



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**

**MONDAY, 16 NOVEMBER 2020
AT 9.58 AM**

Continued from 13.11.20

DAY 56

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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
MR N. YOUNG QC appears with MR H.C. WHITWELL and MR K. LOXLEY for Crown Resorts Limited and Crown Sydney Gaming Proprietary Limited
5 **MR T. O'BRIEN appears for CPH Crown Holdings Proprietary Limited**
MS Z. HILLMAN appears for Melco Resorts & Entertainment Limited
MS K. RICHARDSON SC appears for Star Entertainment Group Limited and Star Pty Ltd

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COMMISSIONER: Yes. Mr Condylis.

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MR CONDYLIS: Commissioner. Yesterday, a further statement was provided to the solicitors assisting the Inquiry from Mr Kenneth Barton and I propose to tender that statement.

COMMISSIONER: All right, then.

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MR CONDYLIS: The number might be AO91.

COMMISSIONER: AO?

MR CONDYLIS: AO91.

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COMMISSIONER: Yes. That will be exhibit AO91. Yes. Thank you, Mr Condylis. And that has annexures as well or just a straight – just the document.

MR CONDYLIS: I believe it's just a document, Commissioner.

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COMMISSIONER: Yes. All right. Thank you.

MR CONDYLIS: Thank you, Commissioner.

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COMMISSIONER: That will be AO91.

EXHIBIT #AO91 STATEMENT OF KENNETH BARTON

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COMMISSIONER: Yes. Thank you. Yes, Mr Young.

MR YOUNG: Good morning, Madam Commissioner.

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COMMISSIONER: Good morning, Mr Young.

MR YOUNG: Commissioner, I thought I would start by outlining the general structure of the submissions we propose to make on behalf of our clients Crown Resorts and Crown Sydney.

5 COMMISSIONER: Thank you.

MR YOUNG: The submissions are effectively going to be divided into sections that I might broadly describe as follows: the first is some submissions as to the overall framework for assessing suitability. The second aspect is that I will address the
10 China arrests, including reforms and remedial steps put in place in the months following October 2016 as a result of the issues and shortcomings that had been identified. Thirdly, we will address the junket issue, if I can broadly describe it that way. Next, we will address some submissions to anti-money laundering issues. Then we will address the Melco transaction and contentions that have been advanced
15 in connection with the influence of CPH.

We will then address the current position in terms of submissions as to all of the processes and remediations that have now been put in place. Additional steps have been taken in the course of the last weeks and steps are still being taken and I will
20 need to explain those to you, Commissioner. We will then attempt to pull all of those foregoing themes together in overarching submissions as to suitability. In doing so, we will draw upon material about the way in which domestic and overseas jurisdictions have approached similar questions of suitability. We will then address your request, Commissioner, for submissions about further steps that might be taken
25 to address any outstanding issues going to current suitability as at the commencement of the operations under the restricted gaming licence.

COMMISSIONER: Yes.

30 MR YOUNG: In that area, too, we will draw upon both domestic and international precedents. Now, in connection with that aspect of our submissions as to suitability and as to further steps, we have endeavoured to accelerate the finalisation of a series of regulatory reports about the domestic regulatory approach that has been adopted in New South Wales and, secondly, about the regulatory position, accurately and
35 precisely stated in relation to overseas jurisdictions such as Macau, Nevada and other places. That is, in our submission, relevant not just to the further measures issue, but it's relevant to the way in which suitability needs to be assessed. That's the broad scheme of the approach, Commissioner.

40 COMMISSIONER: Can I just ask you what you mean about accelerating reports; to what does that refer?

MR YOUNG: We intend to file a number of – to seek leave to rely upon a number of expert reports as to the regulatory approach in the various jurisdictions I just
45 mentioned.

COMMISSIONER: From whom?

MR YOUNG: From a number of individuals; can I identify who.

COMMISSIONER: Yes.

5 MR YOUNG: There is one we've already provided to the Inquiry. It is a report by a Mr Newson, or at least we will provide today, if it hasn't already been provided.

COMMISSIONER: It hasn't been provided, Mr Young.

10 MR YOUNG: Well, I apologise, Commissioner, but you will understand we've been under a lot of time constraints in preparing for this matter. That's my error; I apologise.

COMMISSIONER: That's all right.

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MR YOUNG: The other reports will be from experts in - - -

COMMISSIONER: Mr Newson is a person from where?

20 MR YOUNG: He was formerly one of the heads of the New South Wales regulator.

COMMISSIONER: And so – I see. It's a New South Wales person, Mr Newson.

MR YOUNG: Yes.

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COMMISSIONER: And who else?

MR YOUNG: The following – just bear with me for one moment. I have a list. I want to get the names correct and the jurisdictions associated with the names correct,
30 Commissioner.

COMMISSIONER: Thank you.

MR YOUNG: Would you just excuse me while I find that list.
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COMMISSIONER: Yes, of course. Yes, of course.

MR YOUNG: It's my clumsiness for which I apologise, Commissioner.

40 COMMISSIONER: That's all right.

MR YOUNG: Can I come back to that shortly?

COMMISSIONER: Yes.

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MR YOUNG: I was sent the list this morning and I've misplaced it.

COMMISSIONER: So this is evidence that you want to call, effectively.

MR YOUNG: Yes, it is, Commissioner. It's effectively an acceleration of what we intended to provide in the regulatory round of hearings. We have done our best to
5 accelerate it to make it available this week because, in our respectful submission, the approach adopted in overseas jurisdictions as to similar suitability questions is relevant and will assist you, Commissioner.

COMMISSIONER: Yes. Let me just wait for it, Mr Young. It's a bit of a surprise,
10 of course, to those assisting me, no doubt, that there's now further evidence that you want to – or evidence that you want to call, but we will deal with that as we get along, Mr Young. If you proceed.

MR YOUNG: Thank you, Commissioner. Now, the precise order in which I listed
15 the topics within our structure - - -

COMMISSIONER: Yes.

MR YOUNG: - - - may have to change slightly depending on the state of
20 preparation. I don't think it will at the moment, but that's a possibility.

COMMISSIONER: Yes. Well, I understand that you may be in a rather fluid environment.

MR YOUNG: Thank you.
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COMMISSIONER: That's all right.

MR YOUNG: The Commissioner should have been provided with a folder listing
30 10 documents that we do wish to rely upon.

COMMISSIONER: Yes.

MR YOUNG: And I will explain the relevance of those documents as I - - -
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COMMISSIONER: Please.

MR YOUNG: - - - come to them I think is best.

COMMISSIONER: Yes, all right. Yes, all right.
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MR YOUNG: Now, may I commence with the framework within which suitability could be assessed.

COMMISSIONER: Thank you.
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MR YOUNG: That, of course, is the ultimate issue posed by the amended Terms of Reference, and I won't recite those matters. We take a similar view to that already expressed by Mr Hutley on behalf of CPH, that is, that it is important to focus the assessment on the particular statutory criterion of suitability in the Casino Control Act of New South Wales. We go a little bit deeper than Mr Hutley's submissions in explaining precisely what that means, and I will come to that in a moment. By way of broad outline may I submit this: the way in which counsel assisting has approached the question of suitability is, in our respectful submission, unsound because it is not directed to the applicable statutory inquiry.

One key example of that is that counsel assisting have made submissions on the question of suitability in a piecemeal fashion that pays no regard to any of the conscientious and considered steps that Crown has taken to address and eliminate shortcomings and failings that have been identified over the course of the past years right up until the Inquiry. Those shortcomings, many of them were identified prior to the Inquiry, and remediation steps were put in place before then, and I will take you to those matters, Commissioner. But an overall and comprehensive assessment of any failings that have existed is important to be coupled with the steps that have been taken in good faith and conscientiously to address all of those failings. That, in our respective submission, is essential to any assessment of suitability. Of course, counsel assisting have not embarked on the second aspect of that exercise, yet have made various submissions about unsuitability.

In fact, the approach adopted by counsel assisting, influenced by the framing of the Terms of Reference, has been to analyse suitability vis-a-vis each topic of media allegations in a discrete and isolated way, and they have made submissions as to a finding of suitability based on that narrow historical snapshot of past failings. Effectively, what has been submitted is that if any particular topic of media allegations is said to have been established to some extent, then that is used to found a submission that you, Madam Commissioner, should conclude that there is current unsuitability.

In our respectful submission, that does not accord with how suitability is required to be assessed under the Act, and any such approach would establish an exceptional and unprecedented standard not applicable to any other casino operator, either in Australia or overseas, where issues of suitability have arisen.

Now, an explanation, or a possible explanation, for counsel assisting's approach is the way in which the amended Terms of Reference have been framed. A strange feature of them is that suitability is to be inquired into by reference to media allegations. Now, that framing of the Terms of Reference is no criticism of the Inquiry because the Inquiry must, of course, address the Terms of Reference. But it should not be allowed to influence a proper assessment of suitability by tilting it away from its appropriate axis and orientation. What is required, in our respectful submission, is a comprehensive – a holistic assessment of all relevant circumstances, including reforms and remedies that Crown has progressively implemented and will

have completed prior to the opening of the Barangaroo casino facility. Can I turn to the Act then, Commissioner.

COMMISSIONER: Yes. Thank you.

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MR YOUNG: I just want to elaborate a little on some points already made by Mr Hutley.

COMMISSIONER: Yes, certainly.

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MR YOUNG: Counsel assisting have submitted that this suitability review is being conducted pursuant to section 141 subsection (2)(c) of the Casino Control Act. We agree with that submission, Commissioner, as did Mr Hutley on behalf of CPH. That subsection contains no reference to suitability, rather, it refers to a constant review of all matters connected with casinos and the activities of casino operators. The function that the authority is vested with and is exercising by appointing you as the Commissioner to inquire into certain matters, is the function identified in subsection (2)(c) of 141. That function is distinct from functions conferred on the Authority which expressly invoke the concept of suitability, such as the five-year review under section 31, or the review that takes place when there is a major change in the state of affairs of an existing casino operator pursuant to section 35 subsection (3).

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Now, The concept of suitability is informed by section 13A, as I think has been submitted; that is the section that applies to the assessment of suitability on grant of a licence. That expressly invokes the concept of suitability, but prescribes what it means. The particular paragraphs directly relevant are paragraph (a) and paragraph (g) and (h). Of course, those matters must be adjusted for the fact that this Inquiry is dealing not with original grant of an application, but it's aimed at the interregnum between grant and predating the commencement of operations under the restricted gaming facility licence, so it's necessarily looking ahead to what the position will be on commencement of operations under that restricted gaming licence in the very – having regard to the very specific nature of those operations. I will expand on that point in a moment.

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We agree with counsel assisting that the relevant paragraphs of section 13A are paragraphs (a), (g) and (h). Now, (a) and (g), noticeably, both define the concept that is relevant to an assessment of suitability in the same way, namely, whether the person is of good repute having regard to character, honesty and integrity. That's a prescriptive use of the expression "good repute". It is confined to matters of character, honesty and integrity. And we embrace Mr Hutley's submission that that is a use of the expression "good repute" in a very specialised sense of the person's actual character, honesty and integrity, as distinct from their fame or public perception.

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Another provision of relevance in informing the requisite inquiry is section 23. Section 23 deals with disciplinary action. One of the grounds for disciplinary action by the authority is that appearing in paragraph (1)(d):

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the licensee is, for specified reasons, considered to be no longer a suitable person to give effect to the licence and this Act.

COMMISSIONER: Yes.

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MR YOUNG: So the unsuitability is directed to specified reasons and that must be a set of specified reasons satisfying the statutory criterion that the person is not of good repute having regard to character, honesty and integrity. There's a temporal aspect, "no longer a suitable person". The temporal element refers back, of course, to the original grant, but it also is directed to suitability at the time at which the licence is to commence being given effect to, that is when operations are to commence. That is consonant with the concluding words of paragraph (1)(d):

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...no longer a suitable person to give effect to the licence and this Act.

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Now, the factors that inform the concept of giving effect to the licence and the Act are matters illuminated by the general objects of the Act in section 4A. And I know you are familiar with those, Madam Commissioner.

20 COMMISSIONER: That's all right.

MR YOUNG: They are, in brief:

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- (a) ensuring that the operation of the casino remains free from criminal influence or exploitation;*
- (b) conducted honestly, and;*
- (c) controlling and containing the potential of the casino to cause harm to the public interest.*

30 The words continue to families – "individuals and families", but that would seem to be a reference to concepts embraced by the idea of responsible gaming. Now, we accept that the position of a close associate such as Crown Resorts is to be assessed in the same way as the actual licensee, Commissioner.

35 COMMISSIONER: Thank you.

MR YOUNG: That hardly needs to be expressly stated, but we do.

COMMISSIONER: Thank you.

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MR YOUNG: Now, in summary, in our submission, the concept of suitability and the principles drawn from the Act that inform it can be stated as follows: the primary factors to which regard are to be held are those that go to the person's good repute having regard to that person's character, honesty and integrity, and that is specifically directed to the actual circumstances, the actual character, honesty and integrity of the person as demonstrated by all of the evidence. But it's the character, honesty and integrity assessed, most certainly currently, but also with this element of

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directing one's self ahead to the point of time at which operations commence under the licence.

5 Therefore, one needs to take into account all of the remediations that will be in place
as at that point of time. The objects of the Act, as I've indicated, are consistent with
that being the primary way of framing the suitability inquiry. The next point we
would make is that the assessment of suitability must clearly be a comprehensive one
10 taking into account all relevant circumstances, including the steps that Crown has
taken in the past, has now implemented and is still implementing and will have in
place by the time the facility opens. We will come to this in detail but, in our
submission, there is no basis in the evidence to find that Crown Resorts, or any of its
officers, have acted dishonestly or with a lack of integrity. That is a very strong
15 indication that a finding as to unsuitability would be unsound and not fairly based
upon the evidence and the correct statutory approach.

20 Second, as I've stressed, suitability must be directed to what the licensee is suitable
for, that is to say operating under the casino licence. Now, in that regard it's
necessary to understand the very specialised nature of the operations that will occur
under the restricted gaming licence. Those operations will be very different from
operations conducted at a casino of the kind operated by the Star in Sydney, or a
25 casino of the kind operated by Crown Melbourne and Crown Perth in those
respective capital cities. The objects are in terms of ensuring management and
operation remain free from criminal influence and ensuring the casino is conducted
honestly and without causing harm to the public interest.

30 In our submission, there's no proper evidentiary foundation to conclude that either
Crown Sydney or Crown Resorts will operate the Sydney casino when it opens in a
manner affected by criminal influence, or in a manner which is conducted
dishonestly or so as to cause harm, positive harm to the public interest. Those factors
would likewise indicate that there should not be a finding that the licensee, nor
35 Crown Resorts, is an unsuitable person for the purposes of giving effect to the
restricted gaming licence in the light of those statutory objects.

40 A further proposition that informs the statutory criterion of suitability is that the
assessment is to be made by reference to the context of the particular business and
the industry standards and regulatory standards that have been applied at the time of
the matters that have drawn criticism. That's consistent with the way in which, in
other statutory contexts the concept such as fit and proper person is to be assessed.
The cases – and I won't go into the cases in these oral submissions, Commissioner. I
45 will address them - - -

COMMISSIONER: Thank you.

MR YOUNG: - - - in writing. and I will say something about that in a moment. But
45 the cases indicate that propriety under other statutory formula has to be addressed in
the context of the relevant business or occupation or profession.

COMMISSIONER: Yes.

MR YOUNG: Can I just say this, as those who have gone before me in submissions have, we are preparing written submissions to assist the Commission. We will
5 provide them as soon as we're able to.

COMMISSIONER: Thank you, Mr Young.

MR YOUNG: That will contain a full list of evidentiary references and case
10 authorities and the like where relevant. I won't take your time, Madam Commissioner, by attempting to cite all references in these oral submissions.

COMMISSIONER: I would be grateful. Thank you.

MR YOUNG: Now, I have mentioned, then, other statutory formulas. The
15 correspondence between the precise content of those other formulae and the statutory content of suitability is not exact. In our view, a very precise concept is applied by the Casino Control Act which doesn't match broad criterion under other pieces of
20 legislation that have been the subject of judicial consideration. So caution needs to be exercised in picking up statements about other statutory language. We accept that the questions of repute, having regard to character, honesty and integrity need to take account of the public interest, but the focus of the public interest aspect is that the public interest is not harmed and would not be harmed by the particular granting of
25 the licence.

COMMISSIONER: I just missed what you said then. I'm sorry, Mr Young.

MR YOUNG: I said in the principles to apply to suitability - - -

COMMISSIONER: Yes.
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MR YOUNG: - - - the public interest is a relevant consideration.

COMMISSIONER: Yes.
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MR YOUNG: But it's the particular aspect of causing harm to the public interest that is stressed by section 4A. I didn't use those precise words, but that was my point.

COMMISSIONER: Thank you.
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MR YOUNG: Next, as I outlined earlier, reference to the way in which suitability has been assessed in overseas jurisdictions in similar circumstances is informative and we will provide you, Madam Commissioner, with information along those lines
45 to assist you.

COMMISSIONER: Thank you.

MR YOUNG: Now, the next point we would make is this: suitability is an overall assessment of, in this case, Crown Sydney and Crown Resorts at the current time having regard to all aspects of their operations, not just some particular aspects of their operations. It needs to be a comprehensive assessment of their overall
5 suitability having regard to their commendable performance in a whole range of areas. Now, none of that has been taken into account in the approach adopted by counsel assisting.

10 The next principle is that where past conduct is relevant to and a basis for assessing suitability, the weight to be given to past conduct of course depends on the circumstances of the particular conduct, the circumstances in which it occurred having regard to whether it conformed to industry and regulatory standards at the time, and, most importantly, the way in which it has been remediated and fixed going
15 forward. Now, Commissioner, at this point may I just expand a little on the very specialised nature of the operations that will take place under the restricted gaming licence. I will be brief because I anticipate that you have a familiarity with these matters.

20 COMMISSIONER: Well, Mr Barton explained some of it to me, Mr Young, but please feel free to give me as much detail as you wish.

MR YOUNG: Yes. Well, we will provide all relevant details in the written submissions. I won't attempt to do that now. I will just stress some particular
25 features.

COMMISSIONER: Can I indicate to you that I – what I expect in relation to written submissions is that I would not find in the written submissions anything inconsistent with what you're telling me in your oral submissions, but I'm grateful for whatever
30 assistance you can provide me.

MR YOUNG: Yes. I understand that, Commissioner.

COMMISSIONER: Yes.

35 MR YOUNG: But there are matters of detail that I can't possibly go into sensibly in oral submissions.

COMMISSIONER: All right then.

40 MR YOUNG: The restricted gaming licence held by Crown Sydney Gaming contains conditions that limit the nature of the gaming operations that can occur. It will be a facility that operates traditional table games, including automated table games, but there will be no general casino floor with poker machines. Importantly, the casino will not be accessible by the general public. It will only be open to
45 members or members' guests who satisfy identity and probity checks. There will be a VIP membership policy with details about those qualifications for membership and

entry which is to be approved by the Authority. That matter is the subject of consultations with the Authority at the moment.

COMMISSIONER: I see.

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MR YOUNG: The sign-up process for membership will include these elements: verifying the applicant's identity by reference to official records and photographic identification to be kept on file; photographing the individual to include on a particular membership card; satisfying a background security check which will include an Acuris risk intelligence examination; and acceptance by the patron of the Crown Sydney membership terms and conditions. So every person who proposes to enter will need a membership card obtained in the circumstances I've just described. Guests will be subject to similar identity checks and a security check. So, in those respects, quite clearly, the Sydney operation will be very different from general casino operations at Crown Melbourne or Crown Perth or the Star. Of and by itself, those matters address some of the kinds of issues that have been considered by the Authority, including about unsupervised – I withdraw that word – including about the way people come and go from particular rooms at the casino. I don't think it's useful to go into any more detail right now.

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Now, as you will hear, Madam Commissioner, and as I will turn to as we go to some of the individual categories that I outlined at the start, the evidence does identify some serious mistakes and shortcomings by Crown in the past, none of which, I hasten to say, bespeak dishonesty or a proceeding with a lack of integrity. Take China arrests as an example, because I'm about to turn to that, Crown accepts that its risk management structures were not engaged in relation to oversight of its business operations in China and that non-engagement of the established processes led to significant mistakes being made. That failure to engage with the process that was in place does not reflect dishonesty or lack of integrity and, to the extent that it was a failing of culture at Crown not to engage the risk management processes, those failings have been addressed and they did not encompass in any event deceptive or dishonest conduct. There were honest mistakes by management. Now, if you consider those matters, it's respectfully submitted that those matters do not carry forward to and cannot be the foundation, logically or sensibly, for any assessment going to current suitability, and I will develop those reasons.

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Quite plainly, the weight to be attached to past failings must be influenced by the remediation of the measures and the lack of connection of those particular events and mistakes in relation to China, to current circumstances. Operations in China ceased immediately after the October 2016 arrests and have not been resumed and won't be resumed. Now, Commissioner, that's what I wanted to say about a broad framework for the assessment of suitability. As I said, we will return to suitability much later in the course of our address.

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45 COMMISSIONER: Yes. Thank you.

MR YOUNG: I now wish to turn to the category relating to the arrests in China.

COMMISSIONER: Yes. Thank you.

MR YOUNG: I will first give you, Madam Commissioner, a broad summary, or an overview of what the submissions will say, and what submissions we will make. I
5 will then turn to detailed particular matters and I will address all of the criticisms that have been advanced by counsel assisting in their written and oral final submissions. Now, by way of summary: first, we submit that Crown accepts, and there is no dispute, that failings occurred in relation to its management of operations in relation to China. Risk management structures and processes were not utilised or engaged.

10 That meant that important developments in the operating environment in China were not escalated to any risk management committees, including the board-level risk management committee, and nor were those matters escalated in any proper way to the wider board. Those steps should have been taken. The failure to escalate those
15 developments meant that a small group of individuals in senior management made the decision about how to respond to developments on the ground in China. That small group of senior management set, effectively, the risk appetite of Crown in relation to operations within mainland China, and that arose because they failed to escalate matters to the board and failed to engage with the risk management system.
20 The board should have made those decisions, not that small group of senior managers, and that course of events should not have happened.

Turning to a particular aspect of managerial failures in relation to the events in China, we say this about the management of external advices. The management of
25 external advice obtained in connection with China was inadequate, and I address that both to the legal advice and the security advice that was obtained. All of that advice should have been provided to, assessed and considered by Crown's internal lawyers. Some important parts of that advice were escalated in that fashion, but not all of the advice as and when it was received. And I will detail those matters shortly,
30 Commissioner.

COMMISSIONER: Thank you.

MR YOUNG: Now, with regard to the failings I've just referred to, in our
35 submission, any balanced assessment of the decisions taken by individuals at the time as events were being brought to their attention, and as advice was being obtained, must take account of the surrounding circumstances. Plainly, hindsight bias must be resisted and avoided. In our submission, an important matter of context is the fact that those making the key management decisions looked at operating in
40 China, as Mr O'Connor put it, through the eyes of a westerner. Now, that is a frank and important acknowledgment by Mr O'Connor, and for reasons I will come to it's a very valid one.

45 What the members of senior management who had some requisite information did was to trust and rely upon the person in charge of operations in China, Mr Chen, who had vast experience in managing affairs in China, and the advice, both legal and security, that he progressively obtained each time there was an incident that is

identified as one which in hindsight can be seen as a warning sign. That is what was done, consistently, in the same way, each time there was a development. Further, Mr O'Connor, Mr Felstead and Mr Craigie assumed that operating within the law – and we will say clearly within the law, for reasons I will come to – would not lead to
5 arrest, detention or conviction for gambling crimes in breach of article 303.

A fair assumption for a westerner to make, but unfortunately that is not the way things work in China. The assumption was ultimately shown to be mistaken. It was an undesirable assumption to make and if the risk management practices and
10 processes had been engaged, those with wider experience, and perhaps more caution, might have taken a different view. Now, speaking of a balanced assessment that takes into account the prevailing circumstances, let me mention some particular circumstances, and this is by way of summary. I will come to some matters about these things. Crown had been operating in China and had staff, employees based in
15 China since at least the early 2000s, and that had transpired without incident. In that regard, counsel assisting said that was the position from about 2010. In fact, the evidence is that it goes back to the early 2000s.

COMMISSIONER: I think Mr Hutley took me to 2008. What year do you say?
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MR YOUNG: Well, the evidence – and we will cite it – refers to the fact that it goes back to the early 2000s. I can't be more specific.

COMMISSIONER: All right.
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MR YOUNG: Secondly, numerous competitors of Crown were also operating in China and had China-based staff. Now, there's evidence to that effect – quite extensive evidence – in exhibit O33 and in the statement of Ms Jane Pan, one of the arrested employees, in her sworn affidavit in the Federal Court proceeding.
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COMMISSIONER: What's the status of those proceedings, Mr Young?

MR YOUNG: Because of COVID restrictions in Melbourne, an application was made by the plaintiff to vacate the trial date, Commissioner.
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COMMISSIONER: I see.

MR YOUNG: That occurred and a new date was fixed, effectively – I can't recall the precise date, but it's September 2021.
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COMMISSIONER: I see. Thank you. The statement of Ms Jane Pan, I don't think, is in evidence, but I think you're proposing to tender it, is - - -

MR YOUNG: Yes, I am, and I'm proposing to take you to it, Commissioner.
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COMMISSIONER: We will come back to that in a little while.

MR YOUNG: Yes. The third matter is this, by way of a relevant circumstance: external advice was obtained on each occasion a development in China occurred in response to that development – reliance was placed on that advice – and that formed the basis upon which judgments were made by management as to the way in which it was best to manage the risks associated with the particular development. Fourthly, on each occasion that external advice, far from identifying a persisting risk, was ultimately to the effect that no substantial change in operations was required. And that advice was relied upon by those in senior management who made the relevant decisions. These matters must be borne in mind, in our submission, in passing judgment on the decisions taken by management.

On the topic of hindsight, it is worth mentioning at an early point that the characterisation by counsel assisting of what happened in China as a series of obvious escalations in risk that culminated naturally and inevitably in the arrests is a proposition that is overstated and, sadly, affected by hindsight. Quite apart from other problems, it does not affect the evidence as to the way in which things were honestly perceived at the time. The analysis also fails to grapple with the gulf measured by more than a year between the last of the events that is said to be a clear precursor to the arrests and the arrests themselves.

It also fails, in our submission, to recognise the general perception of how China operates and the fact that there is no dependable rule of law in China, contrary to the views held by senior management. We would add that things might be perceived now very differently than they were in the period between 2012 and 2016 as to the way in which China was developing. Increasingly, looking backwards, one knows that one cannot place any reliance on the rule of law in China and there are any number of examples to that effect. That was not as well appreciated by senior management at the time as it might be today.

Now, many matters were put by counsel assisting in their closing submissions which are not in issue. We have – in the written submissions we will provide a full and separate listing of those matters. I'm going to focus my submissions, Madam Commissioner, on the aspects that we contest arising from counsel's submissions, but may I say this: many of the matters raised by counsel assisting reflect the content of the sixth VCGLR draft reports first received by Crown and considered in June 2018 and then, subsequently, considered again in June of 2019. I will come back to those matters.

Turning to matters that we say are not made out on the evidence – and again by way of summary – there are submissions by counsel assisting that go beyond what the evidence fairly supports or proceed from false premises or a failure to understand all of the relevant factual matters. In short, Crown contests the following propositions: it is incorrect, in our submission, to assert that Crown adopted a narrow or technical interpretation of article 303 of the PRC criminal law, thereby failing to comply, at the very least, with the spirit of the law. That contention is not open, in our submission, when you look to the actual official sources as to the official

interpretation of that article, some of which have not been referred to or considered by counsel assisting.

5 Secondly, it was contended by counsel assisting that Crown breached Chinese business law or acted contrary to its own understanding of Chinese business law, thereby, acting unethically. In our submission, the evidence doesn't make out those propositions. And I will go to that in more detail. Next, it was submitted by counsel assisting that certain individuals in senior management appreciated that there was a material risk of staff being arrested and convicted for gambling offences. Now, in 10 places, I might say, that submission is hinted at, but it seems to be fairly implicit if not explicit in the written submissions. In our submission, it is unsupported by the evidence. Senior management did not appreciate, at any point of time, that there was a material risk of staff being arrested or convicted for gambling offences. Such an outcome would have been, and was, contrary to their very clear legal advice and their 15 understanding of the Chinese criminal law position. Next - - -

COMMISSIONER: Just let me say that, in that respect, it's clear from the document that Mr Chen feared prosecution – and we can come to that. But it's clear on the 20 evidence that when Mr Chen was debating his – whether he would receive an increase in his salary, one of the reasons that he put for the increase in his bonus, or whatever the emolument was, was his understanding and the fact that he had put himself in a position where he feared prosecution by the authorities. So there is some evidence, to be fair, Mr Young.

25 MR YOUNG: Commissioner, I fully intend to go to that document.

COMMISSIONER: Yes. Thank you.

30 MR YOUNG: I do maintain the position – or we do maintain the position that that view of things is unbalanced and overstated. There wasn't a fear of conviction - - -

COMMISSIONER: You mean Mr Chen's view?

35 MR YOUNG: Yes. Yes, Mr Chen's view as counsel assisting have interpreted it.

COMMISSIONER: Yes, I see. All right.

40 MR YOUNG: Mr Chen's view was much more nuanced than that and was not directed towards a risk of conviction for gambling offences. It was a more general caution about the state of affairs in China in an area where your activities were connected with a sensitive topic such as gambling.

COMMISSIONER: Yes, all right.

45 MR YOUNG: But I will come to that in detail, Commissioner.

COMMISSIONER: Thank you, Mr Young.

MR YOUNG: I'm not going to avoid grappling with that.

COMMISSIONER: Yes, all right.

5 MR YOUNG: The next matter is that counsel assisting advanced a submission to
the effect that certain matters can only be construed as attempts to disguise or
conceal things from Chinese authorities, and the suggestion seemed to be made that
that was being done because there was a consciousness of a risk of conviction for
breaching the gambling laws. Now, we say the evidence doesn't support that
10 submission, and again I will go in detail to the particular matters relied upon by
counsel assisting. Based on those last two matters, a broader submission was made
to the effect that Crown and its board consciously adopted a business model that
placed employees at risk of arrest and conviction for breaching gambling laws.
Again, we will say that's not supported by the evidence. It's a hindsight-driven view
15 that overstates the actual position on the evidence.

Next, it was submitted by counsel assisting that decision-making in relation to China
can be seen to be a product of CPH influence. In our submission, including by
reason that Mr Hutley provided, that is an unsound proposition. And towards the
20 end, it was submitted – towards the end of the written submissions, that is, by
counsel assisting, it was submitted that there has been no or no sufficient
examination of the facts, matters and circumstances pertaining to the China arrests.
In our submission, that is not a fair view and it is contrary to the evidence given by
the chairman, Ms Helen Coonan, and to the objective facts that I will take you to,
25 Commissioner.

COMMISSIONER: Thank you.

30 MR YOUNG: As I indicated earlier, all those matters do not go to suitability in any
relevant sense. They do not go to current suitability. The events in China occurred
more than four years ago. They revealed serious failings by senior management to
engage risk management processes, as I have indicated and accepted. But all
operations in China ceased immediately after October of 2016. Further, the failings
that occurred led to significant reforms and remedial steps. A series of steps were
35 implemented in the 12 months that followed the arrests but have not been referred to
or assessed by counsel assisting. Neither the personnel nor the structures nor the
policies that were in place at the time of the China arrests are the personnel,
structures and policies that will be in place at the time of the opening of the
Barangaroo facility. They are not the personnel, structures and policies in place
40 today.

It follows, in our submission, that the events in China are not a sound basis for
evaluating suitability at the current time, or at the commencement of operations in
Sydney. It would be a mistake, in our respectful submission, to so regard them.
45 Now, I want to turn to the nature of the findings that occurred in more detail as the
next step. As I have said, the failing was constituted by a series of failures by senior
management to prudently assess and escalate to the relevant risk management

committees, and then the board, important developments that occurred in China so that they could make the decision about the risk that the company should take in light of all relevant information.

5 That was, in our respectful submission, the root cause of what happened in China. It was attributable to serious misjudgements that developments in China could be adequately managed on the ground, effectively by Mr Chen in reliance upon the progressive advice that was obtained each time an incident occurred. Now, as to root cause, can I mention this by way of brief elaboration. There is abundant evidence
10 identifying the root cause and it is all to the same effect, that is, the effect I've described: senior management, individually and to some extent, collectively, made the judgment based on the advice they received from what they considered to be very experienced China experts that the risks were best addressed operationally, on the ground, as they put it, and that is effectively by Mr Chen with the assistance of the
15 experts he was relying upon.

Ms Coonan's evidence to that effect is at transcript 4423 to 4. The evidence is that risk management structures and procedures were in place and could have been engaged in which developments could have been assessed by a wider group of
20 decision-makers. The statement of Mr Stuart tendered in evidence in this Inquiry which he made in the class action, that's exhibit O68, sets out the risk management structures and procedures then in place at Crown Melbourne and at Crown and explains the link between the two, and he explained how those structures and procedures were designed to identify, assess and manage risks.

25 There is no dispute, as we follow the submissions by counsel assisting, but that there were strong risk management processes available to be engaged, but they were not engaged by senior managers, and it was the non-engagement that was the critical failing. We accept that the failing by management does show a lack of awareness at
30 that time of the importance of escalating risks to the relevant risk management committees, and it also speaks to the need to impress upon management the importance of drawing risk or changing circumstances that might involve risk to the attention of the relevant risk management committees so it can be properly considered and debated through those channels up to the board.

35 Now, the processes that were put in place after the Chinese arrests addressed those shortcomings. I will come in more detail to the evidence given by Ms Siegers. She was engaged in 2017, in the aftermath of the China arrests, to overhaul the company's risk management policy, processes and structures to ensure they
40 represented best practice, and part of the risk management training and methodology she designed and has delivered is directed to emphasising the importance of drawing the attention of the risk management committee to anything that is potentially a risk, whatever view the particular individual manager might take of it. The training recognises that those matters need to be embedded, and that a breadth of perspectives
45 needs to be brought to bear through risk management committees and structures rather than relying upon individual judgments by one manager or a small group of managers.

Now, turning to the particular developments that counsel assisting point to, they point to these matters: first, the 6 February 2015 press conference held by Chinese authorities; secondly, the 17 June 2015 arrests of the South Korean casino employees; thirdly, the question of Mr BX and Mr JX in June 2015, both China-based employees of the Singaporean subsidiary of Crown and, in the case of Mr BX, 5 the request for a letter confirming his employment with a subsidiary of Crown; and lastly, a CCTV news program broadcast in October of 2015.

10 In respect of each of those matters, Crown accepts that the matter ought to have been exposed to wider consideration and assessment, because the executives ought to have engaged Crown's risk management structures and procedures with respect to each of those matters. Further, the risk management structures and processes should have been provided with the advice that management had obtained in respect of each of 15 those events so that it too could be assessed by the relevant risk management committee. Those things did not occur and they were very serious failings that, as things turned out, contributed to quite horrible consequences for Mr O'Connor and other staff members.

Now, turning to Crown's management of external advice received by VIP 20 international executives; that was inadequate. All advice as and when received should have been provided to Crown's internal legal teams for assessment and scrutiny, in conjunction with the escalation of all relevant matters to the risk management committees. But it's not as if not all – it's not as if some of the advice did not get to the legal department. The core legal advice on article 303 was made 25 available to the legal department by Mr O'Connor on the 20th of February of 2013, when he provided it to Ms Tegoni. That's exhibit P4. However, the progressive, ongoing advices that were received and obtained each time a significant event occurred were not provided in the same fashion. In hindsight, it can be seen that it 30 should not have been left to Michael Chen to manage and communicate the ongoing flow of the advice in the way he did. The progressive advices should have been shared more widely within Crown and provided to the legal department at least.

Now, the reliance upon Mr Chen is something I will also expand upon, but, just 35 briefly, he was regarded as the person in the organisation with the most knowledge and experience of Chinese affairs. He had a long experience of doing business in China and he was regarded, rightly, as the person dealing directly with WilmerHale, the providers of the legal advice, and Mintz, the providers of the security advice. If more adequate processes had been adopted, we accept that any ambiguities or obscurities in the advice might have been clarified. There was, however, no lack of 40 clarity or precision in the advice concerning the meaning and operation of article 303, nor was there any unsoundness in its foundations in explicit statements found in the body of Chinese criminal law to which reference has not been made.

Now, Crown has addressed the failings in relation to the management of legal advice. 45 All external advice relating to jurisdictions outside Australia is now obtained through Crown's internal legal teams. Crown has improved its internal systems for the retention of external advice. It has implemented a work site - - -

COMMISSIONER: I'm sorry, Mr Young. I missed what you said about overseas. Could you just say that again for me?

MR YOUNG: Yes. Please tell me, Commissioner, if I'm going too quickly.

5

COMMISSIONER: No, that's all right, Mr Young, I just missed what you said for some reason - - -

MR YOUNG: Yes.

10

COMMISSIONER: - - - in the feed.

MR YOUNG: Yes. All external advice relating to jurisdictions outside Australia is now obtained through Crown's internal legal teams. Madam Commissioner, you would understand that that's a significant change from the China situation where Mr Chen, who was managing the whole sales cooperation in China, obtained and managed the legal advice. The legal advice is now obtained and managed by Crown's internal legal teams with respect to every overseas country in which Crown still has operations.

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COMMISSIONER: And when did that change, Mr Young?

MR YOUNG: That changed – I will get a precise date, but that changed relatively soon after the China arrests.

25

COMMISSIONER: Yes. Thank you.

MR YOUNG: I will come to later – October 2016, I'm instructed.

30

COMMISSIONER: Thank you.

MR YOUNG: I will come to this. But what occurred in the immediate aftermath of China was that there was a complete reassessment by Crown of the way in which it was conducting and managing business operations in overseas jurisdictions, such as Malaysia, Indonesia, and so forth.

35

COMMISSIONER: Yes, I recall that evidence. Yes.

MR YOUNG: Yes. Crown has improved its internal systems for the retention of external advice as well. It has implemented what's known as a work site file management system and has adopted a practice of saving all external advice to that system using a naming convention. As I understand it, that's much like what is used in the construction industry so that people can be sure that the – what they are looking at is the most recent, up-to-date comprehensive advice and they can track back and see what preceded it and what changes have been made to the extent necessary.

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Can I make this point in the broad – and again this is a matter we will develop later in the submissions – the evidence, in our submission, does not support the proposition that the VIP working group was effectively controlled by CPH or that it was an instance of CPH exercising control via that forum over decision-making in relation to China. The evidence does not support such a proposition. Crown does
5 acknowledge that the existence of that working group and Mr Johnston’s membership of it, in particular, did have an indirect impact on the way in which Mr Felstead reported certain matters. It meant, in respect of certain matters, there was an opportunity to – and he did – report certain things to Mr Johnston, but that was only
10 on some occasions. This was no full-fledged reporting line, nor did it exclude his reports to his superior, Mr Craigie.

COMMISSIONER: Yes. I appreciate that concession. Thank you, Mr Young.

15 MR YOUNG: Yes. Mr Hutley went through the evidence about the reports to Mr Johnston in quite some detail and I didn’t think, in my oral submissions, it was necessary to retravel that pathway.

COMMISSIONER: All right then.
20

MR YOUNG: However, Commissioner, it cannot be said that the VIP working group was established for anything other than a bona fide purpose of trying to provide specialised assistance to executives in - - -

25 COMMISSIONER: I don’t think it has been.

MR YOUNG: Beg your pardon?

COMMISSIONER: I don’t think it has been. I don’t think it has been.
30

MR YOUNG: Yes. Thank you.

COMMISSIONER: It hasn’t been suggested. Yes, it hasn’t been so suggested.

35 MR YOUNG: Well, I’m grateful for that indication, Commissioner, but we do make the point anyway because of the way in which we frame the suitability inquiry.

COMMISSIONER: Of course.

40 MR YOUNG: Nor was – can I say this, nor was it an intended outcome of the establishment and working of that working group that it was intended that it should alter or affect Mr Felstead’s ordinary reporting lines. Can I then turn to some matters of context in more detail about operations in China. There has been an element of
45 hindsight in the way in which various things have been approached by counsel assisting without a full appreciation of the particular circumstances of conducting business – any business, in fact – in China, and that includes sensitivities within China to the ongoing risk, at any point of time in connection with any business

operations, that individuals might be called in for questioning and that individuals might be the subject of adverse reports by other Chinese people. And once that situation occurs, there is also a risk that it may explode in unexpected directions because of the unreliability of the way in which the legal process occurs in China.

5 That's rather a formality to refer to China in that fashion as if there is any dependable rule of law. The evidence in this case shows that there is hardly any at all.

Now, Mr O'Connor's reference to "through the eyes of westerners" was expressed in this fashion at transcript 2060, lines 32 to 36, and I will read the extract. Mr
10 O'Connor said he:

...didn't fully appreciate that China's legal system doesn't operate the same way as a western legal system does, and just because one might feel that they're on the right side of the strict letter of the law doesn't necessarily mean that that's the way it will be applied in China.

15

Now, that was expressed through a consciousness arising from bitter experience in his case, because, at all times, he was confident that operations in China were well inside the explicit terms of the applicable law, and that was the advice he relied upon.

20

Likewise, it was assumed by all relevant managers that operating cautiously within the bounds of the criminal law would not lead to arrest and conviction for gambling offences. Now, that assumption is shown to have been mistaken by the circumstances of the conviction of Mr O'Connor and others. I will refer, in
25 particular, to his position and the position of three administrative staff convicted of contravening article 303.

Based on the authoritative interpretation of article 303 published by the Supreme People's Court, there was no basis to fear or to conclude that anyone was coming
30 close to contravening the relevant criminal law. As I'll turn to, there are two relevant Supreme Court interpretations. Counsel assisting's submissions are based on one and they omit any reference to the other, which is very important. I will come to the detail of article 303, but the evidence discloses quite clearly that Mr O'Connor did not organise anyone to go abroad to gamble and most certainly did not, on any one
35 occasion, organise 10 or more Chinese citizens to go abroad to gamble. He never met, in fact, with more than one patron or prospective patron on any one occasion except possibly he might have met with one or two on several occasions.

There is evidence to that effect in his Federal Court statement, exhibit R34,
40 paragraphs 69, 70 and 72. There is evidence to that effect in the schedules for road trips to be undertaken by Crown officials visiting China. An example is exhibit M181, which principally relates to Mr Felstead; that shows that his program was to meet either for lunch or dinner with a single prospective or past customer. In the case of Mr O'Connor, there are two of his schedules for visiting people in China that
45 we seek to tender – they are items 9 and 10 in the tender list – and they show that, likewise, he only met with an individual separately at any one time for lunch or dinner. Turning to the administrative staff, they did not meet with any customers.

They cannot be said to have organised anyone to go abroad to gamble and, certainly, not on any one occasion more than 10 such persons.

5 COMMISSIONER: They're the three individuals that were not the subject of any – after conviction or – I will withdraw that. They didn't serve a term of imprisonment subsequent upon a conviction; is that right?

10 MR YOUNG: That's right. They were convicted, but, by the time of the conviction, they had been jailed for approximately – well, more than 12 months – no, effectively, 10 months or so.

COMMISSIONER: I thought that the administrative staff had been released in the latter part of 2016. Perhaps that's an error on my part, Mr Young.

15 MR YOUNG: It may be an error on my part, Commissioner. I will have it checked.

COMMISSIONER: Anyway, they were certainly dealt with differently from the sales and managerial staff, as I understood it.

20 MR YOUNG: Well, yes, only in terms of the fact that there was a conviction without a term of imprisonment.

COMMISSIONER: Yes. No imprisonment. Yes, thank you.

25 MR YOUNG: But I'm focusing on the conviction, if I may for a moment.

COMMISSIONER: All right.

30 MR YOUNG: The evidence is those administrative staff received only a standard wage with no incentive component. There is no basis, having regard to the plain text of the Chinese law, under which it could be found that they received a kickback or referral fee, and they are the two explicit terms used in the governing Supreme Court interpretation, and so that was one of the essential elements, but regardless of its absence, they were detained in horrible conditions for a long period of time and then
35 convicted. Now, because of the western perspective that Mr O'Connor referred to, and because of the terms of the legal advices that were progressively obtained and they relied upon which made clear what the textual provisions of the Chinese law were, it's readily understandable that the senior executives who knew of the legal advice being given made an assumption that there was a rule of law in China and that
40 Chinese authorities would apply the law as interpreted by the Supreme Court, and that they would not be arrested, detained and convicted in circumstances that were well within the scope of the law as it was stated and interpreted.

45 Now, it's not their fault that, in hindsight, that assumption was falsified. Accordingly, that mistake should not be judged severely in the circumstances of this Inquiry. Latitude needs to be made – to be extended to management for making an assumption that was a reasonable assumption. That doesn't gainsay that they should

not have engaged the risk management processes; that was failing regardless, but their mistake was a bona fide, honest and understandable mistake in the circumstances I have described. Each of Mr O'Connor, Mr Felstead and Mr Craigie gave evidence about the genuineness of their beliefs in the legal advice and their
5 reliance upon the legal advice and their perception that what was occurring was lawful according to the advice.

And that was the foundation of their perception that the risks were best managed in the way they were being managed: operationally on the ground through Mr Chen in
10 China, who was attuned to the cultural sensitivities of operating in China. Now, again that decision is an understandable perception. Its failing is not engaging the wider processes that were in place, but it should not be judged severely because they were acting bona fide and honestly in making the judgments they did. I will come to some of the other particular events, but the same general points apply to them,
15 Commissioner.

In the context of operations in China, and looking backwards from the time of the arrests, the questioning of the two staff members can now be seen to be a matter of
20 serious concern, but that occurred against a wider backdrop that's not been referred to where everyone in China expected that questioning was something that did occur and could occur regardless of the clear legality of what was being carried out by individuals in question, so the assessment made of that situation needs to be seen in that wider context, and I will explain that in more detail.

25 The next broad matter of context is this: there were competitors in China operating in much the same way. There were competitors with staff living in China, including at least the Star, the then branded Echo, SkyCity Entertainment Group, Caesars, MGM, City of Dreams, Galaxy, Las Vegas Sands and Genting. There's extensive evidence about other casinos having similar operations in China in the evidence of
30 Jane Pan. Can I ask you, Commissioner, if you could go to that evidence; it's in the folder we have made available.

COMMISSIONER: Yes.

35 MR YOUNG: It's tab 2 of that folder. The document number is CRL.540.001.0193. The relevant paragraphs are 32 to 37. This evidence is firsthand evidence from a staff member of Crown working in China about the operations of other casinos who had similarly positioned sales staff in China at the time.

40 COMMISSIONER: So the point that you wish to make by it is that there were other international players working and operating in China; is that right?

MR YOUNG: Yes, with Chinese-based staff engaged in similar activities. Yes, Commissioner.

45 COMMISSIONER: Well, when you say similar activities, I can understand everything but the last bit, Mr Young. Just take me to similar activities.

MR YOUNG: Paragraph 33.

COMMISSIONER: Is it that you want to describe – paragraph 33 said that she says:

5 *...who were visiting the client for the same purpose and we would have a brief discussion.*

I don't know what that purpose is, but I accept that – and I think you asked some questions when we did call the evidence that there were other operators in China, and
10 it's quite clear that we have a list of the other operators in China who were thinking of pulling their staff out, remember?

MR YOUNG: Yes.

15 COMMISSIONER: And so I'm aware – and there is evidence that other casinos were operating in China. I'm not sure that this takes it any further and as it's been served only yesterday I won't ask counsel assisting to address it, but I do accept, Mr Young, and I should let you know that we have evidence of other casinos operating
20 in China and one can assume that they were trying to do similar things to the things that your client was trying to do.

MR YOUNG: Yes. Well, what additionally this deals with is that the other casinos had sales staff living and working in China doing the same sort of thing as Jane Pan was doing on behalf of Crown.

25 COMMISSIONER: Well, it's just that general doing the same sort of things. I don't know that we can get into that at this stage. I can accept that there were other operatives in China doing the same or hoping to do the same thing, that is, lure gamblers to their casinos. As to the actual processes, I don't think we can get into it
30 at this stage, but let me just put that to one side and indicate what I've indicated to you as the present evidence and we can move on, I think.

MR YOUNG: Yes. Well, Madam Commissioner, we do seek to tender Ms Pan's affidavit from the Federal Court.

35 COMMISSIONER: Yes.

MR YOUNG: It's one of the materials that the Commission has had.

40 COMMISSIONER: Yes.

MR YOUNG: And it is relevant to this point, it's also relevant to the nature of the office that was operating in China.

45 COMMISSIONER: I see. Yes, well, I will ask counsel assisting to address it in due course, Mr Young. I won't tarry now.

MR YOUNG: Thank you.

COMMISSIONER: Yes.

5 MR YOUNG: Commissioner, I notice the time. Are you intending a morning break?

COMMISSIONER: Yes, I will just take a short adjournment. Thank you, Mr Young.

10

MR YOUNG: Thank you.

ADJOURNED

[11.39 am]

15

RESUMED

[11.51 am]

20 COMMISSIONER: Yes. Thank you. Yes, Mr Young.

MR YOUNG: Thank you, Commissioner. Commissioner, the point I was making about other competitors having sales staff living and working in China - - -

25 COMMISSIONER: Yes.

MR YOUNG: - - - is two-fold. First, in our submission it would not be fair to characterise Crown as a cavalier outlier operating in an environment that the rest of the industry was not operating in in China.

30

COMMISSIONER: I don't think that's been put.

MR YOUNG: And the second point, Commissioner, is this: understandably – and whether it turned out to be right or wrong – the presence of competitors with staff in China did give senior management comfort that the environment was one in which it was possible safely to have sales staff engaging with customers. You mentioned, Commissioner, to me, just before the adjournment - - -

35

COMMISSIONER: Yes.

40

MR YOUNG: - - - some evidence. You may have been referring to exhibit 33A, perhaps.

COMMISSIONER: Thank you. Exhibit A33, do you mean?

45

MR YOUNG: No, O, O for orange.

COMMISSIONER: O. I'm sorry.

MR YOUNG: 33, but something was added to it by way of additional emails - - -

5 COMMISSIONER: I see. Yes. Thank you.

MR BELL: - - - and that's why they were labelled A, I think.

10 COMMISSIONER: Yes. Yes, I think the difference – one of the things that – I
accept that we have evidence that there were other competitors there and there was a
consideration from time to time about it. But you will recall that, in the middle of
2019, when Mr Murphy, Mr Felstead and Mr Preston prepared the report for the
board, there was notification then, I think, that there was some evidence that Crown
had made a conscious decision not to open offices in China, but other competitors
15 - - -

MR YOUNG: Yes.

20 COMMISSIONER: - - - other people, the other competitors, being they were
present, they had offices in China. So there's that distinction between others and
yours. And I just think – I can accept that there were other competitors there, and
your point's, I understand, there's no suggestion that Crown was an outlier working
alone because of a lack of other people, but the distinctions are made, which are
slightly different.

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MR YOUNG: Well, with great respect, Commissioner, the notation in the board
paper - - -

COMMISSIONER: Yes.

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MR YOUNG: - - - that other competitors have representative offices in China - - -

COMMISSIONER: Yes.

35 MR YOUNG: - - - does not provide evidence that all other competitors did. In fact
- - -

COMMISSIONER: No.

40 MR YOUNG: - - - the evidence is to the contrary. Some did, some did not.

COMMISSIONER: Yes. Well, it's neither here nor there, if I may say without any
disrespect to you. It's there are some operations that are this way, some operations
that are that way and there are numerous operations, being your competitors, were
45 there in China. There's no doubt about that.

MR YOUNG: No, no. I accept that, but nor is there evidence – the point I was endeavouring to make, perhaps unclearly, is that there's no evidence that these other competitors with sales staff in China at the relevant time had representative offices. I mean, the evidence is - - -

5

COMMISSIONER: Well, there's some evidence of it. There's some evidence of it.

MR YOUNG: There's some evidence – there's some evidence of some representative offices and there's evidence that some of those representative offices were required to be closed; that's as far as it rises.

10

COMMISSIONER: Yes. Well, when you say that there was no evidence that the other competitors with sales staff in China at the relevant time had representative offices, that's not right because there is some evidence of it - - -

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MR YOUNG: Yes.

COMMISSIONER: - - - that's all we're saying. We shouldn't be at loggerheads on this.

20

MR YOUNG: No, no. It's - - -

COMMISSIONER: Yes. Yes, Mr Young.

MR YOUNG: I was trying to say there's no evidence that they all had representative offices.

25

COMMISSIONER: No, I've got that point.

MR YOUNG: Some did, some did not.

30

COMMISSIONER: I've got that point.

MR YOUNG: Yes. All right. Thank you, Commissioner.

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COMMISSIONER: Yes.

MR YOUNG: I would also note – and this is in our tender bundle as item 4 – that the Australian Financial Review reported, soon after the arrests, that The Star had at least 12 marketing staff in China prior to the arrests, and that the Star had ramped up its marketing activities in the months preceding the arrests, and that other casino operators aggressively reinserted staff into China by January of 2017, and were recruiting new staff. Now, the point we're making is not to step back from the concessions I made at the outset, Commissioner, it's that when you're judging management for the mistakes they made, they did, understandably, take into account their comparison between themselves and the way in which their competitors were engaging in similar activities, as they understood it, in China. And that's one of the

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circumstantial material – pieces that indicate that their mistake needs to be judged according to the circumstances that existed at the time: it was a bona fide mistake consistent with the surrounding circumstances.

5 The next circumstantial piece I will mention I've already referred to in the very
broad summary at the outset, but the circumstances are that each time an important
development occurred in the operating environment in China, including each of the
events pointed to by counsel assisting, advice was sought and obtained. If I take the
6 February press conference, which has been colloquially referred to as "the
10 crackdown announcement". Now, advice was sought by Mr Chen on 9 and 10
February from WilmerHale, and advice was sought also on the 25th of February.
Further, those events caused Mr Chen to engage the Mintz Group in early March of
2015. And we know the effect of that advice was that the way Crown was operating
was lawful.

15 Similarly, in response to the South Korean arrests in June 2015, advice was sought
from WilmerHale and provided on the 23rd of June and the Mintz Group on 19 June
2015 – I won't elaborately go through the steps – but that advice was something that
Mr Craigie requested be obtained, in particular. Now, that advice was relied upon by
20 the individual senior executives in making the decision that they did and the
judgment that those arrests arose in dissimilar circumstances, quite different from
Crown's, because of activities that were quite different from Crown's, and it should
be regarded as an isolated case of action being taken against South Korean casino
employees principally for currency offences and associated prostitution offences.

25 In response to the questioning of Mr BX, advice was likewise sought from
WilmerHale and the Mintz group. The relevant references are exhibits R15 and R17.
That included advice in relation to the sending of the letter, and that advice was
relied upon. And lastly, in response to the CCTV news story in October 2015, that
30 related to the South Korean arrests. Further advice was sought from WilmerHale on
15 October 2015, exhibit M234, and from the Mintz Group on 16 October 2015,
exhibit M235. That shows a conscientious and bona fide attempt by the senior
managers involved to address the issue. They made a judgment about it based on
advice from the people they felt were best equipped to assist them to make the
35 judgment because of their knowledge of affairs in China.

All of the advice obtained throughout was consistent to the effect that there was no
cause for Crown to change the manner in which it was operating in China. Now,
each of those developments was, as I've said, assessed by members of management
40 in the light of external advice. The failing is they took it upon themselves to make
the critical decision rather than escalating it to the relevant risk committees. None of
the advice I've just referred to was to the effect that Crown needed to withdraw its
staff from China or that the staff were at material risk of being arrested and convicted
for a criminal offence.

45 On the contrary, the advice was that, judging all the circumstances, there was a
heightened need for caution, but no substantial change was required to the nature or

scope of operations by Crown and Crown staff in China. That is well illustrated by Mr O'Connor's evidence, exhibit R34. Could I take your Honour – your Honour – Commissioner, could I take you, Madam Commissioner, to this exhibit. It's Mr O'Connor's Federal Court affidavit evidence.

5

COMMISSIONER: Yes.

MR YOUNG: I want to point to several issues he addresses, several topics. The first is the extent of his - - -

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COMMISSIONER: If you identify the number, I would be grateful, the pin number.

MR YOUNG: I apologise, Commissioner.

15

COMMISSIONER: That's all right.

MR YOUNG: Yes. Thank you. It's CRL.540.001.0210.

COMMISSIONER: Thank you. Yes. I have that now, Mr Young.

20

MR YOUNG: Now, the first topic I wanted to refer you to, Madam Commissioner, was Mr O'Connor's evidence as to the trust and reliance he placed in Mr Chen and his judgment. Mr Chen is the subject of evidence by Mr O'Connor in paragraph 31.

25

COMMISSIONER: Yes. Thank you.

MR YOUNG: Commissioner, you will see that paragraph concludes with Mr O'Connor's evidence that in Mr O'Connor's assessment:

30

He was the person on the ground and having an ear to the ground in China, Michael was well positioned to identify and monitor any potential risks in the China market with assistance from his sales team and various consultants and experts that he engaged on behalf of Crown.

35

Then could I turn to paragraph 94 on the same matter – the same topic.

COMMISSIONER: Yes.

40

MR YOUNG: This is dealing with the assessment by Mr O'Connor of the position immediately after the February 2015 press conference.

COMMISSIONER: Yes. Thank you.

45

MR YOUNG: Paragraph 94 deals with the engagement by Chen of the Mintz Group, but it continues at about the fifth line:

5 *I relied on Michael to do this and provide me with updates. I trusted Michael to do this because being based in Hong Kong and making regular trips into China he was very sensitive to the legal and political situation in China and needed piece of mind for himself as well as the sales team staff in China. In my experience, Michael was quite conservative and averse to risk, particularly where there may be a risk to him personally. I considered that he took his responsibility to the sales staff very seriously.*

10 And then can I – on that last point, that is borne out by his contemporaneous emails – that is, Mr Chen’s – and I will take you to some, Commissioner.

COMMISSIONER: Thank you.

15 MR YOUNG: Could I then go to paragraph 123 to 125.

COMMISSIONER: Yes.

20 MR YOUNG: There Mr O’Connor refers to frequent discussions with Felstead and key senior people including Chen. Mr O’Connor said he did recognise:

25 *...the potential risk that Crown executives travelling to China and sales staff in China might be questioned by local police about the activities of a Chinese VIP customer. I did not consider the likelihood of that risk occurring and the consequences if it did occur to be so material and so potentially damaging to the business unit and to Crown Melbourne and Crown Perth that it ought to be included as a specific risk in the corporate risk profile. I considered that this potential risk was being monitored, managed and assessed appropriately at the operational level by Michael Chen.*

30 *Michael was in close contact with our external advisers and would seek refreshed advice from WilmerHale, Mintz and other sources when he, usually in consultation with me, deemed it necessary. I placed a lot of reliance on Michael and the advice that he passed on to me. I understood from my discussions with Michael that if an issue of risk was identified by sales staff concerning a VIP customer or government policy, they would escalate it to Michael and me if he believed it was warranted and would raise it with me.*

40 Now, that indicates the – that evidence indicates the extent of the trust and reliance placed in Mr Chen in his management because of his closeness, his background as a – having worked in China for a long time, his background as having worked in the casino industry in China for a long time, and the way in which Mr Chen approached matters carefully and with an appreciation that risk issues needed to be addressed.

45 COMMISSIONER: I thought Mr Chen had a background in finance.

MR YOUNG: No, well, he had worked in sales in casinos for quite a period of time, as his statement indicates.

COMMISSIONER: Yes.

MR YOUNG: His training may go back to finance, Madam Commissioner, and his early experience.

5

COMMISSIONER: Yes. Thank you.

MR YOUNG: It's set out in his statement which is in our tender bundle.

10 COMMISSIONER: Yes, all right.

MR YOUNG: In relation to another topic, being Mr O'Connor's reliance on the expert advice, without reading it all can I refer to several paragraphs while I have exhibit R34 open. Paragraph 78 - - -

15

COMMISSIONER: The second topic is the reliance on legal advice, is it?

MR YOUNG: I said expert advice by which I meant both legal and Mintz.

20 COMMISSIONER: I beg your pardon. Yes, thank you.

MR YOUNG: This is Mr O'Connor's reliance.

COMMISSIONER: Yes, thank you.

25

MR YOUNG: Paragraph 78, firstly.

COMMISSIONER: Yes.

30 MR YOUNG: Then in the wake of the crackdown announcement he refers to the advice that allayed his concerns at paragraphs 91, firstly, 94 that I've already referred to, and then paragraph 97. In paragraph 97, his evidence is that he does not recall considering that the government announcement of February 2015 had created any additional risk or increased risk to exposure of the in-market sales staff in China over
35 and above the implications of the general corruption crackdown, and that was the view that he came to in the wake of the advice that was obtained.

COMMISSIONER: Yes.

40 MR YOUNG: In relation to the advice post-South Korean arrests, could I give a reference to paragraph 105.

COMMISSIONER: Yes.

45 MR YOUNG: In paragraph 105, Mr O'Connor's evidence is:

5 *The refreshed advice from Mintz Group and other sources which drew a distinction between the South Korean operations and Crown's operations in China allayed my concerns and satisfied me that the South Korean arrests were an isolated incident and there was no material risks of detention of Crown's sales staff in China. And the refreshed advice did not result in any substantive change in how sales staff operated in China.*

10 Now, Mr O'Connor gave oral evidence. It was to much the same effect as what I've just taken you to, Madam Commissioner. He was a forthright and honest witness.

 COMMISSIONER: Yes.

 MR YOUNG: It's not been accepted otherwise.

15 COMMISSIONER: No.

 MR YOUNG: And he accepted his responsibility for the failings of making these judgments, which he conceded to be misjudgements through Western eyes, without engaging the appropriate risk management processes. But all told, his evidence
20 indicates a bona fide assessment – and understandable assessment, if you strip away hindsight perspectives – of the situation that occurred as these events transpired in China.

25 COMMISSIONER: Yes.

 MR YOUNG: May I make it clear, Madam Commissioner, that we do seek to tender Mr Chen's Federal Court affidavit which gives his background and which contains relevant evidence as to how and why he proceeded as he did. I will come
30 back to one particular aspect of that later. Can I then turn to another contextual matter which is what reporting of these events occurred within the management structure. It is not the case - - -

 COMMISSIONER: Mr Craigie – you said that Mr Craigie requested the advice, in particular, in the June period in 2015. Do you remember telling me that?
35

 MR YOUNG: Yes. Yes.

 COMMISSIONER: And that – that was at about the time that Mr Packer said that he asked Mr Craigie to look into that. Do you recall that?
40

 MR YOUNG: Yes, I do, Commissioner; that's correct.

 COMMISSIONER: He'd asked Mr Craigie and Mr Rankin, because Mr Rankin was an expert in China matters, I gather, to look into that.
45

 MR YOUNG: Yes. Yes.

COMMISSIONER: And once that evidence – I withdraw that. Once that report was given, there's no evidence of it going, though, to Mr Packer, as I understand it.

MR YOUNG: That is correct. Yes.

5

COMMISSIONER: Yes. Thank you. Yes.

MR YOUNG: There is evidence that the further – further advices were obtained and then reported back to Mr Craigie, including Mintz's advice that it was an isolated case.

10

COMMISSIONER: Thank you, Mr Young.

MR YOUNG: That advice from Mintz is exhibit M202.

15

COMMISSIONER: Thank you.

MR YOUNG: I was about to turn - - -

20

COMMISSIONER: Yes. I'm sorry.

MR YOUNG: - - - Madam Commissioner to what reporting did occur within management – and, again, I won't attempt to track each line progressively. We will do that in our submissions. There was reporting within the management structure. Mr Felstead caused all important developments referred to by counsel assisting save for the CCTV news program to be reported upwards, if I can use that general description for a moment, to either Mr Craigie or Mr Johnston. I say upwards because Mr Craigie was the direct report.

25

30

COMMISSIONER: Yes.

MR YOUNG: Mr Johnston was not, but he was certainly superior within the organisation, in a generalised sense, to Mr Felstead.

35

COMMISSIONER: Yes.

MR YOUNG: That position extends to the following items: as to the February 2015 press conference and the reference to a crackdown, Mr Felstead's oral evidence was that he may well have reported those matters to Mr Craigie, he just could not specifically recall. He also said that he assumed that Mr Craigie would have heard about it at the same time that he did, since Mr Craigie was on the same email lists as Mr Felstead about gaming industry developments. It seems to be confirmed that Mr Craigie did become aware of the matters, because there was a VIP international business update circulated for a CEO meeting on the 18th of March 2015; that's exhibit AB15 to which Mr Hutley referred.

40

45

COMMISSIONER: Yes.

MR YOUNG: That seems to indicate that the crackdown was in the papers for that CEO meeting. As a matter of recollection, Mr Craigie, in oral evidence, said he could not recall one way or other whether he was aware of the February 2015 press conference prior to the South Korean arrests. He accepted he received various news articles about it shortly after it occurred; that's transcript 1480, line 15. I don't think
5 it was put to him that it was in the board papers for the CEO meeting of 18 March.

COMMISSIONER: No.

10 MR YOUNG: But, generally, it's open on the evidence to conclude that that occurrence, that event, did become known to Mr Craigie, and that's consistent with Mr Felstead's evidence. Now, in relation to the South Korean arrests, Mr Craigie became aware of it at least by the time he was sent an email by Mr Rankin about the matter; that's exhibit M198. And Mr Felstead - - -

15 COMMISSIONER: That's the 24th of June email.

MR YOUNG: Yes, I think that is the date.

20 COMMISSIONER: Yes. Thank you.

MR YOUNG: I will double check it, Commissioner.

COMMISSIONER: That's all right.
25

MR YOUNG: It is correct. Yes.

COMMISSIONER: Yes.

30 MR YOUNG: Mr Felstead also sent an email to Mr Craigie addressing the matter; that's exhibit R16.

COMMISSIONER: Thank you.

35 MR YOUNG: Now, so that matter was appropriately reported upwards by Mr Felstead. Thirdly, the questioning of Mr BX. Mr Felstead sent an email to Mr Johnston drawing his attention to it; that's exhibit R16. The matter also came to the attention of Mr Neilson, then general counsel and company secretary, and also to the attention of Ms Williamson. So there was reporting. Again, the failing was that it
40 never went to the board risk committees and it didn't go up to the board.

COMMISSIONER: Yes. No, I've always indicated, Mr Young, that the suggestion that some of the board members were – I withdraw that. There is no suggestion that the whole of the board was informed, but some of the board members were clearly
45 informed – Mr Craigie and Mr Johnston – of some matters.

MR YOUNG: Yes, that's right. And it extends a little bit further than that in relation to the – what seems on the whole of the evidence to be a pre-board discussion - - -

5 COMMISSIONER: Yes.

MR YOUNG: - - - about the South Korean arrests.

10 COMMISSIONER: Yes. And Mr Rankin was obviously aware because he gave the so-called warning, and so there was – it was dotted. It was Mr Rankin, Mr Johnston, Mr Craigie, and what you've said about the discussion about the Korean arrests.

MR YOUNG: Yes.

15 COMMISSIONER: Yes, thank you.

MR YOUNG: We recognise those matters, Commissioner.

20 COMMISSIONER: Yes.

MR YOUNG: That does indicate there was a degree of looseness in the way in which things were reported. Circumstantially, though, it's relevant to note Crown was a very large organisation with multiple venues and it was a regulated business which involved lots of board responsibilities and activities. In the relevant period
25 this was also a period of considerable overseas activities, not just in China, but elsewhere, and some activities in the US, so there were many issues for the company and – I say this particularly because Mr Craigie and Mr Felstead were managing a wide suite of matters. That's not to gainsay the mistakes we've acknowledged, Commissioner. It's simply to point to a circumstance as to why the – there was a
30 degree of informality in the way in which these matters were reported amongst senior management.

35 As to Mr Craigie, he was a member of the Crown risk management committee at the time and in his oral evidence he accepted that it was a failing on his part not to raise the particular events I've just listed – the major events developing in China – with the other members of the risk management committee. That's at transcript 1497.

COMMISSIONER: Thank you.

40 MR YOUNG: Now, Commissioner, thus far I've covered a whole range of contextual matters. We say that they are relevant to be brought to bear in assessing the mistake made by members of management, and more particularly whether it has any relevance at all in the very changed circumstances of the company as of
45 December of 2020. Those matters – many of them do indicate that the misjudgements and the mistakes that were made, save for the lack of engagement of the risk management committee, were the product of a whole series of circumstantial matters that need to be taken into account.

Can I turn then to matters in issue; I briefly listed them earlier. One of the first of the matters I listed was the proposition advanced by counsel assisting that Crown adopted a narrow and technical interpretation of article 303 of the PRC Criminal Law that rested on fine distinctions. That proposition, in our respectful submission, is
5 unfair and wrong. It is based on a lack of reference to all of the complete source materials constituting the relevant Chinese legal provisions, in particular, a key Supreme Court interpretation is not referred to at all, and that is a matter of some significance that seems to underpin a proposition that was advanced that we were relying on fine distinctions.

10

COMMISSIONER: Just let me pause there. As I understand it, many of the witnesses accepted that there are distinctions, some of them fine, and the risk of being in China and doing business was obvious, and I think some of the witnesses have spoken about that separately. There is no need for me to decide anything about
15 the Chinese law other than the approach that was adopted by your client in an environment that was, on one view of it, at times dangerous and at other times quite volatile in terms of what could happen in doing business in China. So the fact that the law says X and the fact that the Supreme People's Court have interpreted to say X plus Y is obviously there, but I think the point here is, really, just to look at the
20 landscape in which your client was operating to understand the risk that it was operating within.

25

And I think you have said that there was an understanding but it turned out to be – or there was an anticipation by Mr O'Connor about the position and it turned out to be wrong, and perhaps not by reason of your interpretation or others of the law, but by what actually happened. I'm not wanting to distract you, Mr Young, but I just wanted to indicate that I don't see my role in particular as understanding other than there were different interpretations available, and that was just part of aspects of risk in China, but that your client at all times took legal advice and that it appeared that
30 your client relied upon that advice to express the views that many of the witnesses have, that they understood they were operating within the law.

30

35

So I'm happy to look at the Supreme People's Court judgment if you wish me to, but I just wanted to indicate that position that may or may not assist you, Mr Young.

MR YOUNG: Yes. Well, in our submission, Commissioner, it's necessary to look at those matters having regard to the way in which criticisms have been advanced. Assumptions were put to various witnesses - - -

40

COMMISSIONER: Yes.

45

MR YOUNG: - - - that were wrong. They were only assumptions that they were asked to comment on. But underlying that, the accusation was made by counsel assisting that Crown was not complying with the spirit of the law; it was relying upon fine distinctions as a matter of fact. That was not the case. And the proposition that we were relying upon fine distinctions, it is evident from the written submissions

filed by counsel assisting, do not take account of the relevant legal sources, they omit reference to one of the two Supreme Court interpretations that is of central relevance.

5 Now, in our respectful submission these are important factual matters. They remove the basis for one of the criticisms advanced against the board, that is to say the board and senior management believed that staff were at risk of conviction because they were conscious that they were relying at the time on fine distinctions. Now, that proposition is not borne out.

10 COMMISSIONER: Just take – well, the law that you want to take me to, the case that you want to take me to, has that been a case that was relied upon by the legal advisers and the board?

15 MR YOUNG: No, it was relied upon by the legal advisers, not the board.

COMMISSIONER: Yes. Yes.

20 MR YOUNG: But it's part of the building blocks of the relevant Chinese criminal law and accusations - - -

COMMISSIONER: Well, let me just let you proceed, Mr Young.

MR YOUNG: Yes.

25 COMMISSIONER: I think that might be the most convenient way.

MR YOUNG: Yes. Thank you. All right. Now, in an endeavour to assist the Inquiry - - -

30 COMMISSIONER: Yes.

MR YOUNG: - - - we asked Professor Lewis to provide a quite short further statement, which is in the tender list; it's tab 8.

35 COMMISSIONER: Tab?

MR YOUNG: 8 of the tender list.

40 COMMISSIONER: Right.

MR YOUNG: We did that because - - -

COMMISSIONER: Is this an opinion, is it?

45 MR YOUNG: Yes, it's an expert report by - - -

COMMISSIONER: Look, I can't receive this. I can't receive this, Mister – if you want to take me to the law, and I can have a look at the law for myself, that's one thing. But if you're saying that I need to interpret the Chinese law, then you should have given notice of this, in terms of this report. I see it's dated on Friday.

5

MR YOUNG: Yes.

COMMISSIONER: In any event, Mr Young, I do believe that we can make this convenient for you. I don't want to deflect you, but this opinion of Ms Lewis, I think it is - - -

10

MR YOUNG: Yes.

COMMISSIONER: - - - her opinion, as expert as it might be, would need to be the subject of analysis, of digestion, of examination, and perhaps questions of her. You see, if we can move in a way that's less problematic, I'd be grateful because I can't receive this, as you would know, at the moment.

15

MR YOUNG: Well, Commissioner - - -

20

COMMISSIONER: Why can't we just have a look at what your proposition is, firstly, and then let me understand whether or not I need to do this?

MR YOUNG: Well, Commissioner - - -

25

COMMISSIONER: What's the proposition for which you contend?

MR YOUNG: The proposition for which we contend is that there is a second Supreme People's Court criminal division interpretation of the relevant article 303.

30

COMMISSIONER: Yes. Do you have a copy of that interpretation?

MR YOUNG: Yes. It's in the Lewis report, or it's in the Federal Court affidavits by Ms Lewis that the Commission has long had.

35

COMMISSIONER: The judgment. I'm sorry, the direction. And where do I find that?

MR YOUNG: In the report that I've just been referring to, the recent one, it is - - -

40

COMMISSIONER: That's only five pages or so.

MR YOUNG: Yes. I started to explain what we endeavoured to do was this: there are three federal court affidavits and reports by Ms Lewis.

45

COMMISSIONER: Now, is Ms Lewis your expert in the Federal Court or the plaintiff's expert?

MR YOUNG: She's our expert.

COMMISSIONER: I see.

5 MR YOUNG: But it's common ground - - -

COMMISSIONER: And is there any expert opinion from the other side?

10 MR YOUNG: On this point I'm about to take you to, it agrees with Professor Lewis.

COMMISSIONER: I see.

15 MR YOUNG: And there's a joint expert report accepting this point.

COMMISSIONER: Yes. I see.

20 MR YOUNG: Now, both the joint expert report and the Lewis reports in the Federal Court have long been with the Inquiry, along with all of the other Federal Court materials.

COMMISSIONER: So what is the proposition?

25 MR YOUNG: Now, what we did – the legal proposition?

COMMISSIONER: Yes.

30 MR YOUNG: It's paragraph 4 of the new statement, paragraph 4.2, in particular. Now, the reference to the key passage from the 2005 criminal division interpretation as follows:

35 *First the number of persons organised is not calculated on an aggregate basis. It is necessary that 10 or more PRC citizens are organised at one time to go abroad to gamble.*

COMMISSIONER: Yes.

MR YOUNG:

40 *The phrase "at one time" can be translated as on a single occasion.*

COMMISSIONER: Yes, I see. Yes.

45 MR YOUNG: And that is the official interpretation of the relevant criminal law. It is the – recorded as the agreed effect of that criminal division interpretation of the joint expert report in the Federal Court. It is directly contrary to the assumptions that counsel assisting put to witnesses, and it's inconsistent with the written submissions

that have been provided to the Inquiry by counsel assisting, which make no reference to this relevant Supreme Court interpretation; that is the point we wish to make.

5 COMMISSIONER: Well, let's pause there. Let's pause there, and show me the actual point that you're wanting to draw the distinction from. I think the first point that you raised is a submission by counsel assisting. If you can point me to that and I will look at that.

10 MR YOUNG: Yes. I will take you to the written submissions, if I may.

COMMISSIONER: Yes.

15 MR YOUNG: The submission about criminal law is paragraph 106 – sorry – 107 and – no, it's just 107.

COMMISSIONER: Yes. 106 - - -

20 MR YOUNG: Sorry. 107, I should have – 106 is introductory. 107 gives the relevant source.

COMMISSIONER: If you could just read me 107 for the time being, Mr Young.

MR YOUNG: It's fairly lengthy. I will read this to you.

25 COMMISSIONER: Yes.

MR YOUNG: It cites from the Federal Court proceeding the relevant agreed translation of article 303.

30 COMMISSIONER: Yes.

MR YOUNG: It likewise cites one interpretation by the Supreme People's Court
- - -

35 COMMISSIONER: Yes.

MR YOUNG: - - - which contains these limbs:

40 *Any of the situations set out below, if undertaken for the purposes of profit, will constitute gathering a crowd to gamble as provided by article 303.*

And the situations are one:

45 *Organising three or more persons to gamble and generating illegitimate profits by taking a cut of the winnings in an amount that equals 5000 Yuan or more in aggregate.*

Two:

Organising three or more persons to gamble, where the amount gambled is 5000 Yuan or more in aggregate.

5

Three:

Organising three or more persons to gamble with the number of people participating in the gambling is 20 or more in aggregate.

10

And, four, which is most relevant:

Organising 10 or more persons who are citizens of the People's Republic of China to go abroad to gamble from which kickbacks or referral fees are collected.

15

Now, the point is - - -

COMMISSIONER: Yes. I now have that. Yes.

20

MR YOUNG: Yes. The point I'm endeavouring to make that is necessary for the Inquiry to have before it is that paragraph 4 was the subject of a second Supreme People's Court interpretation - - -

25

COMMISSIONER: Yes.

MR YOUNG: - - - by the criminal division.

COMMISSIONER: Yes.

30

MR YOUNG: So in relation to the phrase:

Organising 10 or more persons who are citizens of the People's Republic of China to go abroad to gamble from which kickbacks or referral fees are collected -

35

the criminal division interpretation by the Supreme People's Court in 2005 said:

The number of persons organised is not calculated on an aggregate basis. It is necessary that 10 or more PRC citizens are organised at one time to go abroad to gamble.

40

COMMISSIONER: Yes.

45

MR YOUNG: So the explicit text of the governing interpretations requires 10 or more PRC citizens to be organised at one time to go abroad to gamble.

COMMISSIONER: Yes.

MR YOUNG: And it's not calculated on an aggregate basis.

5 COMMISSIONER: Yes.

MR YOUNG: The premise of the questions advanced by counsel assisting in the assumptions he asked witnesses to make were to the contrary of this - - -

10 COMMISSIONER: Well, just take me to that premise, please.

MR YOUNG: The premise – well, I will take you to the back end - - -

15 COMMISSIONER: In the transcript. If you could just take me to the transcript so I can understand this point. Yes.

MR YOUNG: Yes. I will find a reference, Commissioner. Can I - - -

20 COMMISSIONER: Thank you.

MR YOUNG: Can I go to what counsel assisting make of this, and it permeates the submissions which is that Crown was relying upon - - -

25 COMMISSIONER: If you just take me – I've got the submission now, Mr Young. I'm sorry, I didn't have it earlier.

MR YOUNG: It culminates in paragraph 350, paragraph (a).

30 COMMISSIONER: Just pardon me. Yes, I see that.

35 MR YOUNG: Yes. And I will find an example of a question, but – and that notion of reliance on fine distinctions appears elsewhere in the written submissions. Now, it is based on an omission of an essential component of the relevant body of the Chinese law, namely the Second Supreme Court People's Interpretation which made it quite clear that there was no reliance on fine distinctions in relation to 10 or more PRC citizens being organised at one time. That was a matter of explicit text, and that was what Crown was always astute - - -

40 COMMISSIONER: Just pausing there.

MR YOUNG: I beg your pardon?

45 COMMISSIONER: This is in – this particular interpretation by the criminal division, that was in WilmerHale's advice?

MR YOUNG: One of the later ones, yes.

COMMISSIONER: Yes.

MR YOUNG: Or was referred to.

5 COMMISSIONER: I'm sorry?

MR YOUNG: It was referred to in one of the later ones.

10 COMMISSIONER: So what we're looking at here in 350(a) is that the management appreciated that there was a risk of arrest and that whatever the law was there was possible inconsistent application of it notwithstanding that you say this is quite clear. But I'm just wanting to try and go forward, conveniently. I think what I can do in respect of the problem that we face with your "report" from Ms Lewis, I'm content, Mr Young, to have 4.2 – are you happy with that or do you want to put the whole
15 report in, because if that's the case we will have to deal with it and I think the most convenient way is if I just accept that in 2005 the criminal division interpreted this, and I can have a copy of that, and then you can put your submissions, I think.

20 MR YOUNG: Well, Commissioner, our position is we want to tender the whole report, or if not this - - -

25 COMMISSIONER: Well, you can't do that at the moment. I mean, this was served last night. It's a report that, if relevant we need to look at all the things that the professor or the expert did to give an opinion, but if you're just relying upon the existence of an interpretation of the criminal division at the time to make your submission good then I can accept that that exists and you can give me a copy of that.

30 MR YOUNG: Yes. Commissioner, can I address it this way.

COMMISSIONER: Yes.

35 MR YOUNG: At the very least, Commissioner, you should do what you've just indicated.

COMMISSIONER: Yes.

40 MR YOUNG: But secondly, we do take the position that we have not had a reasonable opportunity of addressing the proposition that we were relying upon fine legal distinctions in relation to China operations, and this is not a matter of the perception of management. The assertion is said to be rooted in the factual position that we were relying upon Chinese law which in fact turned on fine distinctions. Now, all of this Federal Court material has been with the Commission and available to the Commission from the outset. The Commission has chosen to make exhibits of
45 some of it, but not other parts. We have not had any opportunity - - -

COMMISSIONER: You've chosen not to put it in yourself, Mr Young. Look, as long ago as the 6th of August you said that you may call evidence. There's no need to be amused by this. Look, this is a serious situation. You have not given notice under the procedural guidelines. Your solicitors have not notified those assisting me,
5 and last night we get this report that was prepared on Friday, so really, I am trying to accommodate you, Mr Young. Now, the position is that I will accept that in 2005 this was the case. Please proceed on that basis.

MR YOUNG: Yes. Commissioner, would you just – I just want to be clear about
10 this. We prepared that short report because we thought it would assist the Commissioner if we extracted from the volume of Federal Court material that the Commission has the key bits that we were seeking to rely upon; none of it is new. It's all been with the Commission for months. Now, that's why we did that; we did that thinking that that was the best way of assisting the Commission.

15 COMMISSIONER: Well, we didn't know about it. We weren't notified of it until the weekend. No communication has been given. I'm trying to accommodate you, Mr Young. I will accept that this exists, and I will take full note of it and I, of course, listen to your submissions with the greatest of care. Please proceed.

20 MR YOUNG: Yes. Yes. I don't want to try your patience, Commissioner, but can I make one other submission - - -

COMMISSIONER: You're not trying my patience, Mr Young.
25

MR YOUNG: I just want to make one other submission to make our position clear.

COMMISSIONER: Yes.

30 MR YOUNG: There have been rolling hearings from early July covering some 52 days. We've been battling very difficult circumstances because of COVID restrictions in Melbourne affecting almost the entirety of our legal team. Allegations have emerged progressively in some questions, but a lot of further allegations were raised for the first time in the written submissions and the slightly earlier written
35 notification of findings sought by counsel assisting. In our submission we have not had a fair opportunity of addressing either submissions or evidence to those matters until now.

40 That is why, Commissioner, without in any way wanting to disrupt the processes of the Commission, we feel that we need to bring certain evidentiary matters to the attention of the Inquiry, and we've done that doing everything within our power to do it in a way that is not going to delay the processes of the Commission, but we've had no opportunity of doing it in any other way.

45 COMMISSIONER: Well, I think that's a little unfair, Mr Young, but let me just get to this point. The 52 days; I understand them, I've been here. The COVID, I'm fully cognisant of that and we have tried to ensure that every available recognition of

that has been pursued with your solicitors and, of course, yourself. We have tried to ensure that all remote locations are accommodated so that people are not inconvenienced, and we appreciate very much the burdens that have been on you and your solicitors. But the fact of the matter is that I will accept that there has been a
5 criminal division interpretation in 2005 in the terms that you have identified for the purposes of making sure that you can put your submission today. And that seems to me to obviate the need for any further burden other than to let you go forward with your submission, Mr Young. Yes, please proceed.

10 MR YOUNG: Yes. The conclusion of our submission is this, Commissioner: in our submission the contention that Crown's advisers and Crown itself proceeded on the basis of fine distinctions and thereby took a risk is not supported by any evidence. Secondly, the allegation that Crown did not comply with the spirit of the
15 law and, thereby, exposed its staff to increased risk is likewise not supported by the evidence, and insofar as those matters are a foundation for a criticism of Crown's suitability, in our submission, that is an unsound basis which ought not to be accepted.

Now, I will move to the next proposition. This is also concerned with contentions
20 about law. This relates to counsel assisting's submissions concerning Chinese business law. The burden of the submission is to this effect from counsel assisting:

*Crown had been advised that it needed to obtain a licence because it was
25 conducting a business in China and ignored that advice.*

At every level, that proposition is not supported by the available evidence. There is, in fact, in our submission, insufficient evidence before the Inquiry to allow any finding to be made as to the existence of any specific obligation under Chinese
30 business law to obtain a licence or business registration before a foreign company could employ persons living and working in China to engage with prospective customers of the Australian-based business. There is simply insufficient evidence to allow any such finding. And that was the foundation stone, the premise, of a series of criticisms that were made of Crown which ultimately find voice in a further individual criticism of suitability.

35 Now, the evidence of Chinese business law consists of several WilmerHale advices which touch on an aspect of business law, but which are principally directed to Chinese criminal law, combined with advice obtained from several law firms by the legal department in 2011. That material does not provide a basis for saying that there
40 was any specific obligation under Chinese business law that Crown's activities contravened.

Now, before I get into the detail, let me make this observation: the contentions
45 advanced by Chinese business law are somewhat tangential, and I say that, Commissioner, because neither Crown – no Crown company, nor any employee, was ever the subject of any regulatory action in China for allegedly breaching some Chinese business law. It was not the subject of any media allegations. And when

one looks fairly at all of the evidence, the material about the Chinese business law exchanges, limited as they were, afford no basis for criticising the board of Crown. The board of Crown was entirely unaware of these matters. Now, let me immediately go on to say such documents as exist and that Crown executives
5 received relating to China's business law were not nearly as clear as they should have been, but that's a different proposition than what counsel assisting advances, which is that they demonstrate a breach of Chinese business law, or even the existence of an obligation under Chinese business law.

10 Now, two main submissions were advanced, effectively, by counsel assisting. The first is that Crown needed to have a licence or other form of business registration before it could conduct activities of the kind it was conducting in China, that is, having China-based staff liaise with customers and assist them with visas and
15 arrangements for travel to Australia in order to attend a casino in Australia. The second submission is that we adopted some idiosyncratic view of what Chinese business law required based on an interpretation – and I hasten to say not the only reasonable interpretation – of the relevant emails. Now, I want to go to the relevant emails and the interpretation that has been placed upon them. The first is a
20 WilmerHale advice from February 2013, which is exhibit M27.

COMMISSIONER: Yes, if you can - - -

MR YOUNG: The reference number CRL.545.001.0615.

25 COMMISSIONER: Yes. That can be brought up. We have that now. Thank you.

MR YOUNG: It may also assist, Commissioner, if, before I go to that, could you, Commissioner, open up again, please, if it's possible, the written submissions from counsel assisting on China?

30 COMMISSIONER: Yes. Yes, I have that, Mr Young.

MR YOUNG: I will start there.

35 COMMISSIONER: Yes.

MR YOUNG: Would you go, Madam Commissioner, please, to paragraph 146 - - -

40 COMMISSIONER: Yes.

MR YOUNG: - - - in the written submissions of counsel assisting?

COMMISSIONER: Yes. Yes, I have that. Thank you. 146. Yes.

45 MR YOUNG: Now, that paragraph extracts part of a sentence, only part of a sentence – important words of qualification are omitted – and it's that sentence that

is the basis for the propositions advanced by – it’s that passage that’s extracted that is the basis for the propositions that were advanced. Can I go to the email now - - -

COMMISSIONER: Yes.

5

MR YOUNG: - - - from Kenneth Zhou of 19 February 2019. Can I ask you to first note that the email commences with a discussion of article 303 of the criminal law - - -

10 COMMISSIONER: Yes.

MR YOUNG: - - - and what was permissible under its provisions.

COMMISSIONER: Yes.

15

MR YOUNG: If you go to the last page of the email, can I direct your attention to the first complete paragraph “The above SPC interpretation”, that’s the Supreme People’s Court interpretation.

20 COMMISSIONER: I’m sorry, Mr Young, I’ve lost you. Where are you taking me to?

MR YOUNG: It’s the paragraph - - -

25 COMMISSIONER: Yes. I have it now. I have it now. Sorry.

MR YOUNG: Sorry.

COMMISSIONER: Yes.

30

MR YOUNG: “The above SPC interpretation”.

COMMISSIONER: Yes, I have that.

35 MR YOUNG: It goes on to say:

A normal employee of a casino is unlikely to be deemed as a principal or found guilty under the criminal law by merely marketing or participating in a casino operation. Such employee is not directing making a profit from doing so.

40

COMMISSIONER: Yes.

MR YOUNG: So the context is giving criminal advice about a normal employee engaging in casino marketing activities.

45

COMMISSIONER: Yes.

MR YOUNG: The passage relied upon by counsel assisting about business law starts with the words that are omitted in the written submissions:

5 *With respect to potential liability on institutions, we would note that conducting business in China requires a business licence or, otherwise, government approval and casino business is not normally allowed –*

etcetera:

10 *...as such, marketing casino business may run the risk being deemed by government as exceeding the permitted scope of business.*

And there's a reference to the closure of several representative offices. Now, as later made clear by WilmerHale, the words "with respect to potential liability on
15 institutions" is directed to the situation where the foreign casino has registered or incorporated a Chinese entity. If one were to register or incorporate a Chinese entity, that entity would necessarily have a scope of business which would be limited and would not include a business such as marketing overseas casinos.

20 COMMISSIONER: Well, it depends, I suppose.

MR YOUNG: Now, Crown had no local entity. It merely employed staff in China to assist its Australian business operations, and in those circumstances the interpretation that is, we say, the reasonable one, or at least an open one, is that no
25 such institutional liability would arise. In other words, properly understood, the effect of this paragraph in the context of other advices was that if Crown incorporated a Chinese company, or if it registered a legal entity in China, as part of the incorporation or registration process it would be limited to a specified and permitted scope of business such as marketing hotels that would not assist what it
30 was actually doing. WilmerHale later observed that the scope of business limitation applied to China entities only.

COMMISSIONER: Where is that, sorry?

35 MR YOUNG: That's in exhibit Q2. It's after the event.

COMMISSIONER: I see. I see. Yes. Just coming back to this one, looking with respect to potential liabilities on institutions, the business – conducting business in
40 China, does that not include institutions who are not Chinese institutions but all institutions?

MR YOUNG: No, it doesn't.

COMMISSIONER: I see. So you want me to read that to mean with respect to
45 potential liability on institutions, those institutions being Chinese institutions.

MR YOUNG: Yes. WilmerHale later made that explicit in exhibit Q2. They didn't make it explicit at the time - - -

COMMISSIONER: And the date of that?

5

MR YOUNG: That exhibit is much later. That's 19 October 2016.

COMMISSIONER: Yes, that's after the event, sadly.

10 MR YOUNG: They were very clear.

COMMISSIONER: Just give me the exhibit number of that again.

MR YOUNG: I'm sorry, Commissioner.

15

COMMISSIONER: That's all right.

MR YOUNG: Exhibit Q, tab 2.

20 COMMISSIONER: Yes, thank you.

MR YOUNG: I can give the CRL number if that would assist.

COMMISSIONER: No, it's okay. I've got that, thank you, Mr Young.

25

MR YOUNG: Mr Zhou wrote on 19 October 2016 that:

30 *...the 2013 advice regarding running casino business and exceeding the permitted scope of business does not apply because Crown does not have any formally registered legal entities in China. Scope of business applies to China entities only.*

Now, that wasn't explained - - -

35 COMMISSIONER: Just pause there. When he says "formally registered business"
- - -

MR YOUNG: Yes.

40 COMMISSIONER: - - - the previous email required business licences or otherwise government approval. It is a little ambiguous, but I understand your point.

MR YOUNG: Yes. Well, our point is that the interpretation advanced is not the only interpretation available.

45

COMMISSIONER: All right then. Thank you.

MR YOUNG: It's going to take a little while for me to finish dealing with business law, Madam Commissioner.

5 COMMISSIONER: That's all right. Yes, that's all right. Yes, thank you, Mr Young. I will adjourn until 2.

MR YOUNG: I would keep going if I could, but - - -

10 COMMISSIONER: Yes. Did you want to finish off this point before we adjourn?

MR YOUNG: No, I think it will take 10-15 minutes at least, Commissioner.

COMMISSIONER: All right. I will adjourn until 2. Thank you.

15

ADJOURNED **[1.04 pm]**

20 **RESUMED** **[2.00 pm]**

COMMISSIONER: Yes, thank you. Just pardon me for a moment. Yes, I'm sorry, Mr O'Brien and Ms Cage, is it? Yes, I apologise. Yes. Please proceed, Mr Young.

25 MR YOUNG: Thank you. Commissioner, the next point I wanted to draw attention to under the heading Business Law is this: it's clear from the evidence that by 19 August 2014 WilmerHale knew that Crown did not have any Chinese institution. It had not registered or incorporated a Chinese entity. That's made clear in further advice it gave on 19 August 2014 in exhibit P7. I want to go to that momentarily,
30 Commissioner.

COMMISSIONER: Yes, if you give me the number, I will call it up.

35 MR YOUNG: Yes, CRL.625.001.0007.

COMMISSIONER: Yes.

MR YOUNG: That's an email - - -

40 COMMISSIONER: That's exhibit P7, is it, Mr Young?

MR YOUNG: It is, yes.

45 COMMISSIONER: Thank you. Yes.

MR YOUNG: The start of the email chain is an email from Kenneth Zhou of 19 August 2014.

COMMISSIONER: Yes, if you go over the page, thank you. What's the pinpoint, Mr Young?

MR YOUNG: 0009.

5

COMMISSIONER: But I think we've got the one on the 19th of August, yes.

MR YOUNG: Yes. I'm sorry, it's the – I hadn't noticed the earlier very short one.

10 COMMISSIONER: Mr Chen is asking Mr Zhou to call him urgently.

MR YOUNG: Yes.

COMMISSIONER: Yes.

15

MR YOUNG: And the advice comes back from Mr Zhou.

COMMISSIONER: Yes.

20 MR YOUNG: That advice conveyed two things, that Mr Zhou appreciated that Crown had no registered or incorporated Chinese entity, and secondly - - -

COMMISSIONER: Which part are you looking at?

25 MR YOUNG: The second item.

COMMISSIONER: "I do not know what kind of contracts"?

MR YOUNG: Yes.

30

COMMISSIONER: All right, then.

MR YOUNG: And the next paragraph, the last two paragraphs.

35 COMMISSIONER: I will just have a look at that.

MR YOUNG: The point I was just making is the start of the last paragraph:

40 *I have learned from Cynthia that we do not or no longer have any duly registered rep offices, travel service agency companies in China.*

COMMISSIONER: Yes.

45 MR YOUNG: Now, the other part of the advice, if I can go back to the previous paragraph, is:

5 *I don't know what kind of contracts we have with our employees on the ground. Fine for a foreign company without any presence in China to sign services advisory consulting contracts with Chinese nationals. The contract should be clear, though, on relevant scope of services. The contracts will become evidence on what our employees do in China.*

COMMISSIONER: Yes.

10 MR YOUNG: And then the advice continues:

I've learned we don't have any dually registered offices.

And I will turn to the next part in a moment, but can I deal with those two legs.

15 COMMISSIONER: Yes.

20 MR YOUNG: Armed with that knowledge WilmerHale continued to advise through until the arrests that Crown employees in China, being employees of a foreign company, could lawfully engage with existing or potential customers provided they complied with the limits of the criminal law advice in article 303. That's what transpired subsequently. Now, there's no suggestion in this email or any other email that that course of action for a foreign company with employees in China would contravene any business law. The email continues in the last paragraph with these words:

25 *It may be advisable to set up and maintain some foreign business registrations such as a rep office - - -*

30 COMMISSIONER: Formal - - -

MR YOUNG:

35 *Some formal business registrations –*
my apology –

such as a rep office in China –

40 etcetera. Now, counsel assisting suggested that this was advice to Crown that it needed to set up a business registration. That's at paragraph 155 of counsel assisting's written submission. It doesn't go that far. The advice was only that it may be advisable. There was no suggestion that that step was essential to comply with business law requirements. So contrary to the submission, WilmerHale knew that there were no registrations. Its earlier advice had been qualified with respect to
45 institutional liability. Knowing that there were no registered Chinese entities, it advised that it's fine for a foreign company without any presence in China to have employees in China, and vis-à-vis a formal business registration, there was only a

proffer of a suggestion it may be advisable. No advice that there was any obligation under Chinese business law to take that step.

5 COMMISSIONER: Well, I suppose it's the way of expression in these things, Mr Young. I mean, 155 and the content of this email "it may be advisable" – I suppose if your lawyer is saying it's advisable it's equivalent to saying it's advice, but you have to either take it or not, so it was advice.

10 MR YOUNG: Yes, but there's no suggestion that there is a breach of Chinese business law by proceeding to have employees in China as employees of a foreign corporation. That's the burden of – well, that's to the contrary of the suggestion by counsel assisting that there was a positive obligation that you needed to register or obtain a licence to conduct any of those activities. Madam Commissioner, we accept that these advices are not clear and could have been much clearer. I said that at the
15 outset. But conversely, it doesn't allow the proposition to be made that Crown was being advised that it was unlawful not to obtain a licence to do what it was doing.

There was no such advice at any point of time and the advices were reasonably open to the interpretation that Crown took, that is, that they did not need a licence or
20 business registration. These are not the entirety of the advice either.

COMMISSIONER: Just pause there.

25 MR YOUNG: I'm sorry.

COMMISSIONER: Just pause there. When you say "they decided they did not need a licence", etcetera, that was their decision. I think what their decision – I know their decision was not to set up licence – sorry, offices, but I think what you've just said, where is that that I find that?
30

MR YOUNG: I'm coming to it, Commissioner. It's in Mr O'Connor's evidence.

COMMISSIONER: That's all right.

35 MR YOUNG: But can I take the sequential steps to get there?

COMMISSIONER: Yes, of course. Of course. Of course.

40 MR YOUNG: The next piece of advice I wanted to note was that in 2011 the Hong Kong office of Baker and Mackenzie had advised Crown that it was not conducting a business in China unless it was generating income within China. So a distinction was drawn between conducting a business in China, and having employees in China who were part of an overseas business. True it was they were engaging in business-related activities, but those activities related to the foreign business, not Chinese
45 business as such. That was the effect of Baker and Mackenzie's advice in 2011 which is the subject of evidence in exhibit R43 and also from Ms Williamson.

Her understanding of the advice from Baker and Mackenzie was that Crown did not need a licence because it was not conducting business that earned income within China. That evidence is – I will just check the reference. It doesn't immediately make sense to me. I apologise.

5

COMMISSIONER: Thank you. That's all right, Mr Young.

MR YOUNG: It's – I will just check that reference, Commissioner.

10 COMMISSIONER: Yes, thank you.

MR YOUNG: Now, consistently, with those matters Mr O'Connor was asked in his oral evidence about the original 2013 advice. His response was that he did not regard Crown's activities as conducting business in China in a relevant sense that would attract any business law requirement; that is at transcript 1993.

15

COMMISSIONER: I think he stepped back from that a little bit, didn't he?

MR YOUNG: I don't think so, Commissioner. There's other evidence that, when he was asked about the apartment, there's further evidence, which I'm coming to.

20

COMMISSIONER: Yes.

MR YOUNG: But his evidence in that regard was that, while he knew of the use of the residential apartment for visa processing, he would not describe it as a representative office. No – so there's no evidence from Mr O'Connor to the effect that he considered the apartment to be any kind of office that required a licence. His evidence was that it – his understanding was it didn't. That evidence I've just referred to is at transcript 1997.

25

30

COMMISSIONER: Thank you.

MR YOUNG: Now, in those circumstances, Commissioner, it is not possible on the available material to conclude that there was any business law obligation to obtain a licence or registration to do what Crown was doing as a foreign company, by means of its staff on the ground in China. Secondly, there's no evidentiary basis to conclude that Crown was breaching some unspecified Chinese business law merely by having staff in China to meet patrons and assist their visa and travel applications. And, most certainly, the relevant members of Crown management did not believe that anything that was being done was acting in breach of some Chinese business law requirement.

35

40

Now, for those reasons, we disagree with the submissions made by counsel assisting. What is clear is that the interpretation that has been advanced is, when you look at all of the material, not supported, and to the extent a contrary view might be taken, the advice is open to other interpretations, as I have advanced to the effect that there was no requirement and no breach of any Chinese business law. Ultimately this comes

45

back to the proposition that this is really a little of a distraction. It had no connection with the Chinese arrests. It was not an issue raised at the time, it's not an issue raised in media allegations. There's no link between these matters and any current assessment of suitability in our submission.

5

Now, I want to move to another set of allegations about business law. A further proposition was advanced by counsel assisting to the effect that whatever Chinese business law did require, management proceeded contrary to their own understanding, which was an instance of unethical conduct. Now, that submission is not supported by the evidence. The evidence is this: both Mr Craigie and Mr Felstead said they had no knowledge of an office operating in China; that's transcript 1471 to 1472 and transcript 1131. Now, no member of the board had any knowledge of an office operating in China. Further, Mr Felstead specifically objected to a proposal to have a representative office in China. He also said in evidence he was not aware of any requirement to have a business licence or a representative office. Those matters appear at transcript 1134, 1156 and 1182.

The relevant members of management who are said to have some knowledge of the apartment were Mr O'Connor, Mr Chen and Ms Williamson. Ms Williamson's knowledge arose in the context of the – no. I withdraw that. I will just give the reference: transcript 1997. I better specifically check the context, rather than relying on my memory. But turning to Mr O'Connor, the evidence is this: his evidence was, as I think I mentioned a moment ago, he was aware of the residential apartment; he was aware that it was being used in connection with visa processing; he did not describe it or consider it to be a representative office; he did not conceive of it as requiring some kind of business registration or licence.

Now, he may or may not have been wrong, but his conduct was, most certainly, on the point I'm now making, not unethical. Mr Chen, we have – he did not give evidence, so I've got nothing to add on this point concerning him. Now – but there is one point of additional evidence that is relevant. It's in Mr Jane Pan's Federal Court statement at paragraph 11, which I don't need to go back to. I can succinctly give you the substance, Madam Commissioner.

35 COMMISSIONER: Yes.

MR YOUNG: Her evidence was that the apartment was used by one person only, Tracey Lee, an administrative assistant, and she worked from the apartment – worked in the apartment purely for administrative purposes. Now, that evidence is relevant. In our submission, her Federal Court affidavit should be made an exhibit. Now, in the face of that evidence, in our submission, there's no basis for contending some unethical conduct based on a further contention of a breach of Chinese business law. Now, none of that is to say that the apartment ought not to have been operating contrary to Mr Felstead's instruction. It shouldn't have been operating. And if it were operating, it should have been drawn to the attention of the most senior levels of management, that is to say Mr Felstead and Mr Craigie, and if it was considered to be a matter warranting it in their judgment, brought to the attention of risk

committees. But in the way in which this matter is relied upon by counsel assisting, in our submission, it's unsupported by the material.

5 COMMISSIONER: So the fact that it was operating but shouldn't have been operating goes to what?

10 MR YOUNG: Well, it's a criticism of the personal judgment of those who operated it, that's principally Mr Chen, in the face of an objection raised by Mr Felstead. That objection was not based on any concern about risks or illegality, simply that he didn't want to open such an office and, moreover, the advice was there was no benefit in opening an office – registering an office – because it would not be given a scope of business to authorise the actual activities.

15 COMMISSIONER: Yes.

MR YOUNG: It doesn't amount to anything other than a minor issue about the business judgment of an individual who is no longer within the organisation.

20 COMMISSIONER: Well, I suppose it fails to give much capacity for those who are being criticised for their judgments, capacity to know what was actually happening on the ground. They must have known it was there and Mr Chen - - -

MR YOUNG: Well, the only one who knew it was there - - -

25 COMMISSIONER: Mr Chen knew.

MR YOUNG: - - - continuing – yes, that's right.

30 COMMISSIONER: So if he was acting as a rogue, not telling Mr Felstead that he had done things that were inconsistent with his directions, that's one thing, but I – at the moment Mr Chen doesn't feature because he's refused to assist.

MR YOUNG: Yes. I understand that, Commissioner.

35 COMMISSIONER: Yes, all right.

MR YOUNG: The - - -

40 COMMISSIONER: And I suppose if it did call for an explanation – if, on any aspect of this, it did call for an explanation, the point is that perhaps an adverse inference could be drawn that Mr Chen couldn't have given an explanation that would be satisfactory, but that's about it, I think, Mr Young.

45 MR YOUNG: Well, but there are many other explanations, Commissioner. That couldn't be concluded because, for the reasons I've been through, the very limited nature of the use of the apartment by one individual to process visa applications did not raise any indication at all that that was contrary in any way to some legal

requirements of operating in China, and in those circumstances what we say follows. There's – there are no adverse conclusions to be drawn. And in any organisation management make decisions at lower levels of the organisation and not everything can be carried up the line. If they are matters of this dimension, for instance, aside
5 from informing Felstead as to the actual position, given the direction he had given, there's really no more to be done. Commissioner, I wanted to turn to the set of propositions advanced by counsel assisting concerning the February 2015 press conference.

10 COMMISSIONER: Yes.

MR YOUNG: Now, that press conference and the statement made at it was significant. It was regarded that way by senior management who knew of it because they immediately commissioned both legal and security advice to understand the
15 implications of that press conference statement. That was the appropriate course of action and not to be criticised. Management made a judgment in view of that advice that there needed to be no change to operations in China, but the existence of that press statement should have been drawn to the attention of board-level risk committees rather than the individuals making the judgment, as I've said.

20

Can I deal now with counsel assisting's first submission about this topic. The submission, at paragraph 191 of the written submissions, was to this effect: the precise business activities that Crown Resorts' staff in China were undertaking had been identified by the Chinese government as being subject to the crackdown. Now,
25 that is a wide and inaccurate statement, and several points need to be made about that. One would not perceive, certainly not looking at it through Australian eyes, that one's activities were within the purview of a government crackdown if you were operating well within the limits of the actual text of the law and, further, had been advised by highly qualified lawyers that your activities were not in breach of the law.

30

You would regard the crackdown as being aimed at those who were operating illegally and outside the boundaries of the law. So there's no reason why management should be – or this assertion should be made that Crown's precise business activities were the subject of that announcement. That pre-supposes a
35 premise that the business activities were unlawful, because only unlawful activities you would expect to be cracked down on. The second point - - -

COMMISSIONER: Well, I don't know about that from what you've said.

40 MR YOUNG: Well, I'm coming to the second – I'm coming to those matters, Commissioner, but we would say that would be the normal perception of such a thing. "Crackdown" assumes some normative standard that's been breached.

COMMISSIONER: The western approach to that is so.

45

MR YOUNG: Yes. Well, so too is the full context of the press conference if one has regard to it, and this announcement was in fact a single sentence forming part of

an answer to a reporter's question in a lengthy press conference spanning many, many pages of topics, but the predominant focus of the press conference focused on yellow gambling crimes, meaning prostitution and pornography connected with actual gambling operations. The sentence in question was as follows:

5

Many of our neighbouring countries have casinos. They have established in China some offices to attract and solicit Chinese citizens to go outside the borders to gamble. This is also a focal point of the crackdown.

10 Now, that's open to interpretation in a number of ways, including what I said a moment ago, that it's aimed at those acting in breach of the restrictions under article 303. If you take 303 in the interpretations, one can see immediately what type of entity it might be aimed at. It might be aimed at a Chinese junket. They organise large groups, they receive kickbacks or referral fees. That's a different case than
15 somebody engaging one-on-one with patrons in the manner that Crown was doing. Now, the next thing is advice was obtained. There was initial concern, all of the executives said, and that's evidenced by the emails.

20 There was a concern about whether people should travel in the immediate aftermath of the announcement, but the advice was obtained, and the concern was ameliorated or absolved by that advice. A clear indicator that that was so was that Mr Felstead and Mr O'Connor resumed their travels to China by May 2015 after a short break while those advices were obtained. Now, they would not have travelled in that fashion. Mr Felstead, indeed, travelled with his wife; they would not have done that
25 had they perceived, after obtaining the advice, that this was an obvious escalation of risk posing a real threat of detention, arrest and conviction. Their actions belie that proposition.

30 So they made a genuine judgment to that effect. Now, also, in assessing any connection between the February 2015 crackdown announcement and later events, the gap in time needs to be noted. There were events in 2015, but then there was 12 months of clear air, as it were, before the arrests. So the proposition that this was perceived in the face of advice as an obvious escalation of risk is, in our submission,
35 one based on a very strong element of hindsight. Can I turn then to the South Korean arrests.

COMMISSIONER: Yes.

40 MR YOUNG: In the eyes of Mr Johnston, Mr Craigie, Mr Felstead, Mr O'Connor and Mr Chen and their expert advisers, WilmerHale and the Mintz Group, on consideration and examination of the different circumstances, the South Korean arrests were not regarded as an obvious escalation of risk. That was the initial reaction. That was considered. Advice was obtained. That advice drew attention to the Koreans contravening Chinese currency laws and the use of cash for client
45 entertainment, a euphemistic reference to prostitution. Now, none of those activities that attracted that circumstance of the arrest of the Koreans was referable to Crown's position or its activities. So, again, the submission by counsel assisting

characterising that matter, even, it seems that matter as an enduring and obvious escalation of risk, is founded on a strong element of hindsight judgment. It was clearly an alert. It was clearly something that should have been taken seriously. It was. The failing was in not bringing the matter to the attention of the risk management committee and leaving it to the judgment of the individuals I just mentioned.

Can I then turn, Commissioner, to the questioning of Mr BX. The submissions that were made also have, in our submission, a strong element of hindsight and a lack of appreciation of the surrounding circumstances prevailing in China generally. The general circumstances of the need for caution when you're doing anything in China, in such a totalitarian environment, was the subject of the very earliest advices that were received from WilmerHale. Can I take you, please, to exhibit M14 firstly.

COMMISSIONER: Yes, if you give me the PIN number.

MR YOUNG: I will find it, Commissioner. This one doesn't have it.

COMMISSIONER: That's all right.

MR YOUNG: No.

COMMISSIONER: You proceed and just - - -

MR YOUNG: I apologise.

COMMISSIONER: - - - refer to it. That's all right.

MR YOUNG: No. Mr Whitwell is assisting me and he is very quick with the computer.

COMMISSIONER: All right then.

MR YOUNG: Commissioner, CRL.545.001.0021.

COMMISSIONER: Thank you very much. It will be brought up.

MR YOUNG: Thank you.

COMMISSIONER: Yes, I have it now, Mr Young.

MR YOUNG: Yes. You will see, Commissioner, that that is an email to Mr Chen from Mr Albouy of 8 June 2012 at the top. The document - - -

COMMISSIONER: Just pause there for a moment. This is February '15. We need to - so it's CRL.545.001.0021. That's a different email. That's a February '15 email.

MR YOUNG: Yes, it is. My apologies.

COMMISSIONER: That's all right.

5 MR YOUNG: I don't know why my bundle has got the old Crown reference numbers.

COMMISSIONER: That's all right. Mr Young, you can refer to the content of the advice and I will - - -

10

MR YOUNG: I'm sorry. No, it's my clumsiness, Commissioner. I apologise.

COMMISSIONER: That's all right.

15 MR YOUNG: I was looking at the reference at the top rather than the reference at the bottom of the page on what I have. It's CRL.545.001.0595.

COMMISSIONER: Thank you.

20 MR YOUNG: I hope that works.

COMMISSIONER: Yes, there we are.

MR YOUNG: Yes, that's it; that's 8 June 2012.

25

COMMISSIONER: Yes, quite. Yes.

MR YOUNG: The email I want to refer to is Michael Chen's email.

30 COMMISSIONER: Yes. To Mr Albouy.

MR YOUNG: Containing a summary – yes, of 8 June 2012 – on the bottom half of the page, there's a series of points. If one goes to the legal advice. Two is:

35 *Little risk of our staff being detained for any reason.*

But the fourth point is:

Better to avoid interviews than to have to go through one.

40

COMMISSIONER: Yes.

MR YOUNG: And you see what Mr O'Connor said about his first interrogation. One can well understand that.

45

COMMISSIONER: Yes. Quite.

MR YOUNG: The next – then I want to go to M16, which is a further Chen email. That’s CRL.545.001.0594. In this email, it’s 14 June 2012. Mr Chen communicates to Mr O’Connor a summary of the advice provided by WilmerHale. The legal position is made clear in one:

5

Not illegal to be selling offshore gaming within China.

Paragraph 2:

10

That said, because gaming is a sensitive topic, their recommendation was still to be cautious and avoid openly marketing.

And 3:

15

They gave lots of advice on the rights of staff –

I think that should be –

20

if asked for questioning and how one might respond.

COMMISSIONER: Yes. So that’s a summary of the WilmerHale advice at that time was for more than 10 people and to be cautious. I see that.

25

MR YOUNG: Yes, but the point I’m making at the moment is the – to the backdrop to questioning of Mr BX - - -

COMMISSIONER: Yes, I understand.

30

MR YOUNG: - - - is that, from the very earliest time, the advice was consistently to the effect that be cautious, staff questioning may occur, it’s better to avoid that scenario. That is entirely consistent with a piece of Mr Chen’s statement to the VCGLR that counsel assisting cite in their written submissions. Could I ask you, Commissioner, to turn up, please, paragraphs 287 and 288 of the submissions on China from counsel assisting?

35

COMMISSIONER: Yes. Yes, I have that, Mr Young.

40

MR YOUNG: The citation, I don’t think, is provided there, but my understanding is that this comes from the - - -

COMMISSIONER: It’s at the bottom, I think.

MR YOUNG: It’s at the bottom, is it?

45

COMMISSIONER: Yes, it’s footnote 514. You see that?

MR YOUNG: Yes. I was going to say it's referred to in a passage in the VCGLRs Sixth Report as well, but the reference is given; that's adequate. But I wanted to draw attention to Mr Chen's statement about this, in particular, in the middle. I mean, I don't know what they would say, but I don't think anyone would offer up
5 that they're promoting gambling. And then there's some further questions and, at the bottom of that extract:

*I think I would expect my staff always to be truthful with authorities, but I also recognise that, as a practical matter, people are generally very sensitive in
10 China, because China is a place where you just don't know what authorities will or will not do, and it's not like a western society and government where the law is clear and you know that your rights are always –*

rights – you know what your rights are always –
15 *so I think people are pretty cautious.*

Now, that, I think, is given with the hindsight of what happened in China, but that was the flavour of the advice received throughout from both WilmerHale, Chen and
20 Mintz when they came on board, which was China is a society where you have to be very careful, not extravagant in the way you behave, and very careful in any situation where you might find yourself the subject of questioning. Now, I mentioned those surrounding circumstances for a reason. When you turn to the evidence directed specifically in relation to the questioning of Mr X, the police proceeded after
25 questioning Mr X to seek a letter confirming his employment. All of the circumstances of the questioning, including Mr BXs direct account of what he was asked were not seen by WilmerHale as alarming in the sense that Crown needed to change any of its operations. They did not so advise.

30 Mintz Group had the same advice and said that a request and questioning like this was normal. That's – the references are to exhibit R15 and R17 respectively. So that was regarded by the experts as a not uncommon or unexpected situation in China. I will turn to the proposition very shortly that there was some concealment of matters from the Chinese authorities that in some way tracks back to Crown, and I will deal
35 with that, but simply in sequence can I deal with, next, the CCTV news program. The advice of WilmerHale, as I noted, was sought in response to that program which focused on – largely on the South Korean arrests as a neighbouring country attracting gamblers. That's exhibit M234. The advice was that:

40 *Employees should not get involved in any activities which potentially raise money laundering or foreign exchange evasion issues, and that marketing materials should not expressly promote the casino business.*

That's exhibit M234. The provenance of that last observation is that there is a
45 separate restriction on marketing materials, as the evidence showed. Now, that is far from advice that one would regard the CCTV program as a further – to quote counsel assisting:

...obvious escalation suggesting that staff were at risk of arrest and conviction for gambling offences.

To the contrary, the advice of Mintz on 15 October 2015 was that:

5

Your team should not feel overly concerned.

That's exhibit M230. Then that advice was followed up by further advice on 19 October, exhibit M235, as follows:

10

I thought I would pass along the key results of our inquiries with about eight separate sources these past five days. All point to the recent arrests being very much pointed to the Korean entity in question and not part of a broader crackdown underway. Your team should be in good shape for activities this week, though the same ground rules are suggested as we discussed earlier.

15

And the ground rules were proceeding with caution. Now, advice that "your team is in good shape" is hardly advice that there was an escalating risk of conviction for gambling offences. So again, there's a heavy dose of hindsight in the submissions that have been advanced by counsel assisting. Now, by all these submissions, I don't mean to say that the events were not significant and not a cause for concern that needed to be addressed, nor am I saying that they should not have been reported to the CEO, Mr Craigie, and then to board level risk committees for their judgment. We accept that they should have been. But the propositions advanced by counsel assisting are put at a level that is overstated and ignores the circumstances and the content of the advice that was relied upon.

20

25

30

35

Management was acting bona fide, with the interests of staff at heart and taking appropriate advice and their mistake was confining the judgment to their own assessment of that situation. Now, I want to turn to the alleged disguising and concealment of matters from the Chinese authorities mentioned by counsel assisting. They itemise certain matters in that regard such as the content of the letter to the Chinese authorities verifying that Mr BX was an employee of Crown Resorts. Secondly, the lack of signage on the residential apartment, and both were said to be attempts to disguise or conceal Crown's activities from Chinese authorities or an attempt to mislead.

40

45

Now, allied to that notion seems to be the proposition that anything less than specifically calling attention to the fact that these employees were employees of an Australian gambling company is to be equated with dishonesty or deception. Now, none of those propositions stand analysis. They all have an air of unreality about them. Take the letter: it was drafted on legal advice and the form of it was based on Chinese legal advice. It verified only the employment status of the employee. I will come to the description of Crown in a moment, but that is not an attempt to mislead or deceive Chinese authorities.

Take also the signage – lack of signage on the residential apartment. That takes no account of the singular use of that apartment by one employee solely for administrative purposes in the absence of any advice or perception that the operation of such an apartment was in any way in breach of any Chinese business law. The
5 proposition that there's some attempt to disguise or conceal presupposes a proposition that the conduct is illegal, and that is not to be the foundation, in our submission. Now, as to the proposition that Crown should have called attention to the precise nature of its activities, that is a strange proposition given all of the advice about the environment in China where great caution was required because of the kind
10 of things that Mr Chen referred to, and Mintz and WilmerHale had referred to.

Not calling attention to the fact that Crown was a gambling company so as to minimise – not calling – I will just start again. Not calling attention to that fact was based on advice and it was a rational and reasonable approach to adopt. There was
15 no perception of any illegality in the activities so no attempt to disguise. The media allegation of known criminality in breaching Chinese law has been rejected by counsel assisting so that's not to be supposed. And there are other explanations for the conduct other than attempted concealment, including the matters I've been through about the prevailing general situation and the advice.

20 But let me turn specifically to the matters mentioned. Firstly, the letter. The letter was on Crown letterhead. It identified the full name of three Crown entities, including Crown Melbourne and Crown Resorts, set out their details. WilmerHale advised as to the form of words, including it should contain one or two sentences on
25 Crown Resorts, such that it is a well-known resort hotel in Australia with a long history. That's WilmerHale's advice in exhibit R15. The sentence went beyond that and said, as no doubt you recall, Madam Commissioner:

30 *Crown Resorts is one of the leading hotel resort and entertainment companies in Australia and is listed on the Australian Stock Exchange.*

There's no reference to casinos, but the reference to entertainment is apt to connote exactly that. And the evidence was that it was a fairly standard descriptor; that's at transcript 2255. Now, the proposition that the letter was some kind of attempt to be
35 less than honest, in our submission, ought not to be accepted. Now – and I've made the submission about the Guangzhou apartment. Being a residential apartment, the proposition about branding seems rather extreme, all the more so given its use by one employee for administrative purposes. There is one matter I want to specifically deal with, which has been the subject of submissions, Commissioner. It's the email from
40 Mr Chen dealing with Hong Kong and Singapore work permits as one expedient that might be followed.

COMMISSIONER: Yes.

45 MR YOUNG: That document is exhibit M139. And I will find the reference, Commissioner.

COMMISSIONER: Thank you.

MR YOUNG: It's CRL.545.001.0025.

5 COMMISSIONER: Thank you. Yes.

MR YOUNG: Now, before I turn to the specific reference to the work permits, which is in the second numbered paragraph 2 - - -

10 COMMISSIONER: Yes.

MR YOUNG: - - - can I draw attention to the full context of the email?

COMMISSIONER: Yes. Yes, I recall this.

15

MR YOUNG: This is immediately – I beg your pardon?

COMMISSIONER: Yes. I recall this, Mr Young.

20 MR YOUNG: I'm sorry. Sometimes I miss a few words in the - - -

COMMISSIONER: Yes. I'm sorry, Mr Young. I will keep my voice up.

25 MR YOUNG: This is in the immediate context of the crackdown announcement was the point I wanted to make about the date.

COMMISSIONER: Yes.

30 MR YOUNG: Now, that matter is referred to in the paragraph under the first numbered 3.

COMMISSIONER: Yes.

35 MR YOUNG: Mr Chen advises staff members in China, because that's the people to whom this is directed:

It's unclear what this actually means for us. I wanted to let you know we're actively investigating the report to fully understand its implications.

40 The next paragraph shows his motivation, accurately, we say:

Rest assured that the safety and security of our staff is of paramount importance.

45 And he refers to:

...precautions to ensure the safety and security of our staff.

He comes back to that central concern with the safety of the staff in the last paragraph of the email:

5 *We are closely monitoring the situation and will advise of any news. We will also take appropriate action to safeguard our staff. Please don't hesitate to call me if you have any questions or concern.*

10 Now, every aspect of those matters I've mentioned, too, are commendable. It's the responsible and appropriate approach to adopt by the executive in charge of staff in China. Now, the second thing to note about the advice is that he reiterates two things already advised upon in the second-last paragraph: he reminds everyone to take normal precautions; and then he says:

15 *Important to be reminded we've been given advice by outside counsel that the activities we currently undertake, that is, the promotion of overseas gambling and tourism, are indeed legal in China. What is clearly illegal under Chinese law, according to our outside counsel, is the organising of gambling group of 10 or more people and the receipt of commissions for that work. Since everyone here is an employee of Crown and not receiving commissions, we are*
20 *not in violation of any known laws.*

So he repeats the nub of the legal advice. It's in that context that the second group of numbered paragraphs needs to be understood. The first paragraph goes to:

25 *Seeking further legal advice and getting some feedback soon and I will share that with you.*

Again, commendable and appropriate. The second point is the one that's been criticised:

30 *We will be applying for Hong Kong/Singapore work permits for all our China staff that does not currently hold a foreign passport. This is purely a precautionary measure –*

35 and it's the next words that are questionable –

allow you to say that you work out of an overseas location and are on business travel in China.

40 Now, as to those words, they were improper, we accept. That was an improper suggestion to make. You may recall, Madam Commissioner, that Mr Jalland rightly described it as a stupid idea. It was a proposal that went – that never went anywhere. No action was taken in relation to it, but in the context of the entire email it's clear that it was triggered not by an intent to deceive, but by a concern for the safety of
45 staff. Now, that may be a perception that is a product of the environment that Mr Chen well knew and in which he was operating, and it strikes one as quite inappropriate by Western standards. But, nonetheless, that is the context in which

this is to be regarded, in our respectful submission. That email was not – no, I will have this checked, but my recollection is that it did not go up the line to Mr O'Connor, Mr Felstead or beyond, but I will double check that, Commissioner.

5 COMMISSIONER: I think the group called the VIP international officers. I think there's some evidence about the identity of the people who formed that group. We can pick that up in the transcript, Mr Young.

10 MR YOUNG: Yes, that's why I wanted to check it, but I think it's substantially, if not entirely, the China-based staff.

COMMISSIONER: My recollection is different. We will pick it up.

15 MR YOUNG: Yes. Well, we will address it, Commissioner, as well.

COMMISSIONER: Thank you. Thank you.

20 MR YOUNG: So, in our submission, the matters I've just identified for the reasons I've identified do not amount to matters that reflect on the way in which the Australian senior managers were running the business operations in China. It certainly doesn't reflect on the board of Crown at the time. There's no evidence that this was known to Mr Craigie. I think it's right to say there's no evidence that it was known to Mr Felstead. This is not a matter, in our submission, that has any connection to a current suitability assessment of Crown with respect to the operation
25 of the Barangaroo facility.

30 Now, can I, under the heading of the fact that I'm dealing with submissions that there was an attempt to conceal or disguise, let me come back to the questioning of Mr BX. In relation to Mr BX, we have his direct account of what he told authorities, which included the fact that the company he worked for had casinos in Australia. That is exhibit O36. The reference to that is INQ.950.002.0157.

COMMISSIONER: Thank you.

35 MR YOUNG: This is an English translation of the account given in Chinese by Mr BX.

COMMISSIONER: Yes.

40 MR YOUNG: The Chinese account is at the last page of the email, pinpoint 0159.

COMMISSIONER: Yes.

45 MR YOUNG: And then it's translated in Melbourne.

COMMISSIONER: Yes.

MR YOUNG: And you see the translation. He's asked what's his job and his answer is:

Applying visas for clients.

5

He's asked whether he has an office. No, he said he:

... worked from home, visa applications are not hard to do.

10 And question 9:

Have your company got casinos in Australia?

15 And his frank and honest answer is "yes". And then he's asked about the Australian casino is legal in Australia and he says:

Yes, they're a listed company in Australia.

20

Do you know – have your clients gambled over there?

I don't know.

25 And then it finishes off with a request for the certificate of employment. So the direct account of the employee is that he told the truth: he worked for a company that had casinos in Australia. Now, it's not discernible on the face of that that he engaged in anything that misled the Chinese authorities. Now – but I do note that Mr Chen's email gives a second or third-hand account of events and he refers to Mr BX having said something slightly different. Can I go to exhibit R15.

30 COMMISSIONER: The reference number?

MR YOUNG: This is an email – CRL.636.001.0411.

35 COMMISSIONER: Thank you.

MR YOUNG: You will see, Commissioner, that it's an email from Michael Chen to Jan Williamson, cc Mr O'Connor about Mr BX.

40 COMMISSIONER: Yes.

MR YOUNG: And Mr Chen gives an account in which – and I won't read it all – second paragraph:

45 *He denied it and said he worked for Crown Resorts and assisted in organising leisure trips for customers.*

And then the next paragraph:

The police requested he furnish a letter corroborating his statement.

Now, that is Mr Chen's rendering. It's not a first-hand account and it's not supported by the first-hand accounts. The first-hand account he's given by Mr Zhou, who was
5 the person who actually spoke with Mr BX, appears at the start of that email chain at exhibit R15. So if we can turn to the second page, please.

COMMISSIONER: Yes.

10 MR YOUNG: Pinpoint 0412.

COMMISSIONER: Yes.

MR YOUNG: At the bottom of the first paragraph where Mr Zhou gives his report:
15

The police department needs a letter from Crown to confirm that he is an employee of Crown.

COMMISSIONER: Yes.
20

MR YOUNG: That's the first-hand account from the man who spoke to Mr BX. It's the same account that Mr BX gives himself in Chinese of the exchange with the police.

25 COMMISSIONER: Yes.

MR YOUNG: Mr Chen's rendering is – or can be seen to be inaccurate by reference to those matters. The email between Mr O'Connor and Mr Felstead of 10 July is at
30 exhibit O28 and it reflects the first-hand account. I will give the reference, Commissioner.

COMMISSIONER: Thank you.

MR YOUNG: This is exhibit INQ.950.002.0140.
35

COMMISSIONER: Thank you.

MR YOUNG: On the point I'm addressing the – what is communicated is the police asked for a letter from his employer verifying this, that he worked for a hotel resort
40 company and helps with visas and travel arrangements. Now, it – so the premise for the criticism that there was concealment going on, an attempt to conceal, not by Mr BX but by Crown, in our submission, can't properly be founded on those materials and should be rejected. Now, can I make a broader point. Whatever the true
45 position, it is instructive to put one's self in the shoes of the local Chinese staff member, given the matters that Mr Chen has referred to about the general business environment in China, and given also the proposition that anything connected with

gambling has a sensitivity about it, even if it's within the scope of what is permissible for a foreign company.

5 Another aspect of putting yourself in the shoes of a local Chinese staff member, he may have said that he did not organise groups because he was conscious of the advice that had been circulated to staff as to the elements of the Chinese criminal law. A group of greater than 10 organised on the one occasion would offend the law. In our submission, there's no real basis to say that the Crown executives who read the email should have concluded that their employee had lied but, secondly, there's
10 no basis for saying that they failed in their duties in some way by not informing on their own employee and endangering him. At the end of the day, in our submission, these events have no real relevance to questions of current suitability.

15 Specifically, Crown submits that the approach that its executives who knew of the questioning adopted, relying on the advice that was given to this set of circumstances, does not identify any cultural problem in Crown. It does not identify any issue of current suitability and in our submission that is how these matters should be regarded. Now, Mr O'Connor explained his experience which was the predicament he was put in that regardless of the true facts, there was a 99 per cent
20 chance that he was going to be convicted, whatever the law said. That's exhibit R34 at paragraph 179.

Now, that was a common perception in China. There is evidence in the Federal Court proceeding in Ms Lewis' statements to that effect that we do seek to rely upon.
25 I don't want to reargue the previous argument, but we do say that those matters ought to be taken into account. Commissioner, can I go back to the Singapore/Hong Kong building permits? I said I would check the references.

30 COMMISSIONER: Yes.

MR YOUNG: I will just put this on the transcript. I'm grateful to Mr Whitwell for assisting me. Mr Felstead gave evidence he was not aware of that proposal from Mr Chen, transcript 1173, line 28. Mr Craigie, likewise, said he was not aware of that matter, transcript 1492 at lines 37 to 41. Mr O'Connor said he could not recall one
35 way or the other. That's transcript 1990, lines 6 to 10.

COMMISSIONER: Thank you very much.

40 MR YOUNG: Now, part of the wider submission by counsel assisting seems to be to criticise the approach to be low key as recommended by WilmerHale and Mintz Group. That is recommended in a progression of advices which we will detail in our written submissions. I won't take the time now.

45 COMMISSIONER: Thank you.

MR YOUNG: But that traversed the whole period, as I've said, from 2012 right through to late 2015. The idea that adopting a low-key approach in Chinese

circumstances, given all of that advice, was in some way to be criticised is, in our respectful submission, an unreal and unsound proposition, but nonetheless it was.

5 COMMISSIONER: I think it was a factor that's put on the basis that the need for this in circumstances just is part of the fabric of what was going on at the time, that there was concern if they weren't low key, if they didn't keep themselves low key, there was the obvious risk to them.

10 MR YOUNG: Yes, but in the way it's put, Commissioner, it's linked to the risk of detention, arrest and conviction for gambling crimes. That's not supported by the evidence. The reason for being low key and so on and cautious is a more general concern, it's more general advice about the way in which westerners should behave in China having regard to the way in which things generally operate there.

15 COMMISSIONER: Well, that's - - -

MR YOUNG: True it is – yes. Can I move to another email I need to specifically deal with.

20 COMMISSIONER: Yes.

MR YOUNG: It's Mr Chen's email of 26 March 2003 which refers to being tapped on the shoulder.

25 COMMISSIONER: Yes.

MR YOUNG: That's exhibit M30. The reference is CRL.545.001.0611.

30 COMMISSIONER: I think it's 2013.

MR YOUNG: Yes, that's what I said, 26 March 2013.

COMMISSIONER: Yes, all right. Yes. We have that. Thank you.

35 MR YOUNG: Now, the – again, we would submit that the observation towards the end about being tapped on the shoulder needs to be seen in the context of the overall advice and the more general matters I've referred to, but the email to Mr Felstead copied to Mr O'Connor, relevantly, says – it starts off by referring to a situation that's become frequent in China and “what we're doing to protect our business”. It then refers to politically motivated detentions in China. In the fourth paragraph it
40 reiterates the definitive legal advice from WilmerHale that:

...the activities we undertake do not violate any criminal laws.

45 There's a reference to:

...when persons of interest are detained, the government often will spread its tentacles quite wide to gather information to build its case against a high value target.

5 That's a reference to concerns about customers, high value targets and information relating to them. That's made clear by the next sentence. So part of the reasons for flying under the radar or being cautious and so forth is that doing otherwise may expose customers or potential customers to arbitrary detentions and questioning. The next paragraph refers to a protocol in the event that such a knock on the door arrives.
10 Now, that's – and the concept of a knock on the door is a general one that regardless of any position of Crown's activities being illegal, there's always a risk of this proverbial knock on the door. The concern is with staff safety:

15 *Sensible to avoid putting our staff in a situation where they're questioned. The reason is that it's an uncontrollable environment.*

That is most certainly borne out by what Mr O'Connor experienced. Now, the second last paragraph seems to be about a particular customer which underscores the wider context, and it's in that context that the observation is made about the China
20 team:

They are living in constant fear of getting tapped on the shoulder in a country where due process is inconsistently applied. It's a risky place for all of our team.

25 And then Mr Chen says:

This overall feeling is not uncommon. When I was at Caesars –

30 another casino –

...the China team would from time to time duck for cover.

35 Now, those observations are in the broader context of the issues about doing business in China, particularly engaging in lawful activities in the sensitive area of association with gambling. The way it's been rendered by counsel assisting is to use this to say this is evidence that Crown management appreciated there was a real risk of arrest and conviction of staff for gambling offences. In our submission, the evidence does not establish any such appreciation or any grounds for making that submission.

40 What it shows is a persistent concern – or a concern, consistent with what had previously been advised, that any operations in gambling, even though quite lawful, because they have a connection with gambling activities and because China is the kind of place it is, there's always the risk of the proverbial knock on the door or an episode of questioning.

45 The principal purpose of this email was to say to Mr Felstead that steps were being taken to address the concerns of the staff about the proverbial tap on the shoulder,

being further legal advice, a protocol, but the email does not say that there is any need for a change in the nature of operations in China. It certainly does not convey that staff are at risk of being arrested, convicted and detained for criminal offences of gambling. It was to the opposite effect. Now, the notion that management
5 appreciated from this email the material risk of people in China being arrested and convicted is contrary to the actions that management themselves took in frequently travelling to China.

10 In our respectful submission, the reliance placed on this sentence in this email is driven, again, by a hindsight bias. It doesn't appreciate the wider context or the other elements of this email that I've referred to. Now, this is around about 2013. Advice to be low key continued, but that was the constant advice right throughout the period. Can I then turn to the allegations in relation to the CPH influence. I appreciate, Commissioner, that this has been addressed in fair detail by Mr Hutley with a lot of
15 evidentiary references. We also rely upon the evidentiary references that he gave. I won't attempt to repeat them or step through the same staircase, as it were.

We do submit that the proposition that decision-making in relation to China was unduly influenced by the major shareholder, CPH, is not a proposition that can
20 withstand objective or reasonable analysis. The key executives involved in decision-making on China were Mr Felstead, Mr O'Connor and Mr Chen. None of those executives was a CPH representative. Mr Craigie had knowledge of certain matters, primarily the February 2015 crackdown that came up to the CEO meeting and the South Korean arrests where he was involved in email communications and
25 considered the advice. But he was not a CPH executive either.

The proposition that CPH had substantial influence relies on overstating the role of Mr Johnston. The working group was not, in fact, a CPH working group, and I think everyone has come to understand that that label in a marketing document is not
30 correct. It was a VIP working group whose role was to provide assistance in specific areas to the VIP international team. Mr Johnston attended those meetings, at first regularly and then, he said, can decreasing frequency. He was on the committee, and this evidence was not challenged, for the specific purpose of lending assistance in those areas where he had particular expertise, financial and tax matters in particular.
35

But more generally the evidence shows that the key decisions in relation to China were made by Mr Felstead, Mr O'Connor and Mr Chen. Mr Johnston was aware of certain events, he was consulted about certain matters by Mr Felstead, but the suggestion that he directed the course taken in China as a representative of CPH is
40 not supported by the evidence. The overall strategy to be followed in China was not determined by the VIP working group, on the evidence. It was discussed at the working group, but that group made no decisions.

For instance, the decision to adopt the platform junket committee was recommended
45 by Mr Craigie and went to the board and the decision was taken by the board. That's the evidence at transcript 1494. So in our respectful submission, the contention by counsel assisting that somehow CPH controlled decision-making in relation to China

through the VIP working group, or that it set the strategy, is not a sound one. Now, can I then come to another discrete allegation. It's alleged that there was a failure by Crown Resorts to retrospectively examine the facts, matters and circumstances that had resulted in the arrests and convictions of staff in China. In our submission, that
5 view of things is not correct. The events in China were the subject of a class action in the Federal Court, announced by – or in February of 2017 in some detail and commenced soon afterwards. That action alleges - - -

10 COMMISSIONER: When was it actually filed?

MR YOUNG: I will - - -

COMMISSIONER: I think it was later that year, wasn't it?

15 MR YOUNG: Yes, you are correct.

COMMISSIONER: That's 2017?

MR YOUNG: Yes, you are correct.

20

COMMISSIONER: Yes.

MR YOUNG: The intention to commence it was the subject of the first board meeting in 2017, though. There was a press announcement by Maurice Blackburn
25 about it.

COMMISSIONER: I see.

MR YOUNG: The actual formulation of the proceedings unfolded, I think, over the
30 course of much of 2017, because it was issued late in 2017 - - -

COMMISSIONER: Yes.

MR YOUNG: - - - is best recollection. We will provide the date in our written
35 submissions.

COMMISSIONER: That's all right.

MR YOUNG: I was about to say, Commissioner, that the issues in the action
40 included these: an alleged awareness on the part of officers of Crown that there was a risk of arrest and detention and conviction of staff for contravening article 303. It also alleges knowledge of that illegality by Crown. It also acknowledges that Crown's operations were a specific target of the February 2015 press conference, and it relies, in part, in identifying the relevant risks that were not addressed and
45 disclosed to the market on, amongst other things, the crackdown announcement and the arrests of the South Koreans.

So the issues in the class action traverse the issues that counsel assisting point to and, specifically, the alleged awareness of risks, the failure to address risks and the non-disclosure of the risks. Now, a process of responding to the class action and addressing those issues commenced early in 2017, because that action was
5 anticipated. In the course of the class action, Crown has investigated all of those issues, all of this correspondence and the matters and circumstances pertaining to the arrests. The results of that work were conveyed to the board by Mr Murphy of MinterEllison on a regular and frequent basis on and from February of 2017. Because of the pendency of the class action, and on legal advice, this was the form
10 that all board members agreed that the retrospective investigation of the causes of the China arrests would take.

That course of action was agreed in late 2016. It was affirmed in February 2017 and was on track and continued on and from February of 2017. Now, within that
15 framework, the board of Crown did investigate and consider the matters traversed in this Inquiry, including the non-escalation of risks or alleged risks within Crown. And one of the key issues in the class action was who, precisely, was aware of the existence of the relevant risks. That is the foundation for the ASX listing obligation and to make a disclosure to the market within the meaning of section 674 of the
20 Corporations Act. Now, I need to divert slightly to address some matters in the transcript. On the last day of the hearing, Madam Commissioner, Mr Owens of senior counsel addressed the Commissioner in relation to the position of Mr Brazil. Apparently a written submission was filed in that regard, but we haven't seen it.

25 COMMISSIONER: No, no, no. I don't have a written submission. I don't have a written submission, Mr Young. I think Mr Owens may have indicated that any references to transcript, etcetera, would be provided in due course in a document, but, certainly, I haven't received anything as yet.

30 MR YOUNG: All right. Thank you, Commissioner. I misunderstood, obviously, the reference to written submissions in the transcript.

COMMISSIONER: That's all right. No, we haven't received any written
35 submissions.

MR YOUNG: Now, I want to deal with the actual facts concerning Mr Brazil's evidence. The assertion was wrongly made about Mr Owens that, at some point after Mr Brazil left, a decision was taken not to do that comprehensive investigation. Now, that is simply wrong. It's contradicted by the evidence. He claimed that Mr
40 Dixon said something like that. That observation is also wrong. It's contradicted by the evidence. The evidence was, from Mr Brazil, that when he left Crown the post-mortem was on track and committed to be concluded, and he left on good terms and for no reason associated with failure to undertake a post-mortem. But the evidence goes a bit deeper than that. The evidence is that it was resolved by the board that the
45 form of the post-mortem would be within the confines of the reports on the class action. So that was the mechanism, on legal advice, that was adopted. Can I refer

you to the transcript in this regard, Madam Commissioner. Can I go to transcript 3780, which is the first relevant passage in Mr Brazil's evidence.

COMMISSIONER: I have that. Thank you.

5

MR YOUNG: I should start at the previous page, 3779.

COMMISSIONER: Yes, yes.

10 MR YOUNG: Line 40 to 44:

The chairman committed that there will be a post-mortem. He repeated there has to be a post-mortem. I was happy to take that commitment. There was no disagreement with that commitment.

15

I will come back to his proposition about some kind of metaphorical banging of the table and pushback; that was rejected by other directors. It probably doesn't matter, because of the decisions that were taken, but, in our submission, the weight of the evidence is that no such thing occurred. But at 3780, can I go to the last passage, please, from about line 38:

20

...that first meeting ... I had a clear commitment from the chairman and that the board had all agreed with that. Over the following months I pushed for updates on the status of the post-mortem ... informed that MinterEllison had been hired to conduct such a post-mortem along with other matters.

25

And then he goes to the next board meeting, February 2017:

Mr Richard Murphy actually led the discussion on the entire China matter.

30

And then I raised a question of Federal Court privilege. The matter was returned to in his later evidence at 3818 line 15. Mr Brazil is unequivocal. As at February 2017, the second board meeting:

35

The post-mortem in my belief was on track and committed to be concluded.

That's the only thing that he can give evidence about. And Mr Owens' proposition that a decision was later taken to cease that post-mortem is unsupported by any evidence and, indeed, contradicted by the evidence of Ms Coonan.

40

COMMISSIONER: But I think that the post-mortem that was discussed in late 2016 was not a post-mortem of the kind that you're referring to, because no class action had been discussed. So - - -

45

MR YOUNG: Well.

COMMISSIONER: - - - there are a couple of issues. Ms Coonan carefully informed me that the – effectively, the root and branch post-mortem of that type hadn't been done, but it was to do with legal advice, and you've outlined that it's the class action. So this is a "post-mortem" in a litigious environment as opposed to a
5 corporate review of one's corporate responsibilities in terms of how one fixes problems as opposed to defending an action, and I understand the difference, Mr Young.

MR YOUNG: Yes, but it goes beyond that, Commissioner. The post-mortem on
10 advice was conducted within the legal framework I've described.

COMMISSIONER: Yes.

MR YOUNG: And that's what Ms Coonan said in evidence.
15

COMMISSIONER: Yes.

MR YOUNG: Now, legal advice said the board was prevented from initiating its own review. She explained that the advice was given immediately after the China
20 arrests and continues to this day, but - - -

COMMISSIONER: Yes. She said it would be a public company at any risk who goes against legal advice. And I understand that position, but it is not a position that can be described as looking back to work out the problems. This was a litigious
25 environment and the lawyers constrained the company from looking at it from the point of view of fixing it or working out why it went wrong for the purpose of reformation.

MR YOUNG: Well, with respect, Commissioner, that's making assumptions. That
30 - - -

COMMISSIONER: Well, you just told me it was legal advice that they shouldn't do it. I mean, really.

MR YOUNG: No, it was legal advice they should do it within the framework of a series of reports - - -

COMMISSIONER: Yes, of course.

MR YOUNG: - - - led by MinterEllison.
40

COMMISSIONER: Yes. No, I understand it was MinterEllison.

MR YOUNG: That decision, may I say, Commissioner, was taken on 15 November
45 2016, that that would be the form of the review. It would be a legally conducted review; that's exhibit BJ69. That's the minutes of 15 November 2016.

COMMISSIONER: Yes, I'm aware of those. Yes, I'm aware of those.

MR YOUNG: And the minutes 262 February 2016, exhibit BJ56, also make it clear that that was the framework. But we do make the point, Commissioner, that the
5 same factual issues were being addressed, that is to say did risk exists, who knew about them, where were they disclosed, what was done with them, was the subject of that investigation just as much as it has been the subject of this Inquiry. Now, I've referred - - -

10 COMMISSIONER: Well, you see, the difference, I suppose – the difference, I suppose, from our environment here, Mr Young, is that what was – had there been no class action, had there been no impediment, and had Crown been willing to look back and identify the deficiencies as it saw it and do what Ms Coonan referred to as the root cause analysis, or something similar, unconstrained by a litigious
15 environment, then it would have been perhaps easier for Crown to recognise the things that it's recognised in your submissions, and without this Inquiry.

MR YOUNG: Commissioner - - -

20 COMMISSIONER: So I think – and then the – Ms Siegers was looking at the risk management; she too did not look back, and that may have been because of these constraints, but she didn't see any value in looking back. So I do understand the difference.

25 MR YOUNG: But, Commissioner, I will deal with each of those matters.

COMMISSIONER: Yes.

MR YOUNG: The board, informed by the reports that it did get, did take a series of
30 steps to address problems, and I will go through those. So it's not as if the board wasn't informed of relevant shortcomings by virtue of the information it was getting in the context of the class action reports. It was and it took actions, and I will detail those actions. It took actions well before any thought of this Inquiry was in any one's mind, because it was taking actions in 2017 about matters. With the benefit of
35 the knowledge it obtained in the course of the investigations that were underway, as Ms Coonan said, the board was able to piggyback that exercise and also the exercise being undertaken by the VCGLR. That is, in our respectful submission, the position. Now, as for Mr Owens' submission that Mr Dixon's evidence supported his contention that there was a decision to terminate the post-mortem, his evidence was
40 to the contrary.

At 4724 he said there were legal reasons for the board not itself initiating an independent review, and he also referred to the Victorian authorities conducting their own major investigation and "we had other inquiries going on". Now, I just want to
45 deal, briefly, with the VCGLR aspect of the piggybacking. The investigation was commenced prior to 2018. It covered, broadly, the same matters as this Inquiry has covered. It addressed the same major changes in circumstances in China and all of

the correspondence within Crown relating to those matters. Crown has, through the latter part of 2017 and 2018, been engaged in responding to the Inquiry, reviewing documents, interviewing witnesses and so forth.

5 The findings of the draft – well, a draft of the Sixth Report, the VCGLR review, was provided to the Crown board in June of 2018 for their consideration. That’s recorded in the board pack for the June 2018 meeting. We will give you references in our written submissions. So that draft report canvassed many of the same matters as this Inquiry, so Crown had the ability to take all of that into account. In addition, moving
10 forward in 2019, in June, the China section of the 2018 draft was separated and a separate report was provided to Crown. That’s exhibit MFIB.

COMMISSIONER: That’s a draft report.

15 MR YOUNG: Yes, that’s a draft report.

COMMISSIONER: That’s a draft of a draft.

MR YOUNG: Yes. That was provided to Crown for its response and comment.
20

COMMISSIONER: Yes.

MR YOUNG: And Commissioner, you will recall, I expect, that that report is the subject of a minute in 18 – I think it’s the 18th of June of 2019. I may have the date
25 wrong, but the board noted and accepted the particular findings by VCGLR as to the shortcomings that had occurred, and that coincides with the matters that I’ve addressed you on in this matter.

COMMISSIONER: But you see, in that draft, as I apprehend it – and I’m sure you
30 will correct me if I am wrong, Mr Young – there’s no suggestion that any of the board members were aware. There was criticism, as I apprehend it, of the management team, but the things that we discussed earlier, that there were pockets such as Mr Rankin, Mr Johnston, etcetera, that knew of some of the risks, that wasn’t
35 part of the criticism or any dealing that the VCGLR identified. So it was - - -

MR YOUNG: No.

COMMISSIONER: - - - not known at that time, I think.

40 MR YOUNG: No, with respect, that’s wrong.

COMMISSIONER: It was Mr Johnston’s – I think the Johnston email – the email in relation to – from Mr Felstead to Mr Johnston was there, but I think the Rankin high alert risk, etcetera, wasn’t there.

45 MR YOUNG: I’m sorry to say it was.

COMMISSIONER: Well, don't be sorry.

MR YOUNG: Well, I'm correcting you, Madam Commissioner.

5 COMMISSIONER: Yes. That's all right. No, that's all right.

MR YOUNG: I don't mean anything - - -

COMMISSIONER: Can you give me the page reference?

10

MR YOUNG: Yes, it's page 71, paragraphs 367 and 368 and it quotes Mr Rankin's email:

We should be on high alert for this type of action.

15

COMMISSIONER: Yes.

MR YOUNG: The message was forwarded to Craigie and Felstead.

20

COMMISSIONER: Yes, and so Mr Rankin, as the chairman to be, was referred to, but I think in those – in the analysis the criticisms were levelled at Mr Felstead and management rather than any suggestion that the board became aware of things. Isn't that right?

25

MR YOUNG: There's no suggestion that the board as a board became aware of things.

COMMISSIONER: Yes, correct.

30

MR YOUNG: But Mr Craigie and Mr Rankin are dealt with.

COMMISSIONER: Yes.

35

MR YOUNG: So to that extent, yes. I think you're right that there's no specific – I will have the position of Mr Johnston checked.

COMMISSIONER: I think Mr Johnston's email may be in there, Mr Young.

MR YOUNG: Yes, I think so.

40

COMMISSIONER: But there's no identification of his – the matters that he dealt with here because I don't think the VCGLR was aware of what Mr Johnston has told us, that he got the email but didn't deal with it.

45

MR YOUNG: Yes.

COMMISSIONER: I think that's a difference, but – so I understand that that – now, that report is draft. At the moment, the VCGLR has still not concluded its report because I think Crown has provided it with further information, has it?

5 MR YOUNG: I think both those propositions are correct.

COMMISSIONER: I see.

10 MR YOUNG: Crown provided further information, and to the best of my knowledge and instructions, as I answer your question, Commissioner, I'm not aware of the report having been finalised.

COMMISSIONER: Yes, thank you.

15 MR YOUNG: The VCGLR did criticise the failure to report all relevant matters to the board.

COMMISSIONER: Yes.

20 MR YOUNG: So the shortcomings, the failure to engage board mechanisms, are described in that report, and the board - - -

25 COMMISSIONER: You see, Ms Coonan and others were asked questions about that report and their concerns and I think Mr Alexander was asked to speak to Mr Felstead about it, but I have the distinct impression that the evidence shows that even though the chairman, and the CEO as he was then, was asked to report to the board after having Mr Felstead explain himself, events seem to have overtaken that. I think that's possibly the conclusion that one would reach.

30 MR YOUNG: Yes. With this addition, Commissioner.

COMMISSIONER: Yes.

35 MR YOUNG: My best recollection is that neither Mr Alexander nor Mr Felstead were asked any questions about what occurred following the receipt of the draft – the separated draft VCGLR report in June of 2019.

COMMISSIONER: Yes, but the board wasn't reported to on this - - -

40 MR YOUNG: Those questions – yes, but the minutes record that there was intended to be some kind of discussion between Mr Felstead and Mr Alexander.

COMMISSIONER: Yes.

45 MR YOUNG: Neither was asked, to the best of my recollection, about those matters. The only person asked, as I recall, was Ms Coonan in her evidence.

COMMISSIONER: I think there were a couple of others, but so far as Mr Felstead is concerned and Mr Alexander are concerned, even if there was a conversation it was not the subject of report back to the board, which is what the independent directors wanted or what the board wanted, and all I'm saying to you is I believe that
5 that was overtaken by the events that occurred after the advertisement. Mr Felstead was immediately asked to help prepare the report for the – to respond to the 60 Minutes program, I think, with Mr Preston.

10 MR YOUNG: Yes. We agree with that - - -

COMMISSIONER: That's why I say events - - -

MR YOUNG: Yes, we agree with those points.

15 COMMISSIONER: Yes, thank you.

MR YOUNG: I was merely endeavouring to add that there was a small lacunae - - -

20 COMMISSIONER: Yes.

MR YOUNG: - - - in that Mr Alexander and Mr Felstead were not asked to give any account of - - -

25 COMMISSIONER: No.

MR YOUNG: - - - what followed in the wake of the draft report and the board meeting of June of 2019.

30 COMMISSIONER: No. Quite.

MR YOUNG: Now, there's an observation, towards the end of counsel assisting's submission, that there's no understanding of the root cause of the failures; that they haven't been assessed or appreciated. Ms Coonan rejected that proposition. In our submission, she was entirely correct to reject it. The evidence is overwhelming. The
35 root cause is clear. We have recognised and acknowledged it in the submissions we've made here. The board recognised and acknowledged that matter in their minutes of June of 2019. The root cause was the failure to engage risk management and board systems properly in relation to the changing circumstances in China.

40 Now, that has been addressed. In the aftermath of the China arrests Crown took these steps: first, the board immediately ceased all operations in China and they have not been resumed; secondly, the board authorised a full review of all other overseas operations by Crown and that review was undertaken by Crown in the first part of 2017; and a whole set of practices were put in place across the organisation to
45 ensure that the failures of reporting that occurred in relation to operations in China could not recur anywhere else. And I touched upon - - -

COMMISSIONER: When was that?

MR YOUNG: I beg your pardon?

5 COMMISSIONER: When was that?

MR YOUNG: That was in 2017. The first part of 2017.

10 COMMISSIONER: Well, I don't think it was understood in 2017 that there was this horrific lack of communication with the risk management structures. I think, in 2017, as I understood it, so far as China was concerned, you were still reviewing it. I withdraw that. Crown was still reviewing it.

15 MR YOUNG: Yes, but certain things were immediately apparent, with respect, Commissioner.

COMMISSIONER: What were they?

20 MR YOUNG: One was – well, I was about to give you one. You will recall that immediately after the China arrests there was an investigation of precisely what advices had been relied upon and how they had been obtained and how they had been managed. And Ms Tegoni was involved in that process and others in the legal department. It was immediately apparent from that that there was a problem in how advices had been managed and how the receipt of advices progressively had not been referred to the legal department or to the appropriate bodies within Crown.

25
30 Now, that was apprehended very quickly. The review of overseas operations by Crown investigated the question whether any – well, what the legal position was in other countries in relation to Crown's activities, what the position was concerning advices, what advices had been obtained, and so forth. So there was an immediate appreciation of various things, and that was implemented by way of a series of remedial steps in relation to operations in other countries, and that occurred in 2017. There are various board reports about that very matter. A reference to it in the minutes is exhibit BJ58, but that's one of many.

35 COMMISSIONER: This is the review in relation to the processing of the advices and ensuring that that didn't happen in other countries.

40 MR YOUNG: No, it goes broader as to a complete review of how we do operations in other countries and do we have similar issues and failures of reporting. Now, the next change was that there were, very promptly, several changes at the highest level of the company. Mr Craigie, the CEO, departed. Secondly - - -

45 COMMISSIONER: That was June 2017?

MR YOUNG: I think that was the - - -

COMMISSIONER: Or March?

MR YOUNG: That was the time of severance, yes, I believe so.

5 COMMISSIONER: Yes.

MR YOUNG: Secondly Mr Rankin stood down as chairman. The only evidence I will refer to – the evidence, additionally, is that Mr Packer gave evidence, at 3602 and again at 3609, that he had lost confidence in the stewardship of the company by
10 Mr Rankin, particularly in relation to what had occurred in China.

COMMISSIONER: Yes.

MR YOUNG: The next step was a complete overhaul of risk management
15 processes and structures within Crown; that began with the engagement of Ms Siegers in the middle of 2017. Now, the failure in China, as I've submitted, was a failure to engage the existing risk management processes and structures, but, nonetheless, the board of Crown, in the wake of China, considered that there should be a complete examination of the existing risk management processes and structures.
20 Ms Siegers was hired to do that. Her evidence was she directed particular attention to the steps that could be taken by way of training and policies to embed a culture whereby all significant events and risks were brought to the attention of the relevant risk management processes and committees. Now, that position was created in order to create a group audit and risk function; that is page 2480 of the transcript.

25 The papers of the Crown Resorts risk management committee now include an executive summary which provides the committee with an overview of all material events that have taken place since the last meeting of the committee. That is an improvement in process recommended and implemented by Ms Siegers. That kind
30 of change would capture a discussion of any events that have occurred in the period of time between the two meetings. The policy and the Crown Resorts risk management strategy, as at June 2020, explicitly provides that the first line of defence, that is, within the company at an operational level, is to prioritise risk ownership by the CEO and executives, and it requires each business unit to review
35 and update its risk profile on a regular basis; that's exhibit W32.

And under the risk management policy, there's to be – there is a risk register which catalogues major risks with respect to each business, not globally, but focused on the
40 situation of a particular business and it requires preparation and maintenance of risk registers to be the responsibility of each of the senior executives of the relevant division. Now, that series of changes were real changes and so was the engagement of Ms Siegers. Now, Commissioner, you asked me about the fact that she did not conduct a look-back. She didn't, but she also said she - - -

45 COMMISSIONER: No. I said she gave evidence that she didn't.

MR YOUNG: Yes, I know. But she also gave evidence that she did not think it was necessary - - -

COMMISSIONER: That's correct.

5

MR YOUNG: - - - and may I add this: the problem in relation to China was the lack of engagement of the existing policies. Nonetheless, the board's decision to overhaul and enhance its policies and the structure of the organisation with respect to risk was a generalised product of the events that occurred in China that took the board by surprise - - -

10

COMMISSIONER: Yes.

MR YOUNG: - - - and the reason it took the board by surprise is that they had not come up properly through the risk management structures and committees. Now, Commissioner, I notice the time. I'm about to embark on a new topic, by which I will try and pull together the threads of everything I've addressed on today insofar as they have an effect, or are alleged to have an effect, on current suitability.

15

COMMISSIONER: Yes. And then you're going to junkets as I understand it.

20

MR YOUNG: Yes. Personally, I'm not going to junkets.

COMMISSIONER: No? Someone else is?

25

MR YOUNG: No, Mr Herzfeld is going to address that topic to the Commission.

COMMISSIONER: I see. So Mr Herzfeld will be on tomorrow?

30

MR YOUNG: Yes.

COMMISSIONER: Yes. All right then. And what about the next item after that? Are you addressing any – the Melco transaction, for instance?

35

MR YOUNG: I'm going to address – Melco and CPH, I'm going to address.

COMMISSIONER: Yes.

MR YOUNG: That may be the next topic after junkets. It depends on - - -

40

COMMISSIONER: I see.

MR YOUNG: - - - our state of preparation, Commissioner.

45

COMMISSIONER: I see. All right then, Mr Young. I won't intrude, but thank you, and thank you for your submissions today.

MR YOUNG: Now, Commissioner, can I mention that, while Mr Herzfeld will provide the oral address, I will be online - - -

COMMISSIONER: Yes. Thank you. Yes, thank you.

5

MR YOUNG: - - - but invisible. Thank you.

COMMISSIONER: Thank you, Mr Young. We all hope for that. I'm talking about myself, of course, Mr Young. All right then. I will adjourn until – the public
10 hearings until 10 o'clock tomorrow morning.

MR YOUNG: Thank you.

15 **MATTER ADJOURNED at 4.02 pm UNTIL TUESDAY, 17 NOVEMBER 2020**

Index of Witness Events

Index of Exhibits and MFIs

EXHIBIT #AO91 STATEMENT OF KENNETH BARTON

P-5404