they need there is a risk that they will fail to comply with the requirement of intervening at three hours?

25

MR FOSTER: Yes.

MR CONDE: And do you agree that this issue reveals an enormous challenge for Star's responsible service of gaming?

30

MR FOSTER: Certainly it's not helpful, so yes.

MR CONDE: Are you aware that this remains the subject of ongoing investigation?

35

MR FOSTER: Yes, I am.

MR CONDE: And are you aware that Mr Saunders has told this Inquiry that in the last fortnight this investigation has extended to some incidents at the Queensland properties?

40

MR FOSTER: Yes, I am.

MR CONDE: Is this something that you are paying close attention to?

45

MR FOSTER: Yes, I am.

MR CONDE: And do you - as you understand it, is the key challenge here one of training and resources?

5 **MR FOSTER:** That's one of the reasons in my view, but there is a number.

MR CONDE: And what are the other reasons?

10 **MR FOSTER:** Mr Conde, as you pointed out earlier, certainly absolute resource numbers is one of the issues. This is a new function for the industry and certainly for Star in terms of engaging with patrons to intervene in this case in the three-hour rule and my perspective, and it's my perspective only but I think, is the types of skill sets and experience of these individuals is not necessarily suited to people that have come off the casino floor or out of other functional roles. And for the benefit of patrons, people with a different type of experience involving counselling and support of
15 guests and engaging with people in sometimes challenging situations and circumstances, because engagement with patrons isn't always well-received. So having people with the right backgrounds and skills, I think, is an important piece. And then the third element I'll go is to structure and supervision and certainly the structure of the team, as I found was set up, was not one that was sustainable or
20 inducive to proper supervision and/or coaching of the individuals and hence is part of our product area in our organisational re-design to move this particular Line 1 function around safer gaming under the direct management and control of the property.

25 **MR CONDE:** Mr Bell, I see the time.

MR BELL SC: Yes, I will adjourn now until 11.45.

<THE HEARING ADJOURNED AT 11.31 AM

30

<THE HEARING RESUMED AT 11.50 AM

MR BELL SC: Yes, Mr Conde.

35 **MR CONDE:** Mr Foster, do you recall earlier this morning I showed you various messages about abolishing the NICC, getting rid of Mr Weeks, being at war with the manager and the class action idea and I think you said a number of times that you had sent heat of the moment messages?

40 **MR FOSTER:** Yes.

MR CONDE: Those messages truthfully reflected your state of mind at the time. Do you accept that?

45 **MR FOSTER:** In the heat of the moment, yes.

MR CONDE: If I can also show you - I moved on from a document. It's STA.0013.0001.0001. Do you see in paragraph 1.1 The Star Sydney - sorry - The Star Pty Ltd is defined as the "Company"?

5 **MR FOSTER:** Yes.

MR CONDE: And in paragraph 1.2 The Star Entertainment Group Limited is defined there as "The Star." Do you see that?

10 **MR FOSTER:** Yes, I do.

MR CONDE: So then, still on this page, do you see in paragraph 3.1 it says:

15 "The committee is responsible for the following ..."

And then 3.1.2:

20 "Reporting to The Star board any breach of any compliance obligations, or the terms of the casino licence of which the committee becomes aware or which it suspects."

Do you see that?

MR FOSTER: Yes, I do.

25 **MR CONDE:** And why is that, so far as you are aware, referring to a report to Star Entertainment rather than The Star Pty Ltd?

30 **MR FOSTER:** Well, there is two parts to that answer, Mr Conde. In practice there is a dual reporting line through to The Star's - the company's subsidiaries or the casino subsidiaries, plus to the group. There is an anomaly that we have identified quite recently which is within the ICM, which actually details that it reports to the group board rather than the subsidiary board. So we will work with L&G to have that corrected but in practice at the moment it reports to both boards and it is reflected in our governance framework that this is being established.

35 **MR CONDE:** If you were to have it reporting to The Star Pty Ltd board, would that not then allow the Sydney board to exercise a degree of independence and autonomy without bothering Star Entertainment?

40 **MR FOSTER:** As a practice, yes, it would and in practice in the subsidiary boards that we have held the Compliance Committee reports to that board as a precursor to the group board. But as I mentioned before, that structure will evolve with a much stronger alignment to the property boards, the subsidiary boards, and in that case the role of the group board will change.

45 **MR CONDE:** I see. So is it your intent that this Compliance Committee will ultimately report to The Star Pty Ltd board and all of that will sit underneath The Star Entertainment Group Limited?

MR FOSTER: So the Compliance Committee will report to The Star Sydney board, yes, and some form of reporting and role from a broader risk perspective and compliance risk perspective will still be reported to the Group board. The exact form of that is yet to be determined but in principle that's correct.

MR CONDE: So I think these are expressions of dotted lines. Is that there be a firm line to the licensee board and then a dotted line further up?

MR FOSTER: Well, I probably wouldn't even characterise it subject to discussions with L&G and the NICC. As I mentioned, in the ICM currently it is a hard line to the Group board which doesn't reflect what we want as the intent, which is a hard line into The Star Sydney but via some form of reporting that will still have visibility and transparency at the Group board but the main operation will be to the subsidiary board.

MR CONDE: Are you aware of an issue relating to Enhanced Customer Due Diligence, in particular a letter from Ms Townsend to New South Wales Liquor & Gaming dated 30 September 2023 in which she had written that:

"ECDD for some 32,000 customers had been completed."

MR FOSTER: Yes, I am.

MR CONDE: If we can bring up that letter please, INQ.5001.0001.0239. And do you see, Mr Foster, that it's a letter dated 30 September 2023. It's addressed to a person at Liquor & Gaming New South Wales and the second to last paragraph on this page says:

"As at 30 September, all customers identified in the ECDD cohort, 32,205, have been completed."

MR FOSTER: Yes.

MR CONDE: And if we can go over the page, please, to 0240. Do you see a table with what's called a status update and it is across seven measures and across all those measures it says, "Completed 32,205."

MR FOSTER: Yes.

MR CONDE: And those measures include Measure 5 "Source of Wealth" and Measure 6 "Transaction Analysis. Do you see that?"

MR FOSTER: Yes.

MR CONDE: Are you aware that Ms Townsend accepted in her evidence, and Mr Saunders agreed, that on the question of whether this letter was misleading it "Could be looked at in that way"?

MR FOSTER: I think, yes, it certainly could have benefitted from a bit more detail.

MR CONDE: And what do you mean by that, Mr Foster?

5
MR FOSTER: Well, my understanding is and this will be a very simplistic explanation, because I'm not a technical expert in this space but I understand that the appropriate process was followed, which involved I think around 22,000 of the patrons being made inactive because they were either patrons that hadn't been active
10 for a long period of time and there wasn't sufficient photographs available and so forth. But there is a lot of interactions and transparency around all of the steps taken, dating back I think until June. But it would have been I think helpful to all stakeholders to have a concluding letter, which properly laid out the significant effort and steps that were taken to undertake the process, and - so that's probably a simple
15 summary.

MR CONDE: And whether that memo you have referred to were to come before this letter or contemporaneously, your expectation is that it would be better to have been open and, indeed, transparent about the significant effort and steps that you
20 were just referring to?

MR FOSTER: Yes, my understanding is that certainly occurred in various steps and stages, interactions again, dating back to June. But certainly I - I appreciate sort of a wrap-up summary, which would include the overview and the steps taken to make it
25 a simple and comprehensive wrap-up of what was a very long and detailed process.

MR CONDE: Now, are you aware that Ms Townsend accepted in her evidence to this Inquiry that statements in her letter were wrong, in particular relating to Measure
30 5 "Source of Wealth", while Mr Saunders disagreed with that?

MR FOSTER: Yes, I am.

MR CONDE: Does it concern you as the Executive Chair that your Chief Controls Officer and Chief Risk Officer can't - are not in agreement on the correctness or
35 incorrectness of statements made in this one and a half-page letter from some seven months ago?

MR FOSTER: Yes, certainly not ideal.

40 **MR CONDE:** Is it your expectation that anti-money laundering and counter-terrorism financing-related checks should be rigorous and the processes used to perform them should be transparently shared with relevant regulators to provide understanding and comfort about what is being done?

45 **MR FOSTER:** Yes, I do.

MR CONDE: On 29 November 2023, The Star Entertainment received copies of reports from the manager dated 3 October 2023 and 24 November 2023. Do you recall receiving those reports?

5 **MR FOSTER:** Yes, I do.

MR CONDE: And do you recall your reaction to those reports when you first saw them?

10 **MR FOSTER:** They were very obviously lengthy in volume, but it took some time to review and absorb them.

MR CONDE: Did you find, at least the first report, to be useful?

15 **MR FOSTER:** Yes, I did. I found that to provide a good perspective on a number of things and did not disagree with a number of the observations around areas for continued improvement.

20 **MR CONDE:** Now, in the first report Mr Weeks wrote that Star Entertainment at the commencement of his appointments, had been cooperative and engaged constructively. Do you recall reading that?

MR FOSTER: Yes, I do.

25 **MR CONDE:** I take it you are pleased to see that.

MR FOSTER: Absolutely, and very consistent with my view as well.

30 **MR CONDE:** He also noted Star Entertainment's work on developing a remediation plan, which he wrote if implemented, he wrote at that time:

"Was likely to achieve the remediation of the management and operations of Star Entertainment."

35 And do you recall reading that?

MR FOSTER: Yes, I do.

MR CONDE: Again, I take it you were pleased to see that?

40

MR FOSTER: It was encouraging, yes.

MR CONDE: Mr Weeks also wrote that there remained what he called a material execution risk for implementing the remediation plan. Do you recall that?

45

MR FOSTER: Yes, I do.

MR CONDE: And he warned that for implementation of that plan to be achieved, Star Entertainment:

5 "Must consistently deliver high quality work in a timely manner, which is not part of its culture that we have observed to date."

Now, do you agree that for implementation of the remediation plan to work, Star Entertainment must consistently deliver high quality work in a timely manner?

10 **MR FOSTER:** That's part of it, yes.

MR CONDE: And do you agree that Star Entertainment had failed to consistently deliver high quality work in a timely manner by the time of Mr Weeks' first report in October 2023?

15

MR FOSTER: That was very early on in the implementation of the remediation plan, but there certainly has been examples over the past 18 months, I guess, or thereabouts that would certainly support Mr Weeks' observation and likewise there has been some very good pieces of work, but yes.

20

MR CONDE: Mr Weeks wrote of concerns that he had about Star Entertainment's ability to identify and manage risks adequately without supervision. Do you agree that Star Entertainment had not identified and managed risks adequately without supervision?

25

MR FOSTER: I think a realistic expectation is that supervision at this point for a period of time would still be helpful and required, so yes.

30 **MR CONDE:** When you say, "At this point for a period of time", do you mean from now, 23 April?

MR FOSTER: I think the observation in terms of our maturing risk capability, particularly in Line 1, is valid, so yes.

35 **MR CONDE:** Mr Weeks wrote of a, what he called a continued lack of rigour in Star's approach to key pieces of work, symptomatic of what he called a lack of regard for casino regulators. Do you agree with that?

40 **MR FOSTER:** Not the second part, certainly not.

MR CONDE: But you do agree with a lack of rigour in Star's approach to key pieces of work?

45 **MR FOSTER:** I would characterise it as consistency of quality, yes.

MR CONDE: He wrote of a - Mr Weeks wrote of a continued poor ability to execute important tasks caused by an absence of expertise, leadership and clear accountabilities. Do you agree with that?

MR FOSTER: Certainly in part, yes.

5 **MR CONDE:** And he wrote of a continued complacency to, or perception of, or willingness to continue to court high risks in the business, exposing the casino to heightened risks of criminal infiltration. Do you agree with that?

10 **MR FOSTER:** I'd certainly think the risk profile has reduced significantly, which I think Mr Weeks recognised in his report. So I wouldn't categorically agree with that, but certainly would acknowledge that there is areas of capability and capacity that need to continue to be improved as quickly as we can.

15 **MR CONDE:** I'm sorry, Mr Foster. When I asked you earlier about Mr Weeks writing about a continued poor ability to execute important tasks caused by an absence of expertise, leadership and clear accountabilities you said, "Certainly in part", which part do you not agree with?

20 **MR FOSTER:** Well, I think there's clearly over that period been an absence in permanent senior leadership, particularly in the Sydney property, which I agree with and mentioned earlier about the terrific opportunity that we have to fast-track our work in that property assuming Ms Campbell's approval imminently, and then I think there is a maturity issue in various parts of the business. Certainly in a number of our Line 2 functions, such as Mr Saunders' team, they have built some good capability in there. We are still on a journey but that provides a very good base. We are far less
25 mature in our Line 1 functions, particularly in the risk area. Again, they have started that journey but again, through partially a different approach but also under different rule design I'm very confident we can escalate those improvements in that area as well. So those would be a couple of examples, Mr Conde.

30 **MR CONDE:** Mr Weeks also wrote that:

"The CEO and Executive of Star Entertainment have fallen short of the NICC's expectations on several matters."

35 Do you agree with that?

MR FOSTER: I would agree, yes.

40 **MR CONDE:** And from your perspective, what is the basis of your agreement?

45 **MR FOSTER:** Well, I think there has been some observations made around various issues and instances. I think you may have mentioned the TICO fraud matter earlier. The placement of the executive in Sydney and the pace of maturity in a number of our Line 1 functions would be three. And then I guess the other one, which is symptomatic of the broader challenges within the organisation, is there's been a lot of other issues, which is normal within a company, that caused significant pressures and efforts required to fix those and whilst they were contained to a small group of people they certainly still had an impact.

MR CONDE: Mr Foster, I'm sorry, are you referring to the Guest Support Officer issue there?

5 **MR FOSTER:** That is probably a more recent example but yes, I would throw that in the bucket as an example of the Line 1 maturity issue, yes.

MR CONDE: What other examples do you have in mind?

10 **MR FOSTER:** Well, I mentioned the TICO example earlier and obviously the property structures and the evolution to their original design as the properties within the broader structure was that they would be end-to-end. However, that piece of work in the absence of permanent CEOs did not progress as quickly as we would have liked.

15 **MR CONDE:** Do you agree that in a meeting with the NICC, your manager, your board colleagues save for Mr Cooke and you on 7 December 2023, Star Entertainment confirmed to the NICC that Mr Weeks' first report dated 3 October 2023 was overall useful and that Star Entertainment agreed with many aspects of that report?

20 **MR FOSTER:** Yes, that's true.

MR CONDE: Do you agree that Star Entertainment told the NICC and manager in that 7 December 2023 meeting that Mr Weeks' second report by contrast was short on examples and facts?

25 **MR FOSTER:** That was our view, yes.

30 **MR CONDE:** Do you agree that your board colleagues and you were told in that meeting with NICC and manager on 7 December 2023 that the NICC had lost confidence in Mr Cooke to execute the remediation plan, given what the NICC had observed of Mr Cooke's performance to that time?

35 **MR FOSTER:** Yes, I did.

MR CONDE: And do you also agree that in that meeting you and/or your board colleagues asked members of the NICC whether they were aware of someone who could come in to replace Mr Cooke at short notice?

40 **MR FOSTER:** Yes, I believe that was in response to a suggestion that there weren't many people available in Market to do such roles.

MR CONDE: But the question was asked, as you can -

45 **MR FOSTER:** Yes, it was. Yes, it was.

MR CONDE: Well, do you agree that by asking that question on 7 December 2023 your board colleagues and you conveyed to the NICC that Star Entertainment would be making arrangements for a new CEO?

5 **MR FOSTER:** No.

MR CONDE: Well, the NICC had said they lacked confidence in Mr Cooke and the response was not, "We disagree, that's unfair", it was, "Can you think of any names on short notice?" So, I put it to you that Star Entertainment conveyed to the NICC on
10 7 December 2023 that it would be making arrangements for a new CEO. Do you accept that?

MR FOSTER: No, I do not.

15 **MR CONDE:** And why is that, Mr Foster?

MR FOSTER: It was certainly a very serious issue raised by the Commission and we took it as such. There was a number of other factors which I will elaborate on but as I mentioned, there was a suggestion made by one of the Commissioners that there
20 were people in Market. So as we considered that as a serious issue and what action needed to be taken and what we could take, we thought we would seek that piece of information if it was available as one of the inputs. And in terms of explaining the other issues which are related to that, we had quite a number of other things already in flight at that time, most relevantly were the replacement of or addition of three key
25 executives, one of - both of which were two of the Property CEOs, including Sydney, which were in various stages of process nearing completion. And, in addition, the Group CFO was being reviewed at that particular point as well for a potential permanent replacement. A Chief Audit Officer of high calibre we had also sourced and were finalising that placement as well at that point and a number of other
30 commercial matters, such as settlement of a commercial dispute with Multiplex, which Mr Cooke was deeply engaged in, as was AUSTRAC discussions. So there was a lot of other issues that needed to be taken into consideration and potential impacts on the company at that point.

35 **MR CONDE:** If you weren't making arrangements for a new CEO, why bother asking the NICC about a possible replacement?

MR FOSTER: Well, we understood and recognised from the searches that we had been doing, together with Mr Cooke's original appointment, which obviously most of
40 the board weren't present for. But it is not the easiest of roles or companies to source talent, but we were certainly open to any suggestions that the Commission may have had at that point to feed into our discussions. Because starting from a fresh start would have taken some time, which we had to sort of weigh up in terms of what impact that would have on the company and its ability to continue our remediation
45 efforts and other priorities for the company.

MR CONDE: But do you agree that by asking about a replacement, you were signalling that a change was imminent?

MR FOSTER: No.

5 **MR CONDE:** Just to be clear of this I will ask that STA.8102.0010.4676 be brought up please. Do you see, Mr Foster, a document with "NICC" up the top? It says "Minutes." The date is Thursday, 7 December 2023. Sorry. And it is said to be minutes of a meeting between the NICC, manager, The Star and TSEG board.

10 **MR FOSTER:** Yes.

MR CONDE: And among the attendees for the NICC was the Chief Commissioner, Mr Philip Crawford. The manager attended. And then do you see you are marked as an attendee under TSEG?

15 **MR FOSTER:** Yes.

MR CONDE: And then Mr Cooke was not present, correct?

20 **MR FOSTER:** Correct.

MR CONDE: If we go to the - on this page, the sixth bullet point, it says:

25 "PC confirmed NICC's view that it had lost confidence in the TSEG CEO to execute the remediation plan as per observed performance to date of RC."

Do you see that?

MR FOSTER: Yes. Yes, I do.

30 **MR CONDE:** And then if we can go over the page, please, to page 4677, the third bullet point on this page:

35 "TSEG inquired whether the NICC was aware of any specific individual who could step in as CEO at short notice. NICC confirms that while they are unaware of any particular individual, NICC reflected that senior appointments parachuted in."

That is with little lead time:

40 "Take place regularly in distressed organisations."

Do you see that?

MR FOSTER: Yes, I do.

45 **MR CONDE:** Now, if you are asking about an individual being able to step in at short notice, you don't accept that that is signalling that you may be looking to get rid of Mr Cooke at short notice?

MR FOSTER: No, I don't.

MR CONDE: Well, in circumstances where your business involves regular interactions with the regulator - correct?

5

MR FOSTER: Yes, it does.

MR CONDE: And the regulator said "We have lost confidence in the CEO" and you have said "Well, are you aware of anyone that can step in at short notice?" And that does not signal, on your evidence, that Mr Cooke would be replaced.

10

MR FOSTER: No. What I believe it certainly signalled is that given that this is a very clear communication from the Commission, which was very important, it was the first time that that had been discussed in-depth obviously in this forum with the board. So we hadn't had the opportunity to discuss that ourselves on a broader basis, which we certainly did in the subsequent periods of time. And certainly replacing Mr Cooke was a very serious and real consideration over that period and we had a lot of discussions as a board in that regard, including with Mr Cooke, but as I mentioned, this was one, albeit incredibly important part of that discussion. But there were a number of other challenges that we certainly didn't want to lose momentum on some of the improved talent that we had on the verge of starting within the company or committing to start with the company amongst other commercial factors. But it was a live discussion, which we had and continued in our meeting on 18 December as well.

15
20
25

MR CONDE: I will come to that, but I just want to be very clear. I put it to you that at this meeting on 7 December 2023 your board colleagues and you conveyed to the NICC that Star Entertainment would be making arrangements for a new CEO, perhaps even at short notice. Do you accept that?

30

MR FOSTER: No, I don't believe that's the message we conveyed, but it certainly was a live consideration and any input or suggestions from the Commissioner would have been welcomed.

35

MR CONDE: So replacing Mr Cooke was - it was a live suggestion, but not more than that?

MR FOSTER: A live and ongoing consideration that we actively discussed as a board for a period of time.

40

MR CONDE: Okay. Do you recall that you had a board meeting the next day on 8 December 2023 at 10 am?

45

MR FOSTER: Not specifically, but I'm happy to accept that.

MR CONDE: I will bring the document up. I appreciate - it is STA.5002.0029.7531. Has a document come up for The Star Entertainment Group which says, "Minutes of

meeting of the Board of Directors for Friday 8 December 2023 at 10am"? Has that come up for you, Mr Foster?

MR FOSTER: Yes.

5

MR CONDE: And do you see about halfway down the page there is a row "NED private session. Item P1"?

MR FOSTER: Yes.

10

MR CONDE: It says:

"Prior to the commencement of this meeting, the non-Executive Directors held a private session with the Group CEO and Managing Director from 8 am to 9.30 am.

15

MR FOSTER: Yes, I do.

MR CONDE: And in that hour and a half, did you and/or your board colleagues relay to Mr Cooke that the NICC had lost confidence in his ability to execute the remediation plan?

20

MR FOSTER: I can't remember exactly, but I would guarantee that that was discussed in that meeting specifically, yes.

25 **MR CONDE:** Do you recall the substance of what was said?

MR FOSTER: Typically our discussions are quite direct and there certainly was a lot of discussion both in that meeting, but as I alluded to, over a period of time subsequently, where that topic was discussed. Mr Cooke also was considering it from his perspective and I think from his perspective he was willing to do what was right for the company, but we were also alert to the other issues that I alluded to before as well. The board itself debated that topic quite a lot over that period of time from this meeting onward, as I said, pending that meeting of 18 December.

30

35 **MR CONDE:** Just focussing on I think you said there was a lot of discussion, do you recall, either you or one of your colleagues, telling Mr Cooke that the NICC had lost confidence in his ability to execute the remediation plan?

MR FOSTER: Again, I don't remember specifically, but normally in the normal course I would have actually communicated that to Mr Cooke prior to the meeting anyway.

40

MR CONDE: Do you expect that you would have because you had been told it the day before and that -

45

MR FOSTER: Yes. Yes, and I - as I said, I normally have quite a direct communication style, so yes.

MR CONDE: Do you have - in that hour and a half, did you or to your observation any board colleagues also relay to Mr Cooke that the board had asked the NICC about finding a replacement CEO on short notice?

5 **MR FOSTER:** I don't recall whether that topic was discussed. I think the priority was around conveying the sentiment of the Commission and understanding the implications of that for both our regulatory relationship, but also more broadly.

10 **MR CONDE:** I think when I asked you earlier about whether you would have relayed the NICC's lack of confidence you said you expected you would have -

MR FOSTER: Yes.

15 **MR CONDE:** - given the importance and so on. Do you have any expectation about whether you would have relayed the fact of the board asking the NICC about finding a replacement CEO on short notice?

20 **MR FOSTER:** Not that I recall. May have, but that is not necessarily a matter for Mr Cooke, anyhow.

MR CONDE: Well, just to pick you up on that, Mr Foster, is it not a matter for Mr - well, it is a matter for Mr Cooke, isn't it? Because otherwise there is a risk of the board saying one thing to the NICC and another thing to Mr Cooke.

25 **MR FOSTER:** I'm not understanding the question, Mr Conde.

30 **MR CONDE:** I see. Well, if you have said to the NICC "Are you aware of finding a replacing CEO at short notice" but you haven't relayed that to Mr Cooke, then when Mr Cooke considers his position, do you agree he wouldn't have a full picture of the board's position?

MR FOSTER: I apologise, I am struggling to see the relevance, because someone to replace him won't be Mr Cooke's concern.

35 **MR CONDE:** Well, perhaps if I put it this way. I forget your precise answer, but you were talking about a lot of discussions with Mr Cooke during this time. Do you recall that?

MR FOSTER: Yes.

40 **MR CONDE:** And in particular in this hour and a half there were a lot of interactions with Mr Cooke.

MR FOSTER: Yes.

45 **MR CONDE:** And he, I think you said, was considering his position. He wanted to do the right thing by the company.

MR FOSTER: Yes.

5 **MR CONDE:** Now, do you agree it would have been relevant to his consideration of his position to know that the board had said to the NICC "Are you aware of any replacements at short notice?"

MR FOSTER: No, I honestly don't see the relevance.

10 **MR CONDE:** Well, the difficulty for Mr Cooke would be, as he considers how to do what is best by the company, he should know what the company has told the regulator. Do you agree with that?

15 **MR FOSTER:** Well, given that he wasn't a participant in that, it is certainly matters which are relevant which is certainly the regulator's perspective and view that they had lost confidence in him was the important message that was very critical for us to hear, but also to convey to Mr Cooke.

20 **MR CONDE:** Is it correct also that during this private session you discussed the NICC's letter and Mr Weeks' reports that had been provided to the company by that time?

MR FOSTER: I can't recall specifically but I suspect so, yes.

25 **MR CONDE:** Is it correct, as best that you can recall, that you did not discuss the NICC letter and Mr Weeks' report in the opening part of the meeting with GLT members present?

MR FOSTER: Yes, that's correct.

30 **MR CONDE:** It is correct, isn't it, neither you nor so far as you are aware your colleagues on the board shared Mr Weeks' reports with any members of the GLT except for Mr Cooke?

35 **MR FOSTER:** That's true up until the last two weeks or so where I have shared it with the majority of the GLT.

MR CONDE: Do you mean the last two weeks as in from today?

40 **MR FOSTER:** Correct.

MR CONDE: So roughly from 9 April, GLT members have had access to those reports. Is that correct?

45 **MR FOSTER:** Yes, I don't recall the exact date but it was in a GLT meeting that I held, not - within a week or two or a couple of weeks of starting in the acting role, yes.

MR CONDE: I see. So before that time Mr Cooke was the only GLT member working on behalf of Star Entertainment to respond to Mr Weeks' reports, is that correct?

5 **MR FOSTER:** My understanding, which again I don't know the specific detail, but there was a number of components of the reports that Mr Cooke sought input from and details from the various subject matter experts, but it is my understanding that the complete report in full was not shared.

10 **MR CONDE:** So Mr Cooke was the only GLT member who had the manager's reports in full and he had responsibility for preparing Star Entertainment's response. Is that correct?

MR FOSTER: Yes, that's correct.

15

MR CONDE: And that was the same person for whom, on 7 December 2023, you and your board colleagues had asked the NICC about replacing at short notice, wasn't it?

20 **MR FOSTER:** Correct.

MR CONDE: Do you accept that as a result of this, any information that the board received from executives in relation to the issues raised in Mr Weeks' reports, came through the one person, Mr Cooke?

25

MR FOSTER: Well, if you mean he was the person compiling and completing the report, that's correct.

30 **MR CONDE:** But the upshot then is that in terms of the board having the benefit of comments from the Executive, all of that would be filtered through Mr Cooke in relation to these issues raised by the manager, correct?

MR FOSTER: He certainly compiled the report and various inputs, yes.

35 **MR CONDE:** Do you agree that it was ill-advised to have that approach with Mr Cooke having sole responsibility for Star Entertainment's response to Mr Weeks' reports in the circumstances?

MR FOSTER: Not specifically, no.

40

MR BELL SC: Mr Foster, do you agree that looking back on it now, there would have been a more measured and balanced response to the NICC if the input from the GLT members had been sought?

45 **MR FOSTER:** Well, Mr Bell, I agree with you and as I have reflected on it, these are sort of a few elements of it. It was obviously a very tense period, given a number of media announcements regarding the potential closure of the property which obviously we hadn't had any discussions with prior. But on reflection, I think we

could have and should have taken a more conciliatory tone in the letter that I think potentially would have been aided with some more input directly from a number of team members. Just from a concern point of view, the reports did call out a number of individuals and given the environment that we were in, there was some concern
5 that that may have adverse impacts on some of the team members. So that was a consideration but one that could have been worked through. I do think, as well, again with the benefit of hindsight - because whilst the content forgetting the tone of it, it was in large part an opportunity to make sure a lot of the facts and figures around things that had been done were documented. But certainly a missing element, as I
10 think about it on reflection, is we could have done a better job at being clearer around the areas that we still needed to continue to do some work on. In part that was addressed in my letter to Mr Crawford on 22 December. But I think on balance it would have been a better solution to incorporate detail around a number of those things that we certainly acknowledge still need work within the same reply.

15

MR BELL SC: Yes, Mr Conde.

MR CONDE: If we can bring up STA.8890.0001.0067, please, and if we can go, please, to page 0069. If we can enlarge the top message, please. It should be a
20 message from Mr Cooke to Mr Foster. It is recorded as being delivered on 1 December. Do you see it says:

"So Betty said in my GLT meeting just now that she caught up with Nick Weeks this morning and he mentioned there was new correspondence from the NICC. I stated it
25 is correspondence to the board and not something I have authority to discuss."

If we can then go to the next message. Do you see you wrote "I'll call him"?

MR FOSTER: Yes.

30

MR CONDE: And I think there is another message on this page. Right. And so this is a message to Mr Cooke, but is it correct that you have relayed there a message that you sent to Mr Weeks?

MR FOSTER: Yes, that's right.

MR CONDE: And so it says:

"Hi Nick, I just tried to call. I got some feedback you had mentioned/discussed the
40 NICC letter to the board with Betty this morning. Philip, my discussion with him yesterday indicated they would not be sharing it beyond the Commission and yourself and I agreed I would do the same, i.e. board only. Appreciate if you could refrain from discussing it with anyone other than the board. Happy to discuss,
David."

45

MR FOSTER: Yes.

MR CONDE: And if we could go to the next message, please. Again, this is a message from you to Mr Cooke, but it says:

5 "Hi, David."

And ends with:

10 "Regards, Nick."

So is it correct that you were relying a message that you had received from Mr Weeks?

15 **MR FOSTER:** Yes, given that the original issue had been raised by Mr Cooke, I just kept him in the loop as to my discussions with Nick.

MR CONDE: Yes, and:

20 "Hi, David. I understand we are meeting next Wednesday. I'm happy to discuss your question at that time together with the NICC. Regards, Nick."

MR FOSTER: Yes.

25 **MR CONDE:** So although these messages have come out of exchanges with - between you and Mr Cooke, it's correct, isn't it, that those two messages are between - a text from messages between yourself and Mr Weeks?

MR FOSTER: Yes, that's correct.

30 **MR CONDE:** And so would you agree that you had taken active steps to make sure that these reports did not go beyond the board and Mr Cooke?

35 **MR FOSTER:** Well, as detailed in the first text and as I mentioned before, my understanding initially was certainly that Mr Crawford was keeping the communication of the reports concerned and I did agree with him at that point that I would contain it to the board. And then as I mentioned before, there was a number of staff mentioned and named in the various reports from Mr Weeks that, given the environment, we did have some concerns around the impact of those statements and that was sort of the nature of the conversation that I had had with Nick.

40 **MR CONDE:** Do you recall Ms Silfani asking you for a copy of the NICC's letter and/or the manager's reports?

45 **MR FOSTER:** Not specifically, no.

MR CONDE: But looking back, do you accept it would have been better and, indeed, appropriate to have involved the GLT in reviewing and responding to Mr Weeks' reports and not just Mr Cooke?

MR FOSTER: Yes, I do.

5 **MR CONDE:** On 19 December 2023 it's correct, isn't it, that your board colleagues and you had a board meeting where you discussed whether it was necessary to consider a change of CEO to respond to the NICC's loss in confidence?

10 **MR FOSTER:** There was a number of meetings in that intervening period, including I suspect the 19th together with our discussion with the Commission on the 18th.

MR CONDE: I see. I will ask that the document be brought up, please. It is STA.8000.0140.0017. I will just say that again in case. It's STA.8000.0140.0017. I understand, Mr Bell, it is in the Hearing Book.

15 **MR BELL SC:** Are there any other topics you can move on with while we are waiting for that document to come up? Here it is.

20 **MR CONDE:** Mr Foster, has a document come up that says "Star Entertainment Group. Minutes of meeting of the Board of Directors." It is dated Tuesday, 19 December 2023 at 3.27 pm Brisbane time?

MR FOSTER: Yes.

25 **MR CONDE:** And by Teams.

MR FOSTER: Yes.

30 **MR CONDE:** Now, the - those recorded as present are yourself, Mr Cooke and then the other directors. Do you see that?

MR FOSTER: Yes, I do.

MR CONDE: Along with the Company Secretary in attendance.

35 **MR FOSTER:** Yes.

MR CONDE: And I will just note the - about two-thirds of the way down the page it says that:

40 "The board discussed..."

In the second bullet point:

45 "...options for refreshing key management roles, including whether it was necessary to consider a change of the Group CEO and Managing Director to respond to concerns raised by the Manager/Special Manager and the NICC and their stated loss in confidence in the Group CEO and Managing Director. The non-Executive Directors noted that they had each been considering this matter independently. It was

noted that during the meeting of 18 December 2023 that no clear response was provided by the NICC on whether it viewed such a change as critical. The Group CEO and Managing Director indicated that had whilst he was committed to the role and did not consider any of his actions to warrant the outcome seemingly desired by the Commissioner and/or Manager he would, if the board considered it to be in the interests of securing the New South Wales licence consider stepping away from the role. The non-Executive Directors noted that they did not think that such a change was warranted or necessary at this stage."

10 Do you see all of that, Mr Foster?

MR FOSTER: Yes, I do.

15 **MR CONDE:** Now, why was the board's consideration of Mr Cooke's future done with him in the room?

MR FOSTER: We had had a lot of discussion and dialogue, as I mentioned, in the preceding 11 days both with and without Mr Cooke in the room and as alluded to here, Mr Cooke was open - was obviously in those - in that discussion and had made his position clear in terms of doing the thing necessary. As I mentioned, there was a lot of debate amongst the board and considering all those other factors that I mentioned earlier in terms of live recruits that were very critical plans for the future of the business to strengthen the business as well as a number of commercial matters, we had had a good discussion with the Commissioner on the 18th and discussed that and left an open question which Mr Crawford said he wanted to consider and discuss with the other Commissioners, which was whether or not there was consideration that the Commission could - I can't remember the exact words but whether it be reset or, at least, work with Mr Cooke. And then a second item was around to assist with the cultural work, whether there was an opportunity to engage Ms Attracta Lagan to assist the company. And thirdly, was one around sort of longer tenure discussion about Mr Cooke, which we had planned to discuss with the Commission on the week that they got back from holidays, which I think was the week commencing 8 January. So there was a lot of debate amongst directors. Each of us probably changed minds in terms of decisions during the course of that week but a week or so, but certainly on balance we landed, given the other risks that that would cause in particular to the casino with the key people that were getting close to being finalised. We felt making that decision for Mr Cooke at that particular point, we didn't take it off the table as a consideration as obviously we have seen play out, but that we felt was the right decision at that point for the success of the casino operations.

40 **MR CONDE:** It would have been best practice for Mr Cooke to be asked to leave for that item. Do you accept that?

45 **MR FOSTER:** Well, as I sort of alluded to, that was a conversation that we had had at various times in the subsequent - in the preceding 11 days or whatever it happened to be. So this was sort of a final meeting after we had already concluded the position.

MR CONDE: Well, do you agree that at this meeting Mr Cooke only offered to consider stepping away from the role? He didn't offer to step down?

5 **MR FOSTER:** That may have been how it is reflected in the words, but that was certainly an option.

MR CONDE: Well, do you agree that Mr Cooke was in charge of this decision, not you or the other directors?

10 **MR FOSTER:** No, I do not.

MR CONDE: In circumstances where both you and the other directors had been told of the NICC's loss of confidence in Mr Cooke, shouldn't that, in the best interests of the company and its shareholders and employees, have been the end of Mr Cooke's time as CEO and Managing Director?
15

MR FOSTER: As I mentioned, no, I don't agree with that given the other commentary I have already made.

20 **MR CONDE:** But I take it you are aware in the company's most recent annual report there is a statement that the group takes its obligations seriously and considers the ability to hold a casino licence as a privilege. Do you agree that holding a casino licence is a privilege?

25 **MR FOSTER:** Yes, I do.

MR CONDE: Well, by failing to act on the NICC's loss of confidence in Mr Cooke, The Star Entertainment treated its casino licence as a right, not a privilege. Do you accept that?
30

MR FOSTER: No, I do not.

MR CONDE: In circumstances where Mr Cooke only offered to himself consider stepping away from the role, there was no serious or proper consideration of him departing as CEO at this time, was there?
35

MR FOSTER: Yes, there was.

40 **MR CONDE:** And in fairness to Mr Cooke, he didn't know what you had said to the NICC, did he?

MR FOSTER: Sorry, what do you mean?

45 **MR CONDE:** Sorry, about finding a replacement on short notice?

MR FOSTER: No, but he was certainly very clear of the Commission's view of him.

MR CONDE: If we can now go to some text messages. STA.8890.0001.0083. This is from around this time. If we can pull up the first message from you to Mr Cooke and in the first sentence - so this is marked as read on 30 December 2023. It says:

5 "Caught up with John, knew a few things we already did, thought Crawford just motivated to rewrite history."

And then if we can go down to the second message, Mr Cooke wrote:

10 "I was hoping he had something explosive. Shame."

And then you replied in the third message on this page:

15 "Nope."

Now, who was the John you referred to in that first message?

MR FOSTER: He is a colleague that I have known for a number of years that we have holiday properties close to each other so we just caught up for a coffee at
20 Christmas, Christmas-time, which was just something that we prearranged around that time.

MR CONDE: And what, if any, explosive information were you looking for?

25 **MR FOSTER:** None. It was just a general catch-up. He had had some experience with the company historically and so it was just a part of the conversation. It was just discussing his experience and work that he had done with the company historically.

MR CONDE: Do you recall Star Entertainment's response to the manager's reports
30 was dated 23 January 2024?

MR FOSTER: That sounds right, yes.

MR CONDE: I will ask it be brought up, please. STA.8100.0066.1187. I see there is
35 a letter dated 23 January 2024 addressed to Mr Crawford, the Chief Commissioner of the NICC.

MR FOSTER: Yes.

40 **MR CONDE:** Now, do you recall, I think you accepted earlier on 27 September 2023, in your meeting with the NICC Star Entertainment had said Mr Weeks' first report was overall useful and Star Entertainment agreed with many aspects of that first report? Do you accept that the response to Mr Weeks' report, reports, provided
45 under cover of this letter, took a very different tone?

MR FOSTER: Yes.

MR CONDE: And you recall I take it that you wrote to Mr Cooke this day on 23 January 2024:

"Let's hold on to our hats"?

5

MR FOSTER: Yes.

MR CONDE: And you recall I take it that Mr Cooke wrote to you that same day:

10

"The fireworks will be bright and loud"?

MR FOSTER: Yes.

MR CONDE: You knew full well that this response would be controversial, didn't you?

15

MR FOSTER: It certainly had the potential to be, I believe, yes.

MR CONDE: Well, it was - if you were talking about holding onto your hats and fireworks, you knew that it would be controversial. Correct?

20

MR FOSTER: Yes.

MR CONDE: And do you accept that this was an entirely inappropriate approach with the NICC?

25

MR FOSTER: In hindsight we definitely, as I explained to Mr Bell, should have taken a different approach.

MR CONDE: Do you accept that it was not cooperative?

30

MR FOSTER: Well, I think in conjunction with the letter of the 22nd, which focused on other initiatives but nonetheless I think the tone of this letter and as I explained earlier, in hindsight, could have and should have been different.

35

MR CONDE: And if we can go, please, to page 1190 of this document. Do you see this response was sent under cover of letter from yourself and Mr Cooke?

MR FOSTER: Yes.

40

MR CONDE: Now, thinking of it from the NICC's perspective, there had been - at the 7 December 2023 meeting, the NICC had expressed its loss of confidence in Mr Cooke. Star Entertainment had said, "Are you aware of anyone who can step in at short notice?" Star Entertainment had also said that the manager's substantive report was overall useful and that it agreed with many aspects of it, the first report. In light of that, you knew, didn't you, that sending this response under cover of letter with Mr Cooke still there was going to antagonise the NICC?

45

MR FOSTER: That wasn't a thought process or something that was certainly not the intent of sending this document at the time but yes, I can see that that may have been an outcome.

5 **MR CONDE:** Well, you say it wasn't the intent but you and Mr Cooke had been exchanging messages about holding onto your hats and fireworks. It wasn't a case of knowingly antagonising the NICC?

10 **MR FOSTER:** I thought - well, I think that we knew that it would be challenging but not necessarily - certainly not an objective to antagonise. So it was more a portrayal of information which we thought was important, given the various media and other things that had preceded it.

15 **MR CONDE:** First of all, do you accept that your messages with Mr Cooke about holding onto your hats and fireworks were inappropriate?

20 **MR FOSTER:** Again, they were made in private but certainly are ones that don't reflect what - the way that this letter was put forward. But we felt there was some risk around it not being terribly well-received.

MR CONDE: You mentioned they were made in private, but they reflected a - they truly reflected your state of mind, did they not?

25 **MR FOSTER:** Well, it was a broader issue, which related to again the position that the company had been put in with the broader public and investors and other stakeholders around the risk of shutting the doors, which were made earlier in December, put us in a position that the board viewed it was important, albeit as I acknowledged earlier with the benefit of hindsight, the tone and supplementing it with areas still for improvement would have been an ideal addition and change. But
30 getting facts on the table about what actually had been done we felt was an important part of the communication.

35 **MR CONDE:** Perhaps if I put it this way. If we can call up, please, STA.8100.0063.7392. Do you see there is a letter on NICC letterhead addressed to you dated 1 February 2024 from the Chief Commissioner of the NICC?

MR FOSTER: Yes.

40 **MR CONDE:** And it was sent in, as the subject records, in response to The Star's response to the manager's reports.

MR FOSTER: Yes.

45 **MR CONDE:** And from the third paragraph, the NICC wrote:

"Meetings held with you and The Star Entertainment Group (TSEG) board were instigated in 2023 in an attempt to ensure that TSEG board was fully aware of the concerns held by the New South Wales Independent Casino Commission (NICC)

5 together with concerns of the Manager as set out in his report to the NICC regarding aspects of the conduct of casino business by The Star. The fact that you cosigned with Mr Cooke The Star's response of 23 January 2024, aligns you as Chairman and your board with the contents of that document. The response is a comprehensive statement of the Star's position in response to concerns of the NICC and, more particularly, the reports of the manager. You have made your position clear, and the NICC will give careful consideration to the matters you have raised in your correspondence. In those circumstances, we are of the view that further meetings with you are not required at this time."

10

Now, in the circumstances, that was a predictable response, was it not?

15 **MR FOSTER:** Well, I thought it was a - a significant response and a disappointing one, but again, I can see the strength of the reaction with the benefit of hindsight around the letters but it, nonetheless, was a disappointing response.

MR CONDE: Would you agree that the fourth paragraph where it says:

20 "The fact that you cosigned with Mr Cooke The Star's response of 23 January 2024..."

Is consistent with The Star - with the NICC having been under the impression, from your earlier meeting, that Mr Cooke was to leave?

25 **MR FOSTER:** No.

MR CONDE: You say "No", but why else would that be note-worthy, that you had cosigned with Mr Cooke?

30 **MR FOSTER:** Well, as I mentioned the last discussion that I had with the Commission with the board was on 18 December and the position that we had left for a follow-up meeting, which obviously hadn't occurred, was that we wanted the Commission's genuine feedback on whether there was an opportunity, given the multitude of activities and initiatives which were underway, which included as I mentioned some key personnel to really strengthen the bench amongst, I think there were six other items that I talked about. Was that sufficient to give the Commission some confidence? Not necessarily on a permanent basis, but given the sensitivities around recruitment and other issues that we were dealing with, whether that was an option that would be considered by the Commission was the discussion on the 18th.

40

MR CONDE: Mr Bell, I see the time.

MR BELL SC: Yes, we will adjourn now until 2 pm.

45 **<THE HEARING ADJOURNED AT 1.00 PM**

<THE HEARING RESUMED AT 2.02 PM

MR BELL SC: Yes, Mr Conde?

5 **MR CONDE:** Mr Foster, do you recall I asked you earlier about the ECDD losses being booked in July but there was a suggestion to Ms Katsibouba to book them in November and I asked about Star's response to that?

MR FOSTER: No, Mr Conde, I believe it was a different matter.

10 **MR CONDE:** I'm sorry, TICO losses, sorry.

MR FOSTER: Yes, I do.

15 **MR CONDE:** Yes. And I'm told that if - this document doesn't have a doc ID but if the 18 April 2024 letter can be brought up. I think this contains confidential material that I would ask you not to read aloud and I won't, but I might just ask you to read that letter, Mr Foster.

MR FOSTER: Certainly. Thank you, Mr Conde, I have read that now.

20 **MR CONDE:** And, Mr Bell, if that could be marked, please, as MFI 14.

MR BELL SC: MFI 14.

25 **MR CONDE:** So do you agree, Mr Foster, that in particular having regard to paragraph 5, there is a response underway at Star?

MR FOSTER: Yes, that's correct.

30 **MR CONDE:** Yes. I should say I was unaware of this document when I asked you about the TICO losses earlier. Now, I was asking you questions earlier about The Star's response to the manager's reports. Do you recall that?

MR FOSTER: Yes.

35 **MR CONDE:** If we could bring up, please, the response to the NICC that was up earlier. It is STA.8100.0066.1187. And if we go, please, to 1188. Do you see at point 2 it says:

40 "Lack of recognition of proactive steps. The manager's report does not recognise nor emphasise many actions and initiatives proactively taken by the company. This is in stark contrast with the reporting of similar actions and initiatives taken by Crown Melbourne in the Victorian Special Manager's, Mr Stephen O'Bryan KC's six-monthly reports."

45 Do you see that, Mr Foster?

MR FOSTER: Yes, thank you.

MR CONDE: As at 23 January 2024, what was your awareness of Crown Melbourne's remediation and transformation program?

5 **MR FOSTER:** Obviously it was well underway and it had been underway for a period of time. I believe it was nearing completion - nearing the end of their journey, you know, after some - some ups and downs, which is natural within a remediation program, but they were sort of nearing the end of that program, I believe.

10 **MR CONDE:** Is it correct that neither you nor, so far as you are aware, Mr Cooke had undertaken an analysis comparing the work done at Star with the work done at Crown?

15 **MR FOSTER:** I would - I would agree that there - from my knowledge, there hasn't been a deep analysis of it but certainly there has been some contacts with various people across the organisation with colleagues in Crown, I understand.

20 **MR CONDE:** Right. But for the purposes of this response to the NICC, do you agree that whether or not there was more recognition or emphasis in the Crown Special Manager's reports was not especially relevant, was it?

MR FOSTER: Well, I think at that point it was just an observation that the composition of the report was a bit different to the composition of the report that we had received.

25 **MR CONDE:** Do you agree that the language in that paragraph about "stark contrast" suggests a degree of unfairness for Star?

MR FOSTER: Possibly, yes.

30 **MR CONDE:** And I appreciate you have acknowledged earlier certain things about this response, but I do want to raise a further point about resourcing. If we can go to 1189. At point 7, do you see, underneath the quotation it says:

35 "The manager's report suggests the final Group Leadership Team will be comprised of nine existing employees and four new executives. This is not correct."

Do you see that?

40 **MR FOSTER:** Yes, I do.

MR CONDE: I'll just ask you in particular to note that language "will be comprised", so talking about the future. If we - do you accept that the manager - sorry. If we can bring up the manager's report. It's MGR.0001.0001.0001 at page 0023. We will show you what the manager had said. Has a page come up for you, Mr Foster, which begins at the top:

45

"The GLT is TSEG's most senior management forum."

MR FOSTER: Yes, it has.

MR CONDE: Then in the second paragraph, the final sentence is:

5 "Those executives are."

Do you see that?

MR FOSTER: Sorry, in which paragraph?
10

MR CONDE: I'm sorry, the second paragraph beginning:

"TSEG has elected to rebuild its senior executive team."

15 **MR FOSTER:** Yes.

MR CONDE: And in the final sentence in the third line it says:

20 "Those executives are..."

MR FOSTER: Yes.

MR CONDE: Would you accept that the manager was not talking about what the
25 team will be comprised of, he was talking about the current team members?

MR FOSTER: Yes, I think that's fair.

MR CONDE: And so there is a degree of talking at cross purposes where the
30 manager was making an observation whereas the response was focused on - well,
had misinterpreted that. Do you agree?

MR FOSTER: Yes, I - I - I agree. It was a different definition or approach to
articulating the mix of staff.

35 **MR CONDE:** If we go - and just pausing here. This was correct, was it not, as at 3
October 2023?

MR FOSTER: Yes, obviously including a number of stand-in or acting roles but
40 yes, it was correct.

MR CONDE: Yes. If we go to the body of Star's response on this issue, it's
STA.8100.0066.1119 at page 1157. I think halfway down the page there is heading
in italics and bold:

45 "Executive leadership."

Do you see that?

MR FOSTER: Yes, Mr Conde.

MR CONDE: And the text in black is from the manager's report. And then the first comment there has "#F13":

5

"It is not agreed..."

In bold and underlined:

10

"..that The Star moves slowly to recruit and rebuild its executives as stated."

Do you see that?

15

MR FOSTER: Yes.

MR CONDE: Pausing there. At this point on 23 January 2024, The Star, the Sydney CEO had still not been appointed. Correct?

20

MR FOSTER: Correct.

MR CONDE: And do you that agree marking the document like this in, sort of bold and unlined, it is quite a confrontational approach?

25

MR FOSTER: Yes, I think that's consistent with my feedback and reflection before, Mr Conde. So yes, I agree.

MR CONDE: If we go over the page to 1158 and do you see from halfway down the page there is Mr Weeks's table, which I showed you earlier from the original report?

30

MR FOSTER: Yes.

MR CONDE: And then if we can go over to page 1159, and do you see there is a new table and the paragraph before which introduces it is:

35

"On the basis that both the CEO Sydney and CEO Brisbane will be external appointments, the GLT will be equally balanced new versus prior role as follows."

Do you see that?

40

MR FOSTER: Yes, I do.

MR CONDE: And I just ask in particular on that first green paragraph on this page, the fourth line down, about halfway through, do you see the sentence that says:

45

"Also, as would be appreciated by anyone who has run a major corporate operation, the GLT composition will continue to evolve over time to reflect organisational needs/requirements and development."

MR FOSTER: Yes.

MR CONDE: Do you agree, Mr Foster, a statement like that, "As will be appreciated by anyone who has run a major corporation", is just unnecessary?

5

MR FOSTER: Yes, I don't believe it was meant to be offensive but I don't disagree it was superfluous to the point.

MR CONDE: If I can go to - I took you to the response from the NICC. If we can just call that up, STA.8100.0063.7392. Do you recall this was the document I showed you earlier?

10

MR FOSTER: Yes, I do.

MR CONDE: That's dated 1 February 2024. If we then go to your response to the NICC and it's STA.8100.0078.3976. Do you see a letter dated 6 February 2024 addressed to Mr Crawford?

15

MR FOSTER: Yes, I do.

20

MR CONDE: The first paragraph says:

"The board and I are disappointed to receive your letter of 1 February advising that you no longer saw the need to engage in constructive discussions with the board at The Star."

25

Now, how could you be disappointed when, in light of your earlier messages, where you expected to hold onto your hat and there would be bright and loud fireworks? Sorry, Mr -

30

MR BELL SC: Did you hear that question, Mr Foster?

MR FOSTER: Yes, sorry, I didn't fully understand - hear the question. Sorry, Mr Conde.

35

MR CONDE: Sorry, Mr Foster.

MR FOSTER: I thought you were still finishing, sorry.

MR CONDE: In the first paragraph it says:

40

"The board and I are disappointed to receive your letter."

But in light of your earlier messages with Mr Cooke about holding onto your hat and bright and loud fireworks, is it correct that you were disappointed?

45

MR FOSTER: Yes, absolutely. As I mentioned, we had left the last interaction in person with the Commission to consider discussions that we had on 18 December,

which we had set up a meeting to discuss earlier in January. So we still felt it was important to keep open dialogue with the Commission, particularly given that we made a number of important steps, including the appointment of a Sydney CEO, as I mentioned, and were still working on a number of other critical roles. So there was
5 still, in our view, plenty of positive things that would be worthwhile discussing with the Commission and again, sort of circulating on that point but we may be forward to try and arrive on a landing regarding options with Mr Cooke that we appreciated further input from the Commission.

10 **MR CONDE:** In particular, as regards Mr Cooke, when you referred there to the prospect of constructive discussions, hadn't you had those on 7 December 2023?

MR FOSTER: Certainly that was the start of a number of discussions but as I mentioned, we sort of left a couple of things that the Commission was
15 going - Mr Crawford was going to consider with the other Commissioners that we hadn't circled back on at this point.

MR CONDE: Well, in the 7 December 2023 discussion you had accepted points Mr Weeks's report, asked about replacing Mr Cooke but then subsequently sent a
20 detailed response cosigned by Mr Cooke. Hadn't you done - said one thing to the regulator in the meeting but then acted very differently afterward?

MR FOSTER: No, I don't believe so.

25 **MR CONDE:** Okay. You are aware, I take it, that on 22 March 2024 Star Entertainment announced the departure of Ms Katsibouba as CFO and the appointment of Mr Neale O'Connell as interim CFO and the departure of Mr Cooke as CEO and Managing Director?

30 **MR FOSTER:** Yes, I am.

MR CONDE: Why do those announcements need to be timed together?

MR FOSTER: Well, obviously both - both of the separations were under discussion
35 for some time and the initial intent was that Ms Katsibouba was going to be announced earlier, but as the practicalities rolled through the times converged. But we felt it important to make those announcements and get the message to the market. Obviously earlier that afternoon there seemed to be from somewhere, some leaks in the media as well. So it was important, I think, both for internal purposes, individuals
40 involved and also for market disclosure that we announced those changes as quickly as we could.

MR CONDE: It is correct, isn't it, you mentioned having the announcement for Ms Katsibouba earlier? But it's correct that Mr Cooke's announcement was to be
45 pegged to Ms Katsibouba's announcement?

MR FOSTER: That's how it ended up but it wasn't where that process started originally.

MR CONDE: Well, I'll show you a document. STA.8890.0002.0001 and if we can go to page 0003. Do you see about halfway down the page there is a message from you to Mr Cooke:

5

"How would you feel about Friday announcement. There is risk of leak for you."

And the response is:

10 "Not sure. Where is the leak coming from investors are talking about? What day is CK and Neale?"

So why a potential leak relating to Ms Katsibouba and Mr O'Connell of any relevance to the timing of the announcement of Mr Cooke's departure?

15

MR FOSTER: Well, we thought it was very important to get that announcement out about Mr Cooke as soon as possible but the sequencing originally, whether that's clear or not in that particular piece was and an expectation was that Chris - Ms Katsibouba and Mr O'Connell's announcement would predate Mr Cooke's. It may be only have been a day, but that didn't turn out in practice.

20

MR CONDE: But are you not - were you not suggesting to Mr Cooke in this exchange that his announcement needs to be on the same day as that of Ms Katsibouba's?

25

MR FOSTER: No, that's not certainly how I read it at all or what the intention was.

MR CONDE: Well, when you say "How would you feel about Friday", it is not correct, is it, that you had in mind Ms Katsibouba's announcement on Thursday?

30

MR FOSTER: Yes, I believe it was to be before Mr Cooke's, but we didn't wish to leave Mr Cooke's ideally until over the weekend. Certainly that was a point of discussion but not as it turned out because we were keen to get the announcement out. We thought it was very important.

35

MR CONDE: Sorry. Why was it very important to get Mr Cooke's announcement out urgently in circumstances there where you are only there referring to leaks about Ms Katsibouba?

40

MR FOSTER: Well, we felt the sequencing was also better and also, Chris - Christina - so Ms Katsibouba's process, as I understand it, had been going for a little bit longer. So we thought that was prudent to make sure that that occurred prior to Mr Cooke's, in practice anyway.

45

MR CONDE: But when you say, "The sequencing", they were presented for all intents and purposes together, weren't they?

MR FOSTER: In the end because of timing, yes. It is two separate announcements but, yes.

5 **MR CONDE:** Two separate announcements. The Katsibouba announcement went out first and then shortly after Mr Cooke's?

MR FOSTER: Yes.

10 **MR CONDE:** I understand there is a risk of leaks so Ms Katsibouba's comes out when it does. You have referred to "sequencing of other considerations" but what was the need for Mr Cooke's message to come hot on the heels of Mr Katsibouba's?

15 **MR FOSTER:** Well, it wasn't so much the leak. As I mentioned, the preference would have been for Ms Katsibouba to predate Mr Cooke's by a day or two. However, again as I mentioned before, earlier in the afternoon of the Friday we did see some media attention and, in addition, we were very conscious that we thought it was important to get the message out to a broad range of stakeholders to make it clear that decision had been made and we were moving forward.

20 **MR CONDE:** It's the case, isn't it, that bundling them together allowed the company to speak of a narrative of a clean-out?

25 **MR FOSTER:** No, that was certainly never entertained. But I can see how some may draw that conclusion, but certainly it was not something orchestrated or intended by the company.

30 **MR CONDE:** Now - well, I will come back to that. But this was something - you have said, "Sequencing." This was something discussed between you and your board colleagues, is that correct?

MR FOSTER: Yes, we were in constant contact those few days.

35 **MR CONDE:** So if I - if we can bring up STA.8000.0164.0005. I understand these are draft minutes and that's what we have. But do you see some minutes dated - some draft minutes dated 22 March 2024?

MR FOSTER: Yes.

40 **MR CONDE:** And the third to last paragraph on this page refers to:

"The board discussed the potential sequencing of ASX announcements in relation to the CEO and CFO departures."

45 **MR FOSTER:** Yes.

MR CONDE: And so - and they would be targeting release of ASX announcements at approximately 4 pm today. Do you see that?

MR FOSTER: Yes. Yes, I do.

MR CONDE: And so that accords with your recollection of the discussion that the board had?

5

MR FOSTER: On that day I think that's correct, yes.

MR CONDE: Now, do you agree that regardless of how a departure might be structured legally, there is a basic fact of whether an employer or an employee has initiated the relevant departure?

10

MR FOSTER: Yes.

MR CONDE: And if we can call up STA.8517.0056.5202 at page 5205, please. Now, I won't read it aloud as it records legal advice, but do you see at the bottom of the page there is an email from KWM to Ms Hammond dated 15 December 2023 at 4.05 pm?

15

MR FOSTER: Yes.

20

MR CONDE: And I won't read aloud but may I ask you, please, to review that first bullet point?

MR FOSTER: Yes.

25

MR CONDE: So there may be legal reasons to structure things in a particular way, but that does not change the fact of whether the employer or the employee initiated the departure. Do you agree with that?

30

MR FOSTER: I - that's the way I read it, I think, yes.

MR CONDE: And in Ms Katsibouba's case, you knew, didn't you that she had initiated her departure?

35

MR FOSTER: I'm not completely familiar with the original elements. My understanding was that changed quite lately - late in the process, I believe, that there was potentially a termination without cause structure that was going to apply because of some additional benefits that Ms Katsibouba may receive. If I remember correctly that proposal at the time was not approved by the board and therefore some further discussions and negotiations were undertaken. But the conclusion of that, from my understanding, is that Ms Katsibouba ended up resigning.

40

MR CONDE: Well, you knew she had initiated her departure, didn't you?

45

MR FOSTER: I don't know the exact components of the discussion. There was certainly discussions from the company and from Ms Katsibouba around her separation, but I'm not sure of the exact mix of and nature of those discussions.

MR CONDE: First of all, if we can call up STA.8122.0001.0009, please. There is an email dated 22 March 2024 at 6.32 pm. It says it is a note from the Chairman and it says:

5 "Hi, everyone, I'm writing to inform you that our Group Chief Financial Officer, Christina Katsibouba has decided to resign from The Star after nine years to pursue new opportunities."

Do you see that?

10

MR FOSTER: Yes, I do.

MR CONDE: And indeed the ASX release of her departure recorded that she had decided to step down. I'll just ask that that be brought up please. It is
15 INQ.5002.0001.0112. Do you see the language in the first paragraph, second line:

"Decided to step down"?

MR FOSTER: Yes, I do.

20

MR CONDE: You are aware, I take it, that on the morning of 22 March 2024 Ms Katsibouba suggested an edit to the ASX release in respect of her departure to say:

25 "Ms Katsibouba indicated her intention to resign at the end of last year and since then the company has been working on finding a replacement and planning for a smooth transition"?

MR FOSTER: I don't - I don't honestly recall.

30

MR CONDE: I see. If we can call up, please, STA.8122.0001.1377. And do you see halfway down the page there is an email from Ms Katsibouba to Ms Hammond and it says:

35 "Please see mark-ups below."

She wrote:

40 "You will see the addition of the context for finding a replacement."

And then she explains that. Do you see that email, 22 March, 9.59 am in the middle of the page, Mr Foster?

MR FOSTER: Yes, I do.

45

MR CONDE: And then I will take you to the additions now, actually. If we go to 1378, please. And do you see in red, about a third of the way down the page, there is a suggestion in red:

"Ms Katsibouba indicated her intention to resign at the end of last year and since then the company has been working on finding a replacement and planning for a smooth transition."

5

MR FOSTER: Yes.

MR CONDE: If we can go back to 1377, please. Do you see Ms Hammond forwarded this to you on 22 March and said:

10

"Hi David, could you please call me re the below. I sent CK and extract from the ASX (excluding info on Neale) for her information. See comments below, I would also suggest you raise things with her directly as we cannot incorporate them all."

15

Do you see that, Mr Foster?

MR FOSTER: Yes, I do.

20

MR CONDE: And it is correct, isn't it, that you then had a conversation with Ms Katsibouba at the suggestion of Ms Hammond?

MR FOSTER: I believe I did, yes.

25

MR CONDE: And if we can just bring over 1378, please. And just remembering that language in red about Ms Katsibouba indicating her intention to resign, in your conversation with Ms Katsibouba you told her that Star couldn't put those suggestions in because it would have potentially put Star into trouble with the regulator, because there were discussions which should have been occurring from when it was clear that Ms Katsibouba was going to step down much earlier. Correct?

30

MR FOSTER: No, that's not correct.

35

MR CONDE: Well, that was the unchallenged evidence from Ms Katsibouba and she was cross-examined on other matters. What do you say to that?

40

MR FOSTER: I did not listen to Ms Katsibouba's testimony, but there was some conversations going on for some period of time with Mr Cooke and Ms Katsibouba around her leaving the organisation. Because we needed to - she had obviously done a lot of great work but we needed to refresh the capability there and Mr Cooke had been working on somebody to come in for a period of time, which was Mr O'Connell.

45

MR CONDE: I want to be very clear that I'm putting to you, Mr Foster, that you told Ms Katsibouba that those suggestions couldn't go in, because it would put Star into trouble with the regulator. Do you accept that?

MR FOSTER: No, I don't.

MR CONDE: And on the day that Ms Katsibouba's and Mr Cooke's departures were announced, you are aware that Mr Cooke issued an exit statement?

MR FOSTER: Yes, I am.

5

MR CONDE: You and, to your knowledge, your board colleagues knew of that statement and had provided comments on it. Is that correct?

MR FOSTER: Yes.

10

MR CONDE: And neither you nor your board colleagues did anything to stop that exit statement from being issued. Correct?

MR FOSTER: We certainly provided feedback that it was our preference that it didn't go out, certainly not as a public statement. But it was a personal note, internal from Mr Cooke. We did also provide feedback and requirements around some of the wording of that if he wished to persist with an internal announcement.

MR CONDE: When you say, "Internal", wasn't it going to some 8,000 people?

20

MR FOSTER: Internal people, yes.

MR CONDE: Well, you would appreciate there is a very real risk of that leaking outside the organisation?

25

MR FOSTER: Yes.

MR CONDE: Do you agree that it was wrong not to have stopped that exit statement from being distributed?

30

MR FOSTER: Well, I think Mr Cooke felt strongly that he wanted to send a message to the team that he felt a lot for. And as I said, we had provided the feedback that we weren't happy for it to be an ASX release and also had provided feedback on the contents, so that was a compromised outcome.

35

MR CONDE: But reflecting on it now, do you agree it was wrong not to have stopped that exit statement from being distributed?

MR FOSTER: I think in hindsight it ended up being unhelpful whilst the intentions were sound.

40

MR CONDE: You mentioned Mr Cooke feeling strongly about wanting to send a message. Do you agree that apart from noting some past - well, listing past achievements, Mr Cooke's exit statement did not offer a positive message for the future for Star's 8,000 or so employees?

45

MR FOSTER: Well, I can't recall the exact composition but it was a personal note from him rather than a message from the company.

MR CONDE: Well, if we can bring up STA.8122.0001.0012. So do you see it says:

"CEO exit statement"?

5

MR FOSTER: Yes into first paragraph:

10 "It is with considerable reluctance and a heavy heart that I today announce I have, with my board, accepted that I will step down from the Group CEO and Managing Director role with The Star."

And then in the sixth paragraph down:

15 "A number of matters have led to my decision today, however, the determining factor in my decision has been a view I have formed recently that my continuing in the Group CEO role was not going to be conducive to the NICC determining to find The Star suitable to hold a casino licence in New South Wales."

20 Now, do you see that, Mr Foster?

MR FOSTER: Yes, I do.

MR CONDE: And he says he only formed this view recently but you knew that the NICC had lost confidence in Mr Cooke since at least 7 December 2023, correct?

25

MR FOSTER: That was when the comment was made, yes.

MR CONDE: Then in the seventh paragraph Mr Cooke wrote:

30 "That view is informed by my understanding that the NICC's Chief Commissioner had issues with my decision to retain a number of existing executives on my senior leadership team. Noting these individuals were not on The Star's executive committee at the time the offending conduct identified in the original Bell Inquiry occurred, and I am not aware of any basis to suggest they were bad actors. Secondly,
35 it also seems that the Chief Commissioner did not consider I was moving with sufficient speed with the reforms and changes being implemented at The Star, a view with which I respectfully and fundamentally disagree."

40 Now, first of all, do you agree that the message here to Star's 8,000 employees is "I'm being forced out by the Chief Commissioner"?

MR FOSTER: I can see how its - could be interpreted that way, yes.

45 **MR CONDE:** And given the context of this announcement where the departure of Ms Katsibouba was announced the same day, this created a false narrative of Mr Cooke defending her in the face of the NICC. Do you agree?

MR FOSTER: I don't interpret it that way.

MR CONDE: Well, it refers to:

"Retaining a number of existing executives on my senior leadership team."

5

There are only so many of those and there was only one departing that day, do you agree?

MR FOSTER: Those facts are correct, yes.

10

MR CONDE: So you don't think there would have been a link in most reader's minds between Ms Katsibouba's departure and Mr Cooke's statement in that paragraph I have just read?

15 **MR FOSTER:** Not necessarily, Mr -

MR CONDE: Do you agree that the exit statement suggested that Ms Katsibouba may have been a "bad actor"?

20 **MR FOSTER:** No, I don't accept that.

MR CONDE: Are you aware that when she was asked in March 2024 to sign a declaration about no knowledge or involvement in the misconduct recorded in Mr Bell's first Inquiry, Ms Katsibouba signed that declaration and had nothing to disclose?

25

MR FOSTER: I do understand that, yes.

MR CONDE: And you are aware, aren't you, that Ms Katsibouba gave unchallenged evidence that had she been asked to sign such a declaration earlier she would have done so?

30

MR FOSTER: Yes, I am aware of that.

35 **MR CONDE:** Do you agree that this exit statement was antagonistic toward the NICC?

MR FOSTER: As I read it again too, I can see how that could be the case, yes.

40 **MR CONDE:** And in particular, do you agree that the exit statement effectively assigned blame for Mr Cooke's departure on the Chief Commissioner of the NICC?

MR FOSTER: Again, with the benefit of hindsight, I can see how that could be interpreted that way. Whilst that certainly wasn't our perspective, but I can understand that.

45

MR CONDE: In circumstances where Star Entertainment has a suspended licence and it is important for the company to rebuild confidence and trust with its regulator, do you agree that Mr Cooke's exit statement did not assist with that?

5 **MR FOSTER:** As I mentioned before, I agree. It wasn't helpful in the context of what the reasons for doing this were.

MR CONDE: Now, it was the case, wasn't it, that Mr Cooke's departure was an agreed exit between him and Star?

10

MR FOSTER: It was a - termination without cause was the legal structure of it.

MR CONDE: I appreciate that that may have been how it was documented legally, but as a substantive matter it was an agreed exit, wasn't it?

15

MR FOSTER: It - at this particular point it stemmed from a discussion that I had had with the board some - a little bit before that and a conversation that I had with Mr Cooke preceding the start of the discussions and process that we felt that the time had come that Mr Cooke should leave the organisation.

20

MR CONDE: Well, do you see in the sixth paragraph on this page:

"A number of matters have led to my decision today, however, the determining factor in my decision has been..."

25

Do you see that?

MR FOSTER: Yes, I do.

30 **MR CONDE:** And this was a document that the board was aware was being distributed to Star's some 8,000 employees. If anything, Mr Cooke was in charge of deciding when he was going, wasn't he?

MR FOSTER: No, it wasn't.

35

MR CONDE: Well, if we can call up STA.8890.0002.0009, please, at page 0010. A message from Mr Cooke at the top:

"Hi, David. As I know you would know, making my announcement this afternoon is causing me a lot of concern. It really is going to cause a lot of damage to the team as it will be uncoordinated and poorly communicated. It will not look planned and it will not look like it was an agreed exit."

40

Now, you don't disagree with him in your message about whether or not it was an agreed exit, correct?

45

MR FOSTER: Well, the main purpose of that conversation was Mr Cooke trying to push the date out beyond Friday, which we weren't comfortable to do, because we had already made our decision and wanted to get that announced on the Friday.

5 **MR CONDE:** And when you say you had made your decision, you wanted Ms Katsibouba and Mr Cooke's resignations to be announced together, is that right?

MR FOSTER: Only because we weren't able, for various reasons to get Ms Katsibouba's announced the preceding day at least.

10

MR CONDE: Right. But - well, why could Mr Cooke's announcement not wait?

MR FOSTER: Well, as I mentioned, the decision had been made. We wanted to get the message out that we had taken that step, which as we discussed before, was a very important step to make we felt in terms of the organisation and from a practical sense wanted to avoid any media risk, which was already prevalent.

15

MR CONDE: Media risk in respect of Mr Cooke or -

20 **MR FOSTER:** Both. Both.

MR CONDE: But do you agree it was - I just want to be very clear. The arrangement - whatever you reached with Mr Cooke was an agreed exit. It wasn't that Mr Cooke was being forced out. Is that correct?

25

MR FOSTER: As I mentioned, I had a very clear discussion with Mr Cooke and I should stress that he had been very accommodating and was willing to leave at the request of the board. As I said, we juggled a number of things. However, it stemmed from a conversation that I had had with Mr Cooke that the board had had a discussion and decided that the time had come that in the best interests of the company Mr Cooke should leave and he certainly agreed that that was the case.

30

MR CONDE: Well, do you agree that that evidence is inconsistent with Mr Cooke's exit statement, which the board had approved and which referred multiple times to "my decision"?

35

MR FOSTER: As I mentioned before, the board certainly reviewed and gave feedback because we were uncomfortable with it, but we certainly didn't approve it.

40 **MR CONDE:** Well, you didn't stop it. Do you agree with that?

MR FOSTER: Certainly given feedback that we preferred it not to occur but we did not and I'm not sure that we could have physically stopped it, but that's true.

45 **MR CONDE:** Couldn't have stopped it? Couldn't you have disabled his email?

MR FOSTER: I'm not sure whether that was a viable option or would have actually achieved that particular outcome.

MR CONDE: Well, do you also agree that the evidence you have given a moment ago is inconsistent with the text message which is up on the screen where Mr Cooke referred to an "agreed exit"?

5

MR FOSTER: No - no, for the reasons I have already explained.

MR CONDE: In terms of the feedback on Mr Cooke's exit statement, did you give feedback to the effect of "Remove my decision".

10

MR FOSTER: I can't recall the specific feedback. As I mentioned, the main focus or certainly the prime focus was ensuring it wasn't released with the company's endorsement as an ASX, and we certainly said our preference that it wasn't but then there were some very specific words that were dealt with.

15

MR CONDE: Do you recall telling him, "Don't send it"?

MR FOSTER: Certainly our preference was that he shouldn't send it.

20

MR CONDE: That was your preference but did you communicate to Mr Cooke "Don't send it"?

MR FOSTER: As I said, I think I communicated the board's preference for him not to send an exit statement.

25

MR CONDE: Right. Well, I put it to you, you did not communicate to Mr Cooke "Don't send this exit statement". Do you agree?

30

MR FOSTER: I don't believe I was as categoric as that. But as I mentioned, I have communicated the other elements, at least.

MR CONDE: At that stage Mr Cooke was an employee, so couldn't you have given him a direction?

35

MR FOSTER: Possibly.

MR CONDE: If we call up, please, STA.8122.0001.2475. Do you see the first email is from Mr Hodgson to you and copied to other directors, dated 20 March 2024 at 8.17 pm?

40

MR FOSTER: Yes.

MR CONDE: And do you see that Mr Hodgson lists out a number of things about:

45

"Termination or Resignation of Good Leaver applies. No need for board to exercise discretion. Announcement made of departure in due course."

And he scrolls down:

"Entitlements paid out at finish including remainder of notice period. Consultancy agreements to be negotiated to take effect from finish date."

5 And then he said:

"We can discuss tomorrow, but if my understanding of the above is correct then some might say this is a contrivance to ensure maximum entitlements."

10 Next paragraph:

"This may be fair."

15 Now, that is consistent with an agreed and indeed amicable departure for Mr Cooke, isn't it?

MR FOSTER: Well, as I recall, we were still working through what that final separation terms would be. So I don't believe the final position had been landed on quite at that point.

20

MR CONDE: That's right, Mr Foster. But I'm asking you about whether there was an agreed and, indeed, amicable departure for Mr Cooke.

25 **MR FOSTER:** Well, again I'm not 100 per cent clear on the legal definitions, but it was a termination without notice. And we sought legal advice on appropriately understanding his entitlements, because it was quite a complex contract that he had with sign-on agreements and so forth. So we wanted to make sure that that was done properly and in line with his contractual arrangements.

30 **MR CONDE:** Mr Foster, you say "I'm not 100 per cent clear on the legal definitions" but then you have referred to a termination without - I think it is "without cause".

35 **MR FOSTER:** Yes.

MR CONDE: Which - that's the legal definition. I have been asking about a matter as a matter of substance. This was an amicable split, wasn't it?

40 **MR FOSTER:** Well, I wouldn't call it an amicable split as Mr Cooke was certainly disappointed and reluctant to leave and he left based on a decision that the board had made.

45 **MR CONDE:** I appreciate he might have been disappointed to leave but as Mr Hodgson comments here, there were various matters being agreed with him that worked in his favour and he was being allowed to make a statement to 8,000 employees or thereabouts about his position. Do you agree that that is - well, it's not standard practice for a CEO departure.

MR FOSTER: Sorry. Can you clarify what you are referring to?

5 **MR CONDE:** Well, it's not normal for a CEO on the way out to be sending a message to all employees talking about "my decision" and how this was, in effect, forced on him by the regulator. Do you agree with that?

MR FOSTER: It certainly was unusual circumstances, yes.

10 **MR CONDE:** Unusual circumstances, but an unusual departure as well. Would you agree?

MR FOSTER: Well, I don't think it was an unusual departure. It was - he received his termination benefits in line with his contract.

15 **MR CONDE:** You are aware I take that the NICC and the Queensland OLGR were told, on 22 March 2024, that Mr Cooke had tendered his resignation?

20 **MR FOSTER:** No. I phoned each of the regulators and Mr Weeks on Friday evening. So I have not - and that was not my communication.

MR CONDE: I see. Sorry. I wasn't suggesting it was your communication, Mr Foster. But if we can bring up STA.8122.0001.1519, please. Do you see a letter signed by Mr Saunders dated 22 March 2024? It is addressed to the NICC and the first bullet point in the middle of the page:

25 "Mr Robbie Cooke has tendered his resignation as the Group Chief Executive Officer and Managing Director effective today 22 March 2024."

30 **MR FOSTER:** Yes, I can see that.

MR CONDE: And then just under the bullet points:

35 "Mr Cooke will continue a consultant for six months to continue an orderly transition."

Do you see that?

MR FOSTER: Yes, I do.

40 **MR CONDE:** Then if we can bring up STA.8122.0001.1553. Do you see paragraph 1.1:

"Mr Robbie Cooke has tendered his resignation"?

45 **MR FOSTER:** Yes, I do.

MR CONDE: And sorry, I should have mentioned this is a letter from Mr Saunders, Chief Risk Officer and up the top this is dated 22 March 2024?

MR FOSTER: Yes, I see that.

5 **MR CONDE:** Do you agree that the word "resignation" denotes that Mr Cooke is the person initiating this departure?

MR FOSTER: I can certainly see how that was interpreted that way, yes.

10 **MR CONDE:** And do you agree that the reality was consistent with this message it was Mr Cooke who had initiated his departure?

MR FOSTER: No, I do not.

15 **MR CONDE:** Well, the references to "my decision" in his exit statement are inconsistent with that, are they not?

MR FOSTER: I would agree.

20 **MR CONDE:** Now, if we go to INQ.5002.0001.0116. Do you see this is an email from you to NICC dated 27 March 2024 at 12.40 pm?

MR FOSTER: Yes.

25 **MR CONDE:** And addressing the Chief Commissioner, you see in the second paragraph you say:

"Just to summarise a few of the key actions to date."

30 **MR FOSTER:** Yes, I do.

MR CONDE: And then, "Management change". First bullet point:

35 "Last Friday, terminated without cause. CEO Robbie Cooke, CFO Christina Katsibouba."

And then later it says:

40 "In addition, a longstanding team member, George Hughes was also terminated without cause a couple of weeks ago."

MR FOSTER: Yes.

45 **MR CONDE:** And now, that first bullet point suggested to the NICC that Star Entertainment had itself instigated the departures of Mr Cooke, Ms Katsibouba and Mr Hughes. Do you agree with that?

MR FOSTER: That's the statement, yes.

MR CONDE: And Star Entertainment had not instigated the departures of Mr Cooke or Ms Katsibouba, or Mr Hughes. That's correct, isn't it?

5 **MR FOSTER:** Well, from a - I became aware in the last couple of days that I did mistake the descriptions in terms of technical resignation from Ms Katsibouba and Mr Hughes, that they did actually tender a resignation letter. But I was unaware of that at the time, because the discussions and feedback that I had was that they were similar to Mr Cooke were terminations. There certainly were termination deeds completed for each, but that is something I correct.

10 **MR CONDE:** Well, working backwards off that list, are you aware that Mr Hughes gave unchallenged evidence to this Inquiry that he resigned from his position and that this statement was not accurate, in respect of him?

15 **MR FOSTER:** I didn't look at that or hear that, but consistent with what I just said, I would correct the record for Mr Hughes and technically Ms Katsibouba, albeit there had been some discussions around the nature of their separations, I understand with Mr Cooke.

20 **MR CONDE:** Well, that's Mr Hughes. In Ms Katsibouba's case, although legally or - I'm sorry - contractually her departure may have been recorded as a termination without cause, do you accept that she initiated the departure?

25 **MR FOSTER:** I really don't know the sequencing and full nature of the conversations that had been had from Mr Cooke and Ms Katsibouba. That took place over a period of time, but certainly the company had formed a view that whilst Christina had done a terrific job under the circumstances, that we needed to move forward with some fresh capability.

30 **MR CONDE:** You are not suggesting that Ms Katsibouba was - that the company initiated her departure, are you?

MR FOSTER: I don't know the nature of the initiating conversations, unfortunately.

35 **MR CONDE:** If we can bring up STA.8517.0059.7237, please. These are emails to which you were not copied, Mr Foster, but I need to show them to you.

MR FOSTER: Please.

40 **MR CONDE:** Do you see halfway down the page there is an email from Ms Hammond to Mr Cooke dated 13 March 2024 at 5.59 pm.

MR FOSTER: Yes.

45 **MR CONDE:** And do you see it says:

"Helpful."

And then there are two options and it says that in both instances there would be a forfeit of certain amounts. Do you see that?

MR FOSTER: Yes.

5

MR CONDE: But then the next paragraph:

"I have spoke than to her about this and she is fine. She wants to resign even if it's option 1."

10

Do you see that?

MR FOSTER: Yes, I do.

15

MR CONDE: Do you agree then that it was Ms Katsibouba who initiated her departure, not Star Entertainment?

MR FOSTER: Again, I'm not sure of the conversations predating this, but certainly the final form of her departure was as reflected in this note.

20

MR CONDE: Well, I put it to you that it was Ms Katsibouba who initiated her departure, not Star Entertainment. Do you accept that?

25

MR FOSTER: I can't unfortunately either accept or deny it, given my non-involvement in the prior discussions unfortunately.

30

MR CONDE: Well, if we go back to INQ.5002.0001.0116. In circumstances where, to use your words you had non-involvement in the prior discussions, how could you tell the NICC that last Friday Ms Katsibouba had her position terminated without cause?

35

MR FOSTER: Well as I mentioned, I - there had been a termination deed prepared and I had not seen a resignation letter involved in the process. So it was my oversight and I was mistaken in the description, unfortunately, and I apologise for that.

40

MR CONDE: Well, do you accept that this was wrong so far in respect of Ms Katsibouba and Mr Hughes?

45

MR FOSTER: Yes, as I mentioned before.

MR CONDE: Now, turning then to Mr Cooke, do you agree that it's wrong in respect of him too, because the introductory language is just to summarise a few of the key actions and then, "Last Friday terminated". That language suggests that it was the company which initiated his departure, don't you agree?

45

MR FOSTER: Yes, which is the case.

MR CONDE: So you say the company instigated Mr Cooke's departure?

MR FOSTER: Yes, as I mentioned before.

5 **MR CONDE:** Well, I put it to you that what this really represented was a false narrative of a clean-out when, in fact, people were leaving of their own accord in the case of Ms Katsibouba and Mr Hughes or, at the very least, by agreement, in the case of Mr Cooke. What do you say?

10 **MR FOSTER:** Now, I can certainly say that whilst Mr Cooke was certainly cooperative, the decision for Mr Cooke to leave was that of the board. And as I mentioned, I know there had been some variety of conversations with Ms Katsibouba and Mr Hughes over some time and we also had discussions at a board level, but we felt it was best to strengthen our roles, which again is consistent with the discussions - the note to the Commission on 22 December where we were reviewing
15 a number of key roles. So I do accept that I misinterpreted the circumstances, the final technical circumstances for those two but I can't, as I mentioned - wasn't party of a number of the conversations over a period of time, but certainly confirm Mr Cooke was a decision based from the board.

20 **MR CONDE:** Do you accept that this email, at least in respect of Ms Katsibouba and Mr Hughes, was not candid or transparent?

MR FOSTER: It was based on my understanding at the time, which I have now corrected. But it certainly wasn't intended to do anything other than convey that - and
25 communicate that there were changes being made in the organisation and, importantly, in the case of Mr Cooke.

MR CONDE: Well, I want to give you every opportunity, Mr Foster, to explain or offer any further comment. Because I put it to you that this was a false narrative of a
30 clean-out. Do you have any further comment?

MR FOSTER: No. Certainly there is a lot of movement of people and the only comment I would say is people obviously are sensitive to how their circumstances are portrayed, which influenced communication. But it generally was a
35 misunderstand on my part because there were, as I said, various conversations underway in relation to Christina and George and I got that terminology incorrect. Having said that, there were termination deeds for both, but I was unaware at that point that they had also in the end tendered a resignation letter as well.

40 **MR CONDE:** Now, do you - on the question of culture, Mr Foster, do you agree that in the first six months of 2023 it was an all-important time for Star Entertainment to set an internal narrative of transformation?

MR FOSTER: Yes, I do.
45

MR CONDE: And instead, during that time, a negative and even toxic culture set in. Do you agree?

MR FOSTER: No, I wouldn't agree with that.

MR CONDE: Do you agree that the GLT was dysfunctional during the first half of 2023?

5

MR FOSTER: I - I would not characterise it as dysfunctional. It was still - I wouldn't - nor would I characterise it as high-performing, but it was functioning and new members were still joining at that point.

10 **MR CONDE:** When you say you wouldn't characterise it as high-performing, may I ask you, please, to elaborate on that, Mr Foster?

MR FOSTER: Well, certainly from a composition point of view, you know, to the appointments we made, we still didn't have, particularly after Mr Wharton's
15 departure, a CEO in Sydney and for various reasons we didn't have one in Brisbane as well and we were still recruiting a number of - number of key roles. It was certainly disrupted in terms of the ideal sort of activity that ideally could have and in some part was, but not to the extent that it should have. It was disrupted by the New South Wales tax issues, which unfortunately drew particularly Mr Cooke and
20 Ms Katsibouba's attention for a period of time, which was an existential threat on the property in Sydney's viability. So that was certainly something that was not ideal. And we also undertook a capital raising, which obviously the impact on those as a direct impact was limited to a fewer number of people but, nonetheless, some of the focus and work to be undertaken had commenced with work happening on our
25 purpose, vision and values work and so forth. But ideally that sort of work would have been escalated. The structure hadn't quite been confirmed at that point, because of the various uncertainty. So there is a number of elements that with the benefit of hindsight would have been good to get happening a lot quicker. So yes, there certainly was impacts on our momentum in that first half.

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MR CONDE: There has been evidence to this Inquiry from Dr Lagan that in her view, in the first half of 2023, Mr Cooke was extremely busy and industrious and she thought he saved the business financially with the capital raisings that you have just mentioned, but she added:

35

"It came at the cost of the cultural reform program."

Do you have any comment on that, Mr Foster?

40 **MR FOSTER:** I think that's fair to an extent. Obviously a couple of key ingredients which were very, very important to lay the foundation for the cultural program was the root cause analysis, which I think we got in about June, and The Ethics Centre review, which was a very comprehensive and valuable piece of work which I think we got the final report - I might get them around the wrong way but we got one in
45 June and one in August. And they were really necessary to properly evaluate in detail a more structured cultural program but, nonetheless, I don't disagree that that was a big piece of work and Mr Cooke was extremely busy and working very hard and that no doubt would have impacted the ability to do some other things.

MR CONDE: Do you agree, Mr Foster, that upon the commencement of Mr Bell's Inquiry The Star Entertainment - sorry - upon the announcement of Mr Bell's Inquiry, this Inquiry, The Star Entertainment board was largely unconcerned and instead adopted a fight-back stance?
5

MR FOSTER: No, not at all. We are extremely concerned about it.

MR CONDE: You said at the beginning of the day that in your capacity as the Chairman of Star Entertainment and now as Executive Chairman you have cooperated with the regulator at all times. Now, that's not correct, is it?
10

MR FOSTER: I believe it is. We don't necessarily always agree but that's - and we have discussions about things but we certainly have the same objective in mind.
15

MR CONDE: You said that in your capacity as Chairman of Star Entertainment and now as Executive Chairman that you have been completely candid and transparent with the regulator at all times. That's not correct either, is it?

MR FOSTER: I believe it is.
20

MR CONDE: Do you agree that today the GLT is back to where it was following Mr Bell's first Inquiry?

MR FOSTER: No, I would not say that at all.
25

MR CONDE: Right. And - well, you need to have a new permanent CEO, a new permanent Chief Legal Officer, a new Chief Financial Officer. Do you agree there are at least some similarities?
30

MR FOSTER: There are certainly some gaps there, but I think certainly there is also some very good capability being introduced into the business and significantly more experience. And whilst I accept that my solution is an interim one and not ideal, we are certainly working hard on both - on a permanent CEO, which - which we will keep working on. But I'm not keeping the chair warm. I'm certainly progressing forward on a very - on a number of very important elements, notably including the strengthening of the subsidiary companies and the subsidiary functioning that will leverage the capability that now exists within the properties, which has been a very significant and important gap that the company has had historically.
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MR CONDE: Mr Foster, when asked about the need bring in a permanent CEO, a permanent CFO, a new Chief Legal Officer, new Transformation Officer and a new Chief Customer and Product Officer, Dr Lagan told the Inquiry, she said:
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"I think they are great opportunities to actually bring in the right experience now."

Do you agree with that?

MR FOSTER: Absolutely agree.

MR CONDE: And do you consider that you are the best person to pursue those opportunities as Executive Chair of Star Entertainment?

5

MR FOSTER: Well, I think it's important to have momentum and source as good - as best people as we possibly can in those roles. So I'm certainly progressing those earnestly.

10 **MR CONDE:** Mr Bell, that completes my prepared questions for Mr Foster, but a document came through at 2.11 pm which I - if I might just have a few minutes to review in case I have any further questions of Mr Foster at this juncture before going to other counsel?

15 **MR BELL SC:** Yes, I will give you an opportunity in due course.

Mr Foster, do you agree that a board of a listed company plays an important role in setting the culture of the organisation?

20 **MR FOSTER:** Yes, I do.

MR BELL SC: And do you agree that the chair of the listed company has a particularly important role in setting the cultural tone?

25 **MR FOSTER:** Certainly together with the rest of the board I do, yes.

MR BELL SC: Yes. And in the year or so that you have been the Chair of Star Entertainment, what changes to the culture of the organisation have you observed that you are pleased about?

30

MR FOSTER: Well, I think notwithstanding some of the people changes, there has been some good people brought into the organisation. I have certainly seen a strong commitment and endeavour around working through our remediation efforts and doing the right thing by the regulations and the rules. And that's been a significant shift for the business, which has been very challenging for people to understand and get their head around. And I certainly did note earlier on in that - in the last year or so that people felt some discomfort and angst around that journey and the proper application of regulation, understanding how important it is to protect patrons from themselves and from illegal activity and so forth. And that was clearly, you know, confronted by staff forums and communication. It wasn't something that was shied away from in the company and I certainly am starting to see that occur. That certainly intent and good motivation has been lagged by the capability of the organisation as, you know, whether it be new people, training, clarity around accountabilities and so forth has occurred. But I do think that there is a base there that we can leverage and leverage reasonable quickly to improve. I will give you one example, Mr Bell. As part of the board's attempts to get closer and understand the business better, we have attended a number of night shifts on a Saturday night in the properties to understand I guess the property in full flight with all the pressures that

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exist within the business and on discussions with - again I appreciate it is an example of one, but it was very encouraging that one of the floor managers said to me that things are so different now from the old days, because they felt actually a lot of pressure in circumstances where they had to exclude and remove customers or
5 intervene on behaviour or safer gaming interventions. They feel really supported now and no pressure at all from a financial perspective and whilst there is a long way to go in terms of increasing our skills and systems to do that effectively and efficiently on a consistent basis, which we have certainly seen in numerous examples as we've discussed today, that was certainly a very positive - positive element. And I have also
10 heard from one of the executive team of an interaction they have had with a senior manager within the properties that raised the point, which I think may have come up in your original observations that, "Just because we can doesn't mean we should". It was sort of their attitude and approach. And that certainly are things that provide us a lot of encouragement. And I do firmly believe and I have worked in an environment
15 where - in this case it is properties, but lines of business have end-to-end accountability and control and I really do believe in the benefits of that and are very confident with the people that we have either in place already or about to be approved hopefully tomorrow that we can really make some quick progress. And certainly from my discussions with the executive around the changes that we need to
20 make collectively as a leadership team and also the company more broadly, people are on board and are keen to move forward with those as quickly as we can. So I do think there has been some change, but we have got quite some way to go and I certainly appreciate the position of the regulators that we need to do that on a consistent basis and at a consistently high quality and that is something that we have
25 been not consistent with in the past. But we are undertaking a health check of our remediation program with the view to make sure it's lined up appropriately with things like root cause, Ethics Centre and your first Inquiry and Gotterson in Queensland to try and make it much simpler and clearer for our teams who are working incredibly hard to deliver milestones. But we need to tweak a few things to
30 make that more effective, efficient and to make sure changes are embedded in the organisation. So that's something that we are absolutely committed to. Yes, we have got some good positive signs, but certainly a lot more work to do and people are very committed to do that. And I do believe if I use Sydney as an example, we have a strong leader in place there with a lot of experience and looking forward to them
35 being able to bring further insights and capability to bear in the Sydney property.

MR BELL SC: Did you watch Dr Lagan's evidence to this Inquiry last week?

40 **MR FOSTER:** No, I didn't, Mr Bell.

MR BELL SC: Have you read the transcript of her evidence?

MR FOSTER: I have seen bits and pieces of it at this stage, but not in detail.

45 **MR BELL SC:** Dr Lagan said that in the first six months of last year the internal story of rebuilding and setting a new vision of becoming fit for purpose was not present. So a new internal narrative emerged to the effect that the regulator was

against Star and the manager was too demanding. Do you accept the force of Dr Lagan's analysis?

5 **MR FOSTER:** I think the two elements - and, you know, part of that is Mr Cooke, who worked extremely hard obviously on certain things and the absence of a full-time CEO for at least part of that and Mr Wharton who was there for a period of time, really, was spread across broader roles. So I think the absence of that local leadership and I guess that was a period of time that the new - either new regulation requirements or the proper application of existing regulatory requirements were
10 being implemented. So I think off the top of my head since - in the last 12 months we have excluded something like 9,000 patrons. So without the appropriate support, without the training and probably without the full understanding of what and why things are going on, I can see how a negative narrative may evolve, which as I mentioned there has certainly been a lot of effort put in to make sure that narrative is
15 corrected and people understand that, you know, it is on the organisation why the organisation is in the position that it is. We need to educate them why, whether it be safer gaming, looking after our patrons or doing the right thing or in the case of financial crime, that's the law and we have to abide by the law and should abide by the law, and we have to lift our capability ongoing in that basis. But that narrative, I
20 think whilst I know it was done at things like town halls and so forth, there is nothing that replaces it for that middle management layer on the ground. So perhaps from a slightly different orientation, but I think Ms Lagan's comments on a broad basis are pretty much aligned to my view as well, albeit for slightly different reasons.

25 **MR BELL SC:** And do you accept some responsibility for that internal narrative, that internal negative narrative developing?

MR FOSTER: Well, I think ultimately we have to, Mr Bell, as a board and, you know, certainly one thing we have discussed is post this exercise we are going to
30 have a deep look at ourselves, of what's happened over the last year and with the benefit of time and so forth what we would do differently. But a lot of it does come down to people and having strong leaders on the ground in the properties do go a long way towards patching some of those and fortunately we are looking like we are in quite a good spot at the moment. But it does need some further reflection, Mr Bell.

35 **MR BELL SC:** And looking back on it now, do you accept that the terms of Mr Cooke's exit statement perpetuated that negative narrative?

MR FOSTER: Yes, I do.

40 **MR BELL SC:** Putting it mutually, a number of witnesses have told me that Star Entertainment is at a very early stage of cultural transformation. Do you accept that that's an accurate assessment?

45 **MR FOSTER:** Well, I think it's a long journey, which it normally is. However, I do see, as I sort of provided a few examples, that there is some strong threads that I have noticed and also, I think there is a sincere willingness of people to change. They are just looking for leadership at the right level, which again, reinforces, I firmly believe,

a fast transition to those property models that I had described with the appropriate responsibility, accountability and resources within the properties to affect those changes. Because it is really a business of two part. One is the properties, where the mass of people and where the heart of the organisation lives, and part of it is around reorientating the central functions into more a mindset of a group of those departments are there to help and support the properties where it is relevant for them to do so, and then the corporate centre has a function at a corporate holding company level. But the real culture change and the real effect of that both from a morale and a behavioural point of view needs to be led through the properties.

MR BELL SC: And getting back to my question, do you accept that the cultural transformation is at an early stage?

MR FOSTER: Yes. I think there is significant time to go, but I think the pace at which that can be accelerated is - is real.

MR BELL SC: And having regard to the private statements you made to Mr Cooke about the regulator and the manager to which Counsel Assisting has taken you today, do you think you are the right person to lead the necessary cultural transformation at Star Entertainment?

MR FOSTER: I think as I mentioned, I'm certainly keen and I am very focused and I do believe that I have good relationships with the Commission and Mr Weeks. I have seen how this journey needs to play out and I believe that I have a good handle on the business and very focused on achieving those outcomes. I do obviously regret and apologise for my comments and narrative again in personal statements in the heat of the moment, but they certainly don't represent my professional approach to - and relationship with the regulators, which I have always maintained and believe I certainly can going forward. But - so I believe I can assist in that journey, but importantly I think there is a period of stability required in the business at least to transition in a new CEO as quickly as possible and a couple of other key leadership appointments, and then I think we should re-evaluate what the business needs.

MR BELL SC: And do you accept that the regulator and the New South Wales public might not necessarily accept your public statements at face value in future?

MR FOSTER: I - I accept that the materials that we have been through is not ideal, but I do think my actions with a variety of stakeholders, including the regulator and Mr Weeks, is consistently constructive and forward-looking and very direct and transparent. And I think I'm confident that I can continue in that and make sure that we get the appropriate momentum and have the trust of various stakeholders.

MR BELL SC: And as you understand it, do all of your board colleagues agree with you that you are the right person to lead the necessary cultural transformation at Star Entertainment?

MR FOSTER: Certainly at this point in time, as I mentioned Mr Bell, for the stability of the organisation, we believe it's probably the right step at this point in

time. But as is the case, I'm here at the will of the board and also to maintain my focus on the forward plan for the business and provide that stability at least in the short-term to make sure that we get momentum on that.

5 **MR BELL SC:** I just want to make sure that I have got an accurate assessment of
the current position in relation to the Group Leadership Team. I note yesterday that
the Chief Transformation Officer resigned last month. Obviously the CEO and CFO
and the Chief of Staff and the Group Chief Customer and Product Officer recently
10 departed. I learnt that the CEO of The Star Gold Coast resigned last Friday. As I
understand it, there has not yet been any permanent replacement for Ms Ivanoff as
Chief Legal Officer and the CEO Star Sydney you told us today is getting probative
approval tomorrow. Is that an accurate assessment of where things are at with the
Group Leadership Team?

15 **MR FOSTER:** Yes, I think so, Mr Bell. I think just for a little bit of context, a
number of the roles were planned to be permanent replacements with either the
existing or - excuse me - or other options, but with the uncertainty in the market a
few people have opted for interim or to hold off accepting roles. So that's still an
option to progress. And certainly for key roles there are a number of searches in
20 market and we have met a number of very capable people and I have discussed a
number of those with both Mr Weeks and Mr Crawford, who are very supportive on
a number of those appointments if we can land them in the short-term, which is
certainly what I'm trying to do. So - but there are people in roles, forward-looking
and progressing and some of that structure that you described, Mr Bell, will change,
25 anyway as we sort of move functions into the property businesses directly. Because
the structures will need to evolve to cater for that but there will be less requirements
in the central functions as there is today, if that makes a bit of sense.

MR BELL SC: Yes, I understand you have got aspirations for the future, but would
30 it be fair to say that the general leadership team at the moment is in a state of
disarray?

MR FOSTER: I wouldn't call it disarray. People are getting on with their day jobs
and focused on things. Certainly one of the things we are trying to do is to sort of
35 simplify the focus and agendas, and I do believe transitioning things into the
properties as quickly as we can will help that. But people are still very focused and
committed and I have been encouraged by that. We have obviously brought in some
extra capability as well with Ms Arzadon on the cultural front, which is very
important for the board. She is sitting on the leadership team and has a good voice
40 for that audience as well as assisting with the actual program and so forth itself. So
she has been giving us a very good perspective on both the strengths as well as the
areas to progress, and certainly simplification is one of those. We are undertaking
that health check of the remediation program, which the sole objective is to allow us
to build momentum and focus on that in the short-term. So I think with a clear focus
45 people are getting on with what they need to. The most unruly bit is probably for me
in terms of signing off bills and things like that, which is a large volume of paper, but
in terms of the priorities for the business I think we have got clear alignment and
people are focused on that.

MR BELL SC: And what is your realistic assessment of the time it's going to take to have all of the GLT positions filled with the right people on a permanent basis?

5 **MR FOSTER:** It's a little bit hard to answer that, but I have got a number of
outstanding candidates who still need a bit of a nudge. They are a little bit uncertain
given the circumstance of the company, but they are very keen to come on board.
They have got fantastic and relevant, and recent experience in a number of those key
10 roles and so I think they will be able to come quite quickly if those discussions are
successful. That includes potentially a CEO as well. But certainly my endeavour,
Mr Bell, is to get them on board as quickly as possible. Because I do recognise the
importance of delivering stability in the team and start moving forward, have a
greater trajectory.

15 **MR BELL SC:** I understand that you would want to have the positions filled as
quickly as possible. But what's your realistic assessment of how long it's likely to
take?

MR FOSTER: I think for a number of the key roles, given the progress of searches
20 and discussions, I think with - certainly within - and it could range between one and
three months, Mr Bell, to be realistic in most of the key roles. The one that is a little
bit uncertain and probably has got a longer time frame if I'm not successful with the
short-term, the nearer term option is probably the Group CEO role, to be honest, and
that is a tougher one to fill depending upon the avenue, but I am happy very
25 productive discussions with a strong candidate who would be terrific.

MR BELL SC: I assume it will take somewhat longer than that to have the whole of
the team fully briefed and functioning efficiently as a unit. Would that be right?

30 **MR FOSTER:** Well, I think with the right focus and right leadership those sort of
things and interventions can be achieved quite quickly with everybody's intent. So I
don't think it would take too long. There would be need to be effort and investment
upfront to make sure they come together as a team quickly. Talking to Elizabeth,
that's something, once we work our way through the Inquiry itself, I plan to do
35 myself with the GLT just to make sure we are focused and pulling together. But to do
that permanently, on a permanent basis it certainly needs the permanent solution to
do it again, I guess.

40 **MR BELL SC:** Yes. I assume you are aware that one of the views I expressed in the
2022 report was the need for close and direct supervision and governance of The Star
Pty Ltd, the owner of the Sydney casino?

MR FOSTER: Yes, Mr Bell.

45 **MR BELL SC:** According to my information, the board of The Star has only had
one meeting between 1 January 2023 and the announcement of this inquiry on 19
February 2024, being a meeting on 13 February 2024. Is that consistent with your
understanding?

MR FOSTER: Just one addition to that, Mr Bell. There was also a meeting really focused just on the accounts and I think that was in September or October, I believe. There has obviously been a larger and more structured number of Compliance
5 Committees, which was the focus. But as mentioned, that's certainly a priority to reorientate or change the nature and capacity of the board. The original scope discussed with Mr Weeks was - and I think there has been a little bit of a disconnect, but I have had subsequent discussions with Mr Weeks and the Commission to make those into proper full functioning boards and change the role of the group board as a
10 result. But they were first the scope of them was very much more compliance and regulatory-based as opposed to fulling functioning boards, if that makes sense. But certainly that's in the process of changing now.

MR BELL SC: And would you agree that the Sydney board should have met more frequently in that period?
15

MR FOSTER: I think - I think depending upon the scope but yes, I think in practice that would have been a better outcome.

MR BELL SC: And do you agree that Star Entertainment should have taken steps more quickly to engage a new CEO for Star Sydney after Mr Wharton resigned in April 2023?
20

MR FOSTER: Yes, notwithstanding the challenges at the time, I think we should
25 have tried to do more than we did to get somebody in there of quality quicker. Yes. And that's certainly been a major issue for us to get more progress in Sydney, absolutely.

MR BELL SC: Do you accept that up to now not enough has been done to ensure close and direct supervision of the governance of The Star Sydney?
30

MR FOSTER: Well, I think there has certainly been oversight delivered by the Group board and through the Compliance Committees, but I think the ideal model is to have the subsidiary boards fully functioning, overseeing both the compliance and the operations directly will be the optimum model.
35

MR BELL SC: I think you are agreeing with me, are you?

MR FOSTER: Yes, I am, Mr Bell.
40

MR BELL SC: You are aware that the manager of The Star Sydney is currently due to end his role on 30 September 2024?

MR FOSTER: Yes, I am.
45

MR BELL SC: What is your view of the prospects of The Star Sydney satisfactory managing and operating without continuing external management after that date?

MR FOSTER: Well, I certainly have a clear and realistic view that there is not a scenario and I don't think there ever was realistically of the company at this stage achieving suitability. So some form of supervision, whether it be a further extension of the manager - Mr Weeks for a period of time or the application of a monitor of some kind, I think that would be an appropriate step. And obviously some safeguards for the Commission in terms of requirements on the company to make sure that we keep focussed, don't slip and keep delivering on the plan that we have and will refine. So I think realistically that one of those two options at the discretion of the Commission would be a realistic option to enable us to continue on that and escalate that remediation.

MR BELL SC: And should I infer from that answer that you don't consider that Star Entertainment and The Star are presently suitable?

MR FOSTER: Yes, I would agree with that, Mr Bell.

MR BELL SC: Yes. I will take a 15-minute adjournment now until five to 4.

<THE HEARING ADJOURNED AT 3.40 PM

<THE HEARING RESUMED AT 3.56 PM

MR BELL SC: Mr Conde, did you have any further questions in public hearing for Mr Foster?

MR CONDE: No, Mr Bell.

MR BELL SC: Mr Walker, do you have any questions?

MR WALKER SC: No, thank you Mr Bell.

MR BELL SC: Dr Renwick, are you seeking leave to ask any questions?

DR RENWICK SC: I am, Commissioner, and I think I can say this in public session. There is a document we sent my learned friend Counsel Assisting. I take it there is no objection to me referring to that document in an open hearing? I think Mr Conde shook his head, I don't think there is.

MR BELL SC: I'm not aware of the document. Mr Conde, is that satisfactory to you?

MR CONDE: Yes, there is no objection, Mr Bell.

MR BELL SC: Is that the only matter on which you are seeking leave to ask questions?

DR RENWICK SC: No. To be clear, Commissioner, there are three topics. There is the -

MR BELL SC: Sorry, I might just move into private session so you can tell me in private.

5 <**THE HEARING IN PUBLIC SESSION ADJOURNED 3.57 PM**

<**THE HEARING IN PUBLIC SESSION RESUMED 4.00 PM**

MR BELL SC: Yes, Dr Renwick?

10

<**EXAMINATION BY DR RENWICK SC**

DR RENWICK SC: Mr Foster, my name is Renwick and I act for Mr Cooke. I have some questions to put to you. The first topic is the resignation statements to the staff
15 by Mr Cooke and the ASX statement. You will recall Mr Conde asked you a number of questions on those topics, do you?

MR FOSTER: Yes, I do.

20 **DR RENWICK SC:** All right. So, can I take you to this document, STA.8122.0001.3882? This is in the Hearing Book, Commissioner. So this is the Separation Deed between Mr Cooke and The Star Entertainment Group on 22 March 2024. You are familiar with this document, I dare say, Mr Foster?

25 **MR FOSTER:** Yes, it looks familiar, yes.

DR RENWICK SC: All right. And so can I take you then directly to page 3888?

30 And I take it there is no objection by anyone? There is none by my client to me reading out paragraph 2.3. In that case I will read it out.

So, Mr Foster, I will just read this out. This is the deed between Mr Cooke and Mr Foster says this:

35 "The employer..."

That's Star:

40 "...will make an announcement in terms of schedule 3 to the ASX Limited announcements platform before the next opening of the cash equities market conducted by ASX Limited after the time at which this deed has been executed and delivered by both parties. The Executive shall be entitled to make the statement set out in Schedule 4 to The Star employee team, joint venture participants, business
45 partners and key suppliers to The Star immediately following the release of ASX announcement."

And that's the end of the quote. Do you see that, Mr Foster?

MR FOSTER: Yes, I do.

DR RENWICK SC: And do you accept that that is the reason why Mr Cooke was contractually entitled as against Star to issue the statement he made to staff?

5

MR FOSTER: Yes, I see that now. I didn't recall that at the time but yes, I do.

DR RENWICK SC: Can I then, before taking you to the terms of the actual annexures in Schedule 3 and Schedule 4, and we will just go to this document, STA.8890.0002.0011.

10

Commissioner, this is another part of a series of texts between Mr Cooke and Mr Foster to which he has already been taken.

15 So the - do you see there, in the middle of the line, that you can see it is important. So you can assume this is Mr Cooke speaking to you:

"It is important for that I can send my note (exit statement) to the team to coincide with the ASX release - I am assuming that is still okay."

20

Do you see that?

MR FOSTER: Yes, I do

25 **DR RENWICK SC:** And that's your response, isn't it, "Yes, it is"?

MR FOSTER: Yes.

DR RENWICK SC: Thank you. Can you take that document down. I would like to you assume that if we can then go back to the separation deed, STA.8122.0001 and go to - it starts at 3882 and go forward to 3896. So that's your signature there, Mr Foster?

30

MR FOSTER: Yes, it is.

35

DR RENWICK SC: And the next page, please. And the next page. I'm sorry, just go back a step. Back to the preceding page. That's Ms Anne Ward's signature?

MR FOSTER: I don't know. Well, it's her name so I assume it is, yes.

40

DR RENWICK SC: Let's go forward then. So if we can go through to Schedule 3, which we will start at Schedule 4, which is 3904. So this is the CEO exit statement agreed between Star and Mr Cooke. And you can take it from me, Mr Foster, that is in the same terms as the email sent around at 6.22 - 6.20 that night. I will just read on to the record the reference to the actual email, which is STA.8000.0130.0001. Now, Mr Conde asked you a number of questions, you will recall, about this document?

45

MR FOSTER: Yes, I do.

DR RENWICK SC: And you are familiar with that document?

MR FOSTER: Yes.

5

DR RENWICK SC: Tell me if you want to take time to reread that to answer this question, which is: can you point to anything incorrect from your point of view in that statement? And I'm not there talking about questions of tone. I'm talking about is there anything you can point to which is incorrect. Please take your time and when you are ready ask for the document to go to the next page.

10

MR FOSTER: The next page is fine, Dr Renwick.

DR RENWICK SC: Next page, please. Just take your time.

15

MR FOSTER: Thank you.

DR RENWICK SC: Can you point to anything, reading that letter now, which is incorrect?

20

MR FOSTER: The only comment I would make, if you flick to the previous page, please.

DR RENWICK SC: Can we just go back to the preceding page?

25

MR FOSTER: I think obviously paragraph 7 is Mr Cooke's perspective and -

DR RENWICK SC: So just pause there. Sorry to interrupt you. That's the one "This view is informed by my understanding"?

30

MR FOSTER: Yes.

DR RENWICK SC: I'm sorry, please complete your answer.

35

MR FOSTER: So as I said, that's Mr Cooke's words. That was his perspective, which I understand is drawn from obviously a number of conversations, plus some relevant media commentary, but this was his statement with his perspective.

DR RENWICK SC: You say it is from your point of view, it's incorrect?

40

MR FOSTER: Well, as I said, I believe it's just drawn from Mr Cooke's views as well as a source from various media comments and quotes is my recollection.

DR RENWICK SC: But you can't point to anything that's incorrect?

45

MR FOSTER: Well, based on how I have described it, I couldn't make a comment either way.

DR RENWICK SC: I see, thank you. If we can then go back two pages please, to the Schedule 3, which is the agreed ASX announcement, and let me read this sentence attributed to you in the ASX statement:

5 "Robbie has worked tirelessly since he joined in October 2022, focussing on
stabilising the operations, resolving a number of existential threats to the business,
addressing separate remediation, demands from regulators and rebuilding the
management team and systems, including the addition of more senior risk,
10 compliance and financial crime executive and the commencement of our culture
transformation. Robbie shared in a resolve to put safe, responsible and ethical
gaming at the core of what we do."

And I end the quote. You approved the entire statement, but you approved that which
is attributed to you?

15

MR FOSTER: Yes.

DR RENWICK SC: And you stand by that?

20 **MR FOSTER:** Yes, I do.

DR RENWICK SC: You will recall - I forget whether it was the Commissioner or
Mr Conde - referred you to what Dr Lagan said last week which included this
statement that:

25

"Mr Cooke's actions saved the business."

Your view on that?

30 **MR FOSTER:** Mr Cooke certainly worked tirelessly and we faced quite a number
of major, major issues within the business that he worked tirelessly to make sure that
we navigated our way through those and he did do a terrific job in that context,
absolutely.

35 **DR RENWICK SC:** All right. We can take that document down. The next topic I
would like to take you to, Mr Foster, is the events of December 2023. You will recall
you were asked some questions by Mr Conde about meetings with the NICC and the
Chief Commissioner, and also meetings of the board discussing the document - the
manager's reports. Do you remember thank those questions?

40

MR FOSTER: Yes, I do.

DR RENWICK SC: And so you will remember there were questions about a
meeting with the NICC and the Chief Commissioner, I think, on 7 December 2023 to
45 which Mr Cooke was not invited or, rather he didn't attend?

MR FOSTER: Yes.

DR RENWICK SC: You will remember you were asked some questions about the meeting the next day, or the board meeting, where before others - non-board members attended, about an hour and a half was spent with Mr Cooke.

5 **MR FOSTER:** Yes.

DR RENWICK SC: You will also recall that there were some questions about meetings on 18 December with the NICC and 19 December with the board. That's just to orient you. You recall the chronology of those meetings?

10

MR FOSTER: Yes.

DR RENWICK SC: So going back to the first meeting on 7 December with, I think the Chief Commissioner and the manager and no doubt others, and the board, other than Mr Cooke. So, did those attending the meeting from the NICC, including the Chief Commissioner, say, in substance, why they had lost confidence in Mr Cooke to the board?

15

MR FOSTER: I can't remember the exact words, but certainly the absence of a CEO in Sydney and that he wasn't moving fast enough, and I think something along the lines of not listening may have been included in the commentary, but I don't have a crystal clear recollection, Dr Renwick.

20

DR RENWICK SC: All right. So, in relation to the suggestion by the regulator that Mr Cooke was not listening, to your observation, was that something you had seen with Mr Cooke?

25

MR FOSTER: I think overall Mr Cooke did a lot of things incredibly well and you have used a couple of examples before. I think he recognised the requirement and pressure around getting people into roles quicker and I do think, as I have said, with the benefit of looking back maybe there is something more the company could have done to make that happen. But the circumstances at the time with the New South Wales tax and financial uncertainty made it very difficult not only to complete the task, but also to attract suitable candidates. But I certainly, if I put myself in the Commission's shoes, the vacancy for, at that time eight months or whatever it was between the time Mr Wharton left is a long time, albeit we were getting close to having someone in the role, but undoubtedly it's had an impact on the business.

30

35

DR RENWICK SC: I will bring you back to my question in a minute, but in view of that answer in relation to the replacement of the Sydney CEO, did the strategic review with the Sydney casino going on at that time have an impact in trying to find a replacement for the Sydney CEO?

40

MR FOSTER: Yes. I believe so. I sort of characterise it as financial uncertainty, but certainly a driver of that was the strategic review underway, yes.

45

DR RENWICK SC: All right. I know it has been a long day for you, Mr Foster, but just to bring you back to my question which was the suggestion by the regulator that

one of the reasons why it had lost confidence in Mr Cooke, I think you mentioned, was that he was not listening. My question to you was, was that your experience, not the regulator's experience? Was that your experience in your professional dealings with Mr Cooke?

5

MR FOSTER: No, I think he certainly listened and understood various communications. The challenge was in committing and executing it. Whether it be because of the circumstances that we've touched on through various examples or making different decisions, or different activities to try and get that done quicker than what we were able to. But we have found it a challenge for a period of time, but encouraged by more recent activities. At times it has been very challenging to source talent into the business, which we certainly found in the process for the CEO of Sydney.

10

15 **DR RENWICK SC:** Yes. Thank you. So I think you mentioned another concern or reason why the regulator said they had lost confidence is that Star had not moved fast enough. Now, is that in relation to remediation in the Sydney casino in particular? Is that what you were referring to?

20

MR FOSTER: Well, I mean as - as we know, the full remediation plan was not endorsed in Queensland until I think October, but there was numerous activities underway. And certainly completing things like the root cause analysis and The Ethics Centre review, undertaking the work during the course of 2023 for the creation of the purpose, vision and values was a terrific exercise, which engaged quite a broad base within the organisation of influencers. So we sort of built from the bottom up. But there clearly - which again as we touched on earlier, there is always more that you can do in businesses and I do think because of those other impacts and priorities, which - and appropriately there was no-one else that should be focused on those key activities than Mr Cooke. That undoubtedly would have had an impact on the ability, together with the absence of a CEO in Sydney at the time, would not have assisted. Because certainly if there was a permanent solution, which obviously wasn't available at the time, that would have been able to carry much of the focus and burden in the Sydney property.

25

30

35 **DR RENWICK SC:** Can I just ask you to put to one side now the evidence about the Sydney CEO?

MR FOSTER: Yes.

40

DR RENWICK SC: We have heard your answer on that. What I was seeking to have you concentrate on was the suggestion that there was not sufficiently fast remediation. You have given some evidence about a remediation plan being approved in Queensland in October. Can you please assume that, in fact, that remediation plan had only been approved two weeks before this meeting, namely, 24 November. So can you make that assumption, please?

45

MR FOSTER: Yes, in terms of the formal plan, yes.

DR RENWICK SC: Yes, indeed. That being so, did you think it was a fair criticism, given it had only been approved so recently, to say that Mr Cooke was unsuitable because he hadn't moved sufficiently quickly on the remediation?

5 **MR FOSTER:** Well, I think there certainly was a number of factors which impacted Mr Cooke's ability and focus, and many of them critical to the broader organisation. However, we certainly had conversations -

10 **DR RENWICK SC:** Mr Foster, I'm sorry. Mr Foster, I'm so sorry. I'm just going to stop you there if I may.

MR FOSTER: Yes, of course.

15 **DR RENWICK SC:** Can I ask you and if my questions are not clear I'm sure you will tell me.

MR FOSTER: Yes.

20 **DR RENWICK SC:** I just want you to focus on the notion that one reason why the regulator seemed to have lost confidence, told the board at the 7 December meeting that it had lost confidence, was that Star and Mr Cooke were not moving fast enough in the remediation and my question simply was: did you feel at the time that was a fair criticism or an unfair criticism?

25 **MR FOSTER:** In the Commission's shoes, I think it was a fair comment.

DR RENWICK SC: But I'm asking you what your view was and what the board's view was, as at 7 December. Not now.

30 **MR FOSTER:** Yes.

DR RENWICK SC: As at 7 December, did you feel that that was a fair criticism or not?

35 **MR FOSTER:** I think our view would be that we should have moved faster on a number of things.

DR RENWICK SC: I'm sorry if I'm not being clear.

40 **MR FOSTER:** I will - sorry.

DR RENWICK SC: I'm sorry, just if I can ask you to stop there. I'm asking you what your view was, to the extent you recall it - perhaps you don't - on 7 December 2023. Do you have a recollection? And if so, what is it, please?

45

MR FOSTER: I can't specifically specify if it was that date, but certainly the board and myself would have a view that obviously plenty of impacts and constraints, but we are - I think that was a fair statement.

DR RENWICK SC: The next thing then is, I think you gave some evidence earlier that when you had the meeting the next day between 8 and 9.30 between the board and the - and Mr Cooke, you said in evidence that Mr Cooke said "He was willing to do what was right for the company." Do you remember giving that evidence earlier today?

MR FOSTER: Yes, I do.

DR RENWICK SC: And what I would like to put to you is that what Mr Cooke, in substance, indicated - invited was that the board would remove him, because that would be in the best interests of the company. Do you recall that?

MR FOSTER: Yes, I think that's what I said, yes.

DR RENWICK SC: And it's the case, isn't it, that despite that offer by Mr Cooke, the board declined it at that stage, on 8 December 2023?

MR FOSTER: I don't specifically remember the 8th. I do know that over the subsequent 10 or 11 days there was quite a number of discussions, differing views at different times within the board before we sort of converged on a position to have a further discussion with Mr Crawford on the 18th.

DR RENWICK SC: Well, you have already agreed with me that he made the offer he did on the meeting of 8 December between 8 and 9.30 am and it's true, isn't it, that the offer had not been taken up by the board on 8 December?

MR FOSTER: That's correct.

DR RENWICK SC: All right. And then, is it also the case in that the 11 days ensuing between that meeting and the meeting on 19 December, the board meeting that is to say, Mr Cooke asked for permission to speak individually to other directors. Do you remember that?

MR FOSTER: Yes, I do.

DR RENWICK SC: And do you remember he spoke to you? I will ask you what he spoke to you about, but do you remember he spoke to you?

MR FOSTER: Yes, we would have spoken many times but yes, I do.

DR RENWICK SC: All right. And do you know whether he spoke to other directors?

MR FOSTER: I believe so.

DR RENWICK SC: All right. So let me ask you what he said to you in relation to whether he should go or stay between those meetings. Do you have any recollection?

MR FOSTER: Not specifically, but I think to my point earlier today, Mr Cooke as you accounted was willing to do the right thing by the company at that point and as I mentioned, there was quite a number of things underway, including bringing in new talent that I felt anyway, and obviously at that point and then as I said, there was subsequent conversations and discussions, but that it was important to the company to get those people secured so that we could provide a better platform to move forward. But on the basis, as I mentioned, that we had a very - an open conversation with Mr Crawford on the 18th to get his feedback on whether a reset with Mr Cooke would be possible or whether a different path was the only option.

DR RENWICK SC: I will take you then to the question of the response by the board to the manager's reports. So, can I take you first to this document, STA.8517.0057.1332? STA.8517.0057.1332.

MR BELL SC: Mr Conde, do you know why we are having a difficulty with this particular document.

MR CONDE: I understand, Mr Bell, it is necessary to read the front number on the document. STA.8517.0057.1331. It's just come up.

DR RENWICK SC: That's the document. So firstly I should ask you, Mr Foster, whether you are familiar with this document. Have you seen it before?

MR FOSTER: I believe I have, yes.

DR RENWICK SC: All right. Well let me just be clear here what I'm asking you about. So this is a question by this Commission, Item 1, to the state the names whether internal or external who were involved in drafting the letters by you and Mr Cooke to the NICC and the response in green front to the two manager's reports. So you understand that?

MR FOSTER: Yes.

DR RENWICK SC: And so the next three paragraphs set out the recital of persons involved and to be fair, if you drop down three paragraphs:

"The star entities understanding involvement in drafting or preparing the documents to include being asked to comment on one of the document or factual input, without necessarily providing per the drafting of or being provided with the draft of the document in accordance with the searches and inquiries, the names of the persons involved are as follows."

So do you see there, there is the name of three external lawyers?

MR FOSTER: Yes.

DR RENWICK SC: Leave them to one side. So the - can you just identify, please, the names of board members. I appreciate it is obvious, but that's you, isn't it?

MR FOSTER: Yes, I'm second on the list.

5

DR RENWICK SC: And Mr Cooke. And just identify the other board members, please.

MR FOSTER: Mr Hodgson, Peter Hodgson, Michael Issenberg, Deborah Page, Toni Thornton and Anne Ward.

10

DR RENWICK SC: Yes. And the other persons who are mentioned there, they are all internal people, aren't they?

MR FOSTER: Yes, they are.

15

DR RENWICK SC: Leaving aside the three lawyers, who we have already mentioned?

MR FOSTER: Yes, of course.

20

DR RENWICK SC: Yes. And so they are people who are senior leaders, are they?

MR FOSTER: Yes, they are all members of the Group Leadership Team, I believe, yes.

25

DR RENWICK SC: Can we go to the next page, please? Do you see at the top there, there are six other people who provided input in circumstances where they may not have understood the document? Where do these people sit in the hierarchy of the company, please? Just broadly?

30

MR FOSTER: I don't know all of them, to be honest. A couple look like they are in the People and Performance Team, Ritu is in the Risk Team. I think Maree and Judith are in the People and Performance Team. Unsure of the other three.

35

DR RENWICK SC: All right. And then Item 2 requires the name of all persons who are provided with copies of the manager's report and addendum when they got it and you will see that set out there. So again, leaving aside the names of the lawyers, the NICC reference, they are almost all board members, including Mr Cooke aren't they?

40

MR FOSTER: With the exception of -

DR RENWICK SC: Mr Saunders?

45

MR FOSTER: Mr Saunders, Ms Rennell and Mr Jenkins.

DR RENWICK SC: Yes, all right. So we can take that document down, please.

MR FOSTER: And Ms Ryan down the bottom, second from the bottom.

5 **DR RENWICK SC:** All right. Thank you very much. So now some questions about
how the response to the manager's reports were prepared and how the covering
letters were prepared. So I am going to put some propositions to you and please let
me know if you agree or disagree. The first thing is you'd agree, wouldn't you, that
the manager's reports, the two of them to which response was given in green, were
reports to the board?

10

MR FOSTER: Yes.

DR RENWICK SC: And it was the board who chose how to respond and how to
prepare its response. That's fair, isn't it?

15

MR FOSTER: Including Mr Cooke, yes, that's correct.

DR RENWICK SC: Yes, indeed. Indeed. And so the first thing is, a decision was
made, wasn't it, that it would not be widely distributed, including among the senior
leaders.

20

MR FOSTER: Yes, that's correct.

DR RENWICK SC: And what were the reasons for that board decision?

25

MR FOSTER: The main reason, as I mentioned earlier, was some concern around
some of the contents of the report that had commentary around a number of
employees and senior leaders within the organisation and there was concern given
the heightened anxiety within the organisation that that would be problematic. And in
addition to that, which I again mentioned earlier from discussion with Mr Crawford,
he advised that he was not going to distribute it more broadly and so in the same
conversation I had committed to him that I wouldn't distribute it more broadly than
the board at that point as well.

30

35 **DR RENWICK SC:** I see. Yes, thank you. I think I understand that. And so is this
right? Mr Cooke was given the immediate responsibility of getting a first draft or cut
together for the consideration of the board?

MR FOSTER: Yes.

40

DR RENWICK SC: And consistent with the general direction you have just
mentioned, it was up to him to decide who within Star he would share particular
portions with so that the first draft could be prepared?

45 **MR FOSTER:** Well, he was - certainly took on responsibility to compile the report
and from what I remember, he did need to provide - get some additional information
from certain members of the management and leadership teams.

DR RENWICK SC: Yes, and that would be consistent with the RFI I showed you a minute ago -

MR FOSTER: Yes.

5

DR RENWICK SC: - and the small number of people who were consulted. Right?

MR FOSTER: Yes.

10 **DR RENWICK SC:** All right. Now, the board was very actively involved in drafting and settling every aspect of the response, wasn't it?

MR FOSTER: It certainly was an involved process with numerous iterations, yes.

15 **DR RENWICK SC:** Yes, but you are not suggesting that any part of the response went out which the board didn't know?

MR FOSTER: No, it was across the whole report, yes.

20 **DR RENWICK SC:** And were you at the time - leave aside now - but at the time you were happy with every aspect of it?

MR FOSTER: It certainly felt at that particular point that it was necessary to be very clear in terms of our response and details.

25

DR RENWICK SC: And I suggest in part that was because you didn't want to leave any contested matters contested with the regulator unanswered?

30 **MR FOSTER:** I think the answer is yes, we did want to provide a complete detailed list of actions and activities that had been taken by the company, yes.

DR RENWICK SC: Yes, all right. Nevertheless, it was - well, can I put it this way? Can I ask you this question? Do you recall Mr Cooke telling the board that the response as finally sent - this is before it went - involved the board going down a one-way street or road with the regulator? Do you recall him saying that?

35

MR FOSTER: No, I don't. But as mentioned before, we knew it would be at the time challenging, a challenging document to receive by the Commission.

40 **DR RENWICK SC:** Yes. And, in effect, a turn in the road had been made. There was no going back. Once you had made the decision to respond in a direct way in the terms that you did, you weren't going to retract any part of it, were you?

45 **MR FOSTER:** Well, I think it was important, given the circumstance at the time, we felt a view that we needed to provide that complete information. But certainly as detailed in the cover letter in the previous correspondence in December, we were still hopeful and looking forward to some constructive engagement to move forward. But felt that was important, given the media commentary and other things that we did

have to put down on paper a lot of the achievements and activities that the company had done to have it documented.

5 **DR RENWICK SC:** Just to go back to the topic, I did take you to the separation deed earlier. You are not a lawyer, I take it?

MR FOSTER: No, thankfully.

10 **DR RENWICK SC:** So you have no particular view about whether it's properly characterised in one way or another?

MR FOSTER: Not forensically, no.

15 **DR RENWICK SC:** Yes. Just one final question then. Just asking about your observation about Mr Cooke's interactions with the senior leaders. What was your observation about how he performed his duties with those most senior leaders, the GLT?

20 **MR FOSTER:** I - I think Robbie is a very personable person. He was incredibly focused, hard-working and well-intended. I think he built some very good relationships with a number of the team and supported them very much. He made some choices early on to really support and back some people that certainly the board questioned at the time, but supported him in his decisions and he did back them through some very difficult periods. But my approach, he's very personable. I
25 went to a number of staff forums with Mr Cooke as well. He constantly and consistently delivered the right messages to staff in those forums and had a good relationship with staff at a number of levels, from my observation. So it was just his character. And so I do think he was very much intended in the right direction and worked incredibly hard. The company was facing a number of very large challenges,
30 which no doubt has impacted our progress over that time. But I do believe Mr Cooke's heart was always in the right place.

35 **DR RENWICK SC:** Did I understand you to say that there were people that Mr Cooke backed in the GLT that the board didn't support? Did I understand that correctly?

MR FOSTER: Yes.

40 **DR RENWICK SC:** And who was that?

MR FOSTER: Probably most noticeably, Ms Katsibouba.

DR RENWICK SC: I see.

45 **MR FOSTER:** And it - yes.

DR RENWICK SC: One final question just about what the company was facing. I took you to Mr Cooke's executive statement and that listed an enormous number of things which Star was facing and just to quote from it:

5 "It was rare that a business faces as many issues simultaneously as we have dealt with at the Star."

And he gives a long list and you have agreed with that list and indeed it is in the response to the manager. That's right, isn't it? Star was facing an extraordinary
10 number of issues simultaneously, in your experience, as a board member, including on other boards?

MR FOSTER: Yes, I could safely say that's true.

15 **DR RENWICK SC:** Can I just have one minute, please, Commissioner?

MR BELL SC: Yes.

DR RENWICK SC: I just have one. Yes. Yes, just to correct the transcript reference
20 to one of the documents, it's STA.8122.0001.0010. That is the exit statement, which actually went out. So that's the email. The terms of it will be found in Schedule 4, Commissioner, but I gave the incorrect reference to the email that went out at 6.20 pm. Those are the questions for Mr Foster.

25 **MR BELL SC:** Yes, Mr Harris?

<EXAMINATION BY MR HARRIS

MR HARRIS: Mr Foster, my name is Harris. I'm acting for Ms Katsibouba. I just
30 have a couple of points of clarification that arose out of your conversation with Mr Conde. You accept, don't you, that Mr - that Ms Katsibouba's decision to leave The Star was a decision of her own volition and was instigated by her?

MR FOSTER: Mr Harris, I certainly concur that the final document included a
35 resignation, which again I only really got clarity on in the last little while, but I don't have intimate knowledge to the commencement of or the nature of the conversations that were had between herself and Mr Cooke.

MR HARRIS: So sitting here today, you have no basis though to say - to
40 second-guess what I just put to you? You have no basis to say that the decision was anyone other than Ms Katsibouba's, do you?

MR FOSTER: That's what I said, yes.

45 **MR HARRIS:** You would also agree, would you not, that any suggestion or implication that may have been conveyed to the market by the timing of the announcements of Ms Katsibouba's resignation and Mr Cooke's departure, that

Ms Katsibouba's departure may have in any way been connected with concerns of the regulator would be unfair?

5 **MR FOSTER:** Well, it certainly wasn't a consideration or a factor that was considered in that. Obviously I am aware that Ms Katsibouba was mentioned in the media previously, but that is unrelated to the exercise of her departure.

10 **MR HARRIS:** So if that impression had been conveyed, then either inadvertently or not, that impression would have been unfair. Correct?

MR FOSTER: Well, it - it wasn't the main - it certainly wasn't the driver of her exit.

MR HARRIS: It wasn't any part of her exit, was it?

15 **MR FOSTER:** Well, it - I think I - it meant to convey the same thing, Mr Harris. So, yes.

MR HARRIS: Thank you.

20 I have no more questions, Mr Bell.

MR BELL SC: Mr Gyles, do you seek leave to ask any questions? I think you are on mute, Mr Gyles?

25 **MR GYLES SC:** I'm sorry, Mr Bell. I do not seek leave, thank you.

MR BELL SC: Yes.

30 Mr Conde, anything arising?

MR CONDE: No, Mr Bell.

MR BELL SC: Yes. Did you have questions for Mr Foster in private session?

35 **MR CONDE:** Yes, just one quick question, Mr Bell. If we can move to that.

MR BELL SC: Mr Foster, we will now move into private hearing mode.

40 <THE HEARING IN PUBLIC SESSION ADJOURNED 4.43 PM

<THE HEARING IN PUBLIC SESSION RESUMED 4.45 PM

45 **MR BELL SC:** Mr Foster, that concludes your examination today. Thank you for attending and thank you for your evidence. The direction I will make is that your examination be adjourned, which means it is possible you may be recalled but that won't happen unless you hear from the Solicitors Assisting.

MR FOSTER: Thank you Mr Bell and thank you.

MR BELL SC: Yes, Mr Conde?

5 **DR RENWICK SC:** I'm sorry to interrupt. I have a short application to make in private session at a convenient time.

MR BELL SC: Yes. Does it involve Mr Foster?

10 **DR RENWICK SC:** No. It does not, but I just thought I would mention. It doesn't involve Mr Foster, Commissioner.

MR BELL SC: Yes, thank you, Mr Foster.

15 **<THE WITNESS WAS RELEASED**

MR BELL SC: Yes, Mr Conde?

20 **MR CONDE:** Mr Bell, it might be time for Dr Renwick to bring his application if we -

MR BELL SC: Who is the next witness?

25 **MR CONDE:** Sorry, the next witness is Mr Robbie Cooke and normally we would adjourn for the change of witness, but if there is an application -

MR BELL SC: Are you making an application in relation to Mr Cooke's evidence, Dr Renwick?

30 **DR RENWICK SC:** Yes, indeed, Commissioner.

MR BELL SC: Operator, please take us back to private mode.

<THE HEARING IN PUBLIC SESSION ADJOURNED 4.46 PM

35 **<THE HEARING IN PUBLIC SESSION RESUMED 4.54 PM**

MR BELL SC: Yes, I will now adjourn until 10 am tomorrow.

<THE HEARING ADJOURNED AT 4.54 PM