



**INDEPENDENT LIQUOR AND GAMING AUTHORITY OF NSW**

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

**THE HONOURABLE PA BERGIN SC  
COMMISSIONER**

**PUBLIC HEARING  
SYDNEY**

**THURSDAY, 12 NOVEMBER 2020  
AT 10.00 AM**

**Continued from 11.11.20**

**DAY 54**

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**MR A. BELL SC, MS N. SHARP SC, MR S. ASPINALL and MR N. CONDYLIS appear as counsel assisting the Inquiry**  
**MS F. SHAND appears for Crown Resorts Limited and Crown Sydney Gaming Proprietary Limited**  
5 **MR N. HUTLEY SC appears with MR T. O'BRIEN and MR A. D'ARVILLE for CPH Crown Holdings Proprietary Limited**  
**MR J. STOLJAR SC appears with MS Z. HILLMAN for Melco Resorts & Entertainment Limited**

10

COMMISSIONER: Yes. Thank you. Ms Shand, you're for Crown today. Is that correct, Ms Shand?

15 MS SHAND: Good morning, Commissioner. Sorry, I didn't hear the beginning of what you just said.

COMMISSIONER: I just said, Ms Shand, are you for Crown today?

20 MS SHAND: Yes, I am. Thank you, Commissioner.

COMMISSIONER: Ms Shand, I did want to raise something in respect of one matter that's in the exhibits. The statement that Mr Barton has provided to the Inquiry, which is referred to as the fourth statement; you're aware of that?

25 MS SHAND: Yes.

COMMISSIONER: Yes, all right. One of the problems that I think needs to be addressed, and having regard to the timing, what had happened was that Mr Barton filed a fourth statement in the Inquiry and it was in response to some questions posed for him relating to an email regarding what would be described generally as the Riverbank/Southbank communications with the ANZ Bank. It was suggested in the correspondence that there were failures and very serious issues identified by Mr Birch who is the bank officer. Mr Birch suggested that there was certainly – there'd been two patrons who had been charged and convicted and there was no evidence of any review of those particular patrons' accounts. And he did a comparative exercise between Crown's policies and approaches and the ANZs policies and approaches, and he also identified that there was only a minimum amount of information, and there was no evidence of any client reviews when there was adverse media, and that risk rating of customers was low and wouldn't be reviewed for two years or so in a comparative way.

45 And Mr Barton has indicated in his statement that he didn't see and does not see today such things as "serious issues" or "failures", and the structure of what has happened is that Mr Barton hasn't been examined on that statement, and in circumstances where, if one can't see a serious issue that might amount to an adverse comment about Mr Barton, I need to indicate to you that Mr Barton can be given the

opportunity to address a possible adverse comment because if you look at those things and think that they're not serious or serious issues then there may be adverse comment and I wanted to give the opportunity to Mr Barton to either file – reflect on the matter and file a further statement or you may want to just deal with it in  
5 submissions, but I wanted you to know that, having reviewed the statement now in evidence, it does look as though some adverse comment could be made by me in respect of not identifying them as serious issues, and it may be a matter of reflection, I think, Ms Shand. And if Mr Barton would like to file a further statement then I will grant that leave.

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MS SHAND: Thank you, Commissioner. Yes, I will take instructions on that.

COMMISSIONER: Yes, thank you, Ms Shand. Yes, Mr Hutley.

15 MR HUTLEY: Thank you, Madam Commissioner.

COMMISSIONER: Yes.

20 MR HUTLEY: As I indicated yesterday, this morning we turn to the section of the case dealing with the China arrests.

COMMISSIONER: Yes.

25 MR HUTLEY: Counsel assisting has made a series of admissions about Mr Johnston's conduct concerning three events out of a larger number of risk escalation factors concerning the risk of Crown – to Crown group staff in China and their arrest, namely: firstly, the steps he took on learning of an announced crackdown on foreign casinos in China; secondly, the manner of his reporting to the board of Crown  
30 Resorts concerning the arrests of employees of South Korean casinos operating in China following the announcement of the crackdown on foreign casinos in China; and thirdly, that he was notified that a staff member in China had been questioned by police in China but did not report this to the risk management committee or the Crown Resorts board.

35 Mr Packer knew none of the risk escalation factors other than the South Korean arrests following which he requested the then executive chairman and CEO to look into the matter. Nevertheless, counsel assisting has submitted that, and I quote:

40 *A significant cause to the risk management and governance failures was the compromised independence of the Crown Resorts board by the dominance of CPH and the insertion by Mr Packer of informal reporting lines to Mr Johnston and his VIP working group.*

45 This, so it's contended, led to the VIP international executives reporting problems to that group "rather to their direct reports in the risk management structures", referring to there the submissions at transcript 4917.5 to .10. Counsel assisting's statements of issues and contentions on China arrests list a number of matters which are not in

issue. The CPH parties agree that those matters described in A1, A3, A4, A6, A7, A15 and A17 are correct. In respect of the remaining matters said not to be in issue, while the CPH parties agree with parts of those remaining paragraphs they contend that some are incomplete or require additional context and in some cases, with respect, are incorrectly stated.

They are addressed in detail in the submissions that follow. Some are not adverted to because they're solely concerned with what – as I described – I indicated yesterday are, as it were, solely Crown Resorts concerns and it doesn't seem appropriate that we take a particular position in relation to them. Now, our submissions, consistent with the approach we took yesterday, will focus on the position of the CPH parties. For that reason we will not address you orally at this time as to the contentions made as to the governance and risk management structures and framework of Crown Resorts and the culture of the organisation other than where there are specific contentions about the intersection between the CPH parties and those matters.

We may, as I indicated yesterday, have some supplementary submissions on those broader topics after Crown Resorts has made its submission, but we would accept they would be in writing on this topic should the Commission be minded to accept them. Before examining Mr Johnston's approach to the three risk escalation factors and the contended impact of CPH on reporting lines and governance, we will address the dangers of hindsight reasoning as well as some relevant background to Crown's operations in China and its reporting and governance structures. We will then address, firstly, the evidence as to the extent of Mr Johnston's involvement in the VIP business, which we will submit demonstrates that his involvement was more limited than described in counsel assisting's submissions.

Next, that awareness of the general corruption crackdown and the evidence about development of financial plans concerning the VIP international business will be undertaken. Next, assurances – the assurances received by Mr Johnston from Mr Craigie regarding Crown Group's Asian operations in 2014. Then the information Mr Johnston and others received about the foreign casino crackdown and, in particular, that a number of other directors received information about that crackdown at that time.

After that, we'll turn to the Korean arrests and the assurances received by Mr Johnston about that matter and his understanding that Crown's legal team were involved in obtaining advice on that matter and that Mr Craigie was being kept informed. Thereafter, we'll turn to the information Mr Johnston did not have or receive about the questioning of the Crown employee by the Chinese police, followed by a consideration of Mr Johnston's communications to the board about the Koreans' arrests and, finally, Mr Packer's evidence about the risks of China.

Our submissions will, in essence, be, firstly, that senior members of Crown Resorts management at the time had direct responsibility for escalation and management of risk, but did not do so; that's our first proposition. Our second proposition is, properly considered, without viewing the matter through the prism of hindsight, Mr

Johnston's actions at the time were reasonable and appropriate in the light of the limited information he had in the context, importantly, of the appearance of a sophisticated, developed corporation which had many structures designed to ensure that information was gathered, assessed and reported through operative chains,  
5 including the risk management committee, senior executives, and the like, culminating, if thought – if judged reasonably appropriate, through communication to the board through its regular meetings.

10 Thirdly, we will submit there is no basis for a finding that Mr Johnston knew of the risk of detention, arrest or conviction of the Crown group staff in China. Fourthly, we'll submit that the questions answered by Crown directors and Mr Packer about contended failings by Mr Johnston, of necessity, were, stripped of context at the remote time with which we are concerned and in the context in which it happened,  
15 were exposed to the inevitable risk of hindsight analysis. And we make no criticism of those witnesses as to their honesty, but this, we will submit, is a classic context where the risk of hindsight analysis, observation, is heightened having regard to the multiplicity of materials that these witnesses had become aware of which were not co-extensive by any means with the knowledge of Mr Johnston, and that they were not practised as you, Madam Commissioner are practised, and lawyers are trained, to  
20 address such questions stripped of that accumulation of irrelevant material or hindsight influences.

So we don't, for a moment, suggest those witnesses who gave evidence were being other than honest, but you, Madam Commissioner – and I think, in effect, you've  
25 observed upon this in respect of a number of matters – the risk of hindsight bias in the context such as this, particularly in an environment of what might be described as charged as this Inquiry, is high. And we will submit that you will assess the likelihood of conduct and the appropriateness of conduct by approaching the question, stripping the Inquiry of those risks.

30 Fifthly, we will submit that adverse findings as to Mr Johnston's credit and submissions that part of his evidence should not be accepted were not justified. Sixthly, the contention that the conduct of the VIP working group "was a factor which caused the China arrests" is without evidentiary foundation. Seventhly, there  
35 is no basis for findings by the Inquiry that governance structures of Crown Resorts were compromised by the influence of CPH or any of the CPH parties in a way which resulted in failures to recognise and report escalating risk and, in this regard, we advert to our learned friends the counsel assisting's submissions at transcript 3843 line 30 to 4843 line 33. And, finally, there is no evidence that any of the CPH  
40 parties encouraged the pursuit of financial outcomes while disregarding non-financial risks.

Now, turning, firstly to the issue of hindsight reasoning, the Inquiry should be astute to assess the natural human temptation to judge the conduct of persons, including Mr  
45 Johnston, with the benefit of hindsight. Now, Madam Commissioner, you'd be well aware of the statement of Chief Justice Gleeson warning against such risks in *Rosenberg v Percival* (2001) 205 CLR 434, at 441 to 442, and particularly to risk

from – to single out from a number of adverse contingencies or to attach to it the significance it later assumed. Now, that – there are many other cases – and we will refer to them in our written submissions – such as the famous statement of Sir Garfield Barwick in *Maloney v Commissioner for Railways (NSW)* 52 ALJR 292.

5 Such dangers are familiar to lawyers and the cases are littered in all fields with a consideration of that danger, a danger to which judges have often succumb, who are men and women trained to avoid it, which points out its peculiar risk with respect to lay witnesses.

10 Now – so in evaluating the possible warning signs, as they’re called, concerning the China arrests, the Inquiry would be appropriately wary of that risk. It’s easy to suggest that warning signs were obvious with hindsight. Considering the circumstances, in fact, known to the individual the subject of the Inquiry, which  
15 contextually here is Mr Johnston, is a very different exercise. Now, part of that contextualisation must be, in effect, assessing what officers of Crown, by this I mean a director, at the relevant times would have by way of background in relation to the organisation – the Crown Resorts organisation – and that organisation’s involvement in business in what is sometimes called as China and Greater China. The Crown Group had operations in Greater China for a long period of time. It had staff  
20 operating in China, whether based in mainland China or otherwise for about two decades, and that was the subject of evidence by Mr O’Connor at transcript 1990, lines 22 to 27 and in exhibit R34, and Mr – which is – that’s his statement which is CRL.540.001.0210. Mr Felstead gave evidence to the same effect in his evidence.

25 Can I go to exhibit AL23 which is INQ.010.001.0001 at pinpoint 0013. This is the Crown Resorts first annual report in 2008. And at 13 in the first column you will see, Madam Commissioner, the quote:

30 *Crown Melbourne has one of the largest single site VIP gaming operations in the world. The complex is strongly marketed throughout Asia, a feature of which is the promotion of Melbourne and Victoria as attractive tourist destinations. Along with major events that Melbourne offers, Crown Melbourne hosts its own attractions to stimulate international VIP.*

35 And it says – goes through those, and then:

40 *Sales resources have been expanded in Greater China, including Hong Kong and Macau, to capitalise on emerging opportunities. Select customers have access –*

45 and so it goes on. That’s back in 2008. The scale of Crown Group’s operation in Greater China was significant. It employed a number of staff throughout Greater China. Again – and I won’t take you to them, Mr Felstead at paragraph 12 of exhibit O67 referred to it, as did Mr O’Connor at paragraph 65, 70 and 94 of exhibit R34, and that evidence indicated that the staff was organised in various divisions to run its operations which often interacted with other aspects of the Crown Resorts business. That’s Mr O’Connor’s affidavit, exhibit 34 at paragraphs 22 to 23.

And for example, Mr O'Connor, who had responsibility for the general management and oversight of the VIP international business, which included jurisdictions other than Greater China, said that at one point he had management of over 500 staff across Australia, Asia and the UK in teams including in market sales, marketing  
5 teams, administrative support teams including finance, credit control, human resources, commercial, aircraft operations and customer service hosting teams. That's paragraph 23 of that exhibit 34. Legal and governmental relations advice was also sought and received over that period of time on a wide range of issues touching on various aspects of Crown Group's activities in Greater China. That's adverted to  
10 in exhibit 26 by Mr Felstead at paragraphs 20 to 23.

Now, the structures provided for within Crown Resorts tasked with risk management are set out in the submissions of counsel assisting in relation to the China arrests at paragraphs 35 to 39 and 41 to 46, and they, with respect, accurately set out those  
15 structures. Paragraph 40, I have passed over which puts forward a proposition as to the operation of them which I would apprehend may be the subject of submission by Crown, but we certainly accept that the structures were in place as described. In the period 2013 to 2016, before the arrest of the Crown Group staff in China occurred, the most senior executive at Crown Resorts with management responsibility for  
20 Crown Group's businesses, including the VIP business, was actually Mr Craigie, the CEO.

And Mr Craigie gave evidence to that effect at exhibit O68, paragraphs 15 to 18. And he also gave evidence to that effect at transcript 1441, lines 18 to 1441, lines 36.  
25 Mr Johnston gave similar evidence at transcript 2968, line 45 to 2969, line 2, and Mr Packer gave confirmatory evidence at transcript 3590.8 to 3590.26. It was not Mr Felstead. That's to be compared with the statement of issues and contentions on the China arrests, paragraph A2 which states that Mr Felstead was the executive ultimately responsible for the VIP international business. Now, the next most senior  
30 executive, we submit, was Mr Felstead, the CEO of Australian Resorts from March 2013. Mr Felstead, as you know, reported directly to Mr Craigie.

COMMISSIONER: That was his line of reporting.

35 MR HUTLEY: Quite. That was his line of reporting. Yes. Whether on a particular occasion he reported a matter he should or he shouldn't will, no doubt, be a matter which you, Madam Commissioner, contemplate on – comment upon and consider. But I'm dealing now with the structures and the important point of this is these were structures which you, Commissioner, when assessing, particularly Mr Johnston,  
40 would assume Mr Johnston knew of. That's the context in which Mr Johnston is acting. Departures, which you may or may not find, and that is a matter upon which Crown will submit, except to the extent it is established that my client knew of, of course, cannot be visited upon my client.

45 Or if you were to assess that those structures became compromised in the sense of Mr Felstead failing, except to the extent that you found that we knew about it, and no such submission has been made, you would not visit that or have regard to that in

assessing the behaviour of Mr Johnston, but would assess his behaviour in the context of a person who is entitled, as did the other members of the board, to assume that the structures put in place were operating. Now, Mr O'Connor – I won't give you, Madam Commissioner, references for the last proposition I made about Mr  
5 Felstead's reporting lines. We will put that in our written submissions, but there are – there's much evidence about it.

Mr O'Connor was the executive general manager responsible for the VIP international business reporting to Mr Felstead. Mr Michael Chen was the president  
10 of international marketing, who was tasked with reporting to Mr O'Connor and had direct responsibility for the management of Crown group sales staff located in Asia. Counsel assisting lists as a matter not in issue that VIP international business unit was part of the business of Crown Melbourne; that's the statement of issues and contentions China arrests A2:

15 *Messrs Craigie and Felstead were both members of the Crown Melbourne board.*

Mr Johnston, of course, was not:

20 *During the relevant period Mr Neilson, the general counsel and company secretary of Crown Resorts, was also a direct report to Mr Craigie. Ms Tegoni, who reported to Mr Felstead, was the head of the legal function for Crown Melbourne, and Ms Williamson, who was described as a very senior lawyer, reported to Ms Tegoni.*  
25

That's Ms Williamson's evidence at transcript 2190.19, 2191 to nine, and Ms Tegoni's evidence at transcript 2309.10:

30 *Mr Craigie, as managing director, was also a member of the Crown Resorts board. His CEO report to the Crown Resorts board were a standing agenda item at the regularly scheduled board meetings. Mr Neilson also attended those meetings as company secretary, as did Mr Barton as the then-chief financial officer. Mr Felstead also regularly attended and reported at the*  
35 *Crown Resorts board meetings.*

And that's exhibit 67, Mr Felstead's statement, paragraph 54. – O67, I'm sorry. Exhibit O67. Now:

40 *During the relevant period –*

that is, leading up to it – when I say “during” – and this had history –

45 *CEO reports to the Crown Resorts board were compiled by Mr Neilson or Mr Craigie based on reports from different areas of business.*

And that was Mr Craigie's evidence at transcript 1448.33 to transcript 1448.41. Mr Felstead confirmed it. We will give you the reference in our written submissions. The CEO – excuse me. I will just have some water. I do apologise.

5 COMMISSIONER: No problem.

MR HUTLEY:

10 *The CEO reports had a constant and consistent structure over the relevant period and relevantly covered: firstly, financial results, including results, estimates, year-to-date estimates, full year forecasts, broken down into various parts of the Crown group's international and domestic businesses, net debt and cashflow, capital expenditure and balance sheet; secondly, current issues for each of the Crown group's international and domestic businesses, including*  
15 *Crown Melbourne, Crown Perth and Melco Crown as it then was. The information contained in the current issues section was detailed and included matters relating to risk and compliance, such as ongoing litigation, security incidents and interactions with regulators, including implementation of recommendations. They also included information relating to Crown's VIP*  
20 *international businesses, including financial information and information relating to marketing and events initiatives.*

By way of example, could we show you the report of the 16th of – for the board meeting of the 16th of July 2013. Now, this has not yet got an exhibit number. It's  
25 CRL.512.001.2888. And I would like to take you to one of – a number of matters in it. For example, if you could go to – we will just go to one, if we could, at PIN number 2897. There's a privilege claim in relation to this, so it shouldn't come up on the screen - - -

30 COMMISSIONER: It will only come up on the – but it's in your folder. It's in your material - - -

MR HUTLEY: Quite.

35 COMMISSIONER: It's in your material that you've provided, I think, Mr Hutley.

MR HUTLEY: Yes. It's behind – I'm sorry – Commissioner, tab 27, I think.

COMMISSIONER: Yes, I have it.

40

MR HUTLEY: And if you look at the third dot point on the page.

COMMISSIONER: Yes. On which page?

45 MR HUTLEY: Point – page 2897, top right-hand - - -

COMMISSIONER: Thank you. Yes, have I that.

MR HUTLEY: You will see that subject matter. That's a - - -

COMMISSIONER: Yes, I see that.

5 MR HUTLEY: And you see the topic.

COMMISSIONER: I do.

10 MR HUTLEY: And the report on the 21st of October – August 2013, which you will find behind tab 28, and the number is – the PIN number is CRL.512.001.3373. And if you go over to PIN number 3381 and the last dot point under “MCE”, you’ll see that that same topic is adverted to.

COMMISSIONER: Yes. I’ve read that.

15

MR HUTLEY: Now, could I now take you to the 12th of August – if you would go, kindly, to tab 31.

COMMISSIONER: Yes.

20

MR HUTLEY: This is an executive officer’s report, CRL.512.001.7319.

COMMISSIONER: Yes.

25 MR HUTLEY: And if you go over to 7335 to 7336 - - -

COMMISSIONER: Yes.

30 MR HUTLEY: - - - you will see there is, in the dot point – this is not confidential, I don’t think.

COMMISSIONER: I wouldn’t have thought so.

35 MR HUTLEY: I’m just having it checked – is:

*City of Dreams Manila property performances improving in the mass market sector. However, VIP gaming is missing budget as the anti-corruption campaign in China affecting Manila visitation –*

40 etcetera.

COMMISSIONER: Yes.

45 MR HUTLEY: So there’s there a report into the CEOs report of the anti-corruption campaign. So I’m - - -

COMMISSIONER: Yes. I don't think there's any issue that that was known about. It's the one that's specifically targeted - - -

MR HUTLEY: I'm going to come to that in due course in a little while.

5

COMMISSIONER: Yes, yes.

MR HUTLEY: But what I'm – what we are – what's important, you will see, is how detailed these reports are and how extensive and how many issues they cover. Now, from the point of view of a board member, and we say in Mr Johnston, they were entitled to assume that the structures within the organisation, we will submit, are operating.

10

COMMISSIONER: Yes. These documents, Mr Hutley, that you provided the other evening, which have been provided to me with all the detail of them, some of them are in evidence already, but I think it's probably convenient for me to mark them as a separate exhibit, which I will do in due course. So you can assume that they'll be marked as an exhibit - - -

15

MR HUTLEY: Thanks.

20

COMMISSIONER: - - - and I will just get the appropriate letter and number for you.

MR HUTLEY: Thank you. Thank you. Now, moving on, additionally Mr Craigie was a member of the Crown Resorts risk management committee to which the board, as you know, had delegated oversight and responsibility for risk management and internal control of major risks. And I won't take you – Mr Neilson was the secretary of that committee and Mr Dixon and Ms Danziger were its other members. Mr Felstead and Mr O'Connor, as executives directly responsible for VIP international business, were responsible for identification of risks in the VIP international business for inclusion in corporate risk profiles and the rating of risks and for assessing and managing material risks in that business, including through the risk management committee, and Mr Felstead gave that evidence, as did Mr Stuart. I will give you the – we will give you the references in our written submission, unless you would like the references orally.

25

30

35

COMMISSIONER: Just pardon me, Mr Hutley. As you know this is an ancient building where I'm located and, from time to time, there are fire alarms. I must comply with the obligations that I have to those that are assisting me and myself. I will have to take a short adjournment. I apologise.

40

MR HUTLEY: If the tribunal – if the Commission pleases.

45

**ADJOURNED**

**[10.41 am]**

5 COMMISSIONER: Yes, I can hear you, Mr Hutley.

MR HUTLEY: Thank you, Madam Commissioner.

10 COMMISSIONER: That's all right. Yes. All right. My apologies for that interruption. Please proceed, Mr Hutley.

15 MR HUTLEY: I'd just made the point that Mr Felstead and Mr O'Connor, in their capacities as executives responsible for VIP, were responsible for, in effect, elevating – dealing with assessing material and managing material risks, including through the risk management committees, and that is both in Melbourne and the general one –  
20 the board one. Ms Tegoni and Ms Williamson also provided regular updates to Crown's risk officer to ensure emerging risks were input into its risk register, and we will give you the references for that. Now, that's what might be called the structural context. Can I now turn to the extent of Mr Johnston's involvement with the VIP international business.

25 COMMISSIONER: Yes.

30 MR HUTLEY: Now, the relevant fact concerning Mr Johnston's information about and actions in relation to the "warning signs" as to the escalation of risks relevant to Crown Group China are the following: firstly, Mr Johnston did not have overall management or oversight of the VIP international business, neither did Mr Packer. Contrary, with respect, to what is conveyed by the statement of issues and contentions China arrests, and in counsel assisting's oral submissions at transcript 4853, line 12 to 4853, line 19 and 4855, Mr Johnston did not have general oversight of or managerial responsibility for the VIP international business.

35 Rather, he performed certain specific tasks relevant to that business from time to time at the request of both Crown Resorts' then executive chairman, Mr Packer, and of the then managing director and chief executive officer, Mr Craigie, and that's what Mr Johnston's evidence at exhibit CJ1 was at paragraphs 14, 18, 21 and 24, and he – his transcript at 2973, line 29 and 3092, line 32 to 3092. line 43. Mr Craigie, and I quote here "imagined" that Mr Packer allocated this role to Mr Johnston but also said he thought the role in the VIP working group emerged from discussions occurring at CEO meetings. That was his evidence at transcript 1461, line 4 to line 8  
40 and 1462, line 27 to 32.

45 Counsel did not refer, in his recitation of the matters in issue, to the fact that Mr Craigie as well as Mr Packer was involved in this request. That's the statement of issues and contentions China arrests at A10. Those specific tasks in respect of which Mr Johnston provided consulting services included matters relating to debtors, currency controls, pricing and tax. They were not concerned with the day-to-day work carried out by Crown Resorts sales team in China. Mr Craigie and Mr Jalland

also gave evidence that they saw Mr Johnston's involvement as directed or limited to certain aspects or issues. That was Mr Craigie's evidence at 1462, lines 17 to 25, and Mr Jalland at 3306, lines 34 to 3307, line 12. Mr Johnston - - -

5 COMMISSIONER: When you say that he, Mr Johnston, provided consulting services to debtors, currency controls, etcetera - - -

MR HUTLEY: No, no.

10 COMMISSIONER: - - - he provided services in respect of VIP positioning, though, what was called VIP positioning and that was part of his role as a provider of consultancy services via CPH to Crown.

MR HUTLEY: I'm going to come to that.

15

COMMISSIONER: I see.

MR HUTLEY: What – just to say – the VIP – the relevant committee was a committee which was designed not to run the VIP business, and it never did; it was a  
20 committee which was tasked to deal with certain issues from time to time and of a rather ad hoc variety. What Mr Johnston's specific skill set and the area in which his input was sought was because of his numeracy, debtors, currency control, pricing and tax, and what might be, if one wants to call it, strategic issues about those. But what he wasn't – and therefore the title that one gives there that you've referred to,  
25 Madam Commissioner, can be – is apt to, as it were, not address what he was actually doing. That's what I'm going to come on to deal with.

COMMISSIONER: It's the description that was given in the records.

30 MR HUTLEY: I understand that. I do understand that.

COMMISSIONER: And that was the fees that were charged for his work over the period.

35 MR HUTLEY: I understand that.

COMMISSIONER: Yes, all right.

MR HUTLEY: I accept that. I accept that. Mr Johnston rejected the proposition  
40 that he was "heavily involved in the entirety of the VIP international business during the period 2013 to '18. That was his evidence at 3088, lines 39 to 43. Mr Johnston confirmed that Mr Johnston did not have a day-to-day understanding of everything occurring in the VIP international business. That's transcript 1988, lines 41 to 43. Mr Packer also rejected the proposition put to him that he and Mr Felstead were  
45 "managing the VIP international business". That's transcript 3724, lines 45 to 47. He had no operational role in respect of the VIP business whether while executive chairman or at any other time.

That was his evidence on the same page in that quoted passage. No other witness gave evidence to the contrary. Counsel assisting portrayed Mr Johnston and Mr Packer as particularly interested in the VIP business. Now - - -

5 COMMISSIONER: That's what Mr Craigie said.

MR HUTLEY: Mr – I will just get the quote from Mr Craigie. Mr Craigie says – Mr Craigie spoke – he said that:

10 *Mr Packer was interested in all aspects of the Crown's business and to the extent he had a particular interest in VIP, that was connected with the international nature in respect of VIP international and the mathematical aspects of the business.*

15 I think you are referring to Mr Craigie's evidence at transcript 1450, line 43 to 1450, line 14, and 1462, lines 11 to 25 where he described those issues. Now, what we say is they did not have detailed oversight of the – or managerial instruction concerning that business. That's made clear by Mr Felstead's evidence at transcript 1117, line 11 to 43, Mr Johnston at 9238, lines 22 to 26 and Mr Packer at 3717, lines 1 to 4,  
20 and 3725, lines 8 to 12. And that was confirmed by Mr Kunaratnam at transcript 1404, line 45 to 1405, line 6.

25 *Mr Johnston provided specific assistance on identified tasks at the request of the executive chairman and CEO, hence his participation in the VIP working group –*

which we will come to in a minute –

30 *and sometimes was a sounding board for senior executives of the VIP international business.*

That was Mr O'Connor's evidence at transcript 1989 line 40 to 1989 line 43. Now, the VIP working group, we submit, was an advisory group established at the request of both Messrs Packer and Craigie. It did not make decisions and Mr Johnston's role  
35 in it was limited to specific tasks. It was not, and I quote, "a CPH group", and was not led by Mr Johnston. Mr Johnston largely ceased attending it after 2014, and Mr Packer did not attend it at all. In 2013 and 2014 Mr Johnston's task in relation to VIP international were conducted via the working group suggested by Mr Packer and Mr Craigie. The working group was an advisory group, was not decision-making,  
40 and was not a – and I quote "separate management oversight structure for the VIP international business", and that's what Mr Felstead said at transcript 1226 line 24 to 39, and Mr Craigie said it at 1461 lines 20 to 25, and Mr O'Connor said it at 1989 line 40 to 43. Further, Mr Johnston's specific tasks were matters relating to debtors, currency controls, pricing and tax. He was not directly concerned in other matters  
45 considered by that group. Counsel assisting, in oral closing submissions, put that the VIP working group met approximately monthly from about October 2013 to – April 2013 to October 2013, but that "Mister" - - -

COMMISSIONER: Wait a minute. Sorry. October 2013 - - -

MR HUTLEY: '13.

5 COMMISSIONER: Yes, April 2013 to when?

MR HUTLEY: October of that year, I think. That was – I'll just have that checked.

COMMISSIONER: I think that may be - - -

10

MR HUTLEY: It may be wrong.

COMMISSIONER: I mean, we all know – we all know that it met for some years.

15 MR HUTLEY: Quite. I'm just going with the regularity of the meeting at the moment.

COMMISSIONER: I see.

20 MR HUTLEY: Now, Mr Johnston's evidence was that the meetings of the group in 2013 was pretty much monthly, whilst those in 2014 probably, four or five. And that's transcript 4855 lines 1 to 3 and 4855 lines 18 to 19. He also gave evidence that his involvement in the group diminished around the end of 2014 and, in each of 2015 and '16, he attended perhaps one meeting. That's his evidence in his statement,  
25 exhibit CJ1, at paragraph 24 and he – and his transcript 3094 line 16. No challenge is made to this evidence.

Mr Johnston's evidence is consistent with Mr O'Connor who said, and I quote, and this is from transcript 2044 – 2045 line 43 to 2046 line 10. He said this:

30

*...they were conducted on a monthly basis for approximately 12 months and, thereafter, perhaps the frequency started to drift.*

35 Mr Felstead recalled the meetings being even less frequent, in the order of every two, three or four months. That's Mr Felstead at transcript 1120, line 42 to 1121 line 10. My learned friend, counsel assisting, also submitted that, and I quote from transcript 4855 line 3, that L

40 *The purpose of the VIP working group was for CPH attendees to provide guidance and advice to senior executives of VIP international.*

No evidence was given by any witness accords with that description. Mr Johnston's evidence was that the purpose of the VIP working group was to assist the VIP international business by considering options and making recommendations about  
45 issues put before it. That was his evidence in his statement in exhibit CJ1 paragraph 18, and he reiterated that in transcript at 3089 lines 5 to 34 and 2935, lines 19 to 22.

With respect, counsel assisting's description is also inconsistent with the fact that there is no evidence of CPH executives attending the meeting of the group after 2014. Prior to that, CPH executives, not including Mr Johnston, attended infrequently and had minor roles in the work of the group, and you will see that from  
5 paragraph 17 of exhibit CJ1 of the statement of Mr Johnston, and his transcript at 3094 lines 22 to 23, confirmed in the evidence of Mr Felstead at 1121 lines 27 and following. There was otherwise a diverse set of attendees from Crown Resorts as well as external consultants; exhibit CJ1, again, paragraph 17. Furthermore, the group continued to meet largely without Mr Johnston or any executive from CPH  
10 during 2015 and '16; that's transcript 3094 lines 9 to 16.

Counsel assisting, in our respectful submission, wrongly described Mr Felstead's evidence as confirming that:

15 *The VIP working group –*

and I quote from transcript 4855, line 43 and following –

20 *was operating separately from the official reporting structure into the Crown Resorts CEO.*

And that's also in the submissions of counsel assisting, China arrests at paragraph 81. That was not, with respect, Mr Felstead's evidence. He did not agree to the premise put to him that quote – and this was put to him and I quote:

25 There were two separate management oversight structures –

for the VIP business being –

30 *the official structure reporting into the CEO group and Mr Craigie and the unofficial structure reporting into CPH VIP group and Mr Johnston.*

The only proposition with which Mr Felstead agreed was that the VIP working group:

35 *...was operating separately from the CEO group.*

That's Mr Felstead's evidence at transcript 1226 lines 9 to 17. All that evidence was that simply acknowledging there was a – the – there was a committee and there was  
40 another organisation – a structure within the organisations – and they were two groups which met separately. Not, which is the – I don't say the sting, but the thrust of the thing is unofficial reporting structures. They simply wasn't a reporting structure. Mr Craigie - - -

45 COMMISSIONER: Well, Mr Johnston says that he reported to Mr Packer from time to time. I'm not quite sure where this is going, Mr Hutley, but - - -

MR HUTLEY: Well - - -

COMMISSIONER: - - - quite frankly, the chairman of Crown asks Mr Johnston to go to the committee. He goes. And he says, in his own evidence, “I was chosen to do it because of my particular skill set.”

MR HUTLEY: Yes. I accept that.

COMMISSIONER: Now, it was obviously to help or to guide the business to make it successful, I would have thought. I’m just not sure what the sensitivity to this is.

MR HUTLEY: The sensitivity to it is that the submissions made – I’m addressing the submissions made by counsel assisting.

COMMISSIONER: Yes.

MR HUTLEY: Counsel is saying that, in effect, this structure, as it were, undermined the reporting structures because it became .....

COMMISSIONER: Well, there’s no doubt that he blurred it. Mr Felstead said that he failed to do what he should have done and, I mean - - -

MR HUTLEY: He failed to do what he should have done not because of the VIP working committee, he failed to do what he failed to do. He didn’t report all the things he should have - - -

COMMISSIONER: You may submit that, Mr Hutley, but the evidence shows that he believed what he was doing – he reported to Mr Johnston, as he thought he should, and he gave Mr Johnston some information. He also said that he failed to report to the risk committee but – when he reported things to Mr Johnston. So for whatever reason – for whatever reason there were structures in place that seemed to – not intentionally, but seemed to blur the lines for the more junior people within the group. And that doesn’t seem to me to need a great deal of analysis. It’s the fact.

MR HUTLEY: Well, with respect - - -

COMMISSIONER: Yes.

MR HUTLEY: - - - Mr Felstead accepted that the one communication to Mr Johnston, which he didn’t make to others, would appear to be the email of June – July 2015. The one.

COMMISSIONER: Well, no, that’s the controversial one. What I’m saying to you is that this group met for the purpose of trying to drive the business into a situation that was effective and efficient and that’s why Mr Packer asked Mr Johnston to help, to guide them, and your submission that it wasn’t guidance, I don’t understand it because it was clear that Mr Johnston had particular skills.

MR HUTLEY: As I said, it was there to deal with issues put before it for its advice.

COMMISSIONER: Yes.

5 MR HUTLEY: So that's guidance.

COMMISSIONER: Yes.

10 MR HUTLEY: What we – our learned friends, counsel assisting, says that it undermined reporting structures. In our respectful submission, whatever failures there are – and you may well find there were very significant failures of reporting, but one of the things which it did not do is undermine those reporting structures. The failures to report by Mr Chen and Mr Felstead go, in relation to matters concern – which may border on China – go wildly beyond anything that Mr Felstead  
15 communicated to Mr Johnston – anything – wildly beyond. And therefore, it is a false assumption that there was an alternate reporting structure. What there was, and what you will find, is that there was a fundamental breakdown at the China level – Mr Chen particularly, we would submit – and Mr Felstead and, to a degree, Mr O'Connor and, to a degree, Mr Craigie.

20 None of – and they had information, and much information which I will seek to show, that never came anywhere near Mr Johnston. And so it was not that any person – there was a reporting line into the VIP working group. It was not a subject of reporting about these matters. There is one email, and I will come to it, and  
25 you've referred to it, the July email, and the – actually, the first email by which it comes to Mr Johnston appears – has the form of Mr Felstead not reporting to Mr Johnston, is making an observation to Mr Johnston, not as part of anything to do with the VIP working group. And I will come to that email, but this – I don't – I am merely, with respect, Madam Commissioner, responding to the submissions made by  
30 the counsel assisting.

There is obviously have been a breakdown in reporting, quite clearly. Mr Chen was aware of matters, many matters, which don't seem to ever have got to Mr Felstead. Mr Felstead were aware of matters which didn't get to Mr – Mr O'Connor was aware  
35 of matters that didn't get to Mr Felstead. Mr Felstead was aware of matters that didn't get to Mr Craigie, and Mr Craigie was aware of matters that never got to the board. My only point here, and why we have to address this, is a submission is made that this is in some way the fault of the VIP working group, and the fault is sought to be laid at CPH and Mr Johnston's feet, and that's all I'm addressing.

40 I'm not disputing that there were flaws. You will find there were faults, and I'm not – I can't speak for Crown; they will address it. We are not dealing with that. But what I am concerned about, and what I am addressing is the submission that the VIP working group undermined these structures. These structures failed without any  
45 assistance from the VIP working group. They just failed. Now, how they failed - - -

COMMISSIONER: Just pausing there, Mr Hutley, take away the active intervention causatively, if you like, by the VIP working group. Where you have – what you had was a totally dysfunctional reporting arrangement which didn't work. And when you have the establishment of a separate group that did operate separately,  
5 the significance of that overlay or concurrent operation separately is bound to have, as it did in Mr Felstead's mind, I believe, from what he told me, a blurring of the lines. Now, it's not suggested that Mr Johnston intentionally intervened with the reporting structures, but the very existence of the VIP structure and its nice group telling people how to go about things to make it more effective, without having the  
10 reporting structure between them was a problem that contributed to a lot of information not getting to where it should have gone, as I see it at the moment.

MR HUTLEY: I will come to that.

15 COMMISSIONER: Yes, all right.

MR HUTLEY: The discussions at the VIP working group were communicated to the CEO. There was a pattern that there would be a reporting to the CEO of discussions of the VIP working group.

20

COMMISSIONER: Well, Mr Felstead, as he said to me, he failed because he didn't report things to Mr Craigie, unfortunately. So whatever the structure might have been it didn't happen as it should have.

25 MR HUTLEY: We, with respect, wholly embrace that.

COMMISSIONER: Yes.

MR HUTLEY: But Mr Felstead didn't say his failure to report to the CEO was  
30 driven by the VIP working group, and we would submit that there was nothing about the VIP working group which was there to look at, in effect, forward-looking, as it were, developments which would inhibit the reporting of failures and events in China of the level of concern which came to the attention of Mr Chen. He had nothing to do with the VIP working group. Mr O'Connor, Mr Felstead and what – Mr Felstead  
35 was aware of many matters which he never communicated to the VIP working group; in fact, nearly every one of the deficiencies were not communicated to the VIP working group.

40 What we submit is that's our submission. We're not defending that there weren't failures. We say there manifestly were. But the gravamen of our learned friend's submissions, I stress, is that that's to be laid at the feet of Mr Johnston and CPH and we say that's not justified. Now, there was a debate as to whether the VIP working group was "a CPH working group". Now, I don't know if you wish to hear submissions in relation to that, Madam Commissioner. We submit that that was  
45 simply – that seems to have come out of one document created by Mr Chen and nobody really described it and it wasn't a CPH working group because there was

only one person of CPH on it, and it was regularly attended by Crown Resorts employees – executives.

5 It is, with respect this debate, a complete diversion from concentrating on the issue, but it has been – quite a deal of submissions have been devoted by the counsel assisting to this question and on that basis I propose to respond to it. In the oral submissions, it was submitted that Mr Felstead had accepted that the VIP working group was a “CPH working group”. That’s at transcript 4857, lines 15 to 19. That, with respect, is wrong. Mr Felstead said evidence – which is at transcript 1121, lines 10 33 to 38 – was:

15 *I think the CPH – CPH working group is probably a title coined by Mr Chen. I wouldn’t call that a CPH meeting. We had a CPH person there on occasions ... This was more in relation to how – what some of the challenges facing us in running our business, what are some of the opportunities and it was really just a bit of a brainstorm to work out weighs to run the business.*

20 Whilst the group may have referred to in different ways, no witness gave evidence that the group was or was known as a CPH working group, and it was a wrong title. Now, I think it was referred to in one document titled VIP Marketing Kick-off, which is exhibit M109, but the evidence was – and Mr Craigie said he was not sure the participants in the group would refer to it by that name “since it was Crown people plus Mike Johnston”. That was Mr Craigie’s evidence at 1460 lines 4 to 13. And we can deal with the rest of that – what we think is essentially verbal quibble – 25 in written submissions.

Now, the work of the VIP working group was reported to the CEO meetings. Discussions at the VIP working group meetings were reported to CEO meetings at which Mr Craigie, Mr Packer, Mr Alexander and various Crown executives attended. 30 That’s Mr Johnston’s evidence, exhibit CJ1 paragraph 15. Although Mr Packer did not recall participating in the CEO meetings after the end of 2013, when he moved to the United States, and did not recall receiving VIP international business update documents after that date, counsel assisting was unable to identify any documentary evidence of Mr Packer receiving such written updates. 35

Mr Felstead agreed that there were occasions on which information was discussed at VIP working group meetings which may not have been discussed at CEO meetings. However, it was not explored what or what kinds of information may have fallen into that category. And counsel assisting’s questioning of Mr Felstead is at transcript 40 1226 line 1 to 1227 line 26. It’s unremarkable, for example, that a matter of minor detail may have been discussed at a VIP working group meeting and not raised in a meeting with the executive chairman or the CEO. Counsel assisting, in his oral closing, also referred to the evidence from Mr O’Connor that:

45 *...there could have been occasions when he was aware of matters which he did not disclose in relation to VIP international business at the CEO meetings.*

That's transcript 4854 lines 23 to 26. Now, that's got nothing to do with the existence of a working group. A – complex organisations like this will have many committees which may deal with many matters. The important point is that this was a committee which had a, insofar as it operated, was operated on the basis that its contents – what occurred – would be communicated through to the CEO meeting. That's wholly conformable with a usual operation of a corporation.

Now, the proposition that information discussed at VIP working groups may not have been discussed at CEO meetings was not a matter which either was put to Mr Johnston or was a matter which Mr Johnston would be apt to be aware of, since he was not an attendant at CEO meetings. I'm sorry. I have to withdraw that. He did attend – I will just have it checked. I don't think he attended all of them. Yes. He attended some CEO meetings. I'm just – to be correct. And the evidence in relation to this is transcript 2933 line 3 to 2934 lines 18 and 3097 lines 13 to 3097 line 44.

So the observations by Mr O'Connor and Mr Felstead that some matters which may have been discussed at the VIP meetings may not have been repeated at the CEO meetings goes nowhere. That would be the case with respect to any committee meetings. You wouldn't expect that they repeat all the things which are discussed. They would repeat matters which the relevant individuals thought were material to the CEOs information; that's the point of these structures.

Now, whilst a more detailed written VIP update documents presented to the CEO meetings were not regularly tabled at the Crown Resorts board meetings, there were regular reports, in respect of VIP business, to the Crown Resorts board, including information contained in the CEO reports to the board. Mr Felstead was a regular attendee at meetings of the board and the directors expected that he, as the responsible senior executive, would raise with them at the board meetings matters relevant to the conduct and operation of the business for which he was responsible. That was the evidence of Ms Coonan and Mr Dixon. He was not excused in that obligation by the fact that Mr Johnston may have performed certain tasks in connection with the VIP international business, and nothing about that was thought by Mr Felstead to interfere with his responsibility to raise such matters either with the risk committee or with the board and that was his evidence at 1221, lines 28 to 38. Nor, in our respectful submission, would it be reasonable to expect that Mr Johnston would expect that it would.

COMMISSIONER: What would it be reasonable to expect that – not reasonable to expect of Mr Johnston? Sorry?

MR HUTLEY: That anything that was communicated by Mr Felstead to him or his dealings with the committee would in any way inhibit him in performing his duties, as he recognised he had, to raise matters either with the CEO, the risk committee or, to the extent appropriate, ensure that it came to the attention of the board.

COMMISSIONER: Yes. I don't think it was so much a prohibition, but an unsatisfactory understanding, I think.

MR HUTLEY: Well, Mr Felstead said he didn't understand that it did. His evidence was he was conscious that it didn't. That's his evidence - - -

5 COMMISSIONER: It's not so much a prohibition. It was the fact that the light didn't go on in some respects.

MR HUTLEY: I fully accept that, but obviously – not obviously – with respect, you're quite correct: the light didn't go on for a number of people who had a large accumulation of knowledge. And all I'm stressing – and the point of this submission  
10 – is that you have to look at Mr Johnston's position in the context of what Mr Johnston knew and what he was entitled to understand was being done. Not every fact an officer – a director receives which may, on its own, look material, or some person may view as material, requires the director to raise it at board, particularly if it's a material matter which is under consideration by an executive team. And the  
15 structure of the complexity of this organisation: it has risk evaluation committees; it has legal officers; it has access to advice, both in Australia and overseas; it had a history – a large history – of dealing with a sophisticated business; it has an apparently organised operating management team which goes through Mr Chen to Mr O'Connor to Mr Felstead to Mr Craigie and then via risk committees, both in  
20 Melbourne and in the board risk committee, and directors aren't expected to turn up, in our respectful submission, at each meeting and say, "I heard something. Let's talk about it." But – when that material is known to the director to be known to the relevant organs of the body.

25 COMMISSIONER: One of the problems was that Mr Johnston descended into that relevant organ, and that's just a fact. I mean, he was providing consultancy services that were being paid for by Crown and that's just another layer of problematic structures, I think, Mr Hutley, that Mr Johnston, albeit that he was trying to assist, became then an adviser in a structure – albeit that he was a director, he became an  
30 adviser as a consultant under the services agreement to the China situation, which put another layer of complexity on it, I think.

MR HUTLEY: Well, I will come to the detail in relation to that, but we submit that one has to look at this at an institutional level and one has to see – we submit that  
35 good management is not – is management which makes sure information goes to the relevant organs, and all the relevant information went to the relevant organs except one, to the board, and that, we say, was the responsibility of the structures put in place by Crown which, to all intents and purposes appeared to be operating efficiently. Thus you see the detailed reports coming ultimately through the CEO  
40 and the risk boards to the board. And what our submission is, in assessing Mr Johnston's suitability – and that's what we're about here – one cannot visit him with hindsight or the collective errors within this organisation.

45 Now, I now want to turn to this topic. Mr Johnston did not attend operational meetings with VIP international executives weekly or even regularly. He did not make or approve operational decisions of the VIP international business. The reference in counsel assisting's statement of issues and contentions in submissions at

transcript 4853, line 12 to 4853, line 14, and 4903, line 14 to 16, and 4905, lines 22 to 27 to Mr Johnston having:

*...regular meetings, usually weekly, with senior executives of VIP international.*

5

And that's in the statement of issues and contentions for China at A10 and also at transcript 4853, lines 12 to 19, and the submissions of counsel assisting on the China arrests, 65 to 66 is, with respect, incorrect. While operational meetings of VIP international executives occurred weekly in the period prior to the China arrests, Mr Johnston – Mr O'Connor said that Mr Johnston only attended those meetings sometimes. That's Mr O'Connor at transcript 1872, lines 1 to 1872, line 15, and 1988, lines 15 to 29. Mr Johnston was involved in a different exercise in connection with the VIP business involving, initially, weekly meetings following the China arrests. That's Mr Johnston's evidence at transcript 3124, lines 12 to 28.

15

He had ad hoc telephone discussions with VIP internationals from time to time in the relevant period, but this did not usually include Mr Kunaratnam – that's transcript 2937, line 8 to 20 – with whom Mr Johnston was not particularly familiar. That's 3092, lines 6 to 8. A weekly written trading update provided by Mr Felstead concerned all of the areas of business for which he was responsible, not only VIP international was sent not only to Mr Johnston but to Mr Craigie, Mr Barton, Mr Neilson, Mr Packer and Mr Alexander. That's Mr Craigie's evidence at transcript 1453, lines 45 to 1454, line 23. And you would note counsel assisting's submissions at 310.

25

Operational decisions relating to the VIP international business made by Mr Felstead, Mr O'Connor and Mr Chen, with Mr O'Connor and Mr Felstead, if certain monetary thresholds were reached, as ultimate decision-makers, and that – I will give you the references in the written. Counsel assisting's submissions in support of the contention that Mr Johnston made operational decisions in the VIP international business referred to one instance where Mr Johnston – Mr O'Connor sought and received Mr Johnston's approval for a proposal to offer a particular player a \$1 million bet limit by using an existing junket revenue share program framework. That's transcript 4855, lines 35 to 37.

35

With respect, that does not accurately describe the evidence which was as follows. Now, if you would – during his examination, Mr O'Connor was taken to an email chain in July 2014 regarding a proposal to increase the bet limit for a particular player. That was exhibit M84, and the cross-examination of Mr O'Connor was at transcript 1988, line 45.

40

COMMISSIONER: It was an examination, yes.

MR HUTLEY: Yes, I do apologise. Examination.

45

COMMISSIONER: Yes. Thank you.

MR HUTLEY: Now, the counsel assisting's questioning of Mr O'Connor is at transcript 1988, line 45 to 1989, line 46, and focused on the reference to Mr Johnston in the email chain, including:

5           *Do you recall why you considered you needed to get Mr Johnston's approval to the proposal?*

If you read through this email chain, we say the email chain sets out the following sequence: Mr O'Connor emailed Mr Johnston, copying Messrs Felstead and Chen, noting he left a message looking to speak to Mr Johnston earlier about a proposal setting out an overview of the proposal to increase the player's bet limit which included using an existing revenue share program of a junket and saying – and you will see:

15           *The attached schedule outlines the economics and I can step you through you that when we get a chance to speak.*

Mr O'Connor then emailed Messrs Felstead and Chen only relaying his conversation with Mr Johnston, including that Mr Johnston was supportive, that Mr Johnston, and I quote:

20                           *...also understood clearly the risk mitigating effect of the proposal.*

And Mr Johnston's comment that they:

25                           *...should be mindful of the credit risk position they take given what he is hearing and reading about the state of Macau junket market and the Chinese government's activities of late. Good thing someone's listening.*

30 In the same email Mr O'Connor set out the next steps and you see what they are starting "I will call Todd", etcetera. Mr O'Connor then has sent a further email to Messrs Felstead and Chen providing an update on the next step, set out in his previous email and asking:

35           *Baz, I would like to get this –*

etcetera. You see that. Mr Felstead replied:

40                           *Definitely wait for Todd. What about sending him a detailed email?*

It is clear that Mr Johnston's views are sought and provided on general aspects of the proposal relating to the economics or credit risk. To the extent that Mr O'Connor is seeking approval the person from whom he is seeking it is Mr Felstead. Even Mr Nisbet and Ms Tegoni's role can be more readily be characterised as approval than Mr Johnston's. Now, he was asked questions about this and he – at transcript 1989.9 to 1989 to 15, and if that could be thrown up, and you will see it says:

*I think the suggestion was that by virtue of the fact was very numerate –*

and then it goes on. Mr Johnston was merely being – views were being sought because of the sophisticated, as it were, arithmetic involved in the proposal. That's  
5 entirely consistent with the evidence regarding Mr Johnston's involvement with the VIP working group, which was to consider and assist with specific issues, broadly speaking, of a financial and mathematical nature and Mr O'Connor's stated objective to assault Mr Johnston to give comfort and verification the proposal was sound was, in effect, him seeking advice. Now, that is the only example put before you of what  
10 might be called Mr Johnston being involved, in an operational sense, in a decision, and his advice is being sought of a particular, as it were, issue of a variety falling within his particular skill set.

Now, next, Mr Johnston did not set or approve strategies for the VIP international  
15 business, nor did the VIP working group endorse or direct strategies for that business. That was Mr Johnston's evidence at transcript 3092 lines 32 to 42 and 3113 lines 1 to 4. He did not participate in VIP marketing or strategy workshops or receive documents associated with those workshops, and that was his evidence at  
20 3090 lines 18 to 30 and repeated at some other points which we will put in our submissions. Nor did he participate in overall strategy setting by the VIP working group.

In oral submissions, our learned friends, counsel assisting, stated that the VIP  
25 working group "endorsed" certain strategies for the VIP international business. Specifically, it was put that the group "endorsed ... a double-down strategy" devised by Mr Chen and a "platform junket strategy". That's at transcript 4855 lines 32 to 41 and 4859 lines 39 to 4860 line 2 and 4916 line 6 to 8. That, with respect, is wrong. Rather, during questioning, counsel assisting sought to have Mr Felstead agree that the VIP working group endorsed what was described as – by Mr Chen as a "double-  
30 down strategy"; that was not put to Mr Johnston. Further, Mr Felstead's recollection was poor, his evidence was:

*I would agree that elements ... were endorsed. I couldn't say which ones in particular.*

35 That was his evidence at transcript 1151 and following. Counsel assisting, in a subsequent question, then summarised the evidence of Mr Johnston agreeing that the VIP working group endorsed the strategy. That was repeated in oral submissions – closing submissions – at transcript 4859 lines 42 to 4860 line 2.

40 Now, Mr Johnston was not taken to Mr Chen's email with his very preliminary thoughts on available approaches, including the double-down approach; that's exhibit 95, which you will be aware of, nor to the separate email between Messrs Alexander, Johnston and Kady about which Mr Felstead was questioned here; that's  
45 exhibit 97. Counsel assisting suggested to Mr Felstead that it appeared from this email that Mr Johnston was inviting Mr Kady to the next VIP working group meeting to discuss these matters, presumably, the double-down strategy, but there is

nothing to support, with respect, that submission. Nor was Mr Johnston taken to the document apparently setting out a six-point plan consisting of a double-down approach put to the VIP working group in September; and that's exhibit M102.

5 There's no evidence that Mr Johnston received the latter document or attended any  
VIP working group in September 2014 at which it was discussed. Mr Felstead also  
could not recall if the VIP working group had "endorsed" the platform junket  
strategy; that was at transcript 1154 lines 25 to 29. In any event, that strategy was  
supported by the CEO, Mr Craigie, and that's – he gave evidence at transcript 1494  
10 lines 20 to 25. Further, the four year financial plans put forward to and approved by  
the Crown Resorts board in 2015 and '16 also specifically refers to the platform  
junket model, and that's – if we could take you to exhibit M186, which is  
CRL.522.001.0994, at 0999 over to 1000, and you will see a reference to the VIP  
business. And you will see in the second dot point, reference to a "platform junket  
15 model".

COMMISSIONER: What's your point?

MR HUTLEY: There is nothing that – one, the VIP working group did not endorse  
20 this strategy; there's no evidence that Mr Johnston participated in that. And  
secondly, the relevant part of the strategy, the platform junket model, went to the  
board and the board endorsed it.

COMMISSIONER: Yes.

25 MR HUTLEY: All I'm saying is as opposed to the submission that was put by  
counsel assisting. That's, with respect, our point. The counsel assisting says that we  
endorsed it. Mr Johnston did this and there's – in our respectful submission, there's  
not evidence that he did. Now - - -

30 COMMISSIONER: Was this at a time when he was approving the junkets? Or is  
this a little later?

MR HUTLEY: That came after the arrests.

35 COMMISSIONER: Yes.

MR HUTLEY: He had no involvement in it at that stage.

40 COMMISSIONER: Prior to the arrests?

MR HUTLEY: Quite. Prior to the arrests. That's why – that's when he did become  
involved in weekly meetings - - -

45 COMMISSIONER: Yes.

MR HUTLEY: - - - to address the problems which had – you know, the - - -

COMMISSIONER: Yes.

MR HUTLEY: - - - the events. It's – this detail is detail which has been brought in response to specific submissions made about Mr Johnston by our learned friends.  
5 Now, Mr Felstead also disagreed with counsel assisting's proposition that various proposed steps relating to the foreign casino crackdown, contained in an email between Messrs Felstead, O'Connor, Chen and Ratnam only dated 11 February and referring to a meeting to occur that day, were even discussed in the VIP working group; that was Mr Felstead's evidence at transcript 1202 in connection with exhibit  
10 O23. There is no evidence that these proposed steps were, in fact, put before Mr Johnston. Counsel assisting did not take Mr Johnston to that email. Mr Johnston's evidence is that he was unaware that Crown executives had discussed pausing travel in mainland China. That's Mr Johnston's evidence at 2961, line 22 to line 32, which was one of the proposed steps relating to the foreign casino crackdown referred to in  
15 that email at exhibit O23.

Further, by February 2015, Mr Johnston had essentially ceased attending the VIP working group, as he says at paragraph 24 of his affidavit, exhibit CJ1. And there is no evidence that he attended any discussion with Messrs Felstead, O'Connor and  
20 Chen on the 11th of February. Finally, Messrs Felstead, O'Connor and Chen resumed travel to mainland China by May 2015, as you know, Madam Commissioner, from Mr Felstead's evidence. It was Mr Felstead and other Crown group executives who prepared detailed planning documents for the VIP business, which were then discussed with Mr Craigie and Mr Barton. There is no evidence  
25 that Mr Johnston was sent these drafts or had any role in preparing or approving them. Abridged versions of those documents were ultimately provided to the Crown Melbourne and Crown Resorts board. All that activity was consistent with formal reporting lines. Mr Packer also did not set or approve strategies for the VIP international business. He described his contribution to those strategies while  
30 executive chairman as marginal in his evidence at 3718 lines 1 to 13 and 3731 lines 22 to 25.

Can I now turn to the next proposition which we need to deal with. Mr Johnston had no role in the management or supervision of VIP international sales and marketing  
35 team members in Asia. The evidence is that the specific aggressive sales culture impacting the staff in China was manifested and, in particular, by Mr Chen – and there was a lot of exhibits to that effect – and unchecked by Mr Chen's direct supervisor – superior – Mr O'Connor, and Mr O'Connor's direct superior, Mr Felstead. Mr Johnston had no role in the management or supervision of VIP  
40 international team members based in China. It was Mr Chen who had immediate managerial responsibility for the team. The evidence shows only minimal communications between Mr Johnston and Mr Chen over the period 2013 to '16, none of which involved direct correspondence between them. Mr Johnston was not aware of how bonuses of the staff working in China was calculated, and that was his  
45 evidence at 2941 lines 40 to 47. That was a matter squarely within the remit of Mr Felstead and those who reported to him, as Mr Felstead accepted in his evidence. Nor did Mr Johnston have any specific role in relation to remuneration for any of

Messrs Felstead, O'Connor or Chen. Counsel assisting noted when asked by you, Commissioner, that the remuneration for each of those three executives was approved by the board.

5 Now, can I now turn to the awareness of corruption crackdowns, financial plans and  
financial plans for the VIP business. By 2014, Mr Johnston was aware of the general  
corruption crackdown by the Chinese Government which was identified as one  
10 focusing on Chinese players attending Macau, and he said that in his evidence in  
exhibit CJ1 at paragraph 78 to 81, and he confirmed it in his evidence. This  
crackdown was described in material provided to the board as negatively impacting  
upon the business of Crown Resorts' then joint venture with Melco Crown, but  
offering potential opportunities for Crown Resorts in the Australian business, and  
you know that the report to the board, exhibit M91, and the minutes of that meeting  
15 are exhibit AA22. Now – and if you go to the minutes of that meeting, if we could  
call those up, exhibit M91, I think, is what I need to - - -

COMMISSIONER: What's the number, Mr Hutley?

MR HUTLEY: I do apologise. Hang on. I will just get it. I'm sorry. I think it  
20 might be exhibit M91 I want. I do apologise, Commissioner, to - - -

COMMISSIONER: That's all right.

MR HUTLEY: I will just turn that up.  
25

COMMISSIONER: And the - - -

MR HUTLEY: Exhibit M91 is CRL.545.001.0859.

30 COMMISSIONER: Thank you.

MR HUTLEY: The relevant PIN number is 0865. And you'll see that under MCE.

COMMISSIONER: Yes.  
35

MR HUTLEY: Yes. That was also adverted to in the board minutes at  
CRL.512.001.5263, which is exhibit AA22, at PIN number 5264, about halfway  
down the page.

40 COMMISSIONER: Yes.

MR HUTLEY: Now, Mr Johnston understood – that's how Mr Johnston understood  
it to be, and he gave that evidence at transcript 2939 at line 21 to 2939 line 45. Now,  
counsel assisting referred to the evidence from Mr O'Connor, where Mr O'Connor  
45 said that VIP international teams were under pressure to deliver results that they  
could not achieve and that conservative expectations would not be well received.  
However, Mr O'Connor did not attribute this expectation over to Mr Johnston or

CPH interests. That's at transcript 2013, lines 38 to 2015, line 2. In addition, Mr O'Connor said:

*The drive to increase profits was not unlike most commercial operations.*

5

That was at transcript 1966, lines 19 to 24, suggesting that he did not consider the drive to be any different to other parts of the Crown Resorts business. In relation to "expectations of business volumes and business profits", if one goes to – he was shown an email chain which is exhibit M136, which is CRL.522.001.0572, and you will recall that, Madam Commissioner. Mr O'Connor agreed that the expectations came from those to whom he reported, referring to Mr Felstead and the board although not any specific individuals on the board. You will see that from his transcript at 2014.1 – line 1 to 2014, line 34. You then asked him some questions, Madam Commissioner, which could be brought up at 2060, lines 38 to 2061, line 3. This was in response to your questions that the pressure to chase profits may have blinkered some seeing the signals, and then he referred to Mr Chen, as you see.

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15

COMMISSIONER: Yes.

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MR HUTLEY: In our learned friend counsel assisting's oral submissions at transcript 4858, lines 34 to 42 and 4860, lines 31 to 33, and in 4886, lines 40 to 4887, line 20, in our respectful submission, an uncomplete picture as to Crown Group's plans regarding contribution from the VIP international business to the profitability in this period is given, and similarly in oral submissions at 4858, lines 34 to 46 and 4860, lines 22 to 42 and 4916, lines 26 to 29. The evidence demonstrated that after an exceptional financial performance by the VIP international business in the previous financial year, the relevant assumptions for Crown Melbourne's four-year financial plan, that is, for the financial years 2016 through '19, presented to the Crown board for approval contained the following; and if we could bring up exhibit M186, CRL.522.001.0994 and at an internal pin of 0999.

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And you will see under VIP business, the first dot point, that same first sentence also appears in the four-year financial plan put forward to and accepted by the Crown Resorts board in 2016 prior to the China arrests, and if you could bring up exhibit M259 which is CRL.519.001.0538 at 0564. You will see a similar observation there, and they are repeated in exhibits M185 and M260; I won't take you to them. That is the VIP international business was comfortable to put forward to the board and the board accepted financial plans founded on assumptions more conservative than actual performance in the preceding financial period.

45

That's not to gainsay what may have been happening in different locations within the organisation, and I'm not gainsaying the evidence of Mr O'Connor to which I took you to, but it must be measured that what the board was – that management didn't, as it were, feel constrained not to be conservative about such a matter through any imperative or influence from any board member or any person. They were prepared – anyway, it speaks for itself. Can I turn to the assurances received by Mr Johnston from Mr Craigie in 2014 regarding Crown Group's Asian operation. Mr Johnston

had received assurances in 2014 from Mr Craigie that Crown Resorts had received advice on the conduct of its operations in Asia, including China, and that it was acting lawfully and prudently in accordance with that advice which comprised legal and government relations advice.

5

Mr Felstead and Mr Chen provided him with similar assurances. Mr Craigie's assurances to Mr Johnston were given in the presence of senior members of Crown Resorts' internal legal team, and this is referred to in the affidavit of Mr Johnston, exhibit CJ1 at paragraph 78 to 79. That wasn't contested, and there was no reason for Mr Johnston to doubt those assurances, or in the face of those assurances seek nevertheless to conduct detailed managerial review of the work he told was being done – had been done. In fact, as a non-executive director, even as a consultant that would be a matter which would appropriately go through the structural channels which the organisation had set up.

15

Now, can I now turn to the foreign casino crackdown and what Mr Johnston and others were told about it. The information Mr Johnston received in respect of the Chinese government foreign casinos crackdown in March 2015, referred to by counsel assisting as the "February crackdown" – that's in the statement of issues and contentions in relation to China arrests, paragraph 12(a) – was framed to him at the outset as directed in particular to those who may be flouting Chinese currency controls rumoured to be South Korean operators. He was further assured at the time that Crown Resorts' position was different and compliant with the Chinese requirements.

25

He was given to understand that external legal advice had been sought to support that position. That's in paragraphs 82 and 83 of his evidence, exhibit CJ1. Could I bring that up. That's WIT.CPH.006.0001, and internal pin number 0015.

30 COMMISSIONER: Yes.

MR HUTLEY: He was examined in relation to that topic at transcript 2959, lines 40 to 2960, line 1, if that could be brought up. And 2963, lines 36 to 43, if that could be brought up.

35

COMMISSIONER: Yes, I recall all this.

MR HUTLEY: Yes. Now, as you see there, he accepted that there may have been – the date of it may have been slightly different to the one specified in his statement and that relevantly at 2962, lines 14 to 2962, line 46 Mr Johnston was firm in his recollection of what he had been told in this discussion.

40

COMMISSIONER: Yes. Well, you see this was – because he had that thing in his diary he seems, on one view of it, Mr Hutley, to have transposed the recollection from later in the year to the 5<sup>th</sup> of March, and so what was subject to the 5<sup>th</sup> of March, on one view of it, more probably than not was the reference to the concern about the destabilisation, etcetera, that was the subject of other evidence. And so he

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resisted any suggestion that either Mr Chen or Mr O'Connor or Mr Felstead had advised him in this so-called urgent telephone call on the 5<sup>th</sup> of March that the climate in China was – had become quite destabilised.

5 So that's an important aspect of this, and if I'm satisfied that the 5<sup>th</sup> of March date there of the urgent telephone call is in fact wrong, and if it's more probable than not that Mr Felstead or Chen or O'Connor in that call said to him that there was destabilisation then that has some consequence of his knowledge at the time, so perhaps you could address me on that.

10

MR HUTLEY: I'm coming precisely to that topic now.

COMMISSIONER: Thank you.

15 MR HUTLEY: Yes. He was certain his knowledge of this crackdown came from the discussion with Messrs Felstead, O'Connor and Chen. That's his evidence at transcript 2958, line 5 to 2958, line 23.

COMMISSIONER: Yes.

20

MR HUTLEY: And 2959, lines 18 to 20.

COMMISSIONER: Yes, but he accepted that – we both know he accepted that it was possible that his recollection may have been faulty. That's 2962 to 2963.

25

MR HUTLEY: Quite. But his recollection is what the date on slightly different to the one he specified. That's 2962, line 14 to 2962, line 46. Could I just proceed through, if I can. Counsel assisting submitted there was no evidence that Mr Johnston took any steps to discuss with VIP executives the steps they took or ought to take in response to the crackdown. That's the submissions at paragraph 212 on this topic. That, with respect, is incorrect. Mr Johnston's evidence was that he asked Messrs Chen and Felstead whether they were sure that Crown Group's operations in China were in accordance with the law to test whether there had been a change in the law or the approach by the Chinese authorities to enforcement that might impact Crown Group and received assurances that we've described.

35

And that's referred to in Mr Johnston's statement, exhibit CJ1, at paragraph 83, if that can be brought up, WIT – I'm sorry, paragraph 83 – did I take you to paragraph – yes, I've taken you to that. That aspect, in our respectful submission, was not challenged in examination. Counsel assisting submitted that Mr Johnston's evidence to what he was told on the 5<sup>th</sup> of March should not be accepted because of its contrast with the content of emails sent between Messrs Chen, Felstead and O'Connor shortly prior to that discussion, and an email between Mr Chen and WilmerHale. That's transcript 488.38 and 488.31. That submission should be rejected. Mr Johnston was clear that he had not been made aware of seemingly different positions being discussed by Mr Chen with WilmerHale at about that time or between Messrs Felstead, Chen and O'Connor, and would have certainly remembered any different

45

portrayal of the position than the one he received. That was his evidence at 2961 to 2963.

5 His evidence on this matter should be accepted and there is no evidence to the  
contrary. Additionally, there is evidence not, with respect, referred to by counsel  
assisting consistent with each of Mr Felstead and Mr Chen knowing of rumours that  
the South Korean casino operators were involved in illegal currency transfers prior to  
the occurrence of the Korean arrests. Mr Felstead stated that in his witness statement  
10 statement was tendered in the Inquiry. Could exhibit O67, which is  
CRL.540.001.0114 at internal pin number 0127 be brought up at paragraph 37.

COMMISSIONER: Thank you. Yes, 37; I've read that.

15 MR HUTLEY: Yes. That is consistent with Mr Johnston learning of those rumours  
from Messrs Felstead and Chen at a point of time prior to the Korean arrests, as he  
recalled. Mr Felstead accepted that he and Mr O'Connor were responsible for  
decisions made by the VIP business in response to the foreign casinos crackdown.  
That was his evidence at 1202, lines 22 to 28. He also accepted that he was  
20 responsible to report the crackdown to Mr Craigie and that he could not recall doing  
so. That's transcript 1169, lines 45 through to 1171, line 12 and 1201, line 1 to 5. I  
won't go through those with you. Although he also gave evidence that he expected  
that Mr Craigie knew of that crackdown anyway. That was his evidence at 1197.6.

25 In any case, by the time of the South Korean arrests, Mr Craigie accepted that he did  
become aware of the foreign casinos crackdown. That's transcript 1482, lines 31 to  
35 and 1483, lines 20 to 23. There was no reason for Mr Johnston to expect that Mr  
Felstead was not providing such information to Mr Craigie or to operate on any  
general presumption that Mr Felstead was not meeting his responsibilities to Mr  
30 Craigie. In any case, and contrary, with respect, to our learned friend counsel  
assisting's submission at transcript 4887, lines 38 to 40 and 4889, lines 31 to 34 there  
is clear, contemporaneous documentary evidence that the fact of the crackdown was  
made known to all of the attendees of the CEO meeting that took place on the 18<sup>th</sup> of  
March because it was clearly referenced in the VIP international business update  
35 provided to that meeting.

And could we go to exhibit AB16, CPH.001.241.5285 at internal pin number 5287  
under the Key Points to Note:

40 *Turnover across the February was suppressed, either direct ..... reasons could  
be related to recent government statements indicating a campaign against  
foreign casinos targeting Chinese patrons.*

Now, the CEO report – could I go to – sorry, could I also ask you to bring up  
45 CPH.001.241.4993; that's tab 15 in the bundle we've supplied to you. Sorry.

COMMISSIONER: I will mark that bundle as exhibit AR.

MR HUTLEY: I'm sorry. This is exhibit AB15, I'm sorry.

COMMISSIONER: That's all right.

5 MR HUTLEY: Exhibit AB15.

COMMISSIONER: AB, is it?

10 MR HUTLEY: AB15 which is CPH.001.241.4993. This – shall.

COMMISSIONER: Just while you're there, Mr Hutley, I will mark your bundle of material that you've provided, notwithstanding some duplication, as exhibit AR with the relevant numbers.

15

**EXHIBIT #AR EXHIBIT BUNDLE OF CPH SUBMISSION DOCUMENTS**

20 MR HUTLEY: Thank you, Commissioner.

COMMISSIONER: Thank you.

25 MR HUTLEY: Now, if one looks at the email which has come up you will see to whom it is sent.

COMMISSIONER: Yes.

30 MR HUTLEY: To Mr Alexander, Mr Rankin, etcetera, and the other individuals who you see there.

COMMISSIONER: Yes.

35 MR HUTLEY: That's the document which makes clear the recent campaign against foreign casinos targeting Chinese patrons.

COMMISSIONER: Yes, that's – the attachment is exhibit AB16.

40 MR HUTLEY: Yes. Exactly. Now, Mr Alexander was taken to that document, but he wasn't taken to that passage. That's transcript 3431, lines 35 to 3433, line 12; a good example of the difficulties of hindsight. Now - - -

COMMISSIONER: What does that mean?

45 MR HUTLEY: - - - the CEO report for the - - -

COMMISSIONER: What does that mean?

MR HUTLEY: - - - immediately following - - -

COMMISSIONER: Mr Hutley, what does that mean? I'm just not sure that I understand what you mean by a "good example of the difficulties of hindsight".

5

MR HUTLEY: ..... that Mr Alexander gave evidence about his understandings at times.

COMMISSIONER: Yes.

10

MR HUTLEY: And is not refreshed by things like that can, of course, influence one's reaction to what one says about what - - -

COMMISSIONER: Yes, all right.

15

MR HUTLEY: - - - one would have done if one was told something.

COMMISSIONER: Yes, all right.

20

MR HUTLEY: That's all. No more. The – now, the CEO report for the immediately following board meeting on the 30<sup>th</sup> of March compiled by Mr Neilson for Mr Craigie did not refer to the crackdown. If one – this will be exhibit AR30 now, which is CRL.512.001.6745, and that's the report. It's not necessary to go to it. Now, a detailed five-year plan for the VIP international business prepared around the 17<sup>th</sup> of March also contained a clear reference to the foreign casinos crackdown and that you will see in exhibit M169, CRL.522.001.0136 at internal pin number 0139, and you will see that in the fourth bullet point – the third and fourth bullet point. The same content appeared in other drafts of this document, and I will just refer to them, R6 and exhibit R8.

25

30

There's no evidence that any one of these documents was provided to Mr Johnston, although Mr Johnston accepted that they were the sort of documents he could have seen, although his evidence was directed to a different point of time than March 2015, and you will see that in transcript 3110, lines 19 to 3111, line 28. Mr Craigie gave evidence as to how such documents were prepared, that he had seen documents like it and that he or Mr Barton may have been invited to attend a meeting of Crown Melbourne executive team at which such plans were presented. He was taken to each version of the document in evidence, however, Mr Craigie's evidence wasn't drawn to the passage which we've highlighted in any of the versions of the document. That's transcript 1455, lines 5 to 1457, line 41.

35

40

45

Mr Barton wasn't asked about any version of the document. Mr Felstead gave evidence that the document would have gone to an executive group, including Mr Craigie and Mr Barton and an abridged version provided to the Crown Melbourne board. He did not recall the document being discussed at the working group. Again, Mr Felstead's attention was not drawn to the passage I've highlighted. You'll see that in transcript 1202, line 39 to 1206, line 2. The Crown Melbourne financial year

2016-19 financial plan which was approved by the Crown board at its 22 May 2015 meeting, exhibit M186, which is – doesn't need to be brought up, did not contain any equivalent content. The financial plan was considered at the Crown Melbourne board on the same day. The minutes of that latter meeting note Mr Felstead, in  
5 discussing the plan, referring to the ongoing volatility in the international business and that international market unpredictability made it particularly hard to provide accurate assessments.

Those in attendance at that meeting other than Mr Felstead included Mr Alexander,  
10 Ms Danziger, Professor Horvath, Mr Barton, Mr Neilson and Ms Tegoni. That's exhibit FB9. None of these witnesses were asked about the minutes. So the point is the existence of the crackdown was broadly known within the organisation and appears to have been brought to the attention of senior executives including board members. It didn't ultimately get noted in the CEO report of Mr Craigie into the  
15 board, but it was broadly put and referred to in numerous documents bearing upon the likely performance of the VIP business.

COMMISSIONER: Can I just go back, Mr Hutley, because what it was in relation to the 5<sup>th</sup> of March telephone call, the reality is that what was suggested was that  
20 what had been discussed between Mr Chen, Mr O'Connor and Mr Felstead at around that time just before the 5 March note in Mr Johnston's diary was that (1) the climate had been destabilised and (2) that competitors had pulled their teams out of China.

MR HUTLEY: I understand that.  
25

COMMISSIONER: Now, Mr Johnston, and this is, I think, the only point – Mr Johnston claimed that he was not advised by Messrs Chen, O'Connor or Felstead of that matter.

30 MR HUTLEY: I accept that.

COMMISSIONER: And he said that on the 5<sup>th</sup> of March what he was advised about was the Korean problem, we'll call it.

35 MR HUTLEY: Yes.

COMMISSIONER: Now, the only real question of the forensic analysis of this is if I were to find that Mr Johnston was mistaken in respect of the content of that telephone call and that that information was provided to him in relation to the Korean  
40 arrests a little later when it happened in May or thereabouts, May/June, then more probably than not it was put, I think, that what had happened in the telephone call was that Mr Johnston did become aware that his competitors, or the competitors of Crown, were so concerned that they were pulling their staff out from China. So I just need - - -

45 MR HUTLEY: I understand.

COMMISSIONER: I just need you to put your submission on that aspect if you'd be kind enough.

5 MR HUTLEY: Mr Johnston, it should be accepted, there was no direct evidence that he was told about that. It's really an inference as to likelihood.

COMMISSIONER: Yes.

10 MR HUTLEY: - - - I don't think Mr Felstead said he told Mr Johnston that. And all it is is a possibility. Mr Johnston, you would accept, if he was told that, would have reacted as he said he would have reacted – he believes he would have reacted – and there is – the face of his evidence and the absence of any evidence – positive evidence – somebody saying that they told him that material, in our respectful submission, there's no basis to conclude that he was.

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COMMISSIONER: Yes. Thank you.

MR HUTLEY: It becomes – now, the – could I turn to the arrest of employees from Korean casinos operating in China and assurances received by Mr Johnston about that. That's the next topic.

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COMMISSIONER: Yes.

25 MR HUTLEY: Mr Johnston learned of the arrest of employees of South Korean casino operators in China in June 2015, independently of any information provided by management. He immediately requested that fresh legal advice be obtained to assess Crown group's position in the light of that development. He was again assured that he had – that that had been done and that the legal and government relations advice so obtained confirmed that Crown group was operating in  
30 accordance with accepted law and practice in China. It was conveyed to him that the South Korean casino operators had been conducting themselves very differently, had sought – and had sought to subvert Chinese currency controls in an aggressive and blatant manner and were an isolated case. That's – you'll see that from Mr Johnston's statement, which is exhibit CJ1, WIT.CPH.006.001 at internal PIN 0015  
35 to 0016. If that could be brought up, thank you.

COMMISSIONER: Yes.

40 MR HUTLEY: Now, he was examined in relation to that by our learned friend at transcript 2965 lines 33 to 45.

COMMISSIONER: Yes.

45 MR HUTLEY: And transcript 2975, lines 39 to 42. Now, there was an email on which Mr Johnston was copied at the time, forwarding government relations advice from the Mintz Group, was to the effect also verbally relayed to him. It was addressed to senior members of Crown Resorts' legal team, contributing to his

assumption that those persons had been involved in obtaining the relevant advice. Now, this is exhibit M202, which is CRL.522.001.4220. One will see that Mr Craigie and Mr Barton were also copied on that email.

5 COMMISSIONER: Yes. But I think your client says he didn't see a copy of the advice. He didn't ask for it.

MR HUTLEY: Quite.

10 COMMISSIONER: Yes.

MR HUTLEY: But that conveyed to Johnston that Mr Craigie was being provided with relevant information by Mr Felstead and that ordinary reporting - - -

15 COMMISSIONER: Yes. But why is he involved in this?

MR HUTLEY: Mr Felstead, on, I think, this and one other occasion, sent an email to Mr Johnston of this variety, and that was a matter – Mr Felstead was, I don't think, asked as to why. I will have that checked, Madam Commissioner. But one - - -

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COMMISSIONER: Yes.

MR HUTLEY: Now, I will have that checked.

25 COMMISSIONER: Just pardon me. That's 28 June, isn't it?

MR HUTLEY: Yes.

COMMISSIONER: Yes. Yes. Thank you.

30

MR HUTLEY: Now, so – now, could I now turn to the information Mr Johnston did and the information he did not receive regarding the questioning of a Crown group employee by the Chinese police. As Mr Johnston explained in his evidence, the email received from Mr Felstead some two weeks later, that is, on the 10th of July, concerning the questioning of the Crown group employee came to him without adverting to any connection with the subject matter on which Mr Johnston had previously inquired, which we've already addressed, about advices to ensure that Crown was acting appropriately in the light of the South Korean casino circumstances. Mr Felstead in his email, which is an email which starts on the 10th of July, if you have it – have I called it up? I'm not sure I've called it up. I do apologise.

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COMMISSIONER: I have it. No. I have it.

45 MR HUTLEY: I'll call it – exhibit AB21, CPH.001.242.3531. The email is an email chain commencing over, relevantly, at 35323, with a communication from Mr Zhou of WilmerHale and then continuing up to an email from Mr Chen to Jan

Williamson who, as you know, Madam Commissioner, was a senior lawyer within the Crown group. And notice that it refers to “our staff in Wuhan”, [REDACTED], was invited by local police, and then certain matters go on. That then is communicated from Mr O’Connor, at 9.47 am, to Mr Felstead who passes on to Mr  
5 Johnston, at 9.49 on the 10th of July:

*This is what we will be up against in China at the moment.*

Now, the communication calls for no activity from Mr Johnston. It has the character,  
10 and you asked me, Madam Commissioner, why Mr Felstead had sent the earlier email to Mr Johnston. A similar question can be asked about this email: why? That could only be answered by Mr Felstead. But sent it was. It has, perhaps, a character of – I don’t say idle – but passing on a piece of information to Mr Johnston, perhaps because Mr Felstead had had some dealings with Mr Johnston in the way that we’ve  
15 discussed and we’ve addressed.

Now, Mr Felstead merely said – now, as I said, he didn’t request anything. Mr Johnston’s recollection on the matter was not challenged. Mr Felstead’s evidence was that he didn’t discuss the matter. Mr Felstead gave speculative evidence of a  
20 discussion. He said “I would have,” that’s at transcript 1224, lines 20 to 1225 line 16, and really doesn’t lie in the area of recollection. Submission was made – Mr Felstead said he was informing Mr Johnston “because of his involvement in VIP”; that’s his evidence at transcript 1221 line 26.

25 COMMISSIONER: Yes.

MR HUTLEY: Not because of his involvement in the working group, just because of his involvement in the transcript – in VIP.

30 COMMISSIONER: What does that mean? It can only mean his interaction with Mr Johnston in the VIP environment, I would have thought.

MR HUTLEY: As you know, Mr Johnston had ceased attending the VIP working group some, at least, seven months before this.

35 COMMISSIONER: Well, he said it became less and - - -

MR HUTLEY: No, no, he doesn’t believe – I think he said he attended once in each of 2015 and 2016 was his evidence. But, anyway, it came to him. But it came to  
40 him in a context of sending an email which the central emails are being addressed to the internal lawyers of Crown and it’s being passed through Mr O’Connor and Mr Felstead.

COMMISSIONER: Look, he frankly said he didn’t – he did not appreciate the  
45 import of this email.

MR HUTLEY: Well, can I say where comes to a question of the import, and I want to deal with the import of this is to – if one contextualises its import together with other matters which were known to others, its import was obviously very significant. For example, this wasn't the first time an employee had been brought in for  
5 questioning. I think it was the third time. I will come to that. It also was in a context where Mr Chen was being told that the employees in China were scared; that wasn't communicated. This was – and when one asks about the import, there is necessarily a difficulty in speaking to it of an import, of itself, which can't be assessed, its importance – and we can don't dissent ..... having regard to all the other  
10 things which were known and unknown to Mr Johnston it was an important thing. But merely to be told once that an employee has been invited – not arrested – invited to speak about a matter, he's not told that anything being told by the employee was false; he's not told that the employees are scared and a whole series of other matters which I will come to. And, can I say, going forward, from the point of Mr Johnston,  
15 nothing further happened about this issue for 15 months. Now, that's why – I do not dissent from its import, but its import has to – is an import in a context which Mr Johnston didn't know. This extreme import; I accept that. But that's the judgment one has to make, and one has to make of Mr Johnston, what he was told and what he knew. Its import for Mr Chen might be totally different. Its import for Mr Felstead,  
20 totally different, because they knew so much more.

And that's what I would like to expose, if I can, now as to the circumstances. So obviously the email of the 10<sup>th</sup> of July involved communication and advice from Crown's external lawyers based in China who appeared to be dealing directly with  
25 the employee concerned. It included in the email chain a communication to a senior member of Crown's internal legal team. As we observed, the employee had been invited to meet with the Chinese police; that is, attendance voluntarily. Not being detained or arrested. And did not describe the interaction between the employee and the Chinese police as threatening in nature.

30 Did not anywhere identify alarm or express possible escalation of risk to Crown group for its staff in the light of the interview despite coming only two weeks after what Mr Johnston had been told was advice from the same external lawyers that Crown's risk profile was not impacted by what had happened with the South Korean  
35 operators. The external lawyer described both the interview of the employee and the letter to be provided as "straightforward". In the light of all those features of the 10<sup>th</sup> of July email, Mr Johnston reasonably assumed that the matter described in the email was being addressed appropriately by Crown Group's internal and external legal advisers, and the senior member subject to the CEO, Barry Felstead, the chief  
40 executive officer, was seized of it.

Now, he also reasonably assumed that he'd be informed that if there was any change to the advice that he was told after his request had recently been provided about Crown Group's position in the light of the South Koreans' arrests, and that's in his  
45 statement at exhibit CJ1 at paragraph 89, WIT.CPH.006.0001 at 0016 to 0017, that could be brought up.

COMMISSIONER: That's where he says he didn't appreciate the import.

MR HUTLEY: Yes, at paragraph 89.

5 COMMISSIONER: Yes.

MR HUTLEY: And then it's said – and he – this was dealt with at transcript 2972, line 33 to 2973, line 2.

10 COMMISSIONER: Yes, I've read that.

MR HUTLEY: And further at 2975, line 39 to 2976, line 2, and particularly what he says at 2976, line 1, that it was inconceivable to him that if the Chinese lawyers were alarmed by this that they wouldn't have stated so.

15

COMMISSIONER: Yes.

MR HUTLEY: And standing back, on what he knew, is that an unreasonable view to have held. You've engaged expert lawyers about - - -

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COMMISSIONER: Well, he didn't hold that at the time, I don't think, Mr Hutley. I think this was – this was an assessment in his examination before the Inquiry. My feeling is, from what he said, he didn't – he didn't understand the import or the context of it. He said:

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*Frankly, I was on a holiday and I did not appreciate the context or import of the email when I received it.*

When he said in answer to Mr Bell's question:

30

*I would have found it inconceivable if the Chinese lawyers were alarmed by this that they wouldn't have stated so –*

we're talking about hindsight here. And I think this was an assessment by Mr Johnston in the witness box, not an unreasonable one in his own view, but I don't think it was something that he thought about at the time.

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MR HUTLEY: At 119 he says:

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*I assumed that it was being addressed appropriately by Crown internal and external lawyers.*

That's paragraph 89.

45 COMMISSIONER: Yes, he did say that.

MR HUTLEY: And that, I don't believe, was challenged, and also can I make this submission: an experienced person, such as Mr Johnston, doesn't, as it were, bring to mind that it's inconceivable if there was an alarm, etcetera. And you're quite right, of course, Madam Commissioner, and it's not evidence of that variety, but  
5 that's evidence not of reconstruction, that's evidence of a mindset that one has without bringing it to mind, as it were.

COMMISSIONER: Yes.

10 MR HUTLEY: You go through life dealing with a business like this that if I'm running a business and a thing like this happens, if people who are engaged, who are the experts, they tell me if there's a problem. I don't have to bring it to mind, it's just something – it is so inherent in the way one conducts business that one doesn't  
15 bring it to mind. It is just, in effect, the way one has to, to a degree, proceed through life.

COMMISSIONER: But the odd thing is – one of the odd things about this is that he actually speaks about the Korean arrests and – this is only a couple of weeks later and doesn't bring this to mind. It's an odd situation that you would have the  
20 sensitivities in the China environment with people from other casinos being arrested, the young man, as he puts it, having an interaction with the police, that it doesn't come to mind. But it obviously wasn't mentioned by him and that's the position.

MR HUTLEY: And of course, he had been assured that comprehensive advice was  
25 being obtained about the situation of Crown vis-à-vis the Korean position. In fact had been - - -

COMMISSIONER: That makes it even more odd because he told me that he had asked them on a number of occasions. So he was conscious of the risks and he was  
30 conscious of the sensitivity and he asked Mr Felstead et al., you know, are we doing the right thing there?

MR HUTLEY: Quite.

35 COMMISSIONER: And so - - -

MR HUTLEY: Any person after the Koreans would ask that, and he did.

COMMISSIONER: And so after the arrests this happens, and then he reports to the  
40 board a couple of weeks later and makes no mention, and neither did Mr Felstead. It's a very strange circumstance.

MR HUTLEY: But the – now – but it was in that context which I've just described that Mr Johnston did not appreciate what was described as the seriousness of the  
45 event, or that it represented a potential escalation of risk. But it does because of other matters. Transcript – and that's his evidence and you've been taken to it. It

was suggested to Mr Johnston, incorrectly, that Mr Felstead was alerting him to the fact he thought this was a serious risk. That was put to - - -

5 COMMISSIONER: When you said – I’m sorry to interrupt you, Mr Hutley, I apologise, but I think you had said to me a little while ago that one of the things that Mr Johnston did not know was that the employee who had had the exchange with the policeman had not indicated falsely to him. I think that’s what you said to me, but - - -

10 MR HUTLEY: Yes.

COMMISSIONER: - - - when I look at the exhibit and you go down to the email from Mr Chen to Ms Williamson and Mr O’Connor it says he was:

15 *...told by the police that a tipster reported that he was organising gaming tours and [REDACTED] denied it and said he worked for Crown Resorts and assisted with leisure trips.*

20 So it must be that he couldn’t have read that, and if he had read it he would have known that – I withdraw that. That name should be deleted from the transcript, I’m sorry, it’s a non-publication order in respect of the name. Thank you. He must have known that BX was in a position of telling the police things that were, more probably than not, not accurate to put it neutrally, but that’s a problem for him as well.

25 MR HUTLEY: No, with respect, Mr Johnston didn’t know any aspect of the staff member’s communications was false. He did not know the staff member or the particular role carried out by the person. He was aware that some Crown group staff in China did provide visa processing as a report as the employee apparently informed the Chinese police station.

30 COMMISSIONER: Mr Hutley, really; Mr Johnston was well aware that Crown was driving to get people to come to Australia to gamble; they weren’t here on leisure trips. And what has happened here – and look, I understand your position that Mr Johnston didn’t appreciate the content of it, but if he had read it with a careful  
35 eye, and apparently he didn’t, it’s not right to say that he was precluded from knowing that this particular young employee had given the policeman a story about leisure trips when what Crown was all about was getting people to gamble, and frankly, that’s – frankly that’s just - - -

40 MR HUTLEY: With respect, Madam Commissioner, the question is the police department said that somebody had reported that he organises.

COMMISSIONER: Yes.

45 MR HUTLEY: That is [REDACTED] organises overseas gambling.

COMMISSIONER: I will suppress that name. It’s been suppressed.

MR HUTLEY: I do apologise.

COMMISSIONER: That's all right, Mr Hutley.

5 MR HUTLEY: That he did.

COMMISSIONER: Yes.

10 MR HUTLEY: That he did. And he said he didn't, and he may not have. There's no evidence what that individual did.

15 COMMISSIONER: Well, Mr Hutley, I think if anyone with any knowledge of the business in China read this email with some cognisance of what Crown was up to, that is trying to get people to gamble in their casinos, the last thing they were doing was organising leisure trips. But let me just pause there and I will take the luncheon adjournment and I will resume at 2. Thank you for that. Yes, all right.

20 **ADJOURNED** **[12.58 pm]**

**RESUMED** **[2.01 pm]**

25 COMMISSIONER: Yes. Thank you. Yes, Mr Hutley.

MR HUTLEY: Thank you, Madam Commissioner. I was addressing you in relation to exhibit AB21 - - -

30 COMMISSIONER: Indeed.

35 MR HUTLEY: - - - and about the content of the email on CPH.001.242.3532, the second page of the email. That was the subject of evidence by Mr Johnston, at transcript 2971, lines 25 to 33, where he said he didn't know that anything false was being stated. And, of course, the advice that Crown had at the time was that it wasn't organising overseas gambling tours. That was the very point upon which it was, as we understand it, running its business, because of the law - - -

40 COMMISSIONER: I'm sorry?

MR HUTLEY: Because of the law in China – the relevant law – about groups of more than 10 or less than 10.

45 COMMISSIONER: But that's a different point, though. I mean, there was – the evidence is overwhelming that what Crown was doing was wanting to get gamblers to come to Australia.

MR HUTLEY: No doubt about that.

COMMISSIONER: How they did it was a different matter.

5 MR HUTLEY: Quite.

COMMISSIONER: But they were certainly not leisure tours.

10 MR HUTLEY: I'm not, for a moment – well, when one refers to leisure tours - - -

COMMISSIONER: That's just a ruse. That's just a ruse. It's not criticism of your client, Mr Hutley, but it is a ruse. What was happening was that the presentation to the police was to take the focus away from gambling, take the focus away from what they were really doing, to fly under the radar, all of that. But Mr Johnston's  
15 evidence, in relation to the email, is that he didn't appreciate the import or the context of it. I'm just saying to you when you – the point that you raise was he didn't have the knowledge that anything false had been said, my suggestion to you is if he had looked at this to see what was happening, one could have reached the conclusion that what Mr BX was saying was not consistent with what was truly  
20 happening. That is, that Crown was in fact trying to lure gamblers to Australia and was not just simply organising "leisure trips". But, in any event, I understand your submissions in relation to Mr Johnston's approach to it.

25 MR HUTLEY: Yes. Moving on – I will move on.

COMMISSIONER: Yes, yes.

30 MR HUTLEY: It was suggested to Mr Johnston that Mr Felstead evidence – that Mr Felstead was alerting him to the fact he thought this was a serious issue. Mr Felstead's evidence – and I won't take you to it, was – and that was the question asked at transcript 2974 lines 25 to 34. Mr Felstead gave a different evidence, which is at transcript 1220 lines 15 to 1220 lines 19, and if – you will see that. Now - - -

35 COMMISSIONER: Yes.

MR HUTLEY: But as I've said, importantly, there was no evidence that Mr Johnston was aware of any failures by Mr Felstead or, for that matter, Mr Neilson, to deal with the subject matter of a 10 July email with Mr Craigie, to whom each Mr Felstead and Mr Neilson directly reported, or failures to notify the Crown Melbourne board, of which Mr Felstead was a member, or the risk management committee, of which Mr Craigie was a member, and Mr Neilson was the secretary. Nor is there  
40 - - -

45 COMMISSIONER: .....

MR HUTLEY: - - - evidence of anything that could reasonably have alerted Mr Johnston to such gaps. Also necessary to appreciate Mr Johnston was not told,

which might otherwise have impacted on his assessment, of a number of things. Each of Messrs Felstead, O'Connor, Chen, as well as Ms Williamson, Ms Tegoni and Mr Neilson were privy to more information about the content and circumstances of the questioning of the Crown group staff member than was conveyed to Mr  
5 Johnston. None of these executives or lawyers, most of whom with direct responsibility for dealing with the matter recognised the escalation of the risk sufficiently to prompt the seeking of fresh or differently sourced external legal advice or to raise the matter with the risk management committee or Crown Melbourne or Crown Resorts boards.

10 Specifically, Mr Felstead did not recognise the matter as an obvious escalation of risk; that was his evidence at transcript 1220.8 to 1220.19. Ms Tegoni said that she did not identify the matter as serious at the time; that was her evidence at transcript 2296 lines 23 to 37. Mr O'Connor considered the matter serious, but that it was  
15 sufficient to raise with Mr Felstead and the Crown legal team and not additionally to the risk management committee; that was his evidence at transcript 2036 lines 29 to 2038 lines 32. Mr Neilson did not recall the matter but said he would need further information than the email shown to him during his testimony before forming a view as to its seriousness, and you – that evidence – but that was his evidence at 2355  
20 lines 13 to 2357 line 27.

Now, that's just all the people who came in contact with it who had managerial responsibility or legal responsibility with respect to it. The matters of which those  
25 persons, or at least some of them, were aware and which Mr Johnston was not aware at that time included a narrative record – sorry. I withdraw that – that it appeared to be understood by at least some of those persons that part of what had been communicated by the staff to the police was not accurate; that was Mr Williamson's evidence at transcript 221, lines 37 to 222 - 222.4 and 2257, line 42 to 22 – 2258 line 3, and Mr O'Connor at transcript 2031 lines 42 to 46.

30 Next, Mister – he wasn't aware that Mr Chen wanted to avoid causing alarm by circulating the details of the interview more broadly. You will have seen that in exhibit O35, INQ.950.002.0153 at 0153 to 0154, and Mr O'Connor's transcript at 2034 line 30 to 2035 line 8, and Mr Williamson's at 2227 line 41 to 2228 line 29.  
35 Next, there was further evidence that the employee was the third Crown group employee interviewed by Chinese police or that any of them had not been truthful with the police as to the nature of the work, and you will recall that evidence from Mr Felstead – and we'll give you the – at transcript 1214 lines 23 to 26 and 1215, 1 to 4, and 1219, 41 to 44, and Mr O'Connor also at 2028 lines 5 to 13 and our learned  
40 friends oral submissions at 4899 to 4900. Mr Johnston did not know that more than one employee had been questioned; that was Mr Johnston's evidence at transcript 2967 lines 45 to 2968 line 2. He also didn't know that the Mintz group, the Crown group's external government relation's advisers referred to the letter requested by the Chinese police as contributing to what was called an evidentiary pile that they could  
45 draw on in the future; that was exhibit R17, and I won't take you to it. Also they didn't know that Mr Chen described the letter requested to Crown's internal lawyers as needed "to protect those of us working overseas"; that was exhibit R37.

None of that material, all current at the time, was shared with Mr Johnston. Now – and when my learned friend, at transcript 4896 line 27 to 4896 line 34, listed a number of those matters and submitted that Mr Johnston was aware of them, with respect, it's important that the precise matters that Mr Johnston was aware of be identified.

Mr O'Connor listed himself, Mr Felstead and Mr Chen and internal and external lawyers for Crown as those responsible for and actually responding to the matter, and Mr Johnston wasn't amongst those. Mr O'Connor's evidence in that regard was at transcript 2036 lines 29 to 2038 line 5. Mr O'Connor's usual practice, as he made clear, was to report to Mr Felstead and not Mr Johnston regarding his concerns about such matters; that was his evidence at 1941 lines 31 to 43 and 2026 lines 26 to 28.

Now, as I've submitted, Mr Johnston didn't know about the falsity in the way we've submitted, nor was Mr Johnston privy to the communication between Mr Craigie, Mr Felstead and Mr Rankin regarding the arrest of the South Korean operatives in which Mr Rankin, then shortly to assume the position of executive chairman, referred to the need to be on high alert to Chinese regulatory action; that's exhibit R11. As I've shown you, in exhibit AB16, Messrs Rankin and Craigie were aware of the foreign casinos crackdown from March 2015.

Now, Mr Johnston was also not privy to additional communications and informations relevant to any escalation of risk which subsequently came to the attention of one or more of Messrs Felstead, O'Connor and Chen. Those matters included heightened concerns among Chinese-based staff following a television broadcast in China in October 2015 referring to enforcement efforts in China connected with the foreign casino – and I won't take you to exhibit M239 and exhibit M229 and the cross-examinations of Mr O'Connor and Mr Felstead on those matters. Mr Johnston wasn't informed of them, and he gave that evidence at transcript 2981 lines 1 to 10. He was not informed of this matter which were known to Messrs Felstead, O'Connor and Chen, that Crown group staff in China were expressing fear for their safety and fear about being approached by Chinese authorities in connection with their work. And Mr Felstead accepted that at transcript 1125 line 45 and 1126 line 1 and transcript 1158 lines 37 to 1159 line 33, and then you have exhibit M30.

You also, of course, have evidence of Mr Chen, shortly after the foreign casino announcement, to – proposing that Crown group staff be issued with Hong Kong and Singapore work permits. Mr Johnston wasn't aware of that. And in that regard one would note the statement of issues and contentions at A14. Mr Johnston's evidence is at transcript 2963 lines 45 to 2964 line 4. Now, that proposal doesn't seem to have been discussed with Messrs O'Connor or Felstead or Ms Williamson, and was not authorised. You will have heard about that. You've heard about that.

COMMISSIONER: Can I just ask you to pause for a moment because I want to understand something that you put to me. You referred to a submission made by Mr Bell a little while ago at page 4896. Do you recall saying that?

MR HUTLEY: Yes.

COMMISSIONER: Just a little while ago, Mr Hutley.

5 MR HUTLEY: A while ago, yes.

COMMISSIONER: Just turn that up, and I just wanted to understand what your submission was in respect of lines 27 to 34. I had understood that you had listed seriatim a number of things, but this only refers to the questioning of the young man  
10 and all that is put there is:

*While none of the other directors other than Mr Johnston were aware of the event –*

15 that is the event of questioning, etcetera, but I just want to make sure what you were putting about that.

MR HUTLEY: And then - - -

20 COMMISSIONER: That's 4896. It's about three paragraphs ago, I think.

MR HUTLEY: 27 to 34, I think. So he said, if I've missed ..... :

*They each gave evidence to the Inquiry that the fact of questioning of a Crown staff member was a matter of serious concern and obvious escalation. Mr Felstead ..... who were aware at the time accepted those propositions only in hindsight. Mr O'Connor appreciated at the time he also accepted, etcetera.*  
25

If I've overstated, I withdraw it.  
30

COMMISSIONER: I think you have because there's nothing in that passage of Mr Bell's submissions that deals with anything other than the event, being the questioning, but I had an impression that you were - - -

35 MR HUTLEY: Well, if it's so limited, I'm content with it being so limited.

COMMISSIONER: All right then. Having clarified that - - -

MR HUTLEY: He had of course set out a whole series of matters constituting –  
40 which we read constituted the event, but I withdraw the submission. My learned friend - - -

COMMISSIONER: Yes, thank you. Yes, that will save a little time in due course. Thank you, Mr Hutley. Yes.

45 MR HUTLEY: Let me just deal with a last few things that Mr Johnston wasn't privy to.

COMMISSIONER: Yes.

MR HUTLEY: Now, he of course also wasn't privy to the interpretations being placed upon external legal advice about the conduct of the business of Crown  
5 through the unofficial office or any office in China. That was totally unknown to him, although known to Mr O'Connor and - - -

COMMISSIONER: I don't think there's any suggestion that any of this was known to Mr Johnston. It's the Korean arrests, previous to that the crackdown, and then the  
10 questioning. So it's pushing at an open door, if I may say so, that Mr Johnston did not know these other things.

MR HUTLEY: But my – to some extent – I accept that, but the important point - - -

15 COMMISSIONER: All right.

MR HUTLEY: - - - to observe, and that's the reason why we've gone through it, is that a well-structured organisation, apparently, to a – which was populated by various executives who had responsibility for these matters, material was coming  
20 into that organisation, large amounts of it. There was no reason for Mr Johnston to imagine that material going into that organisation was not being appropriately dealt with. Board directors constantly get information perhaps outside the board in communications with executives of information about the business operations. It happens every day. That doesn't mean that they should raise everything they're told,  
25 or anything they're told with the board if they have a reason to believe that the structures of the organisation are apprised of the material.

None of this material is material which Mr Johnston would have any reason – I'm not saying consciously – any reason to suspect was not coming to the attention of the  
30 appropriate organs, and of course those organs assessing it, and often through executives who had much more experience in dealing with the details of these questions and much greater access to information than Mr Johnston had. To get a fact, such as the 10 July email, ex ante he gets it, as I've submitted, from that structure, and it's apparent that the CEO, Mr Felstead, of the relevant structure, and a  
35 senior lawyer is apprised of it.

Now, with the benefit of hindsight and much material, that was a – and other material such as I've taken you through, even at that time there was a lot to worry about, but good corporate management doesn't necessitate that one treats the structures as not  
40 operating appropriately. Now, for all one looking at the time, if you assume that the CEO had that material, the CEO reports to the group CEO, the CEO reports to the risk committee, the CEO has access to broad legal; not consciously, but unconsciously one would be perfectly entitled to assume everything is being managed properly, particularly in circumstances where you've run the business. The  
45 business by this stage has been run in China on a large scale for up to seven years without any apparent difficulties.

Now, that's the context in which one appropriately assesses Mr Johnston's response. He knew that with respect to the Korean arrests, or he was entitled to assume that Mr Felstead knew it, he was entitled to assume that Mr Craigie knew it, and in fact he did. They were entitled to assume that they knew about the crackdown, and as I've  
5 shown, that was clearly widely dispersed, including to Mr Alexander and Mr Craigie in March 2015, all the hallmarks of an organisation concentrating information where you would expect it to be concentrated, where the management can collect other information which may bear upon these questions to then put them together in a form, if they were of concern, when all the information was assessed, in a way that it  
10 was progressed to the relevant organs.

Now, I accept that all that failed. I accept that. But the question here is, and why I'm going through this in such length is the judgment of Mr Johnston. He is, in our respectful submission, if one does not apply hindsight, his, as it were, acceptance,  
15 implicit that these matters were being dealt with, and if there were matters of concern they would be drawn to him and dealt with, and in respect of the Korean, he sought that advice be checked, etcetera, so he dealt with all that and, in our respectful submission, properly analysed there was no failure of proper management or proper behaviour on his part in failing to himself draw to the board's attention his  
20 knowledge of the email of the 10<sup>th</sup> of July.

To do so, in our respectful submission, requires imagining that he is a part of some special silo. He is not. He is actually allowing, as we say, an apparently properly managed and structured company to operate in a proper fashion. Now, in fact, that  
25 didn't occur, and – but that's our fundamental submission in relation to this. Had he – he could have, but the question is was he remiss in all the circumstances, without the benefit of hindsight, in not doing so, and in our respectful submission, properly analysed he was entitled, consciously or – and these sorts of things one deals unconsciously to a degree, to rely upon the structures of this organisation which  
30 apparently were fully seized of all these matters from his perspective.

COMMISSIONER: When he goes to the board meeting – if you look at his statement at 88, he's at the board meeting a month later, after he's notified of the 10<sup>th</sup>  
35 of July communication, so he gets the email on the 10<sup>th</sup> of July, but on the 12<sup>th</sup> of August he goes to the board meeting and he says that at the board meeting he mentioned something.

MR HUTLEY: Quite.

40 COMMISSIONER: And then, in addition to that, he had a discussion outside the board meeting during a break in the board meeting. So there were two reports; one to the board meeting which, as we all know, is not recorded in the minutes, but that's all right, and then there is the discussion in the more informal setting.

45 MR HUTLEY: Yes.

COMMISSIONER: So when he reports to the board that advice has been taken in relation to the South Korean arrests and what happens is that Mr Felstead is present. Mr Felstead is not present, it seems, at the informal discussion, but he's certainly present at the formal discussion in the board meeting at which Mr Johnston reports on the advice. So at that time no-one, neither Mr Johnston nor Mr Felstead, mentioned to the board the questioning of the employee in China.

MR HUTLEY: I accept that.

10 COMMISSIONER: So Mr Felstead does not remind Mr Johnston of what, as he put it, they were up against in China, and it must have been a failure to appreciate the context and import by Mr Felstead on one view of it, but it just left the board without any information about this.

15 MR HUTLEY: Quite.

COMMISSIONER: And of course, Mr Neilson was present. He had been aware of the process by reason of a letter that had to be prepared. It was just a disaster.

20 MR HUTLEY: The question to ask – that the board was not informed of that matter is a fact.

COMMISSIONER: It is.

25 MR HUTLEY: That the board – and there we have it. The question is was my client remiss in not raising it, and if so why, when looking at it from a point of view of governance the structures of the organisation were seized of it. For all one knew, or could know, that was still under consideration. All I'm seeking to advance the argument is if one is part of an organisation which has structures to deal with  
30 problems, it can be an exercise in, as it were, post hoc propter hoc reasoning to say because you don't, as it were, depart from those structures you are in some way remiss. And there is a debate in the evidence as to whether he raised the Korean arrests in a board meeting, before, after, or some evidence in both, and the evidence is really – it covers a spectrum from after the – between the board meeting, some  
35 evidence is in the second meeting, some evidence is in the first, and Ms Coonan, I think, gave evidence that it was before or during the first board meeting. Mr Johnston raised and communicated that matter.

40 That's – one can't, in effect – if one, as it were, suggests that's the proper thing to do, it was obviously he was conscious of drawing that to people's attention. It's perfectly consistent then with the fact that he hadn't been struck by the significance of the other thing and if the other thing had – was under the control of the organisation. It was being dealt with to all intents and apparent purposes and, from his point of view, it was just an invitation to speak to the police. It wasn't an arrest.  
45 It wasn't a threat. And it was being dealt with by the organisation. That's why we submit that it is, with respect, unfair to him to criticise his not raising it at that meeting.

COMMISSIONER: I don't know that it's unfair. I think it's fair to assume that a director that receives something like this, the question can be asked as to why on earth he didn't raise it.

5 MR HUTLEY: No, I'm not saying the question can't be asked as to why he didn't raise it. But in the circumstances and when fully analysed, we submit it is not correct to say that he failed in fulfilling his role or, appropriately, his role as a director of the organisation. It's certainly, with respect, no basis for a conclusion of unsuitability of a director. Mr Johnston, when apprised of the Korean issue, immediately sought that  
10 there'd be proper advice taken to ensure that everything that could be done was being done.

COMMISSIONER: Yes.

15 MR HUTLEY: With respect to the 10 July, he saw – the email shows it's in the hands of their lawyers. Not only the lawyers from – in China, but lawyers in Australia. So he's, in effect, informed that the matter is being dealt with, and nothing – and there are so many structures by reference to which this should have, particularly in the context of all the other things which he didn't know, have been  
20 coming forward to the highest level and through to the board.

Now, what – you may come to the conclusion there was just a fundamental misapprehension of the risks associated with China by the management of Crown – now, that will be a matter for Crown to deal with, but I've taken you through the  
25 accumulation of matters which we didn't know at the time – and that was an organisation, individuals of the most senior who were seized of it and didn't move. And that's why we submit that Mr Johnston's reaction, in all the circumstances, should not be the subject of adverse conclusions in your report, Madam  
30 Commissioner.

COMMISSIONER: Yes. Thank you, Mr Hutley.

MR HUTLEY: Now, can I deal with, now, Mr Packer's evidence relating to the  
35 China arrests.

COMMISSIONER: Yes.

MR HUTLEY: Now, the relevant evidence is that Mr Packer's knowledge of and response of what are identified as "the warning signs" concerning risks facing Crown  
40 group's business in China is as follows, noting that Mr Packer ceased to hold a role of executive chairman over a year prior to the China arrests and ceased to be a director of Crown Resorts some 10 months prior to those arrests. He believed at all relevant times prior to the China arrests that Crown group was compliant with the relevant Chinese law and he gave that evidence at transcript – I don't need to be  
45 called up – transcript 3593 lines 32 to 33 and 3599 lines 25 to 31. He had asked Mr Craigie and Rankin to be on top of that issue – that was at transcript 3600 lines 23 to 30 – and had sought and received assurances from both men to that effect. You will

see that at paragraph 26 of Mr Packer's statement, exhibit CM1, which is WIT.CPH.005.0001 at internal PIN number 0005, and that was – evidence to that effect was also at transcript 3604 lines 15 to 27.

5 On learning of the arrest of the employees of South Korean casino operators, he spoke to both Mr Rankin and Mr Craigie about the matter; that's transcript 3600 lines 43 to 45 and 3601 lines 11 and following. They were specifically requested by Mr Packer to look into the South Korean arrests and ensure that Crown group was not taking any similar risks. Mr Packer's evidence is at transcript 3604 line 25, 27  
10 and 3608 lines 37 and following, and 3621 lines 19 to 33. Mr Packer acknowledged that he did not believe that he had mentioned that request to the board, generally, at transcript 3755 line 42 to 3756 line 11. With respect, counsel assisting described this as Mr Packer agreeing that neither he nor Mr Johnston or Rankin had done so. Mister – and that – Mr Packer's reference was to himself alone. There was – I mean  
15 – sorry, Mr Packer's reference was to himself alone. Sorry. I do apologise. Mr Packer's reference was to himself, Mr Rankin and Mr Craigie, and that's the evidence the transcript 3755 lines 36 to 47.

20 There was no evidence of any discussion between Mr Packer and Mr Johnston on the topic. My learned friends, counsel assisting's submissions in this point are at transcript 4890 lines 38 to 43 and in their submissions at 228. However, it shouldn't have been necessary for him to do so. As Mr Packer noted, matters of escalation of risk should have gone to the risk management committee, the CEO and then to the board; that's his evidence at transcript 3603 lines 40 to 45 and 3612 lines 4 to 10 and  
25 35 to 39. It was squarely within Mr Craigie's obligations as CEO to ensure that the board was informed of significant items of work to which he was attending and, further, squarely within Mr Craigie's general obligations as CEO and as a member of the risk management committee. Mr Packer correctly perceived those to be Mr Craigie's obligations; that's at transcript 3608 line 34. Moreover, by August 2015,  
30 shortly after that request, Mr Packer had ceased to hold the role of executive chairman; that role had been assumed by Mr Rankin. Mr Packer was also clear in his recollection that neither Mr Felstead, Mr Johnston or anyone else told him of a Crown group staff member being questioned by Chinese police; that's transcript 3614 lines 12 to 32.

35 Mr Packer made clear that had he been aware of the warning signs of escalating risk there are a series of steps he would have taken or sought to be taken, including pulling staff out of China or ceasing the Chinese operations entirely; that was his evidence at 3619, 3 to 33. As I've submitted already, I would just like to turn shortly  
40 to the fact that senior members of Crown Resorts management had direct responsibility for escalating the matter and assessing the risk, and that does not appear to have occurred.

45 Now, as recognised by the ASX corporate governing principles and Crown Resorts own policies during the relevant period, whilst the board of Crown Resorts is responsible for setting a risk appetite and overseeing the company's risk framework, it is specifically the role of management to, among other things, implement that

framework and ensure that the entity operates within the risk appetite set by the board; and you've been taken to these a number of times by our learned friends: exhibit O5, exhibit M1 and the evidence of Mr Stuart at transcript 108 line 44 – 1084 – I'm sorry – line 44. Mr Craigie stated that he agreed with that principle and that it applied to the management of Crown Resorts in relation to the business strategy in China in the period leading up to the arrests. He further agreed he had an important role in discharging that obligation; that's transcript 1445 lines 43 to 1446 line 18.

Now, during the relevant period prior to the China arrests, Mr Craigie was the most senior executive of Crown Resorts with ultimate responsibility for Crown group's business, including VIP international, as well as a board member of the Crown Melbourne and the Crown Resorts board and a member of the risk management committee of Crown Resorts. Mr Craigie accepted it was his direct responsibility to ensure that his direct reports brought to his attention matters of significance relating to Crown group's business operations, to challenge his direct reports and request further information to ensure he was sufficiently briefed to full fit his obligations as CEO, and you will recall that evidence at transcript 1445 line 43 and following.

Notwithstanding this, Mr Craigie relied upon what he had been told by Messrs Felstead, O'Connor and Chen as to legal advice obtained regarding Crown group's operations in China. He acknowledged it was not sufficient in his role as CEO to have done so and that he should have drilled down into the detail of the external legal advice; transcript 1477 lines 43 to 1480 line 2 and 1493 line 19 to 22. Mr Craigie was also informed by Mr Felstead of the arrest of the South Korean operatives, advised by Mr Rankin to be on high alert, a communication not provided to Mr Johnston – that's exhibit M197, and it's dealt with in transcript at 1497 lines 7 and following – and acknowledged in evidence that he should have done more to look behind the information that was supplied to him by Mr Felstead on the topic; transcript 1497 line 7 and following. Mr Craigie was also aware of the foreign casino crackdown more broadly, and I've taken you to the fact that he was aware of it from March; that's in the documents, transcript 1482 line 31 and following, and 1483 line 20 and following.

Mr Craigie acknowledged that he did not raise either the foreign casino crackdown or the South Korean arrests with the board or the risk management committee of which he was a member; that's exhibit AB15, AB16 and his evidence at 14 – transcript 1497 line 14 to 1498 line 13; that is in the circumstances where the unequivocal evidence that he knew of the foreign casino crackdown at least by the 16th of March. Mr Craigie, on Mr Packer's evidence, was specifically requested by Mr Packer to drill down into the risk issues following the news of the South Korean arrests, yet it would appear to have failed to do so. Mr Craigie's evidence was that he did not discuss those arrests with Mr Packer, which seems inconceivable given that the matter was the subject of communications with Mr Felstead and Mr Rankin.

The extent of the discrepancy between Mr Packer's evidence and that of Mr Craigie, Mr Packer's evidence should be preferred. Mr Craigie was unable to even recall the reference that Mr Johnston had made to board members about the arrest or to point to

any action at all initiated by him following Mr Felstead's or Mr Rankin's emails on the topic; that was his evidence at 1497 lines 7 to 23 and 1502 lines 33 to 39. That he did nothing more following those emails is confirmed by Mr Craigie's statement in the class action against Crown Resorts. You can see that from exhibit O68,  
5 CRL.540.001.0284 and you can see paragraphs 28 to 31 on 0290 to 0291, if that could be brought up.

COMMISSIONER: Yes.

10 MR HUTLEY: It does not appear – 0290 to 0291, paragraphs 28 to 31:

15 *It does not appear that Mr Craigie asked any questions at all to further understand that matter after receipt of those emails. While Mr Craigie did not accept the broad proposition, he failed to take steps necessary to ensure he had information he needed in relation to the Chinese business to fulfil his responsibilities.*

Transcript 1493, lines 13 to 18. That may be an issue which is somewhat difficult to sustain.

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*There were also evident failings in the way in which legal advice about Crown's activities in China were managed with none of Mr Neilson, Ms Tegoni or Ms Williamson making any inquiry or seeking to manage external legal advice being procured by Mr Chen, even when aware that that was being done, demonstrated in the relevant email traffic at the time.*

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I won't give you the detail of that. You are no doubt familiar with that material and we will give you the reference in writing.

30 COMMISSIONER: Yes.

MR HUTLEY: Further:

35 *Mr Neilson who led Crown Resorts internal legal function was aware both of the Crown group employee being questioned by the Chinese police and of the South Korean arrests.*

That's exhibit M202 and exhibit R303, and his transcript at 2353, line 31, 2354, line 21. He was also aware of the foreign casino crackdown more broadly by at least 16  
40 March, and we've pointed to you it's probably earlier; exhibit AB15. As Ms Coonan noted, he was specifically questioned by her after learning about the South Korean arrests to understand more about the legal advice he obtained in respect of it, and that's paragraph 51 of Ms Coonan's affidavit, exhibit CD1, CRL.698.001.0001 at 0012. And that was dealt with also in a transcript, after you've had a moment to  
45 look at that. And the transcript, as was returned to at transcript 4399, line 15 to 4399, line 18 and line 45 on that page to transcript 4400, line 4. Now, given - - -

COMMISSIONER: There was one matter that you raised, if I may just go back to it. If you go back to 4890 of Mr Bell's submissions.

MR HUTLEY: Yes.

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COMMISSIONER: You put a submission that it was really a no evidence to support submission, but I have a feeling that there's an error here in the transcript, Mr Hutley, and it may be either an error by just reference or failure to correct the transcript, but my recollection is here at line 40, Mr – what is being put here:

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*...aware of the need for high alert, neither Mr Packer, Mr Craigie or Mr Johnston –*

you see that –

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*...formally brought the matter of attention, or indeed Mr Rankin. For this, Mr Packer conceded the three of us are all guilty for that.*

Do you see that?

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MR HUTLEY: Yes. Could I have that - - -

COMMISSIONER: “The three of us all guilty for that” does not include Mr Johnston. It is only – when I say only, it is Mr Packer, Mr Craigie and Mr Rankin. So if you go to the actual source of the evidence that Mr Packer gave, which is at 3756, Mr Packer wasn't dealing with Mr Johnston in respect of that matter; he was dealing with – although there's reference to Mr Johnston not telling him about the Wuhan thing, but the three being guilty at the top, you see, “yourself, Mr Rankin and Mr Craigie” on the top line? 3756. So I think it's a reference not to Mr Johnston in that three being guilty; it's Mr Rankin, Mr Packer himself and Mr Craigie.

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MR HUTLEY: If one goes to our learned friend's submissions at paragraph 228.

COMMISSIONER: Yes.

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MR HUTLEY: It says:

*However, despite being aware of the South Korean arrests and the aware of the need for high alert, neither Mr Packer, Mr Craigie nor Mr Johnston formally brought the attention of the board or Crown Resorts - - -*

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COMMISSIONER: Yes, it's Mr Johnston. If you look at page 3756, Mr Johnston is – it's not suggested that Mr Johnston was aware of Mr Rankin's high alert email, as I apprehend the evidence. It was that Mr Johnston was only aware of the Korean arrests and the Wuhan questioning.

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MR HUTLEY: Well, paragraph 228 – if that is – and I – it seems ambiguous - - -

COMMISSIONER: At 4890, yes.

MR HUTLEY: Yes. Paragraph 228 seems to – would indicate to the contrary, but as long as that’s clear, I - - -

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COMMISSIONER: Yes. There’s no suggestion, as I apprehend it, that Mr Johnston was aware of that email, Mr Hutley. That’s right, Mr Bell, isn’t it? Yes. Thank you.

MR HUTLEY: Thank you.

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COMMISSIONER: Yes. Yes, all right.

MR HUTLEY: Now, I was dealing with Mr Neilson.

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COMMISSIONER: Yes, you were.

MR HUTLEY: There is no evidence that Mr Neilson considered the warning signs or raised them with the risk management committee which he attended as secretary of the committee. Mr Neilson regularly provided report against material risks to that committee. In the edition of that report provided to the risk management committee for its meeting following – next following the news of the Korean arrests, Mr Neilson, while considering a range of risks in detail over some 27 pages, made no reference to the matter although he did refer to the increased investment in marketing to VIP players. You will see that in exhibit M270 if one goes – and M245. If one goes to exhibit M245, CRL.527.001.3697 at 3705.

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COMMISSIONER: Yes.

MR HUTLEY: And that’s also dealt with in Mr Craigie’s statement at exhibit O68 at paragraph 9; it’s not necessary to go to. That was also the position in May 2015, report against material risks, and the June 2016 report against material risks. That also did not address any of the warning signs and that’s – I won’t go to them. It’s exhibit M82 and exhibit 262.

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COMMISSIONER: Yes, I don’t think there’s any issue that none of this came to the board’s attention as it should have.

MR HUTLEY: And much of it didn’t come to the risk management committee.

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COMMISSIONER: Quite.

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MR HUTLEY: And we’ve seen on the evidence, Mr Felstead had specific responsibilities for identification of risks in the VIP international business for inclusion in corporate risk profiles and the rating of those risks and for assessing and managing material risks in that business, including through the risk management committees. Mr Johnston had no role or involvement in those processes. Mr Felstead acknowledged that he did not and should have notified the various warning

signs to risk management officers, risk management committees for Crown Melbourne and for Crown Resorts.

5 COMMISSIONER: Well, as you know, Mr Hutley, Mr Felstead – when it was suggested that the board was kept in the dark, effectively, Mr Felstead did give evidence that he did report to the board and he used an example that he did tell your client, Mr Johnston, and that was an example, that the fact that he told Mr Johnston in his email was Mr Felstead’s explanation that there were members of the board that knew some of the things about China. Obviously, that is something that you’ve dealt with, but when I said that the board didn’t become aware of things, it wasn’t put before the board in an appropriate manner, it was bits and pieces being given to various people at times such as Mr Rankin, Mr Packer not having been made aware of it, and Mr Johnston being given these emails.

15 MR HUTLEY: But the difficulty is that’s just not reporting to the board.

COMMISSIONER: No, I understand what you’re putting to me about structure and I understand your point about satisfaction that the structure should be working, but Mr Felstead himself justified himself on one view of it by saying that he had reported to Mr Johnston.

MR HUTLEY: I understand, but he also immediately accepted that that – communicating to Mr Johnston was not fulfilling his responsibility.

25 COMMISSIONER: Yes, he should have been telling Mr Craigie.

MR HUTLEY: Or the risk management committee.

COMMISSIONER: Well, he was a director of the licensee.

30 MR HUTLEY: Quite.

COMMISSIONER: And he could have at least told his colleagues on the board. Yes, I understand.

35 MR HUTLEY: Precisely. Now – and in that regard, as you know, Mr Felstead regularly attended board meetings.

COMMISSIONER: Yes. You mean of Crown Resorts Limited.

40 MR HUTLEY: Of Crown Resorts Limited. And he had every opportunity to raise these matters. He was also present when Mr Johnston raised the topic of the Korean arrests and seems to have added nothing to the discussion. Mr Felstead accepts he had the opportunity, did not do so in respect of the warning signs about escalating risks in China and further he did not regard his limited communication to Mr Johnston about those matters as notification to the board. That was at transcript 45 1102, lines 37 to 41 and 1200, lines 40 to 45 and 1221, lines 28 to 38 and 1239, lines

7 to 14. In short, Mr Johnston was the one person who did seek to have management consider the implications of the foreign casino crackdown and the South Korean arrests on Crown Group's risk profile and raised the latter with the Crown Resorts board based on the information he had been provided by management.

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Mr Johnston believed that Mr Craigie and the Crown internal legal function was receiving information about and dealing with these matters. In contrast, Mr Craigie, the CEO of Crown Resorts and a member of the risk management committee, and the Crown Melbourne and Crown Resorts board who had specific responsibility for seeking information about those matters and looking behind the information supplied to him by Mr Felstead, failed to do so. He took no steps whatever on the information he did receive. It seems that the same was true of Mr Neilson, the general counsel of Crown Resorts, a leader of its internal legal function and a regular attendee of board risk management committee meetings who knew of the foreign casino's crackdown, the questioning of the employee by Chinese police and the fact of South Korean arrests.

Now – and those are structural failures. Now, this is about an event of five years ago now and no doubt you will hear about how Crown has addressed these things. I'm just dealing with what was happening at the time. I'm not suggesting these things go to the suitability of Crown as an organisation, I'm drawing the attention to these to point out that there were a myriad of opportunities for the structures to operate and, in respect of this field of endeavour – and it's noticeable – it's not suggested in other fields of endeavour, it seems to have – it's misfired. That's likely to be, you would find, not a structural problem with Crown, but flaws in the individuals who simply misconceived risk in an area. It was human error. The thing we do want to point out is there are lots of fields of endeavour of Crown about which no failures are adverted to at all, but this – over China, there is this. So there we have it.

Now, we say, in all those circumstances, there's no justification to face any adverse finding in respect of those events. Now, and in that regard, I just want to turn quickly, we submit Mr Johnston's actions at the time were reasonable and appropriate in light of his limited information, and I've made those submissions in detail. Mr Johnston himself accepted that, viewed with the benefit of hindsight, the event of an employee being questioned was an escalation of risk. He said that at 2979 lines 19 to 23. But that was not obvious to Mr Johnston at the time based on the single email received, particularly taking into account the context, etcetera, and he gave that evidence at 2972 lines 30 to 2976 line 2. As he candidly observed in his evidence, he was not an expert in doing business in China; 2974 line 21. He reasonably relied on the descriptions of those much closer to the events, including Mr Chen, who Mr Johnston understood to be well-versed in conducting the business in China; that was – that, you'll see in his exhibit CJ1 paragraph 87, WIT.CPH.006.0001 at 0016, paragraph 87.

45 COMMISSIONER: Yes.

MR HUTLEY: And as the presence of internal and external lawyers and no suggestion or hint that there was any constraint upon those lawyers or those officers in taking all reasonable steps to, as it were, advance the interests of Crown, and one has to sit back and say that exposing employees to risks in China was profoundly not  
5 in the interests of Crown. Profoundly not in the interests of Crown or nor could be in the interests of anyone.

Now, the – at a general proposition, it may be accepted that a director, being informed of a material matter relevant to risk to the companies and appreciating that  
10 information to have that character, to then omit to inform other directors about that matters, certainly in situations where there are no other conduit for that information to reach the board or there is another appropriate conduit which may contextualise and add further information which may inform upon that matter, can be accepted, but, as we've submitted – and I won't go back over it – that is not what occurred  
15 here. It's the very antithesis of it. He did what was appropriate.

Now, in our debate – I will just move over my – yes. Now, can I now turn – various witnesses were asked to pass judgment on Mr Johnston's actions in relation to the questioned employee and, as I said at the outset, we don't challenge their honest  
20 belief. What we do submit is that evidence is inescapably infected by hindsight and decontextualisation. One asks if this issue had been raised, the email, at a board meeting, what we say objectively is the overwhelming likelihood would be is that it would be sent back to management to assess and obtain appropriate advice about. Because, just to be told that a person had been spoken to would raise, as it should  
25 raise, a whole series of questions. What would have happened in our – you would conclude, as it was a properly run board, is the board would have sought to have advice about it.

Now, the difficulty with that is that was precisely the context in which Mr Johnston  
30 saw that document, that is, executives were dealing with it. So we submit that these sorts of questions, which we perfectly understand why they were asked, but they are questions which, in a whole series of areas with which you, in your former guise was confronting regularly, were the sorts of questions which the judge, and here, you, the Commissioner, essentially has to assess by reference to the objective realities.  
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The Inquiry is – questions are being asked at a remove of nearly five years where all the people who are asked have been subjected to a wide range of information about obviously what followed some 16 months later with the arrests and everything  
40 attended upon this Inquiry. So the assessments, in my view, are, whilst, no doubt, honestly held, of little assistance to you, because no one – and we don't criticise the examiner in this regard, because he couldn't, nor anyone, could properly set out and ask the witness to assume all the relevant facts which they would have known or had to mind at the relevant time, and that's the difficulty which leads, for example, in the area of negligence, as you'd know, to it may have rendered the legislature to  
45 determine that such evidence is, effectively, is inadmissible about what one would have done.

So that's what we say. I'm not going to go through – we will deal with the particular analyses of the witnesses in our written submissions, but our general submission is it is in your hands to assess what the likelihoods are if you conclude that Mr Johnston ought to have taken a step of apprising the board of the interviewing of the individual  
5 employee to the attention of the board, what ought to have followed, what would have followed. And we'd submit, as we've submitted, that the overwhelming likelihood is that one would have thought the organs of this organisation to address the questions for the purpose of the board, which they were under a duty to do ex ante.

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Now, can I turn to – given the evidence I've taken to you, to we submit that there is no basis to make an adverse finding about Mr Johnston's credit. The submission by my learned friend that – and I quote from transcript 4953, line 32 to 34 – that:

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*Mr Johnston's refusal to accept responsibility for a failure which was obvious to his colleagues on the board ... reflects adversely on his credit.*

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In our respectful submission, it simply doesn't. What – I've made my submissions about what was obvious to his colleagues on the board. What's obvious to a person five years later, after all that has transpired, asked of people who are not skilled in the undertaking which you, Commissioner, is, is relatively, with respect, valueless. And those people couldn't be contextualised in the way I have sought to contextualise it in any question. And we don't, of course, criticise the questioning. It was a perfectly legitimate question for counsel assisting to ask, but it's the sort of  
25 question one can't appropriately contextualise with a lay witness five years after this event in this ..... because you would have to ask them to make 1001 assumptions contrary to their – that which is before them, and they're not expert witnesses.

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Now, can I now deal with the contention that the conduct of the VIP working group was a factor which caused the China arrests. In the statement of issues and contentions, China arrests B10, it's contended that:

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*The introduction and conduct of the VIP working group and Mr Johnston's regular meetings with the VIP compromised proper reporting lines at Crown Resorts and was a factor which caused the China arrests.*

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In oral submissions, that was put at transcript 4833 line 34. Now - - -

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COMMISSIONER: I think it's the compromise of the proper reporting lines which is causative; that's how I read that. So that's how I read that. So it's not – the fact that the working group and Mr Johnston's meetings, those two things, are said to have compromised the proper reporting lines and then the fact that the proper reporting lines was a factor – so there are two steps: the first one is the first aspect of the group and Mr Johnston's meetings compromising the reporting lines – and  
45 you've dealt with that – and then the fact that the reporting lines were compromised, for whatever reason, was a factor in what happened in not picking up things that

should have been picked up and the China arrests occurred without intervention. I think that's how that should be read, Mr Hutley. In fact, that's how I will read it.

MR HUTLEY: I've dealt with the first.

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COMMISSIONER: You have.

MR HUTLEY: And as to the second, in our respectful submission, there is no basis to conclude that the structure had any influence upon the failures which transpired. Can I deal with them individually. It can't have had any influence upon Mr Chen. It can't have had any influence upon Mr Neilson or any other of the lawyers. It can't have had any influence upon Mr Craigie. The only person, as we understand it – or Mr Rankin, I'm sorry. The only person upon whom this possibility could have operated was Mr Felstead. But the difficulty with that is Mr Felstead didn't communicate to the working group anything material which he failed to pass on to the CEO or the risk group – or the risk management committee, or for that matter the board.

It's not as if there was a communication to the VIP working group which in effect became, as it were, an information black hole. He simply didn't pass on anything to the working group. The only thing he did pass on once was the email of July and that, we would submit, was not to the working group. It was just in the way we've submitted. So the difficulty is one may have a concern, as you – about the operation of that working group, and we submit it was a committee like any other in a sophisticated body and I won't return to it. But an analysis of the failures simply bears no causative relationship to the existence or operation of the VIP working group unless one has hypothesised some psychological, as it were, stoppering of Mr Felstead's capacity to fulfil his job. And it is in the context also of the VIP working group reporting through, I think, Mr Felstead and Mr O'Connor to the CEOs group.

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Thus, there is no, in our respectful submission, way of expressing this in anything which, in our respectful submission, has a concrete causative relation. There just are too many things that didn't go to the right place and even allowing the July 10 email, that material went to various people who had nothing to do with the VIP working group, most importantly, the group general counsel. Now, that's the difficulty with the hypothesis advanced by counsel assisting, and it simply, with respect, doesn't follow from the evidence. The flaws here were, I think, is perhaps an idiosyncratic, collective belief in – not collective - or idiosyncratic beliefs of Messrs Chen, O'Connor, Craigie, Rankin about the lack of significance to the whole range of materials which they became privy to, and that's the explanation. It's not malevolent.

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We say in the – and this is a matter for Crown, we don't say it's indicative of a lack of – the organisation not being a satisfactory organisation because going forward it's such a sad but kind of unique constrained failure by this organisation in this regard, but that's really a matter for Crown, but we submit that it is just simply not supportable as a matter of evidence that the VIP working group and Mr Johnston's

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participation in it had any effect to prevent this – what Mr Hughes would once called a gallimaufry of circumstances which were stoppered either at the Mr Chen, the Mr O'Connor, the Mr Neilson or Mr Felstead level, and the Mr Craigie level.

5 COMMISSIONER: Well, Mr Felstead reported things to Mr Packer; Mr Felstead reported things to Mr Johnston. It looks like Mr Felstead, as he said, wanted to do things “on the ground”, whatever that might mean in a real organisation, but the fact that that working group was there had an impact on Mr Felstead. I have no doubt, Mr Hutley. He was reporting to various people in various ways in an informal way.  
10 He would talk to people over lunch, he would – I mean these sorts of things, in another jurisdiction in China, with a developing business like this, you can just imagine, but the fact was that there was no proper corporate discipline brought to this whole regime. And the fact that there was this committee there is not a malevolent suggestion, as you put. That’s quite right. It was the fact that it was there; Mr  
15 Felstead is in the middle of all of this and it was just an incredibly, as you put, sad breakdown.

MR HUTLEY: And – anyway, we’ve made our - - -

20 COMMISSIONER: You have, and I understand them. Yes.

MR HUTLEY: Now, let me just go through this. In the debate we’ve covered many of the matters: I’m just trying to accelerate it and we can probably cover what is left in - - -

25 COMMISSIONER: Yes, take your time.

MR HUTLEY: - - - written submissions. Now, the conclusion – the position about compromising formal reporting lines for VIP international and also the proposition of  
30 encouraging the pursuit of financial outcomes while disregarding non-financial risk, the former was not as such put to Mr Johnston or Mr Packer and having regard to the way, as we perceive the Commissioner conceives it possibly could, it probably was a thing incapable of being put because the individuals, Mr Johnston and Mr Packer, by hypothesis couldn’t know about the compromise. That was something completely  
35 hidden from them. It was, we would say, an unforeseeable consequence if you find that in some way it impacted psychologically and practically upon Mr Felstead principally, and therefore it wasn’t a matter, we would say, upon which we can be criticised; that is, neither Mr Johnston, Mr Packer nor CPH.

40 This was – and it was never put to either Mr Johnston or Mr Packer, or for that matter Mr Jalland that CPH or any of them were encouraging the organisation to pursue profit over proper management practices. Now, they – that was never put. There was never a suggestion of it to anyone and, in our respectful submission, it couldn’t be advanced against those individuals, and the – they – and – now, counsel  
45 assisting referred on several occasions to evidence given by Mr Johnston as to their loyalty to Mr Packer.

COMMISSIONER: Yes.

MR HUTLEY: Now, I want to – one has, in life, many loyalties. It wasn't suggested that Mr Johnston didn't have a loyalty to Crown Resorts. Any director  
5 will generally have a loyalty to the company over which he's a director. Loyalty means a respect for the position of the person to whom you are loyal, and to be faithful to that loyalty means to treat them not as a subservient functionary, but to treat them honestly and truly. There is no more in saying that one has a loyalty to a person than that. It's like saying one has a loyalty to one's profession but – to one's  
10 client, but simultaneously has a loyalty to the court system. Loyalty is a thing to be admired, not a thing to be deprecated. And no-one – with respect no-one put to those witnesses how the loyalty to Mr Packer interfered with the fulfilment of their responsibilities as they acted in and about Crown Resorts' business.

15 Now, nothing can be extrapolated from expressions of loyalty to conclude a failure in one's duties and, in our respectful submission, the references to loyalty is a diversion from the analysis of why Mr – the various individuals failed in their performance. There is a hypothesis being advanced that they did not wish to bring Mr Packer bad news. That's transcript 4910, lines 36 to 40. Now, we will address you about why  
20 that hypothesis does not withstand scrutiny.

COMMISSIONER: Before you go to that, I think you put to me in that previous submission that it hadn't been put to any of the witnesses that the corporation had focused excessively on profits, etcetera. Do you remember that?  
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MR HUTLEY: No, no. I think I put that there was no support for the conclusion that any action by any of the CPH parties encouraged the pursuit of financial outcomes while disregarding non-financial risks.

30 COMMISSIONER: Yes.

MR HUTLEY: There was evidence, for example, I think it was – I think it was either Mr Craigie or Mr Felstead who said that Mr Chen may have had that attitude, and I took you to those passages.  
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COMMISSIONER: Yes. I think Mr Packer was asked about it.

MR HUTLEY: Quite.

40 COMMISSIONER: Mr Packer was asked about it.

MR HUTLEY: Quite. But it wasn't suggested to him – and I'll have it checked – that his conduct was encouraging – was directed to encouraging people to sublimate, as it were, proper conduct to profit.  
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COMMISSIONER: Yes.

MR HUTLEY: That has not been - - -

COMMISSIONER: Yes. But when he said that he accepted some responsibility for the failures - - -

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MR HUTLEY: Quite.

COMMISSIONER: - - - he disagree that he attributed them to a corporate culture which focused excessively on profits.

10

MR HUTLEY: Quite.

COMMISSIONER: And so the corporate culture that could be – he just did not know to what extent such failures could be so attributed. But I deflected you.

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MR HUTLEY: Quite.

COMMISSIONER: I deflected you, Mr Hutley.

20 MR HUTLEY: Can I say something, momentarily, about corporate cultures. This will no doubt be further developed by Mr Young. There is a danger in assuming that a corporation has a culture across the whole of the corporation. There can be, for example, cultures within certain, as it were, divisions or area of a corporation and, for example, the evidence about Mr Chen, which I took you, to might suggest that  
25 there was, at a certain level within Crown Resorts in respect of the VIP, a culture there which you might conclude did so. That does not follow that that exists at different levels of the corporation.

30 And one of – in our respectful submission, one of the matters you will, Madam Commissioner, be astute, when, as it were, to some extent nebulous, but understandable considerations of questions of culture arise, is that cultures can only be an expression by individuals, and individuals have to be identified, or structures which promote the culture, have to be identified and allowance has to be made that that may be, as it were, a subculture, not a culture of the corporation, not a culture at  
35 particular levels, but at different levels. And one should not, with respect, infer a change of a culture, just because one finds evidence of it at a particular level in the corporations, infer that that's necessarily driven from above. It can be, in effect, driven through the ambition of the individuals at particular levels of organisations.

40 You will not see a corporate culture at the board level of the variety indicated suggested; you will not see it, with respect, in any activity of Mr Packer or Mr Johnston, and I don't address where you might find it elsewhere in the organisation or which parts of the organisation you might find it. But if there are to be conclusions of culture, one, in effect, has to really sculpt, as it were, the metes and  
45 bounds of that part of the organisation which experiences that culture. Now – right. Okay. Thank you, madam. I think I'll move on. And I will turn now, if I can to saying something about junkets. Now, I think we indicated that we would go into –

Mr d'Arville indicated we will go into tomorrow morning. We will certainly finish, I think, by mid-morning tomorrow morning which, as I understand it, will leave more than enough time for others to – who are anticipated to participate tomorrow.

5 COMMISSIONER: Yes.

MR HUTLEY: Now - - -

10 COMMISSIONER: Before you embark on junkets, are you going to say anything about Mr Johnston or Mr Jalland's involvement in authoring the advertisement?

MR HUTLEY: I am going to say something shortly about that tomorrow.

15 COMMISSIONER: I see. That's all right.

MR HUTLEY: Because I've literally tried to take the major – I'm not – in respect of the advertisement, they are not separately, as it were, really, isolated in the submissions of counsel - - -

20 COMMISSIONER: Yes.

MR HUTLEY: - - - so I'm trying to deal with things in, as it were, concentration of our learned friends. We will say something shortly, but that, I think, will be tomorrow morning.

25 COMMISSIONER: Yes. All right.

MR HUTLEY: If it pleases you.

30 COMMISSIONER: Yes, it does. Thank you.

MR HUTLEY: Now, can we say a few things about junkets. In particular, we'll make some short remarks about how Crown's historical dealings with junkets bears upon its present suitability and how it dealt with unsubstantiated allegations concerning junkets. And we will address some submissions made concerning CPHs interests in relation to junkets, in particular, the role played by Mr Packer and Mr Johnston.

40 Crown Resorts' dealings with junkets in the past can only be relevant to the extent they reflect present suitability of Crown Resorts or Crown Sydney. Those dealings must be viewed in their proper context. Difficult questions arise where a casino operator becomes aware of serious but unsubstantiated allegations in relation to a junket operator. It is, of course, often impossible, but, invariably, very difficult to prove a negative. Where such allegations are denied and have not been substantiated  
45 they may not be true or they may be no more than rumour. If rumour, which cannot be disproved or enough to result in casinos refusing to deal with a particular junket, one can readily imagine the incentive to competitors to spread rumour. There is

room for debate as to what is the appropriate way to deal with such a circumstance, and although there is certainly room for improvement, we don't wish to go into the detail of this. However, in our system of law there is a degree of caution applied to unsubstantiated allegations. One is reminded of the statement of Lord Denning in  
5 Dingle v Associated Newspapers Limited [1964] AC 372 at 412, and you no doubt are familiar with it. I see you smile, Commissioner. Now - - -

COMMISSIONER: That's in a system of law though.

10 MR HUTLEY: Quite. It is in a system of law, and we are in a system of law, although we are running a casino.

COMMISSIONER: Yes.

15 MR HUTLEY: Now – and caution by Crown Resorts in the past, consistent with the practice of other operators. And I'm mindful of my learned friend's submissions to the effect that this is not a race to the bottom, as Ms Sharp observed. But practice consistent with that of other operators, and without any contrary guidance from a regulator, in our respectful submission, doesn't really bear upon present suitability.  
20 One is really, now, in an environment looking forward, and that should be the focus of the Inquiry.

Commissioner, during evidence, you've made some comments about the appropriateness of changing the approach taken to junkets and that Crown Resorts  
25 should be a leader in that respect, and you will recall it arose in Mr Demetriou's evidence at transcript 3958, 13 to 26; Mr Alexander at 3549, 11 to 28; and Ms Coonan at 4564 lines 29 to 35. Those comments will hopefully lead to a great improvement throughout the industry, going forward, in respect of junkets. However, when one is looking at suitability by reference to past conduct it is relevant  
30 to consider the standard and practice applied by the gaming industry and its regulators at the relevant time.

COMMISSIONER: Yes.

35 MR HUTLEY: Junkets are a longstanding and accepted part of the casino industry. They find reflection in the relevant legislation. For example, on the evidence before the Inquiry, the only casino operating in New South Wales has longstanding relationships with some junket operators, that's Star, transcript 872 lines 14 to 17; it has dealt with Suncity junket, transcript 848 lines 26 to 848 line 28; and Chinatown  
40 junket, transcript 902 lines 44 to 903 line 11, and others.

COMMISSIONER: Yes.

MR HUTLEY: Regulators too have struggled with how to approach this difficult  
45 issue. Mr Sidoti gave evidence to the Inquiry that, following hearing media reports concerning junkets and triads in September 2014, ILGA had caused investigations to be conducted in relation to Suncity and Neptune junket, but ILGA, according to Mr

Sidoti – and this is transcript 935, 11 to 14 – didn't start off by accepting that all of the allegations in the program were correct and, until we were satisfied that the allegations were correct, it couldn't give rise to any questions in our minds about the probity of the operators. That is, ILGA, during this period, took the same approach  
5 that Crown Resorts appeared to have taken to unsubstantiated allegations. Further, according to Mr Sidoti, at transcript 936 lines 9 to 14, ILGA was unable to be satisfied that the allegation had been established. Ultimately, no decision was made, for example, to prohibit Star from dealing with those junkets. Suncity is still permitted to operate in New South Wales and is licensed by the Queensland regulator  
10 and that's - - -

COMMISSIONER: No, I'm sorry. They're not licensed. What happens is, although people have said this throughout the Inquiry, there's been a misapprehension. There's no licensing arrangements in Australia. What happens is  
15 the casinos in Queensland provide to the regulator a pro forma of a contractual arrangement, and the licence – I withdraw that – the regulator approves a pro forma commercial contract, but there's actually no issuing of a licence to any individual by the regulator in Queensland, and that's - - -

20 MR HUTLEY: But there is an approval system; they approve the relationship.

COMMISSIONER: Well, no, they don't approve – they don't approve the person being a person of integrity or probity. There's no probity process, as I understand what I've been told, Mr Hutley.

25 MR HUTLEY: I won't take it – the regulation of junkets is available to the Authority pursuant to section 76 of the Casino Control Act.

30 COMMISSIONER: Yes. Yes.

MR HUTLEY: And the Casino Control Regulation of 2001, which was in force until 2009, relevantly provided, clause 18, that promoters of junkets required written authorisation of the authority; clause 19, that upon conviction, not mere allegation or  
35 even charge, of a promoter or representative the casino operator was to notify the authority. That tends to suggest the Authority was not concerned with mere allegations or media reports. And clause - - -

COMMISSIONER: But you're going back in history, are you?

40 MR HUTLEY: I'm going back in history, I'm - - -

COMMISSIONER: Yes. Thank you.

MR HUTLEY: Clause 20 provided that advanced notice of any proposed junket  
45 was to be given to the Authority and, by clause 22, that a report was to be given once the junket completed. That was replaced by the two thousand and – by the regulation which was in force – the Casino Control Regulation of 2009 which was in force until

the 21<sup>st</sup> of December 2018. It repeated the requirements to which we've referred, save that the junket promoters were no longer required to be authorised by the Authority. Importantly, the obligation to notify the Authority still only concerned convictions. It was only on the 21<sup>st</sup> of December 2018 that most of these regulations  
5 were repealed, leaving the matter to casino operators to grapple with, and they were not - - -

COMMISSIONER: Can I just indicate to you that there's an understanding that may be erroneous that I have. Under section 124 of the Act where it has been – if we  
10 just go to that – 124 of the Casino Control Act, which has been in place for many years – just let me go to that. Yes. You will see there – so what happens is – and what has happened for many years – there used to be a section 125, Mr Hutley, that set out the various things that you had to have, but that was repealed, and what happens, as I apprehend it, is that the system of controls is that the casino operator  
15 drafts now an internal control; let's assume that it's an internal control in respect of the junket operations within the casino.

It also puts together what's known as the operating procedures, and so these two documents go to the regulator. The regulator approves the internal control but not  
20 the operating procedure, and within the internal control one finds things that have to happen vis-à-vis notifying the regulator. One of the things that is in the internal controls of Crown is that it has to notify the regulator should it become aware that the junket operator or the representative of the junket operator has been charged, has been convicted or has been found guilty, I presume found guilty with a bond. And so  
25 there is a touchstone in the criminal law for notification, as you've rightly pointed out.

In the Sydney – I withdraw that. In the process in New South Wales there's also an internal control that refers to "ill status", so that if the casino operator is of the view  
30 that there is an ill status, which probably covers things more broadly than criminal connections, it will do certain things. So it's an unsatisfactory regime, but there are complex steps that need to be taken, and this is the way it's presently operating.

MR HUTLEY: Thank you, Commissioner.  
35

COMMISSIONER: That's all right.

MR HUTLEY: Now, we now have the Casino Control Regulation of 2019 - - -

40 COMMISSIONER: Yes.

MR HUTLEY: - - - which came into force on the 1<sup>st</sup> of September.

COMMISSIONER: 2019.  
45

MR HUTLEY: '19.

COMMISSIONER: Yes.

MR HUTLEY: At least until December 2018, ILGA principally appeared to be concerned about convictions of persons associated with junkets, not mere allegations  
5 however serious. The authority has power to provide guidance to casinos under section 76. If we could go there for a moment.

COMMISSIONER: Yes.

10 MR HUTLEY:

*The regulations make provision for or with respect to regulating or prohibiting the promotion of junkets involving casinos, offering to persons inducements, the offering of inducements, in particular may impose restrictions on who may  
15 organise or promote a junket or offer inducements and require the organiser to give the authority advance notice of detailed information concerning the contact, require any contract, etcetera, require the organisation to give specified information –*

20 and then going on. So there's ample power in the regulator under the legislation for, as it were, guidance or controls to be put in place by reference to criteria which may be chosen after due consideration which will overcome or perhaps ameliorate and produce a standard by reference to which one can – a casino can objectively determine whether they are meeting community standards in respect of the approval  
25 to engage in business with junkets, which it must be accepted can be an efficient means of risk minimisation for casino operators, and with appropriate junkets dealing - minimising the risks or lowering the risks of inappropriate engagement with, perhaps, money laundering and the like.

30 So one has the position that, in theory, junkets are a good and efficient means of conducting a gambling business, as an adjunct to it. The problem is how to assess them, and that's a problem which has been vexed for a long, long time because rumours, reports of differing qualities, and you've been taken to them, some articles out of obscure magazines, some emanating from police and other bodies overseas,  
35 there becomes a difficulty, and it's a difficulty which has got to be confronted as to how a casino is to treat this. Is any assertion of impropriety to be treated as correct until refuted? And if not, by reference to what criterion, and in effect - and how is one to be satisfied? Now, it's unlikely, in asking a question of a junket operator, for example, "Are you associated with a triad?" he or she, if they say "yes", well, that's  
40 simple. If they say "no", what does one do if the basis of the assertion is some article in some newspaper.

Now, that's just a problem and that's a problem which shouldn't be addressed in criticising ex post facto the conduct of junket business by reference to a standard  
45 which, with respect, was – is being elevated through section 13A(1)(a) with respect to having to be satisfied as to their reputation, because as I pointed out, 13A is a reputation based upon objective facts, not just fame in the sense of rumour. With

respect, elevating that merely has shifted the problem to a new area of discourse which ultimately comes back to the same difficulty. How are these matters to be dealt with? And if, in our respectful submission, you may consider in part B - and no doubt it would be of great assistance to this State going forward that you do - any  
5 regulatory change to overcome these matters. But what should not take place is, in effect, the erection of a standard, a new standard to judge ex post facto the conduct of a casino like Crown Resorts to form a view as to their suitability.

10 Their suitability going forward should be judged on the likelihoods in the future, and to the extent that the past is considered, how it behaved comparative to its peers which are casinos in good standing in an environment of regulation analogous to that which subsisted in this State. And the best comparator one has is that - is Star, and it, together with other casinos throughout the world, for example, with the exception of the Hong Kong Jockey Club with respect to the Suncity junket, have dealt with the  
15 organisation, for example. So - now, that's what we wanted to say as a broad overview as to the approach to an evaluation of suitability of the licensee and the Crown Resorts, and no doubt our learned friends for Crown Resorts may - will have a lot to say about that. But it does, we say, contextualise what I'm now coming to, that is the role of Mr Packer.

20 Now, the crux of the submission made in respect of Mr Packer's role is at paragraph 327 of the written submissions of counsel assisting concerning media allegations on junkets and visa allegations. Mr Bell's submissions explored, and can we go to that? If that could come up, or you will see it, and it said - - -

25 COMMISSIONER: I think - are you referring to Ms Sharp's - - -

MR HUTLEY: Ms Sharp's submission at paragraph 327.

30 COMMISSIONER: Yes, thank you.

MR HUTLEY: And I will read it. Mr Bell's submissions explored Mr Packer's influence on the operation of Crown Resorts:

35 *That influence was also apparent in relation to junkets. Mr Packer set a dubious tone from the top in relation to junkets. It should be found that he monitored the VIP international business closely and he drove a culture that put pursuit of profits above all else.*

40 Now, the section D.5.3 of the submissions sets out the matters upon which the general contention in paragraph 327 are based. Two propositions appear to underlie that section of the submission. Firstly, that Mr Packer wished to bring "casino operator model" to Crown Sydney and, secondly, that Mr Packer was significantly involved in the Crown Resorts VIP international business and as a consequence that  
45 Mr Packer was responsible for VIP international team operating with an aggressive sales culture and a higher risk appetite than the rest of the business. We propose to

address each of those in turn. I see the time, Madam Commissioner. Shall I return to that in the morning unless you wish to sit on.

5 COMMISSIONER: Yes. No, I can – having regard to your observations about your timing, Mr Hutley, I will adjourn until 10 o'clock tomorrow morning. Thank you very much. Yes. Thank you.

**MATTER ADJOURNED at 3.59 pm UNTIL FRIDAY, 13 NOVEMBER 2020**

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