



INDEPENDENT LIQUOR AND GAMING AUTHORITY OF NSW

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

**THE HONOURABLE PA BERGIN SC
COMMISSIONER**

**PUBLIC HEARING
SYDNEY**

**THURSDAY, 19 NOVEMBER 2020
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DAY 59

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MS K. RICHARDSON SC appears for Star Entertainment Group Limited and Star Pty Ltd
10 **MS J. SHEPARD appears with DR D.J. TOWNSEND for Mr Felstead**

COMMISSIONER: Yes, Mr Young.

15 MR YOUNG: Good morning, Commissioner.

COMMISSIONER: Yes, good morning, Mr Young.

20 MR YOUNG: Commissioner, I was about to move to a brief segment of the submissions which is concerned with helpful comparative material that we will address in more detail in our written submissions in the regulatory phase of submissions, however, there are aspects - - -

COMMISSIONER: Part B.

25 MR YOUNG: I beg your pardon?

COMMISSIONER: In part B.

30 MR YOUNG: In part B, yes.

COMMISSIONER: Yes, thank you.

35 MR YOUNG: There are aspects of that, however, that in our submission are informative if I draw them to your attention now because they bear upon the assessment of suitability. They do that by informing you of the approach that other jurisdictions have adopted in similar circumstances.

COMMISSIONER: Yes, thank you.

40 MR YOUNG: In connection with some of the issues that are relied upon relating to suitability and what further measures – further concrete practical measures might be implemented by the corporation in order to address identified shortcomings. I won't do this in as much detail as we will address in written submissions in connection with part B, nor will I specifically refer to passages in the draft expert reports we've been
45 trying to put together that we will provide in connection with a part B submission.

COMMISSIONER: Thank you.

MR YOUNG: The information from other jurisdictions is helpful, but perhaps the most pertinent and relevant material comes out of expert reports relating to Nevada,
5 Macau and Singapore. There's also helpful material in the report from Mr Newson relating to regulatory settings in New South Wales that I've earlier referred to. The first point we would make is this: informed by overseas material and examples it is clear that notions of suitability and analogous concepts are features of the regulatory landscape applying to casino operators in most jurisdictions. In all those
10 jurisdictions suitability is assessed on a holistic basis but gives full weight to the circumstances in which relevant events occurred and also full weight to any remedial actions that have been taken to address the identified shortcomings.

In addition, some of the jurisdictions make it very clear that the fact of self-reporting
15 is a relevant consideration in addressing issues of suitability. None of that is surprising. We, of course, rely upon a similar range of things here. The most common approach to the question of what further steps might be taken is to work out a set of concrete practical measures that can be implemented by the casino operator to address the shortcomings, and the material indicates that one way of addressing
20 that is something akin to what in our competition field would be called a section 87B undertaking, that is, a set of undertakings by the relevant casino operator to take specified concrete steps by way of improvement within particular timeframes.

I will give you some examples a little later in the context of more detailed
25 explanation of the approach in the US. The second broad point is that looking across a whole range of jurisdictions the manner of regulation favoured elsewhere is a risk-based approach which is the model that New South Wales moved to, as has been explained by Ms Webb in her evidence, and also in the earlier evidence, I think, of
30 Mr Sidoti.

COMMISSIONER: Yes.

MR YOUNG: That seems to be the fairly common pattern across a range of
35 jurisdictions. One of the explanations for that seems to be that a risk-based approach allows resources to be targeted at the most serious risks and to enable targeted interventions. That, for instance, is the approach adopted in the United Kingdom as set out in the United Kingdom Gambling Commission's 2018 to '19 annual report as explained by Mr Newson in his report. Similarly, in Nevada the approach is
40 predominantly risk-based in nature but, as I will go on to explain, they do have a process of registering junket operators which is informative.

Now, perhaps I will move to that right at the moment. With respect to Nevada, there is a registration process. Under that registration process, junket operators need to pass a probity test and they need to provide a range of information and any additional
45 information required by the regulator, that's the Nevada Gambling Control Board. Crown's probity process that it has had in place is not materially different from the one applied in Nevada by the regulator. The review process for junkets is not as

extensive as their licensing review of suitability, which is a very elaborate process in the US gambling jurisdictions, however, there is a probity check, as I said, and all requisite information can be demanded by the regulator.

5 One piece of information relied upon by the Nevada regulator is whether the relevant junket operator is licensed in Macau, and I will come to that more specifically. In Macau there have been very extensive improvements in the regulatory scheme since 2016. The period in which Crown, as part of its enhanced due diligence relied upon registration of a junket operator by the Macau regulator, the DICJ, is in the period
10 from 2017 when the revised enhanced due diligence was put in place. Now, some criticism was directed upon reliance upon the DICJ registration of junkets. That was to some extent ill-informed because it was based on broad evidence that did not take account of all of the recent improvements post-2016 in the DICJ regulatory approach.

15 Mr Herzfeld alluded to the post 2016 Macau improvements but didn't go into any detail. I will go into a little detail because, as I say, we see it as part of the relevant context in which suitability should be assessed. It's also specifically relevant to the junket issues in the way that Mr Herzfeld identified. The gaming law in Macau
20 stipulates that as well as a casino being subject to licensing and supervision, likewise junkets are subject to licensing and supervision. There is a probity assessment and the law requires not just the junket operator, but its shareholders, directors and key employees must be considered and assessed to be suitable.

25 So as well as that suitability and probity assessment the junkets are also subject to ongoing DICJ instructions and guidelines, many of which have not been made public by the regulator. Some have, but most, it seems, have not. Now, those measures were greatly enhanced in the period from 2016 onwards. In addition, in the period from 2016 onwards strict rules and regulations relating to money laundering issues
30 and accounting issues were introduced by the DICJ. There was a full review of registered junkets. 35 junkets were effectively delisted, deregistered because they failed to meet the new standards and their licences and registrations were not renewed.

35 Now, there has been ongoing stringent improvements in the money laundering provisions. Further amendments were made in January of 2019 extending the requirements for reporting of suspicious transactions regardless of their value, which was a significant change. The certification in that fashion, that is, registration of a junket operator and strict supervision in Macau and required compliance with strict
40 AML requirements is a matter that casino regulators in other jurisdictions rely upon, just as Crown did. So it carries weight amongst regulators elsewhere. The Nevada Gaming Control Board, for instance, considers the fact that a junket operator has been licensed in Macau and their record of compliance in Macau in connection with their registered status to be an important factor.

45 It doesn't automatically result in registration of the junket in Nevada, but a positive report from DICJ with regard to the junket operator's record of compliance would be

a substantial positive. Now, that view is not an outlier. The Financial Action Task Force, which is a global money laundering and terrorist financing watchdog which sets international standards, has rated Macau regulation of casinos and their regulation as junket operators favourably in both its 2017 and 2019 evaluation
5 reports. And those matters are also matters that give other regulators, including Nevada's, greater comfort in assessing junket operators on the basis that they have been licensed and are compliant in Macau.

10 So just as those views of the Nevada gambling position are not outliers, Crown's approach in considering and bringing into account as one of its due diligence factors the existence of a DICJ registration and compliance status was not an outlier either. It was not, in our submission, properly to be criticised. It was an element in its due diligence process which it believed to be in line with best practice. Now, there is a process in Singapore, too, of regulation and oversight of a casino's business that
15 includes regulation and oversight of junket arrangements, and that is also a marker as to one of the factors referable to the whole approach to junkets.

In all of those jurisdictions the pendency of media allegations, indeed, even a collection of media allegations is not regarded as something that sets the standard at
20 all. And may I add about Macau that Suncity is a registered junket in good standing. Similarly, it operates in Nevada. It certainly operates in all of the major Macau casinos and some of those are associated with, in the sense of having ownership links to Nevada licensed companies. The approach adopted, it seems, in other jurisdictions to media allegations of links to organised crime and the like is that those
25 matters do not generally require a casino to cease doing business with such a person or junket operator, but they may prompt enhanced customer due diligence issues, which is the approach adopted in Singapore.

Elsewhere, they are recognised to be a matter for the casino to take into account in
30 the casino's assessment. That is the position in Nevada where the relevant rule or regulation is the casino should exercise discretion and sound judgment about such a thing. In Macau there are no specific regulatory standards requiring or imposing a standard that you should not deal with junkets about whom there are allegations. Again, it seems to be a matter to be taken into account by the casino in its decision
35 whether to deal or not. Can I then turn, Commissioner, to the several examples I said I would proffer out of the material that we will provide in connection with the part B submissions.

40 COMMISSIONER: Yes, thank you.

MR YOUNG: These relate to examples in Nevada. The first concerned Caesars Entertainment Corporation which is the operator of a major casino on The Strip in Las Vegas. In 2013 it admitted to wilfully violating anti-money laundering laws and suspicious activity reporting requirements under the federal equivalent of our AML
45 legislation, and that in turn was a violation of regulations issued by the Nevada Gaming Commission. The sanctions applied – or the steps taken were these,

relevantly: Caesars agreed to conduct periodic external audits and independent testing of its AML compliance program.

5 It agreed to report to the federal equivalent of AUSTRAC, that is the Financial
Crimes Enforcement Network, on mandated improvements, so a series of concrete
improvements were directed, and it was required to report on their implementation.
It was required to adopt a rigorous training regime in relation to AML issues and it
undertook to carry out a look-back for suspicious transactions. They were the
practical measures that were considered and imposed, and notably that was an
10 admission of wilful violation of anti-money laundering requirements.

The second example concerns another Las Vegas casino, The Sands, the relevant
entity was Las Vegas Sands Corporation. This came from 2016. It was found to
have committed AML breaches in Las Vegas, and in addition to pecuniary sanctions
15 it agreed to a series of concrete measures as follows: first, it undertook to restructure
its compliance and legal branches. At the time of the offences, its compliance
function was shared with a legal function. It committed to a restructure such that its
compliance function became a freestanding function with enhanced controls, an
independent controller, a larger internal audit program and a newly created board
20 compliance committee to which the compliance section reported.

You will recognise, Commissioner, that we have already implemented that kind of
separation and direct reporting lines in relation to Crown Resorts' operations. The
third aspect was that The Sands would no longer employ particular individuals
25 implicated in the offending conduct and it undertook to make significant resourcing
and personnel changes, particularly in connection with its compliance section. So
that was the third undertaking about concrete practical measures that could be taken.
The last example concerns the Wynn casino in Las Vegas. This was an instance
where Mr Wynn personally was found to be unsuitable because of his conduct
30 following allegations of sexual misconduct by associates. He was found to be
unsuitable.

COMMISSIONER:

35 MR YOUNG: I beg your pardon, Commissioner?

COMMISSIONER: I thought it was misconduct by Mr Wynn.

MR YOUNG: It was misconduct by Mr Wynn.

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COMMISSIONER: Yes.

MR YOUNG: And the allegations came about from people in the organisation or
people associated.

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COMMISSIONER: Yes.

MR YOUNG: If I misstated that I apologise.

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

5 MR YOUNG: But practical measures were again the solution that was found. He gave undertakings to implement a number of changes, appointing new senior management, committing to refresh the board, refocusing efforts on the company workplace culture and he actually personally stepped down as an executive/director pursuant to a separation agreement. Now, those matters are - - -

10 COMMISSIONER: Could I just ask you about that. That was the Massachusetts Commission - - -

15 MR YOUNG: Yes.

COMMISSIONER: And they were looking at the suitability of the board at some stage because there was some suggestion, as I apprehend it, that the board was aware of Mr Wynn's conduct and so it was looking at the corporation from the point of view of looking at the directors, I thought. But it was – but they formed the view that – I think the commission formed the view that the – notwithstanding what they found, there was no adverse outcome for the company. Is that right?

MR YOUNG: There was no adverse outcome for the company in - - -

25 COMMISSIONER: Yes.

MR YOUNG: - - - the Massachusetts process. The outcome in – well, there are parallel inquiries, as I understand it, because Wynn had operations in two licensed jurisdictions.

30 COMMISSIONER: Yes.

MR YOUNG: Nevada and Massachusetts.

35 COMMISSIONER: Yes.

MR YOUNG: In the Nevada context the outcome affected the company because Mr Wynn, as the controlling shareholder, was required to implement a series of changes structurally to the company.

40 COMMISSIONER: Yes, I see.

MR YOUNG: But what you say about Massachusetts, I understand to be correct, Commissioner.

45 COMMISSIONER: Thank you. Thank you.

MR YOUNG: We've been through those matters because we do submit that they are helpful examples and a demonstration of the approach that is adopted elsewhere where non-compliances are identified and concrete means are identified in order to bring the casino operator or the relevant close associate back into a state of
5 compliance, back into a state of suitability, by a series of practical measures. They are a practical implementation of what seems to be the first principle operating in most places, that is, that practical, concrete steps to bring back into compliance are really the solution of first resort. Can I go back to Massachusetts for a moment.

10 COMMISSIONER: Yes.

MR YOUNG: My learned junior, Mr Loxley, has just assisted me.

COMMISSIONER: Yes.

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MR YOUNG: The Massachusetts Gaming Commission required a series of licence conditions to be applied to the company as a result of the deliberations you referred to, Commissioner, but they included appointing an independent monitor to review and evaluate Wynn Resorts' adherence to policies and organisational changes.

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COMMISSIONER: Yes.

MR YOUNG: And beyond that they imposed a series of financial sanctions, both
on - - -

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COMMISSIONER: Yes.

MR YOUNG: - - - individuals and on the company.

30 COMMISSIONER: Thank you, Mr Young.

MR YOUNG: With that survey in the background now, Commissioner, can I move to the next step - - -

35 COMMISSIONER: Yes.

MR YOUNG: - - - which is to address the situation of Crown Resorts and to make submissions as to the identification of further practical or concrete steps that the company might take to address a lack of compliance and a lack of suitability so as to bring it back into conformity with those principles.

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COMMISSIONER: Yes, please.

MR YOUNG: First, may I frame my submissions in a similar way that I did at the outset before we embarked on all the various sections we've covered. That is to say,
45 and I can do this concisely, in considering the further measures it is important to keep sight of two things. The first is the statutory criterion of suitability as I

explained at the outset, that is to say one focused on character, honesty and integrity. And the second is to keep in mind that all of this is directed to suitability informed by the objects of the Act in section 4A, that is, keeping operations free from criminal influence, conducting gaming honestly, and controlling the casino so as not to cause
5 harm to the public interest. Paragraph 16(c) of the amended Terms of Reference is directed, in our submission, towards changes which can be implemented by Crown in the same way that, as I've submitted, the Crown board and Mr Barton have been driving practical changes since the chairman's appointment as chairman.

10 Are there further practical measures in addition to those that have already been taken and are currently being implemented which can also be considered and taken by Crown, or undertaken to be taken by Crown. Now, the first aspect we would address is this. There are a number of steps which are underway, as you've heard,
15 Commissioner. A necessary and relevant further step is the appropriate completion – the effective completion of the steps that Crown is currently implementing. Now, the successful completion of those steps can be made the subject of undertakings as to testing and that process can be overseen and then audited at regular intervals to ensure that the implementation and the workings are appropriate and effective.

20 A second step that can be taken is for Crown to take whatever steps are necessary to enable the Authority to exercise close supervision over gaming operations at Crown Sydney, that is to facilitate whatever direct supervision routes or processes the Authority wants to implement, accompanied, of course, by regular consultation with the Authority about any matters arising from that close oversight and supervision.
25 Now, in those respects Crown has commenced a process of consultation with the Authority and Crown would engage with the Authority in future as required, both as part of a consultation process of the kind already contemplated in governing agreements, but also pursuant to any undertaking that you might think,
30 Commissioner, is appropriate.

On the 9th of November Crown provided a detailed paper to the Authority regarding the way in which oversight and supervision could be directed towards a limited opening of Crown Sydney. That document is MFIC. It's tab 19 to Mr Barton's sixth
35 statement.

35 COMMISSIONER: Yes, I have that.

MR YOUNG: I wanted to use that document to identify concrete practical steps that Crown says can be implemented and it would agree to implement by way of further
40 measures. Now, of course, these were propounded in the context of the restricted opening.

COMMISSIONER: Yes.

45 MR YOUNG: But that doesn't mean that these matters can't be applied in future to any such opening.

COMMISSIONER: Thank you. Could I just pause there for a moment, Mr Young.

MR YOUNG: Yes.

5 COMMISSIONER: The proposals that you're putting are things to which Crown are putting to the Inquiry they would – it would agree; is that right?

MR YOUNG: Yes. Yes.

10 COMMISSIONER: Yes, thank you.

MR YOUNG: And should you want that in the form of an undertaking or whatever it may be, Commissioner, the form perhaps is beside the point. Yes, these are matters to which we would agree.

15

COMMISSIONER: Yes, thank you.

MR YOUNG: Now, Commissioner, I can read out the pinpoint number, but if you have the document that's the most convenient way of doing it.

20

COMMISSIONER: I do have the document.

MR YOUNG: Thank you. This is the Crown Resorts' submission to ILGA of 9 November 2020.

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COMMISSIONER: Yes.

MR YOUNG: And I want to draw attention to a number of practical measures that could be implemented whenever. At page 4, and I will use those numbers because, unfortunately, the logo has obliterated the pinpoint.

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COMMISSIONER: I see that.

MR YOUNG: Bottom right corner.

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COMMISSIONER: Yes.

MR YOUNG: The last bullet point on that page is:

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Providing an opportunity for ILGAs inspectors to be able to more thoroughly review and audit Crown's operating processes in real time.

Now, that can be done by inspectors on the floor, but it can be done by daily reports. It can be done in a number of ways, but Crown is prepared to find ways to permit ILGA to be able to thoroughly review and audit Crown's operating processes effectively in real time. If it's not real time it can be done by very frequent reports.

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5 COMMISSIONER: That's why I was asking Mr Craig about the characteristics and capacity of Sentinel and whether that was something that, if one had in mind something like this, whether that would obviate the need for physical presence, but I think it's because there needs to be an understanding of the capacity and breadth of Sentinel's operations that we'll have to await, I think.

10 MR YOUNG: Yes. We accept the proposition that the Authority should be put in a position by Crown where it has a full understanding of the capacities and operating effectiveness of Sentinel. We accept that, Commissioner.

COMMISSIONER: Yes.

15 MR YOUNG: The precise mechanisms to do that can be the subject of consultation and Crown is fully agreeable to such consultations taking place. Now, can I then turn to page 11. Now, some of these matters fit into the first category that I mentioned which are things that are underway which the completion, the satisfactory completion and implementation needs to be certified in some fashion and can I briefly identify that. At page 11, right column, second bullet point has a list of new roles identified, head of compliance and financial crimes. You received an update yesterday, Commissioner, about the first item, but the other structural changes are also important, head of culture and human resources, head of internal audit, head of VIP operations. So there needs to be a process for confirming that those changes have been implemented. Can I then turn to the next page, page 12.

25 COMMISSIONER: Yes.

MR YOUNG: This is concerned with the review of short-term incentives. The last item in the update is a risk management committee review of STI outcomes.

30 COMMISSIONER: Yes.

MR YOUNG: That is a matter – and the outcome of that review can appropriately be communicated to the Authority.

35 COMMISSIONER: Yes.

MR YOUNG: Now, in relation to the item culture – dashboard and ongoing culture reporting in development.

40 COMMISSIONER: Yes.

45 MR YOUNG: There is also a proposal to have Deloitte undertake a review of cultural practices, the embedding of appropriate cultures and so on within the organisation. Now, those matters and the – can be the subject of an audit or review provided to the Authority. We mentioned in discussion, Commissioner, Sentinel and that is the third bullet point in the right column at page 13. It's currently operating in parallel with the manual transaction reporting program, but the – as I said a moment

ago, the final certification of the effective operation of Sentinel is a matter that is of real importance and that needs to be something that we provide oversight and certification to the Authority about that matter.

5 COMMISSIONER: Yes, I see it's been around for a long time. I think material yesterday that was provided indicated that it was to be implemented in August of 2019 but it wasn't yet there, so it's taking a long time, and I suppose COVID has intervened, Mr Young.

10 MR YOUNG: Yes. Well, there have been a lot of difficulties affecting us south of the border and - - -

COMMISSIONER: Yes, I understand.

15 MR YOUNG: Yes. The - - -

COMMISSIONER: But it seems to be a tool, a technological tool that's accepted to be appropriate in the AML environment, as I understand it.

20 MR YOUNG: That's my understanding; on the best advice available, it is the right tool to be using.

COMMISSIONER: Yes. Yes, I see.

25 MR YOUNG: And it is running; it's running in parallel with the manual transaction monitoring program.

COMMISSIONER: Yes.

30 MR YOUNG: It's simply a question of completing and then moving across to it as the – effectively the system that is used for the purposes of AML monitoring and reporting.

COMMISSIONER: Yes.

35

MR YOUNG: Can I then refer to the last item at the bottom of page 13 in the right column. That's concerned with AML training. I mentioned that primarily to presage the next page, page 14. This is dealing with an independent review of the entire AML/CTF program as it is proposed to operate in relation to Crown Sydney, and you will see, Commissioner, that Initialism has been engaged - - -

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COMMISSIONER: Yes.

MR YOUNG: - - - to review and refine, if necessary, the joint program, and
45 Promontory has been engaged to undertake a vulnerability and strategic capability assessment, and then an immediate – I say immediate, it's the second quarter 2021 assuming an opening, effectively, at the start of 2021, but it's after two months

independent review of the new joint program post-implementation, and that's to certify that it is operating satisfactorily. Now, those matters are important for the company to drive for its own purposes, but they can be matters that are made available by way of assisting the Authority in its oversight role. So, looking ahead,
5 this comes down to doing that work. We've already engaged the relevant consultants, ensuring it's done properly, and then undertaking an independent review of the joint program within a few months. Now, I've not tried to go through every item here. There are additional measures being implemented.

10 COMMISSIONER: Yes. I see that.

MR YOUNG: An example is the additional controls concerning cash, the last item on page 14.

15 COMMISSIONER: Yes.

MR YOUNG: You received an update yesterday. But the final position in that regard is also something that needs to be communicated clearly to the authority, and Crown would undertake to take that step. But as you can see from this list – and I've
20 not been to every item – the Crown board is conscientiously trying to address all of the issues in the fullest and most appropriate way leading up to an opening of the Sydney facility. And that has been a diligent and exhaustive process since Ms Coonan and Mr Barton came into their roles. And we would respectfully say, Commissioner, you can see that from the progression of – and reports that have been
25 made to the board and decisions made to the board during the course of 2020 and, of course, I've been through earlier attempts at change. Can I then – I want to go then to page 34, please.

30 COMMISSIONER: Yes. I have that.

MR YOUNG: There's a list of regular reports that we would say are appropriate further steps: regular reporting to ILGA about the list of members and their compliance with – or having passed probity assessments; reporting of all guests; making gaming records and related reports available; likewise, compliance AML
35 and risk reports; likewise, reports of the persons of interest committee along with discussions of the committee; self-reporting any identified breach of an internal control measure; and then periodic external reviews of the AML and risk management frameworks. Now, we put all of those forward as enhancements that we can deliver. We can take those steps. The phraseology here does say “upon
40 request”, but that is to indicate that ILGA can get access to these materials whenever it wishes, but, of course, that doesn't mean that we're not prepared to provide them on a regular scheduled basis; we are. But over and above that, they can be obtained on request.

45 COMMISSIONER: Yes, I see.

MR YOUNG: The last item on page 34 is that Crown proposes – and we would undertake – to carry out a review into the operations of the Sydney licensee at the end of 12 months. That’s a review of all operations, not the specific audit I mentioned concerning either AML or risk management or culture, but this is a broad
5 review of all operations that would include things like responsible gaming, and so forth.

COMMISSIONER: Yes.

10 MR YOUNG: And that, we would undertake, to have supported by an independent report. Now, I’ve used that document as something of a checklist to make those submissions, Commissioner.

COMMISSIONER: Yes. Thank you.

15 MR YOUNG: You will understand.

COMMISSIONER: I do.

20 MR YOUNG: Now, I would note that, in respect of what I’ve described as undertakings, they could, of course, be formalised as directions issued by the Authority.

COMMISSIONER: Yes. And that would be one of the challenges in this particular
25 environment at the moment is the regulatory framework and the contractual framework, which is why I asked you whether these were things to which Crown would agree.

MR YOUNG: Yes.

30 COMMISSIONER: And - - -

MR YOUNG: They are.

35 COMMISSIONER: - - - the last thing – yes. I think the last thing that anyone would want, in line with your submissions, is some technical impediment or some serious impediment within the legislature – in the legislation or the contractual framework which might impede what could be referred to as the reformation.

40 MR YOUNG: Yes.

COMMISSIONER: And so I do understand that all of the things that you’re putting to me are things to which Crown would agree irrespective - - -

45 MR YOUNG: Yes.

COMMISSIONER: - - - of any contractual impediment or legislative impediment.

MR YOUNG: Yes.

COMMISSIONER: Thank you.

5 MR YOUNG: And that's how they were put to ILGA, Commissioner, in the context of the document I've taken you to.

COMMISSIONER: Yes. Thank you.

10 MR YOUNG: But as to those agreements and regulatory arrangements - - -

COMMISSIONER: Yes.

15 MR YOUNG: - - - in our respectful submission, they are not matters that arise at this point. They are matters that arise after your report, effectively, when the authority considers it. And the first step in those circumstances is a full and frank consultation as between Crown and the Authority; that's what's contemplated by the regulatory arrangements. Now, the - - -

20 COMMISSIONER: Quite. The contractual arrangement.

MR YOUNG: - - - we're conscious – yes. We're conscious of what counsel assisting have put forward. That really takes on the appearance of the advice to the Authority about what the Authority's powers are at some future point of time. Now,
25 we do submit that those are not matters for you to address, Commissioner. They – paragraph 16(c), as I said, is directed towards practical, concrete changes that Crown can take or is prepared to take that would address deficiencies that you have identified in your report.

30 COMMISSIONER: Yes. I suppose – I'm delighted to hear your submission, Mr Young. But, I suppose, one of the things to be careful of is if I were in a position to reach this point which you're addressing me on and I was aware of an impediment, contractually, if you had not said that it was consensual, there would have been a need to point it out, I suppose.

35

MR YOUNG: Well, in respect of the matters I'm addressing, we're proffering undertakings, effectively, in respect of those matters.

COMMISSIONER: Yes, I understand.

40

MR YOUNG: But what lies in the future down the track post your report, I'm not proposing to address in terms of other actions the Authority might take. We don't see that as appropriate at all. Can I - - -

45 COMMISSIONER: It depends on the way – the way that counsel assisting put it, as I apprehend it, and it seemed that one of the things that was identified was the proposed – I withdraw that – the structure in the agreements pursuant to which there

is a need in circumstances, if unsuitability is identified, for there to be a consultation, as you rightly point out, between Crown and the Authority and the licensee and the Authority. If there were to be a conclusion in respect of a prospect of disciplinary action, then there are steps to be taken and there are impediments to such steps by
5 reason of the Ministerial direction to which I referred you to, I think, yesterday.

MR YOUNG: Yes.

10 COMMISSIONER: So there is a possible need for me to address, certainly, what counsel assisting have put to me. Whether I accede to doing anything about it is another matter. But I have been addressed on the structure and whether that leads to anything concurrently with your submissions about consensual undertakings that are proffered is another matter.

15 MR YOUNG: Well, the matters about which I proffered undertakings are really quite distinct from the matter you've just raised.

COMMISSIONER: Quite.

20 MR YOUNG: But the matter you've just raised, Madam Commissioner, is a matter for the authority down the track if the authority is operating in the context of section 23 - - -

COMMISSIONER: Correct.

25 MR YOUNG: - - - considering disciplinary action.

COMMISSIONER: Yes.

30 MR YOUNG: That is a later and different stage. It's premature, with respect, for you, Madam Commissioner, to consider what, by way of disciplinary action, the Authority should do given the range of legal rights and obligations that arise in that kind of situation. So that would be entirely premature for you to do. And it would be beyond the Terms of Reference, because that would be, effectively, proffering
35 premature advice as to what course the Authority might take in a different situation should the results of consultation lead it to consider any need for disciplinary action.

COMMISSIONER: And - - -

40 MR YOUNG: So we do say you don't need to deal with counsel assisting's submissions. They are outside the Terms of Reference. They are addressing a different question altogether than that which the Authority is – that which the Terms of Reference require you, Madam Commissioner, to address. And we don't propose to make any submissions beyond those exactly. You know, there are a lot of parties
45 involved; there's the New South Wales Government; there are rights and obligations of a complex kind; and all of those matters lie in the future and outside

the exercise that you're charged with undertaking, is our view, and we do put the submission that way.

5 COMMISSIONER: Let's assume for – thank you for that submission. Let's assume for the purpose of just testing this, to be sure: if it were a conclusion that it was necessary to have, within Crown's relationship as a licensee, that is, the licensee company Crown Sydney Gaming, the imposition of a condition on its licence, that's something that you haven't addressed on, because you're putting to me that there are ways of doing this by consensual undertakings.

10 MR YOUNG: Yes.

15 COMMISSIONER: If one reached a conclusion that the only way to be sure that things would happen was to have a contractual obligation, that doesn't throw up, at the moment, anything other than, let's say, a recommendation that such a condition should be considered - - -

MR YOUNG: Yes.

20 COMMISSIONER: - - - as necessary to convert to suitability.

MR YOUNG: Yes.

25 COMMISSIONER: That's how that fits in with that structure.

MR YOUNG: Yes.

30 COMMISSIONER: Now, there are – if not consented to – if such a condition were not consented to under subsection (2A) and if there was an impediment on the Authority from exercising its discretion in a disciplinary setting – and that's a matter for them – then any suggestion of an imposition of a condition would be in the face of those impediments. So I think it may be at least necessary to observe, if such a position were reached, that subsection (2A) would need the consent of Crown, and whilst ever there is a Ministerial direction preventing ILGA from exercising its discretion under section 23C it would then be not possible for it to do so. So they're

35 the sorts of things about which I was debating or suggesting.

40 MR YOUNG: Yes. Commissioner, we again would say they are not matters for you to address. You can simply make a recommendation that a certain step must be taken.

COMMISSIONER: Yes.

45 MR YOUNG: That is it. That's all you need to do.

COMMISSIONER: Yes.

MR YOUNG: I have proffered steps that we would undertake to take.

COMMISSIONER: Yes, of course.

5 MR YOUNG: If you identify some step beyond that which I've proffered an undertaking about, all you need say is, "This step also needs to be taken", and then it's a matter for consultations between Crown and the Authority as to the way in which that step is implemented - - -

10 COMMISSIONER: Yes.

MR YOUNG: - - - if agreed, and that may simply be by way of further undertaking, and that question that you are foreshadowing will never arise. But we do stress that's not, in our respectful submission, a question for you. That is a down-the-track
15 question for the Authority to consider.

COMMISSIONER: So Mr Young, you say that I can just consider suitability and if necessary the conversion to suitability irrespective of any contractual or legislative impediments.

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MR YOUNG:

COMMISSIONER: I've lost you for the moment. I will just wait until I get you back. Just wait until Mr Young returns. Mr Young, we lost you. I'm sorry.

25

MR YOUNG: Am I back? No, it's probably my internet.

COMMISSIONER: That's all right.

30 MR YOUNG: I should say the Victorian Bar's internet.

COMMISSIONER: Yes, I see. Well, what I said to you was that I can just make recommendations irrespective of what might be the contractual or legislative impediments, you say.

35

MR YOUNG: Yes.

COMMISSIONER: To implementing.

40 MR YOUNG: That's your remit under the Terms of Reference and your remit doesn't extend to advising the Authority about its powers at the next step down the road.

45 COMMISSIONER: Can you just – thank you. Can you just, having regard to those undertakings that you proffered, and this is probably a question that has to be just for the moment put on the premise that until those steps are taken suitability is not there. If you assume that for the moment - - -

MR YOUNG: Yes.

COMMISSIONER: - - - what do you say is the status of the licence during that – if you will pardon the expression – conversion period?

5

MR YOUNG: In our submission, Commissioner, many of the matters that the Authority may wish to be satisfied about are going to be matters that require a working test, as it were. To be satisfied that Sentinel is up and running and working properly in relation to the operations of the Sydney casino, and that is best addressed by allowing the casino to operate and then very closely monitoring, reviewing and having an audit after two months or whatever it may be as to how it's running. So the range of matters I've put forward, some of them are best addressed in the context of the way in which the casino operates by way of close oversight, review, audit of those operations during an initial period.

15

There are some that fall into a different category. Just take the completion of the restructures that have been proposed. We anticipate that all of those will be in place before any relevant operational first date. So we don't suggest that there needs to be, in the overall scheme of what we've submitted about everything we've done about addressing suitability, that all of this needs to bring about a complete postponement of the commencement of operations. Some of them would fit into the realm of allowing a period during which the licensee's systems, its processes, Sentinel can be monitored, evaluated, audited and then certification achieved during an initial period. I did want to move to one other measure, Commissioner, if it's convenient now.

25

COMMISSIONER: Yes, please. It is. It is. Thank you.

MR YOUNG: Thank you. The licensee has already documented and submitted 14 internal control measures to the Authority. A further one has been provided as well, so it's 15 in all. Crown provided a paper to the Authority on 9 November addressing the 14 ICMs. The 15th one I wanted to address specific attention to which has come separately. It is entitled Internal Control Manual 15: Information Sharing, Regulator Supervision and Audit.

COMMISSIONER: We don't – you have an advantage over me, Mr Young. I don't have it. So if your solicitors could provide copies of the ICMs - - -

MR YOUNG: Yes.

COMMISSIONER: - - - I will take it that they will be sent across and I will mark them as an exhibit AS10, I think.

MR YOUNG: Yes.

COMMISSIONER: So what I will do is I will anticipate the 15 ICMs - - -

MR YOUNG: Yes.

COMMISSIONER: - - - and I will mark them as exhibit AS10 confidential – I presume they’re confidential are they, Mr Young?

MR YOUNG: Yes. Yes, Commissioner.

5

COMMISSIONER: And if you would just address me on ICM15 about information sharing.

MR YOUNG: Well, I will tell you the broad thrust of it, Commissioner, if I may.

10

COMMISSIONER: Yes.

MR YOUNG: It’s a document designed to ensure that the Authority has available to it the information it requires to maintain oversight of the operations in the facility, including information it needs to properly and fully evaluate the way in which the licensee is managing the risks associated with the operations. I mentioned it specifically because it ties into one of the objects in 4A.

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COMMISSIONER: Yes.

20

MR YOUNG: Monitoring and controlling the operations, and also 141(2)(c) under which the Authority instituted this Inquiry.

COMMISSIONER: Yes.

25

MR YOUNG: In other words, I’ve referred to an undertaking about those matters, but there’s – we’re also proffering an ICM in that same field, broadly.

COMMISSIONER: Yes, thank you.

30

MR YOUNG: Now, you will know, Commissioner, that under the Casino Control Act section 124 subsection (2) the Authority can amend these internal control manuals and measures on its own initiative or on the application of the casino operator concerned.

35

COMMISSIONER: Yes.

MR YOUNG: And there are sanctions for failure to comply. So putting some of the matters that I’ve referred to in an internal control manual under the heading of Regulator Supervision and Audit is a way of rendering enforceable what I described as undertakings.

40

COMMISSIONER: Yes.

MR YOUNG: And it also permits the ongoing review and tweaking and improvement of those measures.

45

COMMISSIONER: Yes.

MR YOUNG: At the initiative of the Authority or even at Crown's initiative. Our proposal to conduct a full review of all operations on the first anniversary of operations commencing is additional to what the Act requires. Such a review is not intended to replace the first formal review under section 31. It's anterior to that. So it's, effectively, an enhancement of the review processes provided in the Act to provide an early review. And we proffer that as a sensible practical measure to ensure that everything we've said we'll do by way of running this facility in accordance with best practice is working that way.

What we envisage might be the subject of that review would include these things, Commissioner – and I give these by way of examples, not exhaustively. Firstly, that the licensee's compliance with the requirements of the Act, including all compliance with all applicable control measures. That would include reviewing our compliance with any measures of the kind I've proposed to be the subject of our undertakings or additional measures that might be imposed or agreed following your report and recommendations, Commissioner. Secondly, a topic to be covered would be our transparency and our – the way in which we've cooperated with the Authority over the course of that first 12 months.

A third would be the implementation and effectiveness of all the measures we have in place to assess the suitability of the VIP members and guests, if some enhancements are needed to the probity steps, and so forth, they can be reviewed and addressed. Another topic might be the trail of relevant reporting and decision-making relationships between the board subcommittees up to the board relating to the operations of the Sydney casino. Now, as I said, I've mentioned those, but I don't intend to be exhaustive about those matters.

COMMISSIONER: Yes, I understand.

MR YOUNG: We put forward all of these things, because Crown is, as I said yesterday, conscientiously committed to addressing and remediating any problems – or all problems that have been identified, but, moreover, ensuring that no such problems ever recur generally and specifically in relation to the operation of the Sydney facility.

COMMISSIONER: Yes.

MR YOUNG: Now, in our respectful submission, Commissioner, the package of measures that I have identified is far preferable to the approach proposed in counsel assisting's final submission. You may recall, Commissioner, in the written submission, counsel assisting submitted there should be a review by external experts of a long list of matters, 22 in all, described in the broadest possible language, and that's said to be a review by external experts of these 22 matters amongst other matters. Now, with great respect, it's unfocused. There's also a degree of irony about the proposition that further measures should be approached in that fashion

solely through the lens of a globalised set of consultancy reports that aren't targeted to particular matters because, throughout this Inquiry, and over the years, Crown has engaged, for good reason, bona fide, a range of external experts to assist, but most of their reports have been criticised as missing the mark in some respect or another.

5

Informed as the Inquiry now is, Madam Commissioner, it's much better for the Inquiry, in our submission, to target specific measures that can be made the subject of the kind of undertakings that we've proposed rather than postponing everything in favour of a multitude of expert reports about a multitude of ill-defined matters. That, in our respectful - - -

10

COMMISSIONER: I think you've indicated that you've got some external people, Promontory and Initialism - - -

15 MR YOUNG: Yes.

COMMISSIONER: - - - coming on, and Deloitte's, in any event. So there's some aspects - - -

20 MR YOUNG: Yes, that's true, but we've tried to target them to specific matters that have been exposed - - -

COMMISSIONER: Yes, I see.

25 MR YOUNG: - - - as matters requiring attention.

COMMISSIONER: Yes, I see that. Can I just ask you, Mr Young, about the approach to the present suitability if I may, because - - -

30 MR YOUNG: Yes.

COMMISSIONER: - - - it is necessary for me to analyse the presentation by the directors of the company to understand the character of the company to rule on its suitability. And you are correct, if I may say, respectfully, to identify that, but for some matters of evidentiary matters that have been identified in submissions, that the - and putting Mr Johnston to one side for the moment in respect of those matters that were put by Mr Bell for whom Mr Hutley appears anyway - that no attack on integrity, generally, or honesty has been made, so I'm focusing on assessing the character of the company. And I wanted to ask you about what has happened in respect of Mr Barton's evidence and, effectively, what I should make of it. If I could just focus on the difference between the fourth and fifth statements that he gave me, and then the sixth one that comes up is a separate issue. But between the fourth and the fifth statements, just to remind us, the fourth statement was one where Mr Barton said that, really, there were no issues or failures identified by Mr Birch in respect of the matters that he addressed in his email in 2015.

45

MR YOUNG: Yes.

COMMISSIONER: Of course, the email was five years ago, but the judgments that Mr Barton was making was this month, or last month.

MR YOUNG: Yes.

5

COMMISSIONER: So it's really – I'm asking for your submission as to what I should make of this where the CEO tells me what he tells me in the fourth statement, that there's nothing there to be looked at as a failure or an issue for Crown and then, on notice that I might say something adverse, recognises that he should have identified it as an issue and a failure. And it really is a question why shouldn't he have not needed, effectively, that notification and identified it immediately and, not identifying it, why isn't that a problem for the character of the company? So I should ask you that question, if I may.

15 MR YOUNG: Yes. Thank you, Commissioner. Can I address the fourth statement.

COMMISSIONER: Yes.

MR YOUNG: Should I call it up, Commissioner, or - - -

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COMMISSIONER: I'm aware of it.

MR YOUNG: Yes.

25 COMMISSIONER: I have it. Yes, I have it here.

MR YOUNG: There are various circumstances, in my submission, firstly, that you should bear in mind. First, Mr Birch's email was – set out a comparison between a report by Promontory and a comparison between the Promontory report and ANZs practices. It wasn't a direct comparison - - -

30

COMMISSIONER: It was a comparison between Crown's practices and ANZs practices as a result of the Promontory report, I think.

35 MR YOUNG: Well, not quite, Commissioner. It was only a comparison of what Promontory said about ANZs practices – sorry - - -

COMMISSIONER: I think we should - - -

40 MR YOUNG: - - - what Promontory said about Crown's practices and ANZs practices, so in other words I accept it was an indirect comparison, but it wasn't a direct comparison of the two.

COMMISSIONER: I see.

45

MR YOUNG: Secondly, Mr Barton, at the time of that email, was involved because he was the lead connection with ANZ.

COMMISSIONER: He was the relationship - - -

MR YOUNG: Not because of – he’s relationship manager, yes. Not because he was the man fully apprised of the compliance and AML issues within Crown. In those – and the third thing is he did respond to Mr Birch following him up by telephone to get an explanation of what the – of the identified differences in approach.

COMMISSIONER: Yes.

MR YOUNG: Now, it’s in that context that Mr Barton said that he didn’t at that time recognise the seriousness of the issue that Mr Birch was alluding to. And they were matters to check, as Mr Barton subsequently confirmed. But at the time he didn’t identify them as serious issues in respect of Crown’s failures. Now, it may have been a failure to appreciate things given the circumstances that I’ve referred to, but in our respectful submission it does not weigh against him in terms of character or honesty or integrity in the sense of a knowing disregard of what he recognised to be serious issues.

COMMISSIONER: It’s the actual – when he is asked by the solicitors assisting the Inquiry to address whether he accepted that Mr Birch had raised serious issues – so the question that was posed for him which prompted the fourth statement was whether he accepted that Mr Birch had raised serious issues or failures in the email, and in his statement as at 2020 he said he did not accept – he did not accept – that that email raised serious issues or failures. Now, it is just that matter, the fact that in November 2020 he did not accept that, but then when – on reflection, when reminded, or given the opportunity, I should say, to reflect on it, he accepts that there is a serious issue. So it’s the fact that he had to be prompted to recognise it as the CEO - - -

MR YOUNG: Yes.

COMMISSIONER: - - - which I’m a little troubled by.

MR YOUNG: The latest statement indicates - - -

COMMISSIONER: That’s the fifth statement?

MR YOUNG: Well – no, can I go back one step, Commissioner. Mr Barton said that he was focusing on the question from counsel – from the solicitor assisting the Inquiry - - -

COMMISSIONER: Yes.

MR YOUNG: - - - which asked whether he accepted that Birch raised, and I quote:

Very serious issues in respect of Crown’s failures –

outlined in Birch's email. It's in that context that Mr Barton formed the view he did. The Birch email, as I said, was identifying the fact that Promontory does not note that your processes extend to X, Y and Z certain things, and there's no record of those certain things. Now, that comparison of and by itself doesn't identify
5 necessarily any serious issues in respect of Crown's failures. Now, on reflection - - -

COMMISSIONER: If you have a look at it, underneath the heading – I think it's enhanced DD, there's a reference there to the fact that Crown had a couple of people who were convicted criminals and there was no record of them reviewing the
10 accounts. So that's clearly a problem, and Mr Barton recognised that later on. But it's the fact – it's just a small point, but it may be important, and I just wanted to give you the opportunity to address it.

MR YOUNG: Yes.
15

COMMISSIONER: The fact that he didn't in November when he signed a statement for this Inquiry recognise that that was a serious issue or a failure. What do I make of it?

MR YOUNG: Well, in our respectful submission, Commissioner, you make of it that in the circumstances at the time, for whatever reason, and it may include the things I've mentioned, there was a misapprehension on Mr Barton's part.
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COMMISSIONER: All right.
25

MR YOUNG: And it is a misapprehension as his latest statement said.

COMMISSIONER: Yes.

MR YOUNG: But it doesn't bespeak any dereliction of duty or turning a blind eye. It was the misapprehension and – in relation to the sentence that you drew my attention to, Commissioner - - -
30

COMMISSIONER: Yes.
35

MR YOUNG: I've just – in the fifth statement, paragraph 5, Mr Barton addressed that.

COMMISSIONER: Yes, he did. Yes, there's no doubt that he addressed it fully.
40

MR YOUNG: He did make the additional observation without saying he was in any way detracting from his acknowledgment, that the particular matters in question are not identified in the Promontory report. So it's not at all clear where Mr Birch's comment comes from.
45

COMMISSIONER: Yes. Yes, I understand, Mr Young.

MR YOUNG: I know that's an incidental matter, but - - -

COMMISSIONER: Well, thank you for making those submissions. The other
5 matter that I should raise in respect of your submissions that are not – in relation to
the directors who are not separately represented, what do I make of Mr Demetriou's
evidence and his – what seemed to be, on a neutral way of putting it, ill-advised
performance in respect of his documents and his evidence relating to the fact that he
suggested he wasn't reading from them; what do I make of that forensic aspect of
the Inquiry?

10 MR YOUNG: We would submit this, Commissioner, that you should not base any
adverse view of Mr Demetriou on those matters, and you should take into account
the difficult circumstances in which people in Melbourne have been operating. Mr
Demetriou prepared his own brief note in advance of the examination. The fact that
15 a witness thinks how he should express himself and his thoughts and makes a note of
it in advance of the evidence is not a thing to be criticised. Anyone who makes –
who is going to collect their thoughts will often make a brief note about how they
feel they should express themselves.

20 So the fact of making a note is not to be criticised, and the document itself – there
was nothing out of the ordinary about the notes he made. You've seen them. Now,
it was not entirely his fault that he referred to the note; it was a mistake and he
apologised for it. But it was also the legal team's mistake in not raising it with him
before his evidence at some stage, that he shouldn't have any notes in front of him.
25 Now, we haven't been operating in normal circumstances, Commissioner.

COMMISSIONER: No. I understand.

30 MR YOUNG: And the difficulties of operating in Melbourne for the last four
months should not be underestimated.

COMMISSIONER: No, I appreciate that, Mr Young.

35 MR YOUNG: Yes. And likewise, for Mr Demetriou, he was sitting alone at home
- - -

COMMISSIONER: Yes.

40 MR YOUNG: - - - and it was a mistake, he apologised, but it was partly the legal
team's omission.

COMMISSIONER: Yes. And – thank you for those observations. Could I then
raise the matter of, I think, Ms Halton who was criticised by counsel assisting for the
– not willing to accept things that were put to her. Did you want to say anything
45 about Ms Halton's evidence?

MR YOUNG: I'd say this, Commissioner. Her evidence and her answers, in our respectful submission, do not in any way reflect on her credibility or honesty or integrity. Ms Halton's evidence was, in our respectful submission, careful and considered. Some of her answers were lengthy.

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COMMISSIONER: For which she apologised.

MR YOUNG: Yes, she did. And – I mean, giving evidence in this fashion is a very foreign experience to many people, and at all events we submit that no adverse inference of any kind should be drawn about her evidence. She is a very highly qualified person. She is used to operating in different environments. By that I mean general meetings, committees and so forth.

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COMMISSIONER: Yes.

15

MR YOUNG: And the circumstances of giving evidence are unusual and to some extent difficult. So in our respectful submission, no adverse inference of any kind should be drawn. She was an honest witness who did her best to try and assist the Commission.

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COMMISSIONER: Yes, I'm grateful for those submissions in respect of those directors. Are there any other directors that you – if you wish to make any submissions, as I have to review the evidence of each of the directors to review the character of the company.

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MR YOUNG: No, I don't think it's necessary, Commissioner. I've already made submissions concerning the evidence of Mr Felstead and Mr O'Connor.

COMMISSIONER: Yes. Yes.

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MR YOUNG: And as to the other directors, I submit generally that there has been no criticism of their evidence. They all did their best to assist you, Madam Commissioner, as best they could, and they gave honest and forthright evidence. I mean, one thing is clear, is that the directors expressed their own views and as from one director to the other they were individual views, if I can put it that way. That was very clear. They were expressing their own honest opinions and expressing their own state of mind and knowledge of matters.

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COMMISSIONER: Yes, thank you, Mr Young.

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MR YOUNG: Thank you. Mr Mitchell – I'm going to address – will I do that now, Commissioner, or – I was going to do it separately.

COMMISSIONER: I had understood that there was some communication with Dr Collins and his junior. Just pardon me for a moment, Mr Young.

45

MR YOUNG: Yes.

COMMISSIONER: I understand that just as we have been speaking to each other that there has been a written submission made by Dr Collins. I haven't seen it, Mr Young. I'm not sure if you've seen it – in respect of Mr Mitchell's position.

5 MR YOUNG: I have not seen it. Yes.

COMMISSIONER: What I might do is just take a short adjournment and then we can work – is that convenient to you now, Mr Young?

10 MR YOUNG: Perfectly. Yes, perfectly so.

COMMISSIONER: Yes, all right. I will take a short adjournment then we can just check on the status of that submission and I can return to that matter. Thank you.

15 MR YOUNG: Thank you.

ADJOURNED

[11.35 am]

20

RESUMED

[11.49 am]

25 COMMISSIONER: Thank you. Yes, Mr Young, I've received, now, a submission that has been – a written submission from Dr Collins. Do you have a copy of that?

MR YOUNG: I do, Commissioner, and I have read it just now.

30 COMMISSIONER: Yes, all right. Yes. And do you wish to say anything further?

MR YOUNG: Yes.

COMMISSIONER: Yes.

35 MR YOUNG: I'll say a few words.

COMMISSIONER: Yes. All right then. Thank you.

40 MR YOUNG: And this is from the company's perspective.

COMMISSIONER: Yes, of course. Of course.

45 MR YOUNG: But the bottom line is to the same effect as the submission from Dr Collins.

COMMISSIONER: Yes. Thank you.

MR YOUNG: The declaration, as you will have seen, refers to three instances in December 2012 where Mr Mitchell disclosed information to Bruce McWilliam of the Seven Network, Tennis Australia's broadcast partner during the course of broadcast rights negotiations.

5

COMMISSIONER: Yes.

MR YOUNG: And the declaration refers specifically to a failure to exercise powers with reasonable care and diligence on three occasions by, first, forwarding an email to Mr McWilliam on 1 December 2012; two, telling Mr McWilliam on 2 December that he had jumped on the CEO of Tennis Australia for appointing an agent to sell TAs domestic broadcast rights; and, three, sending Mr McWilliam an email on 13 December to hold off on sending certain points to Seven's negotiating position on to the CEO of Tennis Australia, Mr Wood, in advance of a proposed meeting. I just want to provide you, Commissioner, with a little context about those three incidents by reference to the full judgment on the liability issues by Justice Beach.

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COMMISSIONER: Yes.

MR YOUNG: We'll provide the references in writing, if I may - - -

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COMMISSIONER: Of course.

MR YOUNG: - - - rather than now. I have the advantage of having been in the case, representing the - - -

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COMMISSIONER: Yes, I noticed that - - -

MR YOUNG: The successful defendant, Mr Steven Healy, who was the chairman.

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COMMISSIONER: Yes, I saw that.

MR YOUNG: The contextual matters I wanted to mention are these: before Christmas, that is, after these communications by Mr Mitchell, the chairman, Mr Steven Healy, told Mitchell not to intervene in the negotiations any further. Mr Mitchell complied with that direction and there were no further interventions by Mr Mitchell in the negotiations. The negotiations concluded with a contract being made between Tennis Australia and Seven Network in early July of the following year, 2013, so more than six months later. Now, we will give the references to those matters from the main judgment, Commissioner, but against that background, if I may come back to the particular finding against Mr Mitchell.

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COMMISSIONER: Yes.

MR YOUNG: The conduct in question related to those three communications some eight years ago. Mr Mitchell was a director of Crown Resorts limited at the time, but it's quite clear that these actions, those communications, had nothing to do with his

45

role as a director of Crown Resorts. The recent judgment by Justice Beach notes these things and, to some extent, they're recorded in the declaration. First, Mr Mitchell's purpose was not to cause any harm to Tennis Australia, and it did not cause any actual damage to Tennis Australia. Justice Beach found that Mr Mitchell
5 was motivated at all times by a belief that he was acting in the interests of Tennis Australia and that he was assisting Tennis Australia by what he did in these communications. Justice Beach specifically found those matters in paragraph 14 of the penalty judgment. In addition, it's quite clear that those matters don't reflect in any way on Mr Mitchell's character, honesty or integrity, having regard to the
10 findings. And I refer, as well as paragraph 14, to paragraph 32 of the penalty judgment. Justice Beach rejected the orders sought by ASIC for disqualification, finding that the breaches were narrow.

Now, in those circumstances, we do submit that the declaration made by his Honour
15 Justice Beach and the penalty imposed have no nexus with your task of assessing the current suitability of Crown Resorts and Crown Sydney, including by reference to the character, honesty and integrity of its board members. Mr Mitchell's character, honesty and integrity are not impugned by the findings that were made. They were findings of a lack of care in relation to an intervention in negotiations actuated by an
20 intention to act in the best interests of Tennis Australia by doing things that he thought would assist Tennis Australia in the negotiations. Now, it may have been a misguided view, but it was an honest and misguided view and, as soon as the chairman directed him to stop intervening, he did, months and months before the transaction was consummated. So for those reasons, in our respectful submission,
25 there is no connection and the matters the subject of the recent judgment ought not to have any bearing on your assessment of current suitability.

COMMISSIONER: Thank you.

30 MR YOUNG: Commissioner, I wanted – there's one aspect of the further steps that I hadn't completed and I need to go back to, if I may.

COMMISSIONER: Yes, of course. Yes, no problem.

35 MR YOUNG: This relates to submissions by counsel assisting relating to CPH - - -

COMMISSIONER: Yes.

40 MR YOUNG: - - - and what measures could be taken to address Crown's relationship with CPH.

COMMISSIONER: Yes.

45 MR YOUNG: Counsel assisting put forward three proposals in written submissions that no doubt you will recall.

COMMISSIONER: Yes.

MR YOUNG: The first was that CPH and its close associates not be permitted to exercise more than 10 per cent of their voting power in Crown Resorts. The second proposition was that no more than one director may be a nominee of CPH. And the third proposition was that neither the licensee nor Crown may enter into any
5 agreement or arrangement with CPH or Mr Packer for the provision of confidential information. In our respectful submission, there is no need for any of those further steps to be taken. Without repeating them, we rely upon all of our previous submissions about the true nature of the relationship and the fact that the contentions
10 by counsel assisting that led to these proposed measures, were not made out as the platform in any event. But there are some further submissions I want to address.

First, as I have submitted, Crown's relationship with CPH has been pulled back so that the position is the stock standard relationship between a company and its major shareholder; there is only the appropriate board representation, and that is the
15 conduit for influence and communications. There is no other. In that respect, Crown's future relationship with CPH will be no different to any other relationship between a publicly listed company and its major controlling shareholder. Moreover, the second broad point we would make is that Crown has commenced a board renewal process. In those circumstances, the imposition of any further measures
20 would not be warranted.

Now, I want to deal specifically with each of the proposals with a few short further submissions. As to the voting limitation to 10 per cent, there is no evidence before
25 the Inquiry which suggests that CPH has used or intended to use its voting power inappropriately or as a means of exerting improper influence over Crown's affairs. In that respect, therefore, the voting prohibition is not targeted at addressing any conduct or issue that has emerged during the course of the Inquiry. Crown Resorts as a board, through that voting power, has not been led to take any decision that the independent directors have not considered to be in the best interests of the company,
30 and the independent directors have always had the overwhelming voting power on the board.

Secondly, there are practical and legal problems with the proposal. They are these. First, Crown does not have power under its constitution or at law to prohibit CPH
35 from exercising more than 10 per cent of its voting power in Crown. Further, as a publicly listed company trading on the ASX, the ASX listing rules intervene. Under listing rules 6.1 and 6.2 the terms of Crown's securities must be appropriate and equitable, and Crown may only have one class of ordinary shares. In practice this means that CPH's ordinary shares cannot be varied to carry less votes than other
40 shares held by other shareholders. So the practical impediments or obstacles to the idea that has been put forward that we submit, first of all, is not necessary, but there are these problems.

Any amendment to Crown's constitution to provide such a limitation would require
45 the approval and/or consent of a number of key stakeholders, including shareholders generally. There would have to be a special resolution passed by 75 per cent of members to amend the constitution. Secondly, as to the ASX, the change could not

be made in the face of the listing rule unless a waiver were to be obtained from the ASX. Thirdly, there is the position of other casino regulators. Their approval would be required for any such change to the constitutional documents and shareholding arrangements of Crown. And further, there is this difficulty, that financiers would
5 have a right to terminate facilities unless if this occurred without their approval being given under relevant financing documents for the amendment of Crown's constitution and the variation of its shareholding structure in that fashion.

Now, it's perhaps unnecessary to go through that list because, in our respectful
10 submission, the proposal doesn't really rise past first base, as it were. It's not necessary or required and the necessary reforms and changes have already been taken by Crown. Commissioner, I will then move to the second proposal.

COMMISSIONER: Yes.

15

MR YOUNG: Which is the limitation to one nominee director. In our respectful submission that, again, is unnecessary. It doesn't address any issue that has arisen that undue control or influence has been exerted through the three nominees on the board as board members. Crown has already terminated the controlling shareholder
20 protocol and the services agreement so, in those circumstances, this step is unnecessary. It's not really directed towards identifying any particular problem that emerged. All the problems that emerged, to the extent they did, are addressed through the termination of the shareholder protocol and the services agreement and the structural changes that have been made.

25

CPHs right, having regard to the size of its shareholding to appoint two or three nominees to the board does no more than reflect the ordinary workings of an ASX listed corporation and that extent of board representation would accord with market practice for such a major shareholding. Indeed, it's probably on the thin side for
30 such a major shareholding. Moreover, there are currently 10 directors on the Crown board, so whether CPH has one or three nominees will not materially alter or affect its ability to influence the decision-making, and nor will it affect the proper way in which information flows up to the board in which the nominee director participates, and the nominee director will still be able to express views and exert some degree of
35 influence if it's one person rather than three.

Can I then move to the CPH contracting prohibition, saying that there should be – Crown should not enter into any agreement for the provision of confidential information to CPH and Mr Packer. Well, the arrangements embraced by the
40 controlling shareholding protocol have been terminated, effectively by mutual agreement, at the request initially of CPH. So the only flow of information is going to be the standard vanilla through a nominee director, or two or three. So in our respectful submission, there is no need for that proposal to be considered because it doesn't address a live issue that in any way bears upon suitability. Those are our
45 submissions about those three further measures, Commissioner.

COMMISSIONER: Thank you.

MR YOUNG: I did want now to close simply by saying this, Commissioner. Through our submissions on behalf of Crown Resorts and Crown Sydney we have acknowledged mistakes and failings and we have acknowledged that matters should have been escalated to risk management committees and the board. The position of
5 the board as the governing organ of the company is that it was not aware of the serious problems and failings that have been identified and, of most importance to an assessment of current suitability, it has been conscientiously addressing all of the failings brought to its attention by making progressive improvements.

10 That has been driven over the last 12 months by Ms Coonan and Mr Barton. They have acted with urgency and diligence to implement a whole series of appropriate reforms. They have acted conscientiously and responsibly to do those things and thereby demonstrated a commitment to ensure that Crown fulfils all its obligations as a licence holder in respect of the Sydney venue, and moreover that it takes and
15 implements all the steps necessary to ensure that the past problems do not recur. I include within that the position I outlined immediately after lunch yesterday without repeating it, Commissioner. That's at 5618 to 5620 of the transcript.

Crown unreservedly accepts that Ms Lane's recommendation should have been acted
20 upon with urgency at the time. They were not matters that the board or Mr Barton were aware of. They have been brought to the attention of the Inquiry because Crown is committed to doing the right thing. I don't understate the problems that have attended Riverbank and Southbank. Those transactions were underway between 2013 and 2017, in particular, but since the problems have been uncovered,
25 to the knowledge of the board, the board has addressed them with urgency and commitment. So, in our respectful submission, they are amongst the most important matters the Commissioner should take into account in assessing current suitability, coupled with what I've said this morning about the further steps and undertakings that Crown has been – or is prepared to take to ensure it is rendered suitable. If the
30 Commissioner pleases, those are the submissions we wish to make.

COMMISSIONER: Yes, thank you very much, Mr Young. Mr Young, you'll be remaining until we complete the final submissions or - - -

35 MR YOUNG: Yes, I'm proposing to remain. I am, yes.

COMMISSIONER: That's all right.

MR YOUNG: Thank you.

40

COMMISSIONER: Yes. Thank you very much, Mr Young. Now, I think I move to, firstly, ask Mr O'Brien – I'm sorry, Mr d'Arville. Mr d'Arville?

MR D'ARVILLE: Yes, Commissioner.

45

COMMISSIONER: Mr Hutley indicated that he may wish to say something after Mr Young. Am I assuming that that's not necessary now?

MR D'ARVILLE: You are correct about that, Madam Commissioner.

COMMISSIONER: Yes. Thank you.

5 MR D'ARVILLE: To the extent there's anything we need to say in addition to what Mr Young has just said about those matters, we propose to do that in writing if that's convenient.

10 COMMISSIONER: Well, if it's something new – what I'm trying do is to control the paper - - -

MR D'ARVILLE: No, it's not new.

15 COMMISSIONER: - - - and if it's something – all right then. Yes. Thank you, Mr D'Arville.

MR D'ARVILLE: Madam Commissioner, might I mention one other matter ,which is a correction to one of our – something that we said in oral submissions which - - -

20 COMMISSIONER: Yes.

MR D'ARVILLE: - - - we think is appropriate to raise now prior to counsel assisting commencing.

25 COMMISSIONER: Yes, of course.

30 MR D'ARVILLE: Commissioner, you might recall that, during the course of oral submissions on 11 November, the CPH parties relied on an email exchange between Mr Packer and Mr Demetriou, and Mr Demetriou's evidence about that email exchange in relation to the Wynn transaction.

COMMISSIONER: Yes.

35 MR D'ARVILLE: I don't think I need to go to it, but I can explain it enough without - - -

COMMISSIONER: I recall it.

40 MR D'ARVILLE: Yes. Thank you. Having revisited that email exchange, it's apparent that the emails – the Mr Packer and Mr Demetriou emails, to which we referred, were at a later period in time, and after the Crown Resorts board rejected the offer on 25 March 2019. I think, Commissioner, you were alive to this fact at the time. But the correction we wish to make is that the CPH parties do not rely on the email exchange of 4 and 5 April 2019 or Mr Demetriou's evidence in respect of it in
45 relation to the submissions relating to the Crown board having rejected Wynn's takeover proposal. If it's convenient for you, Commissioner, that correction will be

reflected in the written submissions, but we thought it best to make this known before Mr Bell commences his reply.

5 COMMISSIONER: Yes. I think the gravamen of what you're saying is Mr Hutley's submission was to demonstrate that the Crown board did not do what Mr Packer, in fact, wanted and that demonstrated the independence, etcetera. But the fact is that the chronology of events cannot support that submission, I think, is correct; is that right?

10 MR D'ARVILLE: In respect of Mr Demetriou's email, that is right.

COMMISSIONER: Yes.

15 MR D'ARVILLE: There is still – you do still, Commissioner, have evidence from Mr Johnston about Mr Packer's attitude to the proposal at the earlier point in time, at the time of the first proposal was rejected.

20 COMMISSIONER: Yes, but the gravamen of what you're saying today is that I don't need to hear, if I were going to, from counsel assisting in response to that submission because you concede it's not available.

MR D'ARVILLE: In respect of the email and communications between Mr Demetriou and Mr Packer, that's correct.

25 COMMISSIONER: Thank you, Mr D'Arville.

MR D'ARVILLE: There is still – thank you.

30 COMMISSIONER: No, you don't have to repeat it. I do get it when you talk to me about that. Yes. Thank you, Mr D'Arville.

MR D'ARVILLE: Thank you.

35 COMMISSIONER: Before I come to Ms Shepard, Ms Richardson, is there anything that you may wish to put?

MS RICHARDSON: Yes, your Honour – Commissioner.

40 COMMISSIONER: Yes.

45 MS RICHARDSON: I just wish to raise a particular matter that arose by reason of a submission that Mr Herzfeld made on Tuesday of this week, and it starts at the transcript at about page 5521, on behalf of Crown. And that was to the effect that there's little or substantive difference, it was suggested, between Crown's due diligence process and Crown's decisions regarding particular junkets and what was said to be Australian industry practice.

COMMISSIONER: Yes.

MS RICHARDSON: And then he went on to submit that, in support of that submission, that Crown would suggest that the Star had – has had and continues to
5 have dealings with many of the junkets in which Crown has had dealings, which are the focus of the Inquiry. And he then went on to list a series of persons and junket names.

COMMISSIONER: Yes.

10 MS RICHARDSON: Now, he frankly acknowledged that he didn't have perfect visibility over, in fact, what is happening at The Star because it was based on internal documents that are apparently largely not currently in evidence before the Inquiry. And then, after lunch, he appeared to come back from that position slightly in that,
15 Commissioner, you put a question to him: were these internal documents based on what people may have told Crown, were there dealings with Star, and he acceded to that proposition and, after lunch, suggested that, no, it was based on casino-to-casino communication.

20 COMMISSIONER: Yes.

MS RICHARDSON: It was suggested to you, Commissioner, that the internal documents that were not currently before the Inquiry would be compiled into a tender bundle that would be first presented as part of the pack that came with written
25 submissions that have been foreshadowed. I wish to indicate that my client is very likely to oppose leave being granted to Crown to tender any new material along those lines that is not currently before the Inquiry. I will only deal with that in very short terms today, because it will depend on whether Crown, in fact, goes ahead with this proposal or not and also the extent to which the types of documents it relies on, but I
30 accept that we will object to the tender of all such material.

In short terms, as your Honour said in the interchange with Mr Herzfeld on Tuesday, which is, in effect, have these documents been dealt with in an Inquiry environment? And we would interpolate there, in a procedurally fair way where the material has
35 been tendered as part of the evidence adducing process of the Inquiry rather than at the heel of the hunt when parties are in the submission phase. Now, it may be one thing for your Honour to accede to the tender of new material this week, for example, because it's just affecting Crown, for example, an ASX announcement, or so on. But it's another thing altogether to seek to tender material at this very late stage which
40 directly affects my client.

So your Honour will see that when the two witnesses from my client that appeared before the Inquiry gave evidence, your Honour expressly asked Ms Orr QC, who was acting for Crown, whether she had any questions of those witnesses, to which she
45 answered in both cases, "No. No questions at all." So if, for example, Crown had sought to propagate this line during the – I will call it the evidence phase of the Inquiry, for example, to put certain questions to our witnesses as to whether or not

Star dealt with certain people or not or, if so, the footing on which they dealt with them, I certainly would have objected to those questions as being outside the scope of the terms of Inquiry where part A is obviously directly – or related only to Crown and related entities and not to Star at all, and that Star’s role, to the extent it has a
5 role in this Inquiry, is purely in respect of part B, which is that it’s a player in a regulated industry and may have submissions to make to your Honour which we have made about regulatory change that might be seen as beneficial. But it’s another thing altogether for Crown to invite the Commission to, in effect, make sort of
10 backdoor part A findings in respect of Star, and certainly in a way that is – so we say that that is beyond the scope of the Inquiry and is not permitted per se. And in any event, we submit it’s not permitted on any view in a way that is irregular and procedurally unfair.

So if, for example, Ms Orr had sought to take up the opportunity to ask questions of
15 the two Star witnesses, I would then have had the opportunity to object to those questions and the basis upon which they were being put, and then at that point Crown could have articulated to your Honour the basis upon which, given the limited terms of inquiry, it could properly seek to traverse that material. And Crown would have
20 either convinced your Honour it was permissible or not. But at least that would have had the procedurally fair benefit of crystallising that that was a line that Crown was seeking to run that would affect my client.

And then if Crown had have convinced your Honour that that was a proper line of
25 inquiry over my objection, for example, at least Star would have been on notice and we could have sought to adduce material that seeks to address that matter. And I note that your Honour, on Friday the 23rd of October, which was the last sort of full day of witnesses, at transcript 4823, at line 11, your Honour said:

30 *I’ve made very clear that this Inquiry does not ask me to look into the Star.*

And your Honour said to me in an interchange:

The suitability review is not touching upon your client.

35 And in my submission, respectfully, that is absolutely consistent with the Terms of Reference and the way that counsel assisting has approached this inquiry in terms of the letters that were sent to my client indicating the topics about which Star witnesses would give evidence to assist the Inquiry and so on. And the next submission I
40 would make is that in respect of what Crown apparently seeks to invite your Honour to do is to make the submission, in effect, to say we have acted – you know, when we dealt with person X or person Y, we have acted consistently with industry practice, so that’s a shorthand way of saying – because it appears to be a shorthand way of saying we have acted consistently with the Star in respect of certain people.

45 Crown is, in effect, inviting the Inquiry to make a rolled-up and, we would say, unfair – procedurally unfair finding, and out-of-scope finding that, in effect, in dealing with persons X or Y Crown was acting consistently with what is to be

considered an industry practice. So the very unfair aspects of that is, firstly, there has been no traversing in this Inquiry as to how Star deals with certain people or not, in what capacity – if they're dealt with at all, if so in what time periods and in what capacity they're dealt with; are they dealt with as a player or in some other capacity.

5 And the other issue is – more fundamentally, is even in respect of a particular junket or person, even if Star has dealt with them in a particular period, the question is in what capacity were they dealt with in the sense of the approach that Star took.

10 So for example, the contentions that counsel assisting has issued in respect of junkets frames the question in respect of Crown as, for example – and this is at paragraph 30 of those contentions – on the material available to Crown it could not have been satisfied that certain named persons or junkets, in effect, were appropriate persons to do business with. So the key factual issue that has been framed by counsel assisting is, in effect, what was the material available to Crown which is a dense factual
15 inquiry as to knowledge of different persons and what was known, and given the state of knowledge of Crown at particular points of time with respect to certain people, was it – could they have reasonably been satisfied that it was appropriate to form a view that a person was of good repute and so on.

20 So what, in my submission, Crown is foreshadowing inviting the Inquiry to do is in a rolled-up way ask the Inquiry to make links on certain adverse findings that counsel assisting has submitted ought be made with Crown and join certain dots to Star in circumstances where there has been no material adduced before the Inquiry, nor
25 could there be, given its terms, as to what material was available to Star in respect of those people, what decisions did it make and so on, let alone whether or not those people were dealt with at particular points in time.

And so the key way that counsel assisting has framed that issue in the contentions – and this is at paragraphs 35 to 36 of the junket contentions, is that whether or not
30 there were failings of Crown are, in effect, pegged by reference to judgments that were made by Crown by reference to the body of information that they knew. None of that material has been traversed in this Inquiry. So in our submission, the very late and irregular contention raised, in effect, in the submission phase of the Inquiry, quite after the conclusion of the evidentiary phase, that there is an industry practice
35 in respect of certain persons or junkets by reference to the Star is not only outside the Terms of Reference, but in my submission procedurally very unfair.

So for those reasons I foreshadow that we will object to the tender of any new material on that topic, and depending on what is – even if there is no tender on the
40 topic and Crown seeks to make submissions along those lines by reference to some material that is currently before the Inquiry, I anticipate we may well put in a short submission to the Commission as to what we say your Honour could properly find or not find on that topic, given the scope of the Terms of Reference do not refer to Star. May it please the Inquiry.

45

COMMISSIONER: Thank you very much, Ms Richardson. Mr Young.

MR YOUNG: Thank you, Commissioner.

COMMISSIONER: Do you want to say anything at the moment?

5 MR YOUNG: Yes, I do. Thank you.

COMMISSIONER: Yes.

10 MR YOUNG: In our submission, there's no basis for the objection that's been made. This issue arose from the contentions advanced by counsel assisting that the standard that Crown should have applied in determining not to deal with junkets was to the effect that media allegations alleging links with organised crime of a junket operator were a more than sufficient basis to terminate the connection with the junket operator or not to approve them. Now, that contention was based on standard due
15 diligence documents such as wealth checks and the like. A lot of them are already in evidence.

Now, that set of contentions by counsel assisting was then deployed in relation to a large number of named junket operators, but it was the same basic proposition. That
20 your standard checks such as wealth check and so on show a link, a reported link, founded on media contentions to the effect that there was a link with organised crime or a triad. That was the submission that we addressed, or that contention. We're entirely within our rights to say that that contention espouses a standard that did not reflect the standards deployed by regulators. As Ms Webb said, that was not the
25 standard they deployed in New South Wales in respect of The Star, and it was not the standard deployed on the information available to us in our business records from communications with The Star. So our state of mind, based on our business records and communications with The Star, was that it was dealing with the same individuals. There is no basis for objecting to our business records which go to our
30 state of mind which actuated Crown's behaviours in relation to those junket decisions; that's the first point. And that material, that issue, is directly responsive to the way in which counsel assisting put questions and then advanced submissions.

Can I deal with the second matter. Ms Richardson referred to the evidence from Star
35 witnesses; that evidence was given, before any of these contentions by counsel assisting were deployed, in respect of a large number of these junket operators. There was no circumstance that called for a set of questions about a long list of named junket operators and whether Star dealt with them by virtue of the fact that those contentions had not been deployed. Ms Richardson assumes that this is like a
40 piece of litigation where you have a set of allegations and you know what you have to meet; that is not the way this Inquiry has worked, or any inquiry works.

So the course taken at that time was conformable to our state of knowledge and the general circumstances at that time. There's other material – I will withdraw that.
45 Now, the issue about industry practice is a proper submission by us. There's nothing procedurally unfair. There is already evidence before the Commission indicating

that The Star did deal, for instance, with Suncity, and continued to deal with Suncity
- - -

COMMISSIONER: Yes.

5

MR YOUNG: - - - and had a separate allocated, dedicated room, had a separate cash desk for Suncity; that's in the evidence already. Now, that's one indication that, in our dealings with Suncity, our decision to approve a junket relationship with Suncity and to maintain it is conformable to the same standard that The Star was applying. So there's nothing unfair about the submission being advanced. We're not asking for adverse findings to be made against The Star. We're pointing to the existence of a known industry approach that Crown knew of, that its records recorded, and the fact that its processes were influenced by what it knew as to the processes adopted by other casinos in Australia, including, in particular, The Star.

10

15

So, in our respectful submission, there's nothing procedurally unfair towards The Star. We're not asking for any adverse findings against The Star. We're making a perfectly proper point in response to the way in which contentions have been advanced against us. For those reasons, Madam Commissioner, in our respectful submission, there is no basis to object to a receipt of our business records that show, in respect of each of the particular junkets identified by counsel assisting, that our records record a state of knowledge that other casinos were dealing with the same junket operators, including, on some occasions, The Star; that's all it is, in our respectful submission, Commissioner.

20

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COMMISSIONER: Thank you.

MR YOUNG: If there are to be any further written submissions on behalf of The Star we would seek an opportunity to respond to them.

30

COMMISSIONER: Yes. Mr Young, I think Mr Herzfeld certainly went into more detail than has been the subject of any evidence thus far. I have already had the evidence, as you so rightly point out, in respect of Mr Chau and the Suncity or, at least, Suncity labelling of a room in Star and its closure in August 2019, and various other aspects to it. So there's no doubt that Star – The Star was dealing with Suncity at the same time as Crown has been. But this long list of people that Mr Herzfeld wants to, I think, bring forward new evidence about and the dates concurrently, you will have to provide it to Ms Richardson to let her see what it is, firstly, to make an assessment of what it is. If the only proposition is, as you put it, that other casinos were dealing with these junkets at the same time that's fairly benign and I wouldn't be finding any adversity to anyone. It would be for the purpose of trying to work out whether there's something relevant in assessing your client.

35

40

MR YOUNG: Yes.

45

COMMISSIONER: As to industry practice, that's one thing, but the things that your client considered was its internal documents for the purpose of reaching its

conclusion to continue to deal. I can't get into that with Star. And I'm not suggesting that you're trying to ask me to do that. If it's a benign submission that there were junket operators with whom you were dealing that Star was also dealing full stop, then I think perhaps Ms Richardson won't be too troubled, but because she
5 doesn't have the records, because she doesn't have a understanding of what's within them and the nature of them, it's really arguing a little, at the moment, in the dark. So I'm going to allow Mr Herzfeld to take on board what I've said in that I don't want the – there's no need for a lot of detail. If it's just a proposition that you were dealing with them at the same time, then perhaps Ms Richardson's client will not
10 object to that proposition being put, and I don't really need all the documents. So we may be able to get around it in a practical way, I think, Mr Young.

MR YOUNG: Thank you, Commissioner.

15 COMMISSIONER: But you will have to give them to Ms Richardson during the course of the next day or so, and then I can hear – perhaps tomorrow, if there's anything further.

MR YOUNG: Thank you. There's no difficulty about that, but - - -
20

COMMISSIONER: Thank you.

MR YOUNG: - - - I can confirm our purpose is the narrow one.

25 COMMISSIONER: Yes, I understood that.

MR YOUNG: The documents are the same kind as the document – I'm afraid my recollection of his Chinese name is likely to be in error.

30 COMMISSIONER: No, that's all right. Mr Hawkins gave his evidence. And if you give the documents to Ms Richardson - - -

MR YOUNG: Yes.

35 COMMISSIONER: - - - or if you give the propositions, then we can work it out in a much more comfortable environment where Ms Richardson - - -

MR YOUNG: Yes.

40 COMMISSIONER: - - - knows what the plan is.

MR YOUNG: Yes, most certainly. I've no objection to that, Commissioner - - -

COMMISSIONER: Thank you.

45 MR YOUNG: - - - but our purpose is a very narrow one, as I just tried to explain.

COMMISSIONER: Yes.

MR YOUNG: Thank you.

5 COMMISSIONER: Yes, I understand. I understand. Now, Ms Shepard, I'm sorry to keep you. I understand that you appear for Mr Felstead with Mr Townsend; is that right?

10 MS SHEPARD: That's correct, Commissioner. Thank you.

COMMISSIONER: Yes.

15 MS SHEPARD: Might I flag, I don't expect I'll be finished by the luncheon adjournment but I will make a good start. Otherwise, I don't expect to be much more than half an hour.

COMMISSIONER: Thank you.

20 MS SHEPARD: Commissioner, at the time of the China arrests, Mr Felstead was the chief executive officer of Australian Resorts, a business unit within Crown Resorts Limited. He was also, relevantly, a director of Crown Melbourne Limited. Mr Felstead currently remains in those roles, however, he is in the process of being made redundant from his position as CEO of Australian Resorts. He also resigned from his directorships and other roles in Crown and, thereafter, he intends to retire.
25 Mr Felstead - - -

COMMISSIONER: Just repeat for me, did you say he has resigned from his directorships?

30 MS SHEPARD: He will also resign – he will also resign from his directorships.

COMMISSIONER: I see.

35 MS SHEPARD: His is currently listed in company searches as director, but a process is being undertaken whereby he, as I understand it, will be removed.

COMMISSIONER: Thank you.

40 MS SHEPARD: Mr Felstead was granted leave separately to appear with respect only to the issue of the China arrests and specifically items B7 and C3 of counsel assisting's statement of issues and contentions in relation to the China arrests. These submissions I now give address only B7 in circumstances where we understand that consideration of C3 has been deferred until final findings have been made. Otherwise, Mr Felstead reserves his position on A1 to 18 as they pertain to any
45 adverse findings against him pending the determination of C3. Commissioner, with your leave, we intend to file a written outline with full evidence references, but otherwise not to refer to them in the course of oral submissions.

COMMISSIONER: Yes, thank you.

MS SHEPARD: Commissioner, these – our submissions address four matters. First, Mr Felstead’s evidence and his admissions. Secondly, what we understand to
5 be the contention put against Mr Felstead. Thirdly, whether Mr Felstead acted without justifiable reason in failing to report matters and, fourthly, the significance of the risk management committees in contrast to reporting matters directly to the board. Might I now address the first matter which is in relation to Mr Felstead’s evidence and the admissions he gave. Commissioner, in our submission, at all times
10 Mr Felstead gave considered evidence with significant concessions, including against his self-interest.

It has not been suggested that he was anything other than honest with respect to the evidence that he gave concerning the China arrests and his concessions and insight,
15 we submit, including as to his own failings, commends him. Mr Felstead made frank admissions as to his own failings, including as follows. He admitted that from a compliance perspective he ought to have put the issue of the crackdown announced by Chinese authorities on the relevant risk management registers. He acknowledged that in the circumstances of the announced crackdown, in hindsight he ought to have
20 raised that risk with the board of Crown Resorts via its risk management committee as well as putting that risk on the register.

In relation to the two staff that were questioned in China and Mr Felstead’s failure to notify this to the board of Crown Resorts via its risk management committee, Mr
25 Felstead frankly admitted that in hindsight he should have done that saying:

I should have reported it to the risk committee in hindsight.

And further:

30

It was clearly a failure on my behalf. I acknowledge that. It was an error.

In response to the proposition that Mr Felstead ought to have informed Mr Craigie at the time that two of the staff based in China had been questioned and one of them
35 had been asked to provide a letter, Mr Felstead said frankly:

I did not and that was a failing on my behalf.

These omissions and admissions denote serious failings and Mr Felstead, in the
40 course of his evidence, did not seek to evade responsibility for those omissions. Might I now move to the second matter which is with respect to the contention put against Mr Felstead. Commissioner, the contention put at B7 of the statement of issues seeks a finding that Mr Felstead was aware of all of the risk escalation factors, Mr Felstead failed without justifiable reason to report the February crackdown, the
45 police questioning and the CCTV broadcast to the board of CML and the board of Crown Resorts.

Now, if I can ask you, Commissioner, to take up counsel assisting's written outline. At paragraph 307, their contention is in different terms. The contention has been narrowed to remove the reference to the CCTV broadcast. It also refers to Mr Felstead informing, or informing all members or directors of the Crown Resorts and his colleagues of Crown Melbourne board as opposed to reporting these matters. Notwithstanding this, we understand that the CCTV broadcast matter is still pressed as against Mr Felstead and that the contention put against him encompasses all aspects both of paragraph 307 of the outline as well as B7 of the statement of issues.

10 COMMISSIONER: Thank you.

MS SHEPARD: To be clear, counsel assisting does not raise as a separate issue against Mr Felstead the failure to report the South Korean arrests to the relevant risk management committees and there's plenty of evidence about others within the organisation knowing about those matters. In broad compass, Mr Felstead's position with respect to the contention is that no issue is taken with respect to Mr Felstead's awareness as to each of the risk escalation factors. We do take issue with respect to the balance of the contention, however, none of the submissions now made concerning the balance of the contention are intended to diminish, qualify or depart from the serious failings that have been admitted by Mr Felstead.

If I might turn to the third matter I wish to address in the course of submissions, which is whether Mr Felstead acted without justifiable reason. In our submission, the words "without justifiable reason", in the context of an inquiry such as this are words of strong censure. They necessarily draw attention to the person's actual reasons for an act or omission and suggest that the Inquiry has examined those reasons and found them unjustifiable. That is, as we read it, none of those reasons were rational or bona fide at the time the person acted or failed to act. Now, those words may be contrasted with other formulations such as "ought to have but failed to" or "should have but did not". Those types of formulations comprehend that while a person was not acting irrationally or in bad faith, nonetheless, acted in error.

Those types of formulations comprehend errors of judgment and comprehend matters which in hindsight were mistakes but were not appreciated at the time. Now, Mr Felstead, as we've made clear has admitted that in hindsight he ought to have appreciated and reported the factors to the risk management committees. Mr Felstead said that he was:

40 *...managing this situation on the ground with people who knew the landscape of China.*

He also said that he was handling risk on the ground, and he did so because he believed that they had the right people in place and that they were getting the right advice. Now, Mr Felstead's attempt to manage risk on the ground absent proper engagement with the risk escalation procedures at Crown Resorts was in error but, in our submission, it was an error that was made in good faith and exercising Mr Felstead's reasonable judgment at the time. And notwithstanding Mr Felstead's

errors and failings, it ought not to be found now that he acted without justifiable reason for three reasons.

5 Now, the first reason is that as a matter of fact the matters now put against Mr Felstead were in fact escalated to board members either by Mr Felstead or by others. If I might turn to the February announcement, in particular, Mr Felstead escalated that issue to Mr Johnston and gave his evidence concerning its likely reporting to the VIP meeting after that date as well as discussions with Mr Johnston. In addition, Mr Felstead gave evidence that the February announcement was widely reported,
10 common knowledge, and that people in Crown senior management would have been aware of this. Also, “Many other people got this information as well,” they were his words in his evidence. And, in fact, the evidence does show that the February announcement was captured on media monitoring services that were sent to a number of Crown Resorts executives and directors, including Mr Alexander and Mr
15 Craigie and Mr Johnston. Now, neither Mr Craigie - - -

COMMISSIONER: And Ms Shepard, there is – it was contained in a CEOs memorandum in a board pack that went to the board.

20 MS SHEPARD: Yes. And I was going to take – without taking you, Commissioner, to that, because Mr Hutley very kindly brought your attention to it, I was going to advert to that as well.

COMMISSIONER: Yes.
25

MS SHEPARD: But looking at Mr Felstead’s evidence, he certainly raised, as a reason for why – I won’t put it as high as “a reason” – but the circumstance of him not placing the matter on a risk management committee register must be stood in circumstances where he understood, on his evidence, that other people knew about it;
30 and that’s the point that I wanted to make there, Commissioner.

COMMISSIONER: Thank you.

MS SHEPARD: And just for your Honour’s – for your assistance, Commissioner,
35 Mr Hutley referred to that CEO meeting and VIP update at about transcript reference 5317 and following. Mr Hutley also referred to what was called an F16 to ’20 strategic business plan executive review. That was a document that typically would have gone to the executive group for Crown Melbourne and Crown Perth, including Mr Craigie. And Mr Felstead spoke to that document, on Mr Hutley’s reasoning, at
40 the 22 May 2015 Crown Melbourne board meeting. Those matters were adverted to by Mr Hutley at transcript reference 5318.

Now, coming a year after that and, admittedly, after the South Korean arrests, Mr Felstead spoke to a document, which was F17 to F20 financial plan in May 2016. I
45 don’t believe, Commissioner, you’ve been taken to this document. It’s, as I understand it, confidential, and I ask that it not be brought up outside the hearing room. The CRL reference is CRL.627.001.0385, and I understand it’s exhibit FB10.

COMMISSIONER: Thank you.

MS SHEPARD: And if I can ask, Commissioner, if you could turn to the page ending .0386.

5

COMMISSIONER: Yes.

MS SHEPARD: Commissioner, you'll see about point 6 of the page a reference to:

10

The risks and challenges of the ongoing volatility and uncertainty in international VIP gaming market driven by events in China and Macau.

And, in my submission, the reference, while vague, denotes some familiarity with the board members at that meeting of these events as opposed to trying to obscure those events. It appears to have been used as shorthand, at least in the minutes, there on the 25th of May 2016. Now, that was some five months before the arrests of the Crown employees in China. So this evidence, as well as other evidence, ought make this Commission pause before concluding that Mr Felstead failed to escalate the February announcement to members of the board of Crown Resorts or Crown Melbourne, in circumstances where the documents do suggest that matters were raised in various ways.

Might I turn to the police questioning and provision of the letter, which has a slightly different complexion. That matter was escalated to Mr Johnston before the relevant Crown Resorts meeting at which Mr Johnston spoke to the South Korean arrests. Now, Mr Felstead informed Mr Johnston by email of this matter, on the 10th of July 2015, as soon as he was aware of the issue by Mr O'Connor. And he says that he informed Mr Johnston because of his involvement in VIP in addition to his role as director of Crown Resorts.

30

Now, Mr Felstead gave unchallenged evidence that, while he did not report the matter himself to the risk management committees of Crown Resorts or Crown Melbourne, he was aware that the matter was escalated to Mr Neilson, who was the general counsel and company secretary of Crown Resorts as well as the secretary of the risk management committee for Crown Resorts. And it was never suggested to Mr Felstead in his examination that he was mistaken or untruthful in recalling his awareness of that escalation at the time of the relevant events. And, indeed, the documents bear out Mr Felstead's recollection in that that matter was brought to the attention of the legal team on or about the 10th of July 2015 and escalated through Ms Williamson to Mr Neilson and Ms Tegoni, who is the executive at Crown Melbourne with ultimate responsibility for risk management.

40

Might I now turn to the second reason. Now, notwithstanding that Mr Felstead and others escalated these matters, nonetheless, Mr Felstead did not have the view, personally, that there was a material and present risk that his staff would be subject to arrest. Indeed, he gave evidence in his statement on the class action, which is exhibit O67, that, at all times up to October 2016, Mr Felstead did not hold the view

45

there was an immediate or present material risk that Crown's China staff would be arrested or prosecuted for gambling-related crimes. Now, while that view turned out to be wrong, that view at the time was not unjustifiable or irrational in circumstances where Mr Felstead relied on advice that was passed on to him from WilmerHale and
5 Mintz.

The advices are set out in some detail in counsel assisting's submissions, and I don't intend to rehearse them here. But, in short, those advices were obtained by Mr Chen, who reported to Mr O'Connor, who then reported to Mr Felstead. And it's Mr
10 Felstead's evidence that he believed his reports to be competent and experienced and it's not otherwise suggested that WilmerHale and Mintz were not competent or knowledgeable in their relevant areas of expertise. And it's the case that, at each step, advice was sought from these consultants, certainly, after the February announcement and again after the South Korean arrests and then again after the
15 questioning of the Crown employees. Commissioner, I note the time. I do have some – I will be about another 15 minutes to go at most. Would it be convenient to take - - -

COMMISSIONER: I'm happy for you to go on if you would like to complete your
20 submission now, Ms Shepard. Would you like to do that? Or would you like to do that at 2 o'clock?

MS SHEPARD: I'm in your hands, Commissioner, but I would prefer to press on, if
25 I can do that.

COMMISSIONER: Say that again for me?

MS SHEPARD: I'm in your hands, Commissioner, but I would prefer to press on if
30 I can do that.

COMMISSIONER: Say that again for me?

MS SHEPARD: I'm in your hands, Commissioner, but my preference would be to
35 press on unless that would be inconvenient.

COMMISSIONER: You may press on, Ms Shepard.

MS SHEPARD: There is one advice which I don't believe, Commissioner, you've
40 been taken to, and I don't believe that this is confidential so it shouldn't pose a problem to bring up generally. The reference is CRL.545.001.0014. I understand it's exhibit M235.

COMMISSIONER: Thank you.

45 MS SHEPARD: Commissioner, if you look at about point 6 of the page, there's an email from Mr Chen to Mr Phillips of Mintz - - -

COMMISSIONER: Yes, I have seen this.

MS SHEPARD: You have seen that.

5 COMMISSIONER: Yes, I have.

MS SHEPARD: The short point is, Commissioner, that Mintz were approached in October 2015, which is after the South Korean arrests and after the questioning about a marketing roadshow, and the response is that:

10

The recent arrests very much point to the Korean entity in question, not part of a broader crackdown underway, and that your teams will be in good shape for activities this week.

15 Now, this advice was relayed to Mr Felstead. I don't need to burden you, Commissioner, with that document. He was taken to it in examination. But certainly, this was one year before the arrest of the Crown staff in China. Now, we concede that this advice is certainly in different terms to the advice that Mr Felstead received from WilmerHale in February of that year. That advice recommended that
20 senior executives avoid travel to China and not undertake roadshows. Now, Mr Felstead accepted the proposition that the crackdown on foreign casinos meant that it was risky for him and other senior executives to travel to China at that time.

25 However, and importantly for counsel assisting's submissions in this respect, Mr Felstead rejected the proposition that the nature of the risk posed, as he understood it, was of arrest and detention. Now, he agreed that one of the risks, as he understood them, was a risk of drawing attention from the Chinese authorities, but it was not the primary one. And the remainder of his cross-examination on this point is necessarily coloured by Mr Felstead's understanding of the nature of the risk as he understood it,
30 which did not at that time encompass the risk of arrest and detention.

Now, some mileage was made in counsel assisting's submissions at paragraph 195 and then again at paragraph 135E about Mr Felstead's decision that it was too risky for him to travel to China in February 2015, and to the extent it's suggested that that
35 risk is said to be one of personal safety or arrest then that's contested by us. Now, three observations arise concerning the advice that Mr Felstead was acting upon at the time. First, none of the advice given expressly alerted Mr Felstead to a present or material risk of arrest of employees. Secondly, rather than there being a linear and escalating progression of risk, the advice appears to have been responsive and
40 dynamic to changing circumstances of Crown. It's certainly reflected in that advice to which I took you, Commissioner, just now.

45 And third, there's no suggestion that Mr Felstead disregarded or did not follow the advices he received concerning the risks posed to Crown's operations in forming his own view as to the significance of the risks posed and what further actions ought to be taken to escalate those risks to others within the organisation. Now, the fact that Mr Felstead did not, at that time, consider the risk was one of arrest and detention is

borne out by his travel to China in 2016 on three occasions. Two of those occasions were with his wife, with the last trip being on 6 or 7 October 2016, which was immediately before the arrests taking place.

5 Now, on each occasion, Mr Felstead, in his evidence, said that he did not have concerns for his personal safety or that of his wife regarding any additional risk of detention that they might face at that time. Now, as to the third reason we wish to raise, the failure to report to the risk management committees, in our submission, was not deliberate, reckless or wilful. In his evidence, Mr Felstead rejected the
10 proposition that he thought the work of the risk management committee was a hindrance to sales or irrelevant. He rejected the proposition that it was a deliberate decision on his part to not report the matter to Crown Resorts via its risk management committee, the questioning of the two employees.

15 In response to that proposition, he said that other people were aware of it, that he himself had informed other people, and that he had not kept the matter a secret. The reasons explored in the evidence do not suggest that Mr Felstead was acting irrationally or in bad faith and this must be so in circumstances where he assumed others in senior positions knew of the February announcement and the police
20 questioning, and this evidence certainly wasn't challenged.

Might I address in very brief terms the CCTV broadcast. In our submission, counsel assisting was correct to remove this factor from the matters put against Mr Felstead in their submissions. It was not covered in any detail in the course of examination,
25 and it certainly doesn't appear to feature strongly in the evidence at least that I have seen. Any failure to escalate the concerns arising from the CCTV report was not explored with Mr Felstead. In our submission, there's simply no evidence by which this Commission can make findings about the justifiability or otherwise of any reasons Mr Felstead may have had for not doing so, and that's simply what I wish to
30 say about that matter.

The fourth broad matter I now wish to address is the significance of the risk management committee. Now, Mr Felstead's examination quite rightly focused on his responsibility to report risk concerning VIP international and Crown's operations
35 in mainland China to the risk management committee of Crown Resorts, to the audit committee of Crown Melbourne responsible for risk reporting, and also Mr Craigie, the CEO board member for Crown Resorts and CML, member of the risk management committee at Crown Resorts as well as Mr Felstead's direct report. And that focus was, with respect, appropriate. It was in keeping with the evidence as
40 to the reporting lines.

Certainly, it was in keeping with Mr Felstead's witness statement in the class action litigation and other evidence before this Commission. It was Mr Felstead's evidence in the statement that if a material risk in relation to VIP international or Crown's
45 operations in mainland China were reported to him affecting all of Crown's properties, he would report it to Mr Craigie, Ms Tegoni and Mr Neilson, all of whom were variously related to the risk management committees of either Crown Resorts

or Crown Melbourne, and he would also report the matter to Mr Johnston, as a member of the board and interested in VIP business. Now, that's at paragraph 61 of his statement, which is exhibit O67.

5 Now, Mr Hutley took you, Commissioner, to an earlier paragraph in Mr Felstead's statement, where he said that he also regularly reported on all aspects of the business for which he was responsible to the board of Crown Resorts and, certainly, he did report on operational matters to Crown Resorts. Mr Hutley didn't take you,
10 Commissioner, to that latter part of the evidence, but, in our submission, that earlier statement must be qualified by Mr Felstead's evidence as to his understanding of the reporting lines where there was a material risk identified. Now, certainly, the risk management committee for each of Crown Melbourne and Crown Resorts was the organ delegated the responsibility and oversight for managing risk for each of those entities.

15 Now, as I submitted earlier, the examination of Mr Felstead did not focus on his failures or reasons for not reporting matters directly to the boards of Crown Melbourne and Crown Resorts. Certainly, we're aware, Commissioner, of the posing of questions about Crown Melbourne with respect to the February announcement.
20 And Mr Felstead agreed that he had not reported the February announcement directly to each of Crown Resorts and Crown Melbourne, however, unlike the risk management committee notifications or failure thereof, there was no real examination or exploration of why those direct reports were not made, and nor was he taken to contemporaneous documents that might have refreshed his memory
25 regarding what reports he did make, for example, the CEO reports and VIP updates which certainly did go, in our submission, to the Crown Melbourne board members. If I might then turn to the issue of police questioning and provision of the letter. Mr Felstead was asked if he had informed the board of Crown Resorts at a board meeting of these matters. And if I might just ask the Commissioner to turn up the
30 transcript at day – 18 August 2020 at transcript 1223.

COMMISSIONER: Yes. I have that. Thank you.

35 MS SHEPARD: Commissioner, I won't read it out. But it's the matters traversed at point 16 to point 26, and it's a simple question and answer response by Mr Bell and Mr Felstead, and that comprises the extent of the questioning about Mr Felstead failing to report the matter directly to the board and, indeed, the premise of the questioning, in fact, assumes a reasonable justification for not doing so, because he had, in fact, told Mr Johnston of the event. Now, as for reporting that matter to
40 Crown Melbourne board, there's simply no examination of Mr Felstead at all regarding his failure to escalate the police questioning and letter to the Crown Melbourne board and certainly no exploration of his – any reasons why.

COMMISSIONER: Well, he told Mr Packer's emissary – he told Mr Ishan Ratnam.
45 He had lunch with him in China about it, I think, or lunch with him somewhere.

MS SHEPARD: Yes.

COMMISSIONER: You may recall he said we will discuss this over luncheon, loban.

MS SHEPARD: That's right. That's correct.

5

COMMISSIONER: It's not followed through, but Mr Ratnam said that he kept Mr Packer informed of things. Mr Packer said he didn't know of it. Whatever be the true position, Ms Shepard, I understand your proposition that Mr Felstead has said to me that he reported it to Mr Johnston.

10

MS SHEPARD: That's right.

COMMISSIONER: And Mr Johnston had a number of hats on, one of them was a board director of Crown. I understand that.

15

MS SHEPARD: That's correct.

COMMISSIONER: Yes.

20

MS SHEPARD: It – but the issues raised in the context of this Inquiry, where a finding that a senior executive failed without justifiable reason to bring a matter directly to the board, is a serious finding and, in my submission, a finding in those terms assumes that the Commission of Inquiry has examined the reasons for that action and found none of them justifiable, and simply just that, absent that proper explanation, a finding ought not be made in the terms proposed. However, notwithstanding that, and putting to one side the issue of the CCTV broadcast, in our submission, it is open to the Commission to find that Mr Felstead ought to have, but did not, report each of the relevant matters to the boards of each of Crown Melbourne and Crown Resorts via their respective risk management committees. Now, Commissioner, unless I can be of further assistance, those are our oral submissions to be supplemented with the written submissions in due course.

25

30

COMMISSIONER: I'm grateful for those submissions, Ms Shepard. Thank you. I shall adjourn until 2 o'clock.

35

ADJOURNED

[1.16 pm]

40

RESUMED

[2.01 pm]

COMMISSIONER: Yes. Ms Shepard. Yes.

45

MS SHEPARD: Commissioner to excuse ourselves and wish to do that now.

COMMISSIONER: Yes, of course.

MS SHEPARD: Thank you, Commissioner.

COMMISSIONER: Just before you do, I just wanted to raise something with you. When you were making your submissions in respect of Mr Felstead's reporting to the board, we discussed the matter that Mr Hutley had raised in respect of the
5 identification in certain documents, and I think I said that the CEO – I mentioned Mr Hutley's reference – or I mentioned the CEOs report. Do you remember that?

MS SHEPARD: Yes.
10

COMMISSIONER: And I said – I think I said “and the CEOs report went to the board”. Now, I don't know that that was going to be your submission. I think you were just wanting to put to me that the CEOs report contained that, is that right?

MS SHEPARD: It only went to the relevant CEOs attending the CEO executive meeting - - -
15

COMMISSIONER: The CEO committee. Yes.

MS SHEPARD: With Mr Alexander, Mr Johnston, Mr Rankin, Mr Barton, Mr Craigie and certainly Mr Neilson.
20

COMMISSIONER: And could you just – the one that you're referring to, could you give me the exhibit number and the reference?
25

MS SHEPARD: Certainly, Commissioner. There was the one that I took you to, Commissioner. Is that the one to which you're referring?

COMMISSIONER: I'm not quite sure. If you could just give me the references.
30

MS SHEPARD: Certainly.

COMMISSIONER: The one that you took me to was the one in 2016.

MS SHEPARD: That was – the reference number is CRL.627.001.0385. It's exhibit - - -
35

COMMISSIONER: Just bring that up for me.

MS SHEPARD: - - - FB10.
40

COMMISSIONER: Yes. Yes, that's the one in May '16 with the general reference on the following – a little further on, I think.

MS SHEPARD: The following page.
45

COMMISSIONER: Yes, that's the - - -

MS SHEPARD: At point 6.

COMMISSIONER: Yes. That's the general reference that you made, and I understand that's the Crown Melbourne Limited board.

5

MS SHEPARD: Yes.

COMMISSIONER: But is that the only reference that you wanted to take me to?

10 MS SHEPARD: With – the other reference was one that Mr Hutley had taken you to and that - - -

COMMISSIONER: Yes.

15 MS SHEPARD: Excuse me, Commissioner, that was.

COMMISSIONER: AB15 or 16.

MS SHEPARD: That's correct.

20

COMMISSIONER: Yes.

MS SHEPARD: Sorry. It was exhibit AB15, CPH.001.241.4993, and exhibit AB16, CPH.001.241.5285.

25

COMMISSIONER: Yes. And they're the only two documents to which you wish to refer following on from what Mr Hutley had put; is that correct?

30 MS SHEPARD: That's correct with respect to the point being made at that part of my oral submissions, but the references to all the documentary evidence will be in the written submissions. I certainly don't imagine that they will be expanded in my written submissions.

35 COMMISSIONER: No, but I wanted to correct the misapprehension that I had that I needed to correct when I said to you that those documents went to the board, which they did not.

MS SHEPARD: No, and Commissioner, I apologise, I did not take your Commissioner's statement to mean that, in fact.

40

COMMISSIONER: Thank you.

MS SHEPARD: So if I've responded by not correcting it it's only because I had - - -

45

COMMISSIONER: No, that's all right. Yes. Thank you for your courtesy. Yes, you're excused, and Dr Townsend, both of you are excused. Thank you for your submissions.

5 MS SHEPARD: Thank you.

COMMISSIONER: Yes. Mr d'Arville, anything further on that last exchange that I had with Ms Shepard in relation to what Mr Hutley had put?

10 MR D'ARVILLE: No, Commissioner. Thank you.

COMMISSIONER: Thank you. And before I invite Mr Bell, could I just say, Mr Young, I didn't have any discussion with you at all when we were discussing the character of the licensee and the character of the company because it's a question of
15 suitability now. I didn't raise any questions with you in respect of Mr Rankin and the fact – and I don't need to unless you want to say something.

MR YOUNG: No, thank you, Commissioner.

20 COMMISSIONER: Yes, thank you. Yes, Mr Bell.

MR BELL: Commissioner, before I start could I tender exhibits AN19 to AN26 which have been notified to the interested parties. They principally relate to the
25 Wynn transaction.

COMMISSIONER: I will just have a look at that. Mr Bell, I'm not quite sure you're aware of the correction made by counsel?

MR BELL: I am aware of that.

30 COMMISSIONER: Yes, all right then, I will mark those as exhibit AN19 through to AN26.

35 **EXHIBIT #AN19 TO AN26 DOCUMENTS RELATING TO WYNN TRANSACTION**

COMMISSIONER: Yes. Thank you.

40 MR BELL: So Commissioner, in replying to the closing submissions of the interested parties, I will proceed in the same order as I did in my submissions-in-chief, that is to say I will first address the China arrests, then the influence of Mr Packer, then the Melco transaction. Then I will address submissions on the question
45 of suitability relating to the independence of Crown from its major shareholder Mr Aspinall will then make submissions in reply on the issues of money laundering and, finally, Ms Sharp will make submissions in rely on the issues relating to junkets.

And she will then make overall submissions on suitability, having regard to the overlap of issues that arise in relation to suitability concerning the China arrests, junkets and money laundering so that they are all considered together.

5 So if I may turn to the China arrests, we take issue with many of the submissions of
CPH and Crown Resorts in relation to the China arrests, but in the interests of time I
will focus on only what we see as the most important of those matters. And can I
raise the issue of hindsight bias which was raised by both CPH and Crown Resorts,
and they were both right, with respect, to draw your attention to that phenomenon
10 and to take it into account in evaluating the evidence in relation to the China arrests.
It's worthwhile briefly reviewing the two authorities to which CPH referred in
relation to hindsight bias.

The first was the decision of the High Court in *Rosenberg v Percival* (2001) 205
15 CLR 434 which raised an issue about whether a patient would have undergone an
operation if she had been warned of the risks involved. Expert medical opinion was
divided on the remoteness of the risk and the need to warn about it, and there was a
serious question about whether the patient would have acted on the warning. That
was the context in which chief Justice Gleeson, paragraph 16, drew attention to the:

20 *...danger of a failure, after the event, to take account of the context before and
at the time of the event, in which a risk is to be evaluated.*

His Honour said that the:

25 *...danger may be of particular significance where the alleged breach of duty of
care is a failure to warn about the possible risks associated with a course of
action, where there were at the time strong reasons in favour of –*

30 taking:

...that source of action.

The second case to which CPH referred was *Maloney v Commissioner of Railways*
35 (1978) 52 ALJR 292 in which a young boy fell through the open doors of a moving
train. And in assessing whether the defendant had failed to take reasonable care,
Chief Justice Barwick said that hindsight should be avoided:

40 *The matter must be judged in prospect and not in retrospect.*

His Honour emphasised that evidence was essential for all of the component
elements and that:

45 *The fertile but unqualified imaginings of counsel and judges can never be a
substitute for such evidence.*

So there must be solid evidence rather than speculation considering the matter prospectively rather than in retrospect which satisfactorily takes account of the context at the time.

5 Commissioner, in relation to the China arrests you've had firsthand evidence from
the directors and senior management of Crown at the time and, among other things,
those witnesses collectively told you that, having regard to the potential for arbitrary
10 action and inconsistent enforcement of the law by the Chinese authorities, it's
important for the board of Crown Resorts to be kept aware of all factors which
escalated the risk to the safety of the staff in China; that the fact that the staff in
China were expressing fears as to their safety should have been drawn to the
attention of the risk management committee and the full board of Crown Resorts;
15 the failure to report to the board of Crown Resorts that the staff in China were
expressing fears as to their safety is a serious failure by the executives who were
aware of the issue; the crackdown on foreign casinos announced by the Chinese
authorities in February 2015 was an obvious escalation of the risk to the safety of the
staff in China; that the failure to ensure that the crackdown on foreign casinos
20 announced by the Chinese authorities was drawn to the attention of the risk
management committee and the full board of Crown Resorts demonstrates a failure
in risk management processes at Crown Resorts; the proposal to issue foreign work
visas to staff with Chinese passports is inconsistent with Crown Resorts'
fundamental principle that all of its business affairs be conducted ethically and with
integrity; the conduct of the unofficial office being conducted in Guangzhou is
25 inconsistent with Crown Resorts' fundamental principle that all of its affairs be
conducted ethically and with integrity; that the questioning of the staff member in
Wuhan in the context of the recent arrests of the South Korean employees was an
obvious escalation in the risk to the safety of the staff in China; that the failure of Mr
Felstead to report the matter to Mr Craigie, his direct report, in circumstances where
30 he reported the matter to Mr Johnston, indicated the proper reporting lines had been
compromised; failure to inform the risk management committee of the board and the
members of the board, apart from Mr Johnston, about the questioning of the staff
member in Wuhan and a requirement for a letter from Crown Resorts demonstrated a
failure in risk management processes at Crown Resorts at the time; that Mr
35 Johnston's failure to inform his colleagues on the board of the questioning of the
staff member in Wuhan and the requirement for a letter from Crown Resorts was
indicative of a corporate governance problem at Crown Resorts.

Commissioner, this is not speculation by counsel. This is not evidence from experts
briefed after the fact. This is not evidence from a plaintiff trying to prove a tenuous
40 causation case. These are collective admissions against the interest of Crown Resorts
by the men and women who had the destiny of Crown Resorts in their hand at the
time – hands at the time. We submit it's powerful and compelling evidence which
can't be dismissed merely as hindsight bias.

45 Could I turn, then, to the submissions of CPH in relation to the China arrests and,
firstly, firstly deal with the VIP working group. In relation to the VIP working
group, CPH submitted, at transcript 5298 line 36:

Mr Johnston largely ceased attending it after 2014.

At transcript 5299 line 23 and transcript 5322 line 33, CPH submitted that, in 2015 and 2016, “he attended perhaps one meeting” of the VIP working group. At
5 transcript 5311 line 17 CPH submitted that:

...by February 2015, Mr Johnston had essentially ceased attending VIP working group.

10 Commissioner, the precise evidence which Mr Johnston gave to the Inquiry, at transcript 2934 lines 41 to 47, was that the group met regularly throughout 2013, less regularly in 2014 and he said:

I attended fairly spasmodically through 2015 and 2016 till the China arrests.

15
In a statement in the class action, which is exhibit AA221, paragraph 9, Mr Johnston said that the VIP focus group met on about four occasions between February 2015 and October 2016. Mr Felstead’s evidence at transcript 1121 that the regular attendees at meetings of the VIP focus group were himself, Mr Johnston, Mr
20 O’Connor, Mr Theiler and Mr Chen. He said that other people who attended less regularly were Mr Ratnam, Mr Barton, Ms Maguire, Mr Brad Kady, who was a representative of CPH. Mr O’Connor’s evidence, at transcript 1872 lines 22 to 35, and also in exhibit R34, paragraph 19, was that the regular attendees apart from himself were Mr Felstead, Mr Chen, Mr Johnston, Mr Theiler and Mr Kady. Mr
25 Johnston’s evidence, at transcript 2935 lines 10 to 17, is that the regular attendees were himself, Mr Felstead, Mr O’Connor, Mr Chen, Mr Theiler, Mr Kady, for a period of time, Mr Steve Bennett, who was then the treasurer of CPH. It’s to be observed that Mr Johnston was the only member of this group who was a director of Crown Resorts, so it’s unsurprising that the members of this group looked to him for
30 leadership. It’s also to be observed that, apart from the senior executives of VIP international themselves, the only person whom all of those witnesses described as a regular attendee at meetings was Mr Johnston.

35 COMMISSIONER: Mr Kady was CPH, was he?

MR BELL: Mr Kady was a CPH representative.

COMMISSIONER: Yes.

40 MR BELL: Both Mr Johnston and Mr O’Connor said he attended regularly, but Mr Felstead said that he attended less regularly.

COMMISSIONER: Yes.

45 MR BELL: Now, at transcript 5299 line 42, CPH disputed the submission that the purpose of the VIP working group was for CPH attendees to provide guidance and

advice to senior executives at VIP international. Can I take you, Commissioner, to the evidence of Mr Alexander, at transcript 3433.

COMMISSIONER: Yes. Thank you.

5

MR BELL: Starting at line 14:

10 *MR BELL: Were you aware in the period up to October 2016 that there was a group of senior people, including Mr Michael Johnston, who were providing guidance and advice to the executives of the VIP international business unit?*

MR ALEXANDER: I was aware of Mr Johnston's role, yes.

15 *MR BELL: Yes. It has been called various names in hearings of this Inquiry, but did you refer to this group as the VIP working group?*

MR ALEXANDER: Did I refer to it as a working group?

20 *MR BELL: Yes.*

MR ALEXANDER: I can't – I can't recall that but I imagine it would be a reasonable summary of it, yes.

25 *MR BELL: Yes. But to summarise it, as you understood it there was a group of senior people, including Mr Johnston, who gave guidance and advice to the executives in this group which has been described as the VIP working group. Is that a fair way of putting it?*

30 *MR ALEXANDER: Yes.*

Mr Felstead's evidence, at transcript 1121 line 35, was that the purpose of the group was:

35 *...in relation to ... what are some of the challenges facing us in running our business, what are some of the opportunities, and it was really just a bit of a brainstorm to work out ways to run the business.*

40 Mr O'Connor's evidence, at transcript 1872, lines 42 to 46, and exhibit R34, paragraph 19, that the purpose of the group was to develop strategies to grow the VIP international business, including in relation to the Chinese market. Mr O'Connor also gave some further evidence which is relevant at transcript 1839, line 34.

COMMISSIONER: This is Mr Preston.

45 MR BELL: Sorry, 1989. My apologies.

COMMISSIONER: That's all right.

MR BELL: 1989, line 34.

COMMISSIONER: Yes, thank you.

5 MR BELL:

MR BELL: So why generally, as you understood it, was Mr Johnston interested in the VIP international business to the extent to which he was?

10 *MR O'CONNOR: Well, he was one of Crown's directors and I – as I explained I assumed it was because he was a financial person, very numerate. Our part of the business really relies on a strong understanding of those factors and I think Mr Johnston was offered up as somewhat of a sounding board, someone who might be able to provide some counsel in assessing some of the*
15 *proposals that were being put forward in relation to our business.*

And Mr Johnston gave this evidence at transcript 2935, lines 19 to 22:

20 *MR BELL: And did you understand that the purpose of the VIP working group was to provide guidance and advice to the senior executives of VIP international?*

MR JOHNSTON: It was to provide input on specific matters to the group, yes.

25 So could I turn to deal with Mr Johnston's attendance at informal operational meetings of VIP international.

COMMISSIONER: Just in respect to the proposition, I think the proposition was put that this was an advisory group, both by CPH and by Crown.

30 MR BELL: Well, it was disputed at the transcript reference I mentioned, 5299, that the purpose of the group was for the CPH attendees to provide guidance and advice to the senior executives of VIP international. We would submit that that's the conclusion you would draw from all of the evidence to which I've taken you.

35 COMMISSIONER: Yes, all right.

MR BELL: Now, Commissioner it also needs to be borne in mind - - -

40 COMMISSIONER: Just pardon me. Sorry, Mr Bell. That is the proposition for which you're contending, that it was – whoever was attending, including the CPH attendees, that was for the purpose of assisting Crown with advice in respect of the business being discussed in the meetings.

45 MR BELL: Yes, that's right. And apart from the VIP international representatives themselves, the only attendees were Mr Johnston and occasionally other CPH representatives, Mr Kady and Mr Bennett.

COMMISSIONER: Yes, and the proposition that flows – if I find that this was a group to guide Crown in the way – and be sounding board and give advice, the proposition that flows from that is?

5 MR BELL: Well, it leads ultimately to the submission that it came to be seen as a different reporting line by the senior VIP international executives. It led to the compromise of the reporting lines.

COMMISSIONER: The blurring of the lines.

10

MR BELL: Yes.

COMMISSIONER: I don't think that's in issue, though I may be wrong. Yes, thank you.

15

MR BELL: Commissioner, we submit you should also bear in mind that Mr Johnston also attended by telephone operational meetings of VIP international executives. I do have to correct paragraph 65 of our written submissions in chief.

20 COMMISSIONER: Yes. I will just get those. Pardon me. Yes.

MR BELL: So although it's true that the operational meetings did occur usually on a weekly basis, the evidence is that Mr Johnston attended these sometimes, not every week.

25

COMMISSIONER: Thank you.

MR BELL: That was Mr O'Connor's evidence at transcript 1988, lines 15 to 24, and Mr Johnston's evidence at transcript 2938, lines 8 to 20 - - -

30

COMMISSIONER: Thank you.

MR BELL: - - - was that he attended these meetings by telephone from time to time.

35

COMMISSIONER: Yes.

MR BELL: So could I turn to the issue of the VIP international executives reporting the crackdown on foreign casinos to Mr Johnston.

40

COMMISSIONER: Yes.

MR BELL: Mr Johnston's evidence was that he was informed about the crackdown on foreign casinos in a telephone conversation with Mr Felstead, Mr O'Connor and Mr Chen on the 5th of March 2015. There was a note in his diary which said "urgent call". CPH submitted at transcript pages 5315 to 5316 that Mr Johnston's evidence that he was told on this occasion that the focus was on South Korean casino operators

45

so that there was effectively nothing to worry about should be accepted. Mr Johnston's evidence about that is at transcript 2959, lines 45 to 2960, line 1.

5 In argument at transcript 5319 to 5320, CPH said that in answer to your questions that if you were to find that Mr Johnston was mistaken in relation to that telephone call you should not find that Mr Johnston was informed of any of the matters raised in the emails between Mr Chen and Mr Zhou on 24 February 2015. Commissioner, may I take you to four pieces of evidence about this.

10 COMMISSIONER: Yes.

MR BELL: First, to the emails at exhibit M154, CRL.545.001.0128.

COMMISSIONER: Yes.

15

MR BELL: And just to remind you that the clear advice of WilmerHale was that it seemed prudent to limit the travels of senior executives to mainland China at this point - - -

20 COMMISSIONER: Yes.

MR BELL: - - - given that the regulatory environment was being tightened and the picture was not entirely clear. Secondly, may I take you to exhibit O23, CRL.527.001.0406. This was Mr O'Connor's record - - -

25

COMMISSIONER: Yes. I'm sorry. We just lost contact there for a moment. Are we right now? Yes, thank you. All right. Please proceed, Mr Bell.

30 MR BELL: So Commissioner, exhibit O23 is Mr O'Connor's email record of a decision made that day by himself, Mr Felstead, Mr Ratnam and Mr Chen, and point 2 was to avoid travel to mainland for a while.

COMMISSIONER: Yes.

35 MR BELL: So the WilmerHale advice of the 24th of February was confirming that this was a prudent decision given the heightened risk. Thirdly, Commissioner, can I take you to what Mr Felstead said about this at transcript page 1201. If I could start at transcript 1201, line 17:

40 *MR BELL: You did, however, in February or March 2015 discuss the crackdown by the Chinese government on foreign casinos with the CPH VIP group, didn't you?*

45 *MR FELSTEAD: I would have done that. That would sound like something I would have done.*

MR BELL: Yes, and do you recall discussing the matter with Mr Johnston at a CPH VIP working group meeting?

5 MR FELSTEAD: Not specifically, but I would certainly imagine that would have occurred.

MR BELL: And as you recall it, did the CPH VIP working group in its discussions in February or March 2015 endorse the strategies which you, Mr Chen, Mr O'Connor, Mr Ratnam had agreed upon in response to the February 2015 announcement?

And I took him to the email which I've just taken you to at O23 line 45, and my question is:

15 As you recall it, did the CPH/VIP working group in its discussions after that time endorse the strategies referred to in that email?

And there's a bit more confusion. And then at line 9:

20 And do you see –

and I took him to exhibit O23 –

25 Do you see that I took you at points 2, 3 and 4 which were all matters dealing with the response to the crackdown on foreign casinos, yes.

MR FELSTEAD: Yes, correct.

30 MR BELL: My question is as you recall it did the CPH/VIP working group endorse those strategies?

MR FELSTEAD: My recollection of that would be that I would imagine we would have spoken about number 2 in relation to the travel. Number 3, I can't recall. Number 4, I don't think I would have raised that –

35 etcetera. Then I asked him some more about that and then at line 30:

40 And do you say that decision items 3 and 4 were not approved by others who were board members of Crown Resorts?

MR FELSTEAD: I think my evidence was I don't recall that. It may have been. I just don't recall that one, but I would be reasonably certain we mentioned about travel into China.

45 That's the conversation with Mr Johnston as Mr Felstead recalled it.

COMMISSIONER: That's at a meeting, though.

MR BELL: Yes.

COMMISSIONER: So that's nothing to do with a telephone call.

5 MR BELL: Well, his evidence was that it was a meeting, but it wasn't explored whether Mr Johnston - - -

COMMISSIONER: But the point is, I think, not a bad one, if I may say, was that
10 Mr Johnston put in his conversation on the telephone with his diary note that he believed that that's when he was made aware of the casino arrests of the foreign – of the South Korean arrests. It's clear that that couldn't have been the case because it didn't happen until a couple of months later. It was then suggested that Mr Johnston would have been told of these matters about which you're taking me to in the
15 conversation in the telephone call, and the point raised against your submission was that nobody put to him that this was put to him that it happened in the telephone conversation. That is, Mr Johnston. It wasn't put to Mr Johnston in the telephone – that the telephone call included that.

MR BELL: Well, it was put, and I will take you to that evidence next.
20

COMMISSIONER: All right.

MR BELL: Which is what I put to Mr Johnston. It's true that Mr Felstead – I put it to him about a meeting, but it wasn't explored whether the meeting involved Mr
25 Johnston being present in person or by telephone. We submit that you should take it that the communication which Mr Felstead made with Mr Johnston about travel into China was the occasion on the 5th of March when they urgently spoke with Mr Johnston. Now, can I take you to Mr Johnston's evidence about that.

30 COMMISSIONER: Yes. Does it really matter much?

MR BELL: Well, it does because if the submission I'm about to put to you is correct, it means that Mr Johnston was aware that there had been a decision made to
35 defer travel into China by the senior executives because of the risks which they felt they were exposed to.

COMMISSIONER: Yes, I see. Yes, please proceed.

MR BELL: So – and Mr Johnston's evidence is – starts at transcript – it's from
40 transcript 2957, line 24 to transcript 2963, line 15. I won't read all of it, but I would like to start at 2961, line 10.

COMMISSIONER: 29?

45 MR BELL: 2961, line 10.

COMMISSIONER: Please, 2961. Thank you. Yes, I have that now.

MR BELL:

5 *MR BELL: Now, surely Mr Chen or Mr O'Connor or Mr Felstead told you in your urgent telephone call on the 5th of March some eight days later that the climate was quite destabilised and that competitors had pulled their entire teams out of China.*

MR JOHNSTON: I don't recall him saying that.

10 *MR BELL: You don't have any recollection one way or the other?*

MR JOHNSTON: I'm sure I would recall it if that's the message that had been delivered to me.

15 *MR BELL: ...surely Mr Chen or Mr O'Connor or Mr Felstead told you the current legal advice was to limit travels of senior executives to China, given that the regulatory environment was being tightened up.*

MR JOHNSTON: No.

20

MR BELL: Surely Mr Chen or Mr O'Connor or Mr Felstead told you that they had decided to defer travel to China, because of their concerns for their own personal safety at the time.

25 *MR JOHNSTON: No, they didn't tell me that.*

MR BELL: Surely Mr Chen or Mr O'Connor or Mr Felstead told you, in the telephone conversation on or about the 5th of March, that the external lawyers weren't sure whether the entire team should be pulled out of China, but one option was to have key employees working from Hong Kong?

30

MR JOHNSTON: No. I can't recall them telling me that either.

35 *MR BELL: You're painting a very different picture of what you were told on the 5th of March from what these emails conveyed some eight days later; do you agree?*

MR JOHNSTON: Yes. I agree - - -

40 COMMISSIONER: Eight days earlier.

MR BELL:

45 *MR JOHNSTON: Yes. I agree with that.*

MR BELL: And I suggest that your recollection of what you were told on 5 March cannot be correct.

MR JOHNSTON: I mean, I don't accept that. I do recall the conversation and, clearly, the conduct of the business or the conduct of those individuals would, to me, seem to indicate that my recollection is correct.

5 *MR BELL: That just can't be true, can it, Mr Johnston? You must have been told at this time that the executives had decided to defer travel to mainland China because of the risks involved in light of the crackdown.*

MR JOHNSTON: No. I can't recall being told that.

10

Commissioner, you will also recall that, a little bit later, Mr Johnston accepted that it would be very odd for the executives to have told him what he recorded in his statement made on the 15th of September.

15 COMMISSIONER: Sorry? I missed that.

MR BELL: Yes. At transcript 2963 line 10, Mr Johnston accepted that it would be very odd for the executives to have told him what he recorded in his statement made on the 15th of September, which was that this was a conversation about the South
20 Korean arrests and he was told there was nothing to worry about.

Commissioner, what we submit that you should find is that Mr Johnston's evidence in the passage which I've read was clearly incorrect. We submit that you should find that he was told, at the very least, that the decision by the executives – about the
25 decision by the executives to defer travel to China because of their concerns for their own personal safety. That's the evidence which Mr Felstead felt he was quite certain he had conveyed to Mr Johnston at or about this time, as he put it, in a meeting.

Commissioner, it's significant that Mr Chen, Mr O'Connor and Mr Felstead went to
30 Mr Johnston on this occasion with their urgent news rather than to Mr Craigie. Mr Craigie gave evidence at transcript 1490 lines 12 to 23 and again at transcript 1492 line 47, that it was not drawn to his attention that the senior executives responsible for VIP international regarded it as too risky to travel to mainland China for a while, nor was he told they had decided not to travel to mainland China for a while because
35 of the crackdown. What we submit is that this is another example of the compromised reporting lines resulting from the interposition of the CPH executives in the management structure of VIP international.

40 COMMISSIONER: It's also the interposition of a director of Crown Resorts into the structure.

MR BELL: Yes, who was, for obvious reasons, perceived as providing leadership; he was on the board. And, in this regard in a slightly different context, we should remind you that when Mr Ratnam sought advice at about this time about whether he
45 should remove the Crown Resorts logos from the private jets, he asked Mr Csidei of CPH, and Mr Csidei said yes, then it was done.

Now, in terms of reporting the crackdown to the CEO group, we accept that exhibits AB15 and AB16 show that the VIP update for the CEO meeting on 18 March 2015 referred to:

5 *Recent Chinese government statements indicating a campaign against foreign casinos targeting Chinese patrons.*

This was said to be a possible reason for turnover across the Chinese New Year period being suppressed and was characterised as a financial threat rather than a threat to the safety of staff. There's no indication that the CEO group were informed of the increased risk to the safety of staff or the decision by the VIP international executives to defer their own travel. And can I just, in that context, remind you of some other evidence from Mr Johnston, transcript 2963 line 17. So this is in relation to the Reuters article announcing the crackdown on foreign casinos.

15

MR BELL: In any event, Mr Johnston, having been made aware of the gist of the Reuters, article you must have appreciated this was a serious warning by the Chinese authorities at this time.

20 *MR JOHNSTON: Yes, it did cause me some concern. Yes.*

MR BELL: And that it was an important issue in relation to the VIP international business in China?

25 *MR JOHNSTON: Yes.*

MR BELL: And because it was escalating the risk to the safety of the staff in China for there to be a crackdown on foreign casinos recruiting Chinese gamblers?

30

MR JOHNSTON: Yes.

Now, the recipients of the VIP update on the 18th of March 2015 included Mr Alexander, Mr Johnston, Mr Rankin, Mr Jalland, Mr Craigie and Mr Barton. That VIP update was not included in the papers for the next board meeting of Crown Resorts on the 30th of March 2015. The crackdown was not mentioned in the CEO report that went to the board on that occasion. So whilst this information, in the context of a financial threat, went to the CEO group, it didn't go to the board. And there's no evidence that Mr Johnston's awareness that this was an obvious escalation of the risk to the safety of the staff was reported to the CEO group.

40

COMMISSIONER: To the CEO group?

MR BELL: Yes.

45

COMMISSIONER: Or to the board?

MR BELL: Or to the – certainly not to the board. Now, at transcript 5318 to 5319, Mr Hutley referred to a draft financial year 2016 to financial year 2020 strategic business plan. It appears in the evidence in three base places: exhibit M169, exhibit R6 and exhibit R8. There's a very, very slight modification in R8, but, otherwise, the three documents are the same. He made a submission that the existence of the crackdown was broadly known within the organisation as a result of those plans. And without going through the detail of the evidence, in summary, these documents were draft business plans that were being reviewed by VIP international executives. The evidence is that those draft financial plans, when they were in final form, were ultimately presented by VIP international to the executive group of Crown Melbourne. Plans were then modified and abridged before being presented to the board of Crown Melbourne. They were then further abridged before being presented to the board of Crown Resorts. Versions of those documents presented to the boards of Crown Melbourne and the boards of Crown Resorts do not refer to a crackdown.

Could I turn to the South Korean arrests. CPH referred, in its submissions, at transcript 5320, to the fact that Mr Johnston said in his witness statement on 15th of September 2020 that he became aware of the South Korean arrests on or around 19 June 2015 through media articles. And he gave evidence to that effect at transcript 2964 line 29. Can I just draw your attention, Commissioner, to exhibit AB17, which is CPH.001.242.2798.

COMMISSIONER: Bring that up, please. Yes, I have it now. Thank you.

MR BELL: So you will see that, on the 20th of June 2015, Mr Felstead sent an email to Mr Johnston reporting on the Korean arrests saying:

We will dig around and see if there's any more to this.

This was four days before Mr Rankin's high alert email and eight days before Mr Felstead forwarded the Mintz Group report to the group of executives, including Mr Barton, Mr Johnston and Mr Craigie. So in the context of what we submit were compromised reporting lines, it's significant that it was to Mr Johnston that Mr Felstead first reported the South Korean arrests.

So could I turn to deal with the questioning of staff member BX in Wuhan and Mr Johnston's role. CPH dealt with this issue at length, and understandably so, from transcript 5321 to 5344. In essence, CPH submitted that a large number of individuals should bear responsibility for the failure to inform the risk management committee or the board of Crown Resorts of the questioning of the staff member, the requirement for the letter. However, CPH submitted that no responsibility whatsoever should be attributed to Mr Johnston for that failure. CPH submitted, at transcript 5342 line 33, that Mr Johnston's conduct in relation to this matter was reasonable and appropriate. Mr Johnston was the only board member of Crown Resorts who was aware of the questioning and the requirement for the letter and, we submit, he does bear responsibility for the failure to inform his colleagues on the

board; that responsibility being illustrated most acutely by what occurred in the context of the board meeting on the 12th of August 2015.

5 COMMISSIONER: So before you go to that, those emails that were with the legal department and others in relation to the draft letter that had to go to the Chinese authorities, that didn't go near Mr Craigie.

MR BELL: No.

10 COMMISSIONER: Yes. Thank you.

MR BELL: Not at all. Mr Craigie was totally unaware of the questioning.

15 COMMISSIONER: Yes. Thank you.

MR BELL: Could I take you to the email which Mr Johnston received. CPH asked you to look at it and so do I; it's exhibit AB21. Just before I do take you to the email, can I remind you of some other evidence.

20 COMMISSIONER: Yes.

MR BELL: Which is that Mr Johnston said, at transcript 2969 line 23, that he read this email. And he gave evidence, at transcript 2972 lines 8 to 19, after I had taken him through every single piece of information in the email chain, that he read all of those things, when he first read the email in July 2015, in order to understand, as he said, what Mr Felstead was saying we were up against in China at the time.

COMMISSIONER: Yes.

30 MR BELL: Then he gave evidence again, at transcript 2974 line 41, that he read the email quite carefully. So with that context, could I take you to exhibit AB21.

COMMISSIONER: Yes. You're taking me to an exhibit, are you, or the transcript?

35 MR BELL: Yes. It's CPH.001.242.3531.

COMMISSIONER: And that's exhibit AB? - - -

40 MR BELL: 21.

COMMISSIONER: Thank you. Yes. Yes.

MR BELL: So CPH submitted, at transcript 5322 line 10, that the communication called for no activity from Mr Johnston. We submit that's only true in the sense that there was no request made by Mr Felstead specifically in the email. However, we submit that it is in the nature of a report. Mr Felstead is clearly reporting something which he considers to be of moment:

This is what we will be up against in China.

It called for Mr Johnston, as a member of the board of Crown Resorts having special involvement in the affairs of VIP international, to reflect upon the contents of the
5 email, to consider their ramifications. Secondly, CPH submitted, at transcript 5323, that Mr Chen said that Mr BX had only been invited to come in for an interview with the Chinese police as though this affected how Mr Johnston should have characterised the interaction. One can only imagine what an invitation from the Chinese police might have involved. It certainly wasn't an invitation for afternoon
10 tea. And some indication of the true context of what occurred is provided by Mr Chen in this email a little later where he says:

After two hours he was released.

15 And the police requested – according to Mr Chen, the police requested Crown furnish a letter prior to 12 noon tomorrow, corroborating his statement. Another matter which we submit clearly conveyed the seriousness of the situation was that Mr Chen indicated that an informant had provided information to the police about Mr BXs activities. Mr Zhou's email also conveyed that same piece of information. It
20 was now obvious to anyone reading these emails that Crown Resorts' activities were being monitored. There's also the fact that Mr Chen's email stated that BX denied that he was organising gaming tours and said that he worked for Crown Resorts and assisted in organising leisure trips for customers. However, Commissioner, I should point out that Mr Johnston said in his evidence, at transcript 2971 line 32, that he did
25 not know whether that was or was not true.

COMMISSIONER: Yes.

30 MR BELL: CPH also submitted at transcript 5335, line 17 that Mr Johnston was entitled to conclude from these emails that the issue of BX being interviewed by the Chinese police was being dealt with by WilmerHale and also by Crown Resorts' internal lawyers because the email from Mr Chen went to Jan Williamson, as well as to Mr O'Connor. That reflected evidence which Mr Johnston gave at transcript 2972, lines 34 to 43. But what the lawyers were dealing with was not the obvious
35 escalation in risk to the safety of the staff in China. They were dealing with the process issue of how they could provide this letter to the police which the Chinese police had requested.

40 That was why WilmerHale had drafted a template letter, and that was why Mr Chen was sending the email to Ms Williamson. Wider ramifications of the questioning and what it meant for the operations in China going forward was why it was going beyond the lawyers and why Mr Felstead was reporting it to Mr Johnston.

45 COMMISSIONER: Well, Mr Johnston seemed to think that if WilmerHale or the other lawyers, or if anyone had wanted to alert them to a real risk, they would have said something, and so his explanation to me was, "Well, look, I saw these emails. It

didn't look to me as though WilmerHale has put us on high alert. They seemed to be just seeing it as something they see".

MR BELL: Yes.

5

COMMISSIONER: So his explanation is, "I didn't see it as something that I should be dealing with because WilmerHale was on board and it was going to the Melbourne people".

10 MR BELL: Yes.

COMMISSIONER: I'm not sure - - -

15 MR BELL: That's true, Commissioner. I will come to that evidence in more detail but that's correct, with respect. He said, "I took comfort from the fact that our internal lawyers and WilmerHale were dealing with it".

COMMISSIONER: Yes.

20 MR BELL: But of course, this email didn't convey anything to him about what the internal lawyers were doing.

COMMISSIONER: No, I understand that.

25 MR BELL: All he knew was it had been sent to him, and in terms of what WilmerHale were doing they were clearly directing their attention to the process issue: "how do we respond to the police".

30 COMMISSIONER: But he explains himself on the basis that if they had had another concern such as, "My goodness, this is an escalation, you better do something about it, I would have seen is that in the email and I didn't find that, which didn't alert me" - - -

35 MR BELL: That is his explanation, and I want to come to that in more detail.

COMMISSIONER: Yes, all right.

MR BELL: Could I take you to Mr Johnston's evidence at transcript 2972, line 45 and following.

40

COMMISSIONER: Yes. At the top of 2973 where he says:

I would find it inconceivable that if the lawyers were alarmed by this they would have said something about it.

45

MR BELL: Yes.

COMMISSIONER: That seemed to be his explanation for why he didn't - - -

MR BELL: That's right, and I asked him these questions, line 10 and following:

5 *And you understood that Mr Felstead was sending this email to you, correct, to tell you what he believed Crown Resorts was up against in China at the moment?*

Correct.

10 *And whether or not the lawyers were dealing with the letter that the police had required, you must have realised, coming so soon after the arrest of the South Koreans that this was a serious issue.*

15 *No, I didn't.*

Can that be true, Mr Johnston? You were the person who had an involvement in the VIP international business at the time; correct.

20 *On specific issues, yes.*

And you were aware that in 2015 the Chinese authorities had announced a crackdown on foreign casinos; correct?

25 *Yes, correct.*

You were aware that a few weeks prior to this the Chinese authorities had arrested 14 South Korean casino employees, correct?

30 *Yes, correct.*

And you were aware that this was in the context of a broader crackdown.

He said:

35

No, I didn't know that.

40 *And here you have a few weeks later one of your staff members in China being questioned by the Chinese police and the accused of organising gambling tours to Australia; correct?*

Yes.

45 *This was plainly a serious issue, was it not?*

I am not – no. The answer is no.

Did you care about the safety of the staff in China?

Of course, I did.

5 *Well, then, how could you have not thought this was a serious matter when one
of your staff members was being questioned by the police, accused of
organising gambling tours and it resulted in the police requiring Crown
Resorts to provide a letter in support of what the employee had said. How
could that not be serious?*

10 *Because I'm not an expert in doing business in China. The Chinese lawyers
were not alerting us to the fact that it was a serious issue, nor were Crown's
local lawyers.*

15 He didn't know anything about what the local lawyers thought. All he knew was that
an email had been sent to them and, on a fair reading of that email, which he said he
read all of them carefully, it's plain that WilmerHale were addressing an urgent
process issue of "let's get a letter to the police, which is what they have asked for",
and that's – this is the evidence that ultimately you have to evaluate, and it comes to
20 a head - - -

COMMISSIONER: That answer to you at the top of 2974, when you said:

25 *That was plainly a serious issue, was it not?*

He commenced to say something else and then he decided to keep it short and said
"the answer is no."

30 MR BELL: Yes.

COMMISSIONER: And it's "that was a plainly a serious issue". To his mind, it
wasn't because of what he had said earlier about the Chinese lawyers, but I suppose
if he had been asked "do you accept that it should have been in your mind", did you
put that to him?

35 MR BELL: Yes, he certainly accepted in hindsight.

COMMISSIONER: Yes, so I think what he's saying there is it didn't present as
serious at that time, but in hindsight it was.

40 MR BELL: Yes. At the top of 2976, line 1:

45 *So you know, with the benefit of hindsight, I absolutely should have seen this as
more significant but at the time I didn't.*

COMMISSIONER: Yes. Yes.

MR BELL: Now, this then comes to a head when Mr Johnston fails to mention the questioning of the staff member in Wuhan and the police requirement for a letter when he informed some members of the board about the South Korean arrests in August 2015. There are really two possibilities if Mr Johnston read the letter as
5 carefully as he said he did: either he appreciated it was a serious issue and deliberately failed to inform his colleagues which he specifically denied, and that's a serious conclusion to draw and we don't submit there's a proper basis for you to draw that conclusion.

10 Alternatively, if he failed to appreciate that the emails were raising a serious issue, this was an error of judgment on his part in failing to see at the time that this was an obvious escalation of the risk. I put that proposition to him twice and he denied it twice. Transcript 2977, line 45.

15 COMMISSIONER: Just let me understand this. You don't suggest that he appreciated it at the time and failed to inform his colleagues.

MR BELL: I'm saying that's a logical possibility. I put it to him, and he denied it. And it would be a very serious conclusion to draw, that he appreciated the
20 significance of this and deliberately refrained from informing his colleagues.

COMMISSIONER: Yes, but you're not pressing that on me.

MR BELL: No, and we're not submitting that there's grounds for you to draw that
25 conclusion.

COMMISSIONER: All right. And the second proposition - - -

MR BELL: The second proposition is that he made an error of judgment - - -
30

COMMISSIONER: Yes.

MR BELL: - - - in failing to appreciate the significance of it at the time.

35 COMMISSIONER: Yes, and I thought that he admitted to that.

MR BELL: Well, let me take you to the transcript. It's 2977, line 45.

COMMISSIONER: Yes, 43.
40

MR BELL: Yes, 43 is where he admits the clear escalation of risk with the benefit of hindsight.

COMMISSIONER: Yes.
45

MR BELL: But then he goes on to say:

So are you telling the Commissioner that you made an error of judgment in not bringing it to the attention of your colleagues on the board?

5 *No. I think what I'm saying is that I think I erred in relying as much as I did on the Chinese solicitors. So if that leads to the conclusion you're seeking to get to, then perhaps that's right.*

Then again at 2978, line 19:

10 *Your error of judgment, I suggest, was in failing to see that this was an obvious escalation of the risk to the safety of the staff.*

Then he said:

15 *Yes. I mean, I don't know that I can add much more than say I was relying on the advice I was getting. The advice that I saw from an independent law firm was not indicating it was an escalation of risk.*

20 COMMISSIONER: So he accepts that it was an error of judgment.

MR BELL: He accepts it was an error of judgment, but only because he said that he relied on the advice that it was not – there was nothing to worry about, rather than he made an error of judgement in appreciating it was an obvious escalation in the risk. That's the evidence that you're left with.

25 COMMISSIONER: Yes.

30 MR BELL: Now, what you're not left with, in our submission, is a conclusion, which was CPHs submission, that Mr Johnston's conduct was reasonable and appropriate, and that he, among all of the people who saw evidence about this issue, alone bears no responsibility for it. That was the CPH submission.

35 COMMISSIONER: Let's assume that I find that he, in accepting it was an error of judgment, that it was an error of judgment, you would say that I would then reject the proposition that his conduct in not responding or telling his colleagues about it was not satisfactory and not appropriate.

MR BELL: Yes, we do submit that.

40 COMMISSIONER: Yes. And it flows, not from any withholding from them, but the failure to recognise it as an escalation and thus it remained sub silentio.

MR BELL: Yes.

45 COMMISSIONER: Yes. All right.

MR BELL: Now, CPHs final submission in relation to the China arrests was that the compromised reporting lines involving Mr Johnston were not a factor causing the China arrests. That submission extended in transcript 5344 to 5348. We submit that the compromised reporting lines which the directors had collectively admitted in
5 their evidence were a factor that led to the arrests. Mr Johnston himself conceded at transcript 2980, line 25 that it was possible that if he had informed his colleagues on the board about the incident, the board may have put in place mitigation strategies such as removing staff to Hong Kong, which could have prevented the arrests from occurring.

10 However, the evidence is far stronger than a possibility. The evidence is clear that if the questioning of the staff member in Wuhan by the Chinese police had been reported to the board, action would have been taken. Mr Craigie said at transcript 1502 to 1504 that - - -

15 COMMISSIONER: Could you just slow down ever so slightly.

MR BELL: Sure. We submit the evidence is clear that if the questioning had been brought to the attention of the board, action would have been taken.

20 COMMISSIONER: Yes.

MR BELL: Mr Craigie's evidence at transcript 1502 to 1504 was that if this matter had been reported to the board the legal advice about the activities in China would
25 have been checked. Another source of advice would have been obtained. There would have been discussions at board level about the size of the risk, the options available, and he said those options would have included pulling all of the resources out of China even on a temporary basis. Mr Packer said at transcript 3619 that if he had been informed of these matters, he would have secured the safety of the staff in
30 China, and would have taken a conservative approach. He said if there was a risk of people being arrested, he would have pulled the staff out of China or stopped the business.

Ms Coonan said at transcript 4421 the whole board of Crown Resorts needed to be
35 aware of the questioning of staff and the requirement for a letter. She said that the risk appetite to continue the business in China would have been nil in these circumstances. Ms Coonan said that the risk mitigation strategies would have included removing the staff from China, shutting the operation down. As Ms Coonan put it:

40 *It's not worth the candle if you've got these kind of escalating risks.*

Commissioner, it's not even a matter of simply accepting that evidence. Crown Resorts conceded at transcript 5423, lines 5 to 11 that the existence of the VIP
45 working group and Mr Johnston's membership of it did have an indirect impact on the way in which Mr Felstead reported certain matters, and Crown Resorts submitted at transcript 5502, lines 35 to 40, that if the board had been informed of the

escalating risks they would have put in place strategies to avoid the China arrests, including withdrawing all the staff in China. So Crown Resorts' own submissions therefore acknowledge the causal link between compromised reporting lines and the catastrophic failures which led to the China arrests.

5

And we submit, Commissioner, that it's important to bear in mind that the compromised reporting lines that resulted in executives reporting to Mr Johnston rather than to their direct reports, and the circumstances which led to Mr Johnston's descent into the management of Crown Resorts occurred at a time prior to the services agreement. It occurred at a time prior to the controlling shareholder protocol. There was no agreement at that point in time, just as we're told there's no agreement now, regulating communication of information by Crown Resorts to CPH with CPHs involvement in the management of Crown Resorts.

10

15 COMMISSIONER: Let's just go back and have a look. At that time Mr Packer was chairman.

MR BELL: Yes.

20 COMMISSIONER: And it looks, from the recitals to the services agreement, that a practice was put in place where these executives were provided to Crown free of charge, so that with Mr Packer as chairman and the CPH directors, albeit that they were Crown directors – or one of them was at the time, Mr Johnston, not Mr Jalland – he was being provided as a service provider to Crown. And all of that was done, which was then regularised when Mr Packer left the board, and it was put into the services agreement on 1 July '16.

25

MR BELL: Yes.

30 COMMISSIONER: So it doesn't take away from anything you've said, but it's the reality that this is what was happening - - -

MR BELL: Yes.

35 COMMISSIONER: - - - that the arrangements were such that they were comfortable, they were helpful, everyone saw them, it seems, as an appropriate way forward, and not recognising the difficulties that this had on the – I called them “underlings” and I shouldn't have – the executive management team in understanding to whom they were reporting. So I do understand that submission. I think it's – in some senses it was benign, because it was so unfortunate; the consequences were tragic. But in terms of what Mr Johnston did, it was his trouble with too many hats again: he was a Crown director; he was an executive providing services, and he was seen – and I don't think he stopped for a moment to say, “What are they looking at me as?” – but he was clearly the most powerful person in the room when Mr Packer wasn't there. He was the director of Crown. He was the director of CPH, and they looked to him, and that's why I think Mr Felstead did what he did and reported to him in that email. And so I think – I do accept what Crown

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45

says and you're saying that it did have a connection, but it wasn't, it doesn't seem to me, a dishonest or malevolent connection. It was something that was quite tragic, I think.

5 MR BELL: Well, we would respectfully agree with all of that.

COMMISSIONER: Yes.

10 MR BELL: We're not submitting there was a malevolent intention.

COMMISSIONER: Yes.

15 MR BELL: But the fact of the matter is that CPHs influence resulted in these blurred reporting lines.

COMMISSIONER: Yes, I agree.

20 MR BELL: And we also submit that it occurred before there was any contractual arrangements for that to occur, although we also recognise that it's true that there had been an informal practice for that to occur which wasn't regulated by any agreement.

COMMISSIONER: Yes, it was a pro bono provision.

25 MR BELL: Yes. So could I turn to address the submissions of Crown Resorts in relation to the China arrests.

COMMISSIONER: Yes, certainly.

30 MR BELL: Firstly, a submission about other casino operators. At transcript 5426 to 5430, Crown Resorts submitted that there were competitors in China operating in much the same way as Crown Resorts and, in support of that submission, Crown Resorts tendered a statement of Ms Jane Pan which has been served in the class action. Crown Resorts had indicated, as early as 3 August this year, that it may seek to tender evidence in relation to the China arrests, however, Ms Pan's statement was
35 tendered only on Monday of this week after the public hearings of the Inquiry had concluded and after I had concluded my closing submissions-in-chief. By choosing to tender the document at such a late stage, it meant that counsel assisting has had no opportunity to call Ms Pan to give evidence and to test her evidence in the same way that the evidence of other witnesses has been tested in public hearings of this Inquiry.
40 And that means, in our submission, that the evidence of Ms Pan should be given very little weight.

45 Now, Ms Pan's evidence is exhibit AS32, CRL.540.001.0194. In paragraph 6, she says that she was the international sales manager for Shenzhen and Zhuhai. The relevant part of her statement concerning the operations of other casinos is paragraphs 36 and 37. She says at 36:

I also understood from discussions with my contacts at Sky City and The Star that those casinos had administrative offices set up in mainland China which their staff could attend to tasks, such as dealing with these applications and administrative tasks.

5

37:

It's not uncommon for clients to mention activities or events - - -

10 COMMISSIONER: Just pause there for a moment, please. Can you give me the reference again?

MR BELL: To the statement or - - -

15 COMMISSIONER: Yes, the CRL.

MR BELL: Yes. It's CRL.540.001.0194.

COMMISSIONER: 1?

20

MR BELL: I think that must be wrong. Excuse me a moment.

COMMISSIONER: That's right. Thank you.

25 MR BELL: Sorry. The correct reference is CRL.540.001.0193.

COMMISSIONER: .0193. Thank you. I'll just have that brought up so I can follow you.

30 MR BELL: I was directing your attention to paragraphs 36 and 37.

COMMISSIONER: Yes. That's coming up, I hope. I think there's a little problem. If you would just read it to me.

35 MR BELL: I can read it out.

COMMISSIONER: Yes. Thank you.

MR BELL: And I will try and do it a bit more slowly. So 36:

40

I also understood from discussions with my contacts at Sky City and The Star that those casinos had administrative offices set up in mainland China which their staff could attend to tasks, such as dealing with these applications and administrative tasks.

45

37:

5 *It's not uncommon for clients to mention activities or events that were being offered to them by representatives of other casinos as a means to encourage Crown to improve its offering. Based on these conversations, I understood that a number of other international casinos had sales staff located in mainland China. It included the United States-based resorts, such as Wynn and MGM and Asia-based resorts, such as Solaire based in the Philippines, Marina Bay Sands based in Singapore and Genting. I did not have a personal relationship with any of the sales team from these international casinos. However, based on*
10 *conversations that I had with colleagues and clients from time to time, I understood each of these resorts had sales staff on the ground in mainland China, while I was working at Crown in mainland China, were meeting with Chinese patrons to encourage them to visit their resorts and gamble.*

15 Now, we submit that Ms Pan's evidence, at paragraph 36, that Star had administrative offices set up in mainland China at the time is unlikely to be correct. Exhibit – I don't think you need to go to it, but exhibit A75, INQ.080.050.0944, a report by Dr JM Horton QC of a review into the – a licence review of The Star Casino dated 28 November 2016. At paragraph 222 of the report at page .1019, Dr Horton referred to the China arrests which had only recently occurred and stated:

20 *Star assured me, which have I no reason to disbelieve, that its business model differs from that operator.*

25 Ie, Crown Resorts. Dr Horton also stated that at the AGM of The Star Entertainment Group on 28 October 2016, the chief executive officer had stated to the meeting that the group has no offices in mainland China and, in addition neither Mr Hawkins nor Ms Arnott, who gave evidence to this Inquiry on behalf of The Star were examined by counsel for Crown Resorts to ascertain whether The Star had offices in mainland China at the relevant time or whether it's business model was the same as Crown
30 Resorts.

35 Having regard to exhibit A75, we submit that you – and bearing in mind the little weight you should give to this evidence in any event – we submit that you should conclude that Ms Pan's evidence that The Star had an office in mainland China would not be accepted as evidence of that fact. Now, what Ms Pan says about other casinos having sales staff living in China is, in general terms, of course, not disputed. What Ms Pan's evidence does not establish is that other casinos were operating in China without a business licence. So far as we are aware, at least, there's no evidence of any other foreign casino operating in China without any business licence
40 at all.

45 Mr Felstead gave evidence, at transcript 1391 .25 to .35, that he didn't make any inquiries at any time up to October 2016 to find out if any of the competitors of Crown Resorts in China were licensed by the Chinese Government to conduct business or whether, like Crown Resorts, they had no business licence at all. Similarly, Mr O'Connor gave evidence, at transcript 2011 lines 1 to 17, that, in the period up to October 2016, he didn't investigate whether any of Crown Resorts'

competitors were conducting business in China without any business licence. So even if other casinos, such as The Star, did not have offices in China, it doesn't follow that they didn't have some kind of licence or permission from the Chinese authorities. So that being the case, whilst, in general terms, there were competitors
5 who had sales staff in China, we submit that you wouldn't find that there were competitors operating in China with the same precise business model as Crown Resorts.

10 COMMISSIONER: Where does that take me?

MR BELL: Well, where does it take Crown Resorts? They make this submission, as we understand it, to say that they should – they were entitled to take comfort from the fact that everyone else was doing the same as them, but that's not a conclusion to draw in circumstances where there's no evidence at all about the licence
15 arrangements for other competitors and that's simply the point.

COMMISSIONER: Well, putting the – putting the licence structure to one side for the moment, I think that the fact that there were other international licence – I withdraw that – other international casinos on the ground there is of some relevance,
20 because we saw those emails when the other people were wanting, possibly, to pull their staff out, and we saw the list of all of those.

MR BELL: Yes.

25 COMMISSIONER: So they were aware, clearly, that there were other operatives on the ground.

MR BELL: Yes.

30 COMMISSIONER: And so they were in there notwithstanding the crackdown – and whether or not they pulled them out or put them back in I don't know, but there is a factor that I must take into account, I think, that there were numerous foreign casinos operating on the ground in China.

35 MR BELL: Of course with respect, that's right.

COMMISSIONER: Yes.

40 MR BELL: It's the next step of, in fact, drawing a conclusion that they were operating with precisely the same business model - - -

COMMISSIONER: Yes.

45 MR BELL: - - - as Crown Resorts where you would pause.

COMMISSIONER: Yes. It doesn't seem that – the business licence issue, I've seen those advices from Mr Zhou and others, and it doesn't seem that that was really

given a great deal of thought. I think they were more concerned that – it seemed they were more concerned that they were not breaching the criminal law. And each time – I think it’s been put each time a step was taken Mr Chen, as his dictatorial approach to business was, took advice, and he didn’t focus on the licence
5 arrangements. He focused on whether they were going to be breaching the criminal law and then telling the staff that they were safe. So I do understand your submissions in relation to the different structures, but I don’t think Crown, for one moment, were focused on it until you get to the memorandum in mid-’19 when the board is told that they didn’t have a licence.

10 MR BELL: I’m going to address the business licence issue later, but, in general terms, but we have not submitted that Crown Resorts as a matter of Chinese business law required a business licence.

15 COMMISSIONER: Right.

MR BELL: That was a misinterpretation of our submissions by Crown Resorts when they up set up the straw man.

20 COMMISSIONER: Yes.

MR BELL: That was never our submission.

25 COMMISSIONER: Yes.

MR BELL: Our submission is, in a nutshell, that Crown Resorts took what I described as an idiosyncratic interpretation of the advice which it did have – and I think you said in argument that that was a euphemism – but that they had an idiosyncratic interpretation of the business law advice, which was that they could
30 operate in China without a licence as long as they did not establish an office.

COMMISSIONER: Yes.

35 MR BELL: Then they went contrary to that advice and did establish an office which they operated clandestinely and unethically.

COMMISSIONER: Well, they operated an office inconsistently with the direction not to have an office.

40 MR BELL: Yes, quite.

COMMISSIONER: So various layers. I mean, Mr Felstead said, “I didn’t want to establish them”. Mr O’Connor didn’t either, I don’t think. So what happened – who knows what happened on the ground really, Mr Bell. It was a dreadful mess in terms
45 of them going against the idea of having an office.

MR BELL: It is an important issue because one of the media allegations was that Crown Resorts operated under the radar in China in the face of increasing risks, and the unofficial office in Guangzhou was a paradigm example of doing that and doing it in a way which was deceptive. If I could come back to that in more detail.

5

COMMISSIONER: Yes, of course.

MR BELL: Could I address the Chinese Criminal Law. Now, Crown Resorts made a submission that went from transcript 5439 to transcript 5448 to the effect that what we had omitted to take into account was a second interpretation of article 303 by the Supreme People's Court criminal division in May 2015 which, so it was submitted, made it clear the restriction on organising 10 or more Chinese citizens to go abroad to gamble was not calculated on an aggregate basis. It was then contended the questions which I had put to witnesses to the effect that Crown Resorts' interpretation of the law was based on precise legal questions or fine distinctions were themselves based on a false premise.

I did make it clear when opening the China arrests hearings on the 17th of August 2020 this year that whilst there was expert evidence served in the class action by both parties, those assisting you didn't consider it necessary to call expert evidence in relation to the China arrests. No witness in the Inquiry was taken to the words of article 303 or to any interpretation of article 303. Witnesses were only ever taken to the legal advices in fact issued by WilmerHale, or to the summary of the law stated in the board paper in July 2019 when the board was considering its response to the media allegations.

The only time that those assisting you have endeavoured to set out an English translation of the relevant article as well as article 1 of interpretation number 3 of 2005 was in paragraph 107 of our closing written submissions, and those translations were taken from what is admitted in the pleadings in the class action. I'm instructed that the pleadings in the class action do not refer at all to the interpretation issued by the Supreme People's Court criminal division in May 2005 which was the basis for the submission by Crown Resorts. Now, Commissioner, may I take you to exhibit M27, CRL.545.001.0615.

35

COMMISSIONER: Yes.

MR BELL: Now, this was described by Mr Young as the core legal advice at transcript 5421, line 24, and you will see there that on page .0615 that WilmerHale first referred to article 303, and then they refer to what they describe as Supreme People's Court regulations on standards of pursuing criminal liability which appears to be a reference to article 1 of interpretation number 3 which we have quoted in our closing submissions. That is to the effect that it's an offence to organise 10 or more PRC citizens for overseas gambling, to organise benefits from such activities by receiving a kickback or referral fee. There's no mention in this advice of any second interpretation about what organising 10 or more citizens might mean.

45

Commissioner, at transcript 5445, line 43 you asked Mr Young whether this second interpretation by the criminal division was in WilmerHale's advices. Mr Young said it was referred to in one of the later ones. It must have been very much later because we've been unable to find any reference to it in any of the advices issued by
5 WilmerHale at any time up to the China arrests. However, even if the executives had been told about this second interpretation, we submit it remains the case that their interpretation did depend on a precise legal question or fine distinction as all of the witnesses agreed. It is a fine distinction. If you're breaking a Chinese law and you go to jail if you're organising a tour group of more than 10 people on one occasion,
10 but that it's perfectly fine to organise a tour group of 10 people over two occasions, and it remains the case, the interpretation, that that is a fine distinction or a precise legal question.

So we submit that questions which I put to the witnesses were not unfair based on
15 any false premise. If they were, it was open to Crown Resorts to object to the question. There was no objection to any of those questions, nor was there any attempt to re-examine any of the witnesses about this issue, a course which was open to counsel for Crown Resorts. So we submit that you should conclude that the interpretation of Chinese criminal law relied upon by Crown Resorts' management in
20 the period up to the China arrests was based on a precise legal question in this regard, as all of the witnesses agree.

Commissioner, a postscript to this issue is that on 13 October 2015 there was a
25 program on Chinese national television, CCTV. There are three competing translations in evidence as to what that program said. They are exhibit P16, P16A, P16B. Exhibit P16 is a translation of that broadcast prepared by the VCGLR. According to that translation, the program said:

30 *China's laws clearly stipulate that anyone who organises more than 10 people to go abroad on one occasion or organises people to go and gamble abroad on multiple occasions when the cumulative number of people reaches 10 offences are committed.*

Similarly, exhibit 16B, which is a translation of that program obtained by the
35 solicitors assisting the Inquiry says that it should be translated as:

40 *According to the relevant laws in our country, public security agency shall file a case of investigation for the suspected crime of gambling when overseas gambling tour is organised with a minimum of 10 people or multiple overseas gambling tours were organised for a total of 10 people or more.*

On the other hand, exhibit P16A is a translation of that program obtained by Crown Resorts. According to that translation, the program said:

45 *My country's law clearly stipulates that regarding 10 or more people being organised at one time to go abroad and gamble and this accumulative number*

reaches 10, public security organs should file a case for suspected gambling crimes.

5 And Crown Resorts contends that this translation does not indicate that a crime is
committed if 10 or more people are organised to go abroad and gamble cumulatively.
So for what it's worth you're not in a position to resolve these competing translations
but suffice it to say there is a real question as to whether Chinese national television
indicated in October 2015 that an offence would be committed if 10 or more people
10 were organised on gambling tours on cumulative occasions. Now, there was another
aspect of Chinese criminal law which was referred to in Crown Resorts' submissions.
At transcript 5493 to 5495, Crown Resorts challenged our submission that there was
a second precise question or fine distinction based on the question of kickbacks or
commissions.

15 Crown Resorts relied upon a witness statement of Mr Chen in the class action which
was also tendered to the Inquiry for the first time this week. This was in
circumstances where Crown Resorts has been aware that the solicitors assisting the
Inquiry have been unsuccessful in endeavouring to obtain Mr Chen's cooperation to
give evidence to this Inquiry, and as this witness statement has not been tested by Mr
20 Chen giving evidence to this Inquiry we submit that it should also be given little
weight.

COMMISSIONER: Yes, he's beyond the sea, isn't he?

25 MR BELL: Yes. Crown Resorts relied upon paragraphs 51 and 52 of Mr Chen's
witness statement in the class action in which Mr Chen says, to the effect, that he had
oral discussions with a lawyer from WilmerHale that Crown Resorts remuneration
structure and incentives would not be a commission for the purposes of Chinese
criminal law. We submit that you would not accept that evidence in any event
30 because it's inconsistent with written advice given by WilmerHale immediately after
the China arrests. We referred to this advice at paragraph 139(e) of our written
submissions in chief. That's to be found at exhibit M285, CRL.522.001.3952. If I
could take you to, that Commissioner.

35 COMMISSIONER: Yes.

MR BELL: So if you start at page .3953, you will see an advice from Mr Zhou to
Debra Tegoni dated the 18th of October 2016, a few days after the arrests in which
they answer a number of questions that she raised. If I could take you to page .3956,
40 and if we could blow up paragraph 4 about three-quarters of the way down the page,
please, operator. Question 4, "could he and other detainees" – I think "he" is Mr
O'Connor:

45 *Could Mr O'Connor and/or the other detainees be considered to be making a
profit due to their receipt of a salary package including base wage and
performance bonuses?*

Answer:

5 *It depends. The law is not clear. In practice, if the sole reason that employees receive salary or bonus because they organise customers to gamble there is a possibility that such salary or bonus will be deemed as profit. For instance, a special bonus based on the number of customers introduced by them to gamble or the amount of gambling proceeds, it is likely that such a bonus would be deemed as profit.*

10 That's precisely, as we understand it, the basis upon which commissions were paid by Crown Resorts based on gambling turnover provided that the gambling debt was ultimately recovered. We submit that you would not find that Mr Zhou had given evidence contrary of that orally to Mr Chen in circumstances where this is his written advice immediately after the arrests. Could I turn to deal with the business law
15 advice in the Guangzhou office which I've already touched on to some extent. I said earlier from transcript page 5448 to 5458 Crown Resorts contended that we had submitted Crown Resorts had breached Chinese business laws by failing to obtain a business licence. This was a misinterpretation of our submissions and was used to set up a straw man.

20 In our submissions in chief on the business law advice and its interpretation run from paragraph 140 to paragraph 163 of the written submissions. You will search in vain there to find a submission to the effect that Crown Resorts breached Chinese business laws. The gist of our submissions, as I've mentioned, was that Crown
25 Resorts adopted an idiosyncratic interpretation of the business laws which meant that it was not permitted to establish an office and yet they went ahead and established an office in any event which operated covertly.

30 Now, Crown Resorts turn to address the submission which we had in fact made at transcript pages 5458 to 5460 and Crown Resorts attempted to minimise the issue by submitting at transcript 5459, line 17 that it didn't amount to anything other than a minor issue about the business judgment of one individual, Mr Chen, who was no longer with the organisation. Now, Crown Resorts again at this point sought to rely upon Jane Pan's Federal Court statement to suggest that the Guangzhou office was
35 just an apartment used by one person for administrative purposes. I've already made submissions about the weight that should be attributed to her statement.

40 Nevertheless, what she says is largely consistent with the description given by Mr Albouy in his emails from 2012 to which you've been taken many times at exhibits P2 and P3. She refers to the premises as the Guangzhou office. She says it was used as an office space in a mixed commercial/residential building. She says it had no Crown branding. She says it was used to process the visa applications for patrons and it contained paperwork such as cashbook and travel arrangements. I won't repeat all of our submissions-in-chief about this covert office, which are at
45 paragraphs 164 to 185 of our written submissions. Both the office that was used from 2012 to 2015 and the later office used after August 2015 were rented in the names of employees who were reimbursed for the rental.

Mr Craigie said that the office was apparently an attempt to disguise from the Chinese authorities the fact that Crown Resorts was conducting an office in Guangzhou. Many of the directors agreed that the conduct was unethical. Contrary to Crown Resorts' submissions, the operations of the office don't just reflect on Mr Chen. Mr O'Connor, who was aware of the office, said that the operation of the office was not a secret. It was known to a group of executives in Crown Melbourne, including three senior executives who remain executives of Crown Resorts today. So could I turn then to address the escalating risk factors in 2015 and Crown Resorts' submissions about them.

COMMISSIONER: Yes. There are two submissions which were made which I need to address. The first was a submission seen at transcript page 5473 to 5474 that it was an appropriate management strategy for VIP international to operate under the radar or in a low-key way in China in the period up to the arrests. First, we submit that there is an important distinction between acting legally in a low-key way and Crown Resorts deliberately trying to disguise or conceal its activities in China from the Chinese authorities, a distinction which Mr Craigie recognised, transcript 1470 line 44, transcript 1471 line 12. I've made submissions about how the covert office in Guangzhou should be characterised.

Secondly, even if acting under the radar made sense from management's point of view initially, once management and Mr Johnston knew that there was an informant providing information to the Chinese police about Crown Resorts' activities, the game was up. Now, management should have recognised at that point that acting covertly was only likely to increase the attention of the Chinese authorities who were already paying close attention to what Crown Resorts were doing.

Thirdly, having made a concession that management failed to engage with the risk management structures of Crown Resorts, we submit it's inconsistent with that concession to say that management were correct to make a decision on the ground to conduct the business under the radar. The evidence establishes that had management engaged with the risk management processes, it's likely that ethical and appropriate risk mitigation strategies would have been considered to check the staff rather than try and make the activities in China less visible. Crown Resorts, as I've said, has already submitted that if the board had been informed of the escalating risk factors, it would have put in place strategies to protect the staff.

Now, similar problems, we submit, face a second submission that Crown Resorts made at transcript page 5461, that there was 12 months of clean air before the arrests after the last of the factors escalating the risk had been identified, which was said to mean that management were in fact justified in failing to perceive that the escalation of risk was obvious. This, of course, was the 12-month period in which Chinese police were no doubt enlarging the evidentiary pile which Mintz had warned about in July 2015.

COMMISSIONER: Well, Ms Shepard referred me to the meeting in May 2016 a little earlier, exhibit FB10, I think it is, where the volatility of the position in China was brought to the attention of those people at the Crown Melbourne board.

5 MR BELL: Yes.

COMMISSIONER: And so, as Ms Shepard put it, it was a shorthand way of saying, “We’ve got problems,” or the problem is still there, it’s volatile.

10 MR BELL: Well, of course, the problem is, as I think Ms Shepard acknowledged, that the words are somewhat ambiguous and it’s hard to know – one can’t conclude they were told any more than the words say, but, certainly, that was – it’s there in the minutes.

15 COMMISSIONER: Well, if they’d known – in any event, they didn’t know any of this.

MR BELL: No. So, again, Crown Resorts has conceded that management should have engaged the risk management process at the time that each of these risk
20 management – each of these risk factors occurred. And the board collectively admitted that these were obvious escalations of the risk to the safety of the staff in China.

COMMISSIONER: Do I find, if that had happened, that the evidence supports a
25 finding that those mitigatory steps would have taken place?

MR BELL: The evidence supports a finding that, by the time you get to the questioning of BX in July, the requirement for a letter, that had that been, as it ought to have been, drawn to the attention of the risk management committee and the full
30 board, the board would have taken steps to protect the safety of the staff; that is Crown Resorts’ submission, and the evidence of Mr Craigie, Mr Packer and Ms Coonan supports it and there’s no evidence against it.

COMMISSIONER: Thank you.
35

MR BELL: So in the face of those concessions and submissions, it’s somewhat strange that Crown Resorts would seek to justify the conduct of management in failing to take the steps that ought to have been taken by - - -

40 COMMISSIONER: I don’t think they’re seeking to justify them.

MR BELL: Well - - -

COMMISSIONER: Maybe I’ve got it wrong. I don’t think they’re seeking to
45 justify them. They might explain them, but there’s no suggestion that what they did was, in failing to notify appropriate mechanisms; that’s not justified.

MR BELL: No, no. You're correct, with respect. I think the submission was that they were entitled to not regard it as an obvious escalation of the risk.

COMMISSIONER: I see. Yes.

5

MR BELL: But if they should have notified it straight away, then the fact that there was 12 months with nothing happening is really neither here nor there. Now, can I deal with the questioning of Mr BX in Wuhan. At transcript page 5470 to 5473, Crown Resorts made a submission that you should conclude that there was no attempt to disguise or conceal Crown Resorts' activities from the Chinese police in the letter which was provided in July 2015. Part of that submission involved the proposition, at transcript 5473, line 8, that there was no basis to say that the Crown Resorts executives who read the emails should have concluded that their employee had lied. However, can I draw your attention to the fact that two Crown Resorts executives gave evidence that they did in fact reach that conclusion: Mr O'Connor, transcript 2031, lines 42 to 46; and Ms Williamson, transcript 2221 line 43 to transcript 2222, line 4.

20 Crown Resorts relied on the fact that the translation of BXs record of his interview with the Chinese police which was subsequently provided to Crown Resorts showed that he did in fact say anything which misled the Chinese authorities, but that ignores the sequence of events and the way in which they occurred at the time. The letter which was provided to the Chinese police was dated 9 July 2015; it's exhibit M210. And if I may – hopefully, perhaps for the last time – take you, Commissioner, back to exhibit AB21, CPH.001.242.3531.

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COMMISSIONER: Yes.

MR BELL: So this was the information that was known to Crown Resorts at the time that the letter was provided. We've got Mr Chen saying that BX had denied he was organising gaming tours and that he assisted in organising leisure trips. Now, Crown Resorts submitted, at transcript 5472 line 2, Mr Chen's information was not a firsthand account; that the firsthand account of what BX said was in fact what's recorded by Mr Zhou on the following page. There is no basis for that submission on the face of these emails and, in fact, Mr Chen told the VCGLR that he had spoken directly with BX and remembered getting the request from him for the letter; that's exhibit M28, INQ.140.020.0247 at question 396.

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In any event, anyone reading Mr Zhou's email on the following page would receive the same information to Mr Chen: it conveyed that the police had alleged that he had organised overseas gambling tours and he said he had no knowledge about it. Now, I don't need to take you to it, but the translation of Mr BXs interview with the Chinese police is exhibit O36, INQ.950.002.0157.

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45 COMMISSIONER: Thank you.

MR BELL: And that wasn't obtained until Wednesday the 15th of July 2015, some six days after Crown Resorts had in fact provided the letter to the Chinese police. It plainly had no bearing on what Crown Resorts understood it was doing at the time it provided the letter, which is what they learnt from exhibit AB21. Can I address
5 some issues of suitability relevant to the China arrests, although the overall questions of suitability are going to be addressed by Ms Sharp tomorrow. We did submit in our written submissions at paragraph 362 that no-one who presided over the disastrous failures which led to the China arrests could offer any coherent
10 explanation as to how or why they occurred. You will recall that the executive chairman, Mr Packer, the executive deputy chairman, Mr Alexander, the chair of the risk committee, Mr Dixon, could offer no explanation or insight as to the reasons for these failures.

We submitted that there has not been a rigorous review by Crown Resorts itself in
15 order to learn the lessons of the past. Now, in transcript 5477 to 5481 Crown Resorts submitted that there had in fact been a satisfactory retrospective examination of the facts, matters and circumstances because of reports on the class action provided to the board by its solicitors. Crown Resorts submitted at transcript 5477 that the solicitors investigated all the issues in circumstances pertaining to the China arrests
20 and submitted at transcript 5478 that the results of the investigation were conveyed to the board on a regular and frequent basis on February 2017.

Now, because of the class action, those assisting the Inquiry have protected the
25 privilege attaching to any written advices provided by the solicitors defending the class action and haven't required them to be produced. Nevertheless, oral reports by the solicitors to the board in connection with the class action are recorded in minutes of meetings of the board which have been produced. And those board minutes, in the period from November 2016 to December 2018, do not support a conclusion that the solicitors conducted a detailed investigation into the causes and circumstances
30 pertaining to the China arrests. Could I ask you to look, please, at the board minutes for 22 February 2017, exhibit – this should be hearing room only – exhibit BJ56, CRL.506.006.5369.

COMMISSIONER: Yes.
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MR BELL: If I could ask the operator to turn to page 5388.

COMMISSIONER: 5388.

40 MR BELL: 5388.

COMMISSIONER: Yes.

MR BELL: And you will see under the agenda item China Update that Mr Murphy
45 identified what his brief was. He said his brief was to advise generally on how best to protect Crown's interests. That was his role. That was what he did. If you turn to page .5389, one of the major work streams was analysing the laws of various

countries and recommending changes that might be necessary to ensure there were no breaches of law. As would be expected, if you were putting your hands in a lawyer to determine Crown Resorts' response the focus was on breach of the law rather than on reformation of the organisation.

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Now, I should draw your attention to the board minutes of 27 April 2017 which are exhibit BJ58, hearing room only, CRL.506.006.5405. And in particular to page 5411. You will see that the China update starts there and then goes over to page .5412. So I wanted to draw your attention to the fact that those minutes do note that following review of legal advices of the laws in other centres there had been a restructure of the VIP business model to establish a regional hub in Hong Kong, and the development of detailed operating protocols and a dedicated compliance officer in Hong Kong. Now, these were, we acknowledge, welcome developments, but again they're focused on the legal basis of operations in other Asian countries rather than an examination of the cultures, ethics or governance of the organisation in the period up to the arrests.

I won't go to the other minutes, but our review of the other board minutes in 2017 indicates they focused understandably on the conviction of the staff in China, their subsequent arrest – sorry, their subsequent release and post-release plans for each person, and the board minutes in 2018 insofar as they relate to the China arrests focus on work done to enter into settlements with the staff who had been detained and on dealing with the VCGLR in relation to its investigation into the China arrests. There's no indication in these minutes – and Commissioner you will be able to review them all in due course – in our submission, of any retrospective examination of the causes of the China arrests or any investigation of the shortcomings in the governance or culture of the organisation.

At transcript 5485, lines 30 to 40, Crown Resorts submitted that there was an understanding of the root causes of the failures. Crown Resorts referred to Ms Coonan's evidence about this and it was submitted that the root cause of the failures was clear. The failure to engage risk management and board systems properly in relation to changing circumstances in China. Now, Ms Halton, the current chair of the risk management committee, gave evidence at transcript 4292, lines 3 to 14 that Crown Resorts has not carried out any specific review of the risk management failures that led to the China arrests. And she agreed at transcript 4293, lines 1 to 14 that there would be utility in conducting such a review in order to try and work out why these serious failures in the risk management processes occurred.

Now, it's true that Ms Coonan did offer up evidence of her own belief as to the root cause of the China arrests which we set out in full at paragraph 362 of our written submissions, but that was Ms Coonan's conclusion. It wasn't based on any rigorous review of what's occurred.

45 COMMISSIONER: I suppose there was the VCGLR report.

MR BELL: Yes.

COMMISSIONER: I think Ms Coonan did refer to that – the other inquiry.

MR BELL: Yes, she did. There's been no review by the organisation itself.

5 COMMISSIONER: Correct. Yes.

MR BELL: Similarly, we submit that the conclusion as to the cause of the failures submitted by the counsel for Crown Resorts in his submissions is also not based on any rigorous review of what occurred, and it focuses only on risk management and
10 doesn't acknowledge or address the admitted governance and cultural failings of Crown Resorts which led to the arrests. We submit that there were governance and cultural failings which were admitted in evidence by many of the directors of Crown Resorts and which are relevant to suitability and which have not been adequately addressed by Crown Resorts.

15 So far as governance is concerned the board collectively admitted that the failure of Mr Johnston to inform his colleagues on the board of the questioning of BX indicated a corporate governance problem, yet Ms Coonan strongly defended Mr Johnston in her evidence, describing his conduct in relation to that matter as a lapse,
20 transcript 4448, lines 7 to 18. Crown Resorts has not acknowledged that corporate governance problems admitted by its directors in its submissions and in fact has submitted at transcript 5495, lines 35 that there were no failures of board oversight leading up to the China arrests.

25 Corporate culture, we acknowledge, is an elusive concept, but it is a real one as ASIC has been at pains to observe over the last few years. As ASIC says, "it's the way we do things around here". There's been no acknowledgment by Crown Resorts of any cultural failings of Crown Resorts leading to the arrests which were admitted by the directors in their evidence. For example, Ms Coonan acknowledged cultural
30 failures at transcript 4411, line 21, and Professor Horvath acknowledged cultural failures at transcript 4134, lines 20 to 25. Now, we submit that those cultural failings are still demonstrated by the board's decision to let its lawyers dictate the response to the China arrests and by the board's attack on its young employee who had the courage to speak out about her arrest in China.

35 Now, our response to the submissions concerning the overall assessment of suitability in relation to the China arrests will be addressed, as I've said, by Ms Sharp, and that's because, as we said in our submissions in chief, issues of concern demonstrated by the China arrests overlap with the issues of concern that arise in
40 relation to money laundering and junkets and those issues of concern need to be addressed together rather than separately. I'm about to embark on another large topic if this is a convenient time.

COMMISSIONER: Yes. Yes, thank you, Mr Bell. Yes, I will adjourn until 10 am.
45 And Mr Young, perhaps if I can just indicate that if Mr Herzfeld and Ms Richardson had some discussions overnight, we can probably finalise that outstanding issue in respect of the documents that Mr Herzfeld might want to tender.

MR YOUNG: Thank you, Commissioner. I've tried unsuccessfully to contact Mr Herzfeld thus far. But I will renew those attempts.

5 COMMISSIONER: I see. Yes, thank you very much, Mr Young. I will adjourn now.

MR YOUNG: Thank you.

10 **MATTER ADJOURNED at 3.57 pm UNTIL FRIDAY, 20 NOVEMBER 2020**

Index of Witness Events

Index of Exhibits and MFIs

EXHIBIT #AN19 TO AN26 DOCUMENTS RELATING TO WYNN P-5706
TRANSACTION