



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**

**WEDNESDAY, 4 NOVEMBER 2020
AT 10.00 AM**

Continued from 23.10.20

DAY 49

Any person who publishes any part of this transcript in any way and to any person contrary to an Inquiry direction against publication commits an offence against section 143B of the *Casino Control Act 1992 (NSW)*

MR A. BELL SC and MR N. CONDYLLIS appear as counsel assisting the Inquiry

MR H.C. WHITWELL appears for Crown Resorts Limited & Crown Sydney Gaming Proprietary Limited

5 **MR N. HUTLEY SC appears with MR A. D'ARVILLE and MR T. O'BRIEN for CPH Crown Holdings Pty Ltd**

MR J. STOLJAR SC appears with MS Z. HILLMAN for Melco Resorts & Entertainment Limited

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COMMISSIONER: Yes. Thank you. I'll take the different appearances this morning, I think; is that right? Mr Whitwell, you're appearing, are you, this morning?

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MR WHITWELL: I am, Commissioner. Thank you.

COMMISSIONER: Thank you. Yes. You're appearing for Crown Resorts and Crown Sydney Gaming.

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MR WHITWELL: That's right, Commissioner.

COMMISSIONER: And, of course, Mr Hutley and Mr Stoljar are also present. Thank you.

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MR HUTLEY: Thank you.

COMMISSIONER: Yes. Mr Condylis.

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MR CONDYLLIS: Commissioner - - -

MR HUTLEY: Commissioner, before my learned friend commences, Commissioner, could I raise one matter as, merely, at this stage, to indicate when Commissioner might entertain it. As we understand it, we've been notified that it's expected that we should be ready to commence our submissions on Monday next.

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We raised, I think, on the last occasion with the Commissioner, the timing as to when we commenced. And we've written to the solicitors for the Commission indicating that we would propose some little delay next week and, at some point of time, which, of course, Madam Commissioner, at your convenience, we'd like to have a

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discussion as to when we might commence next week with a view to commencing on Wednesday next to allow us to adequately deal with what's developed with a view to including our submissions over two days, thus leaving the Friday to deal with the submissions from the other what you might call less engaged parties so that the – all submissions would be relevantly concluded before the anticipated commencement of the submissions on behalf of Crown on Monday-week; that would be our

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submission, just – Madam Commissioner.

COMMISSIONER: Yes. Thank you for raising that, Mr Hutley. I don't see any difficulty with whatever is necessary to be done to ensure that you have appropriate time to consider your position. I'll accommodate that.

5 MR HUTLEY: We're indebted. Thank you.

COMMISSIONER: Mr Condylis.

10 MR CONDYLLIS: Commissioner, you should have before you a series of documents or proposed tenders.

COMMISSIONER: Yes. All right.

15 MR CONDYLLIS: I'll take you through those documents. There should be a proposed exhibit AXD, which consists only of AXD1; that's a video excerpt of the evidence of Mr Andrew Demetriou before this Inquiry on 12th October 2020. I tender exhibit AXD1 on a public basis.

20 COMMISSIONER: Yes. That will be marked exhibit AXD1.

EXHIBIT #AXD1 VIDEO EXCERPT OF THE EVIDENCE OF MR ANDREW DEMETRIOU BEFORE THE INQUIRY DATED 12/10/2020

25 MR CONDYLLIS: Commissioner, there should be a proposed exhibit MC, which contains five documents, that being MC1 through to MC5; that is correspondence between the solicitors assisting this Inquiry and the representatives of Mr Michael Chen. Exhibit MC1 through to MC5 is tendered on a public basis.

30 COMMISSIONER: All right then. That will be marked exhibit MC1 to MC5.

EXHIBIT #MC1 TO MC5 CORRESPONDENCE BETWEEN THE SOLICITORS ASSISTING THE INQUIRY AND THE REPRESENTATIVES OF MR MICHAEL CHEN

40 COMMISSIONER: Thank you.

MR CONDYLLIS: Proposed exhibit AN contains 18 documents, being AN1 through to AN18; that is material to which counsel assisting, Mr Bell, may refer in his oral submissions and which has not yet been tendered. Exhibit AN1 through to AN18 is tendered on a position reserved basis.

45 COMMISSIONER: All right then. Exhibit AN1 to AN18 is tendered on a position reserved basis.

**EXHIBIT #AN1 TO AN18 MATERIAL TO WHICH MR BELL MAY REFER
IN HIS ORAL SUBMISSIONS**

5 COMMISSIONER: Thank you.

MR CONDYLIS: Proposed exhibit AO contains 71 documents, being AO1 through
to AO71. That is material to which counsel assisting, Ms Sharp and Mr Aspinall,
may refer in their oral submissions and which has not yet been tendered. Exhibit
10 AO1 through to AO71 is tendered on a position reserved basis.

COMMISSIONER: Yes. I'll mark those exhibit AO1 to AO71 on a position
reserved basis.

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**EXHIBIT #AO1 TO AO71 MATERIAL TO WHICH COUNSEL ASSISTING,
MS SHARP AND MR ASPINALL, MAY REFER IN THEIR ORAL
SUBMISSIONS**

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MR CONDYLIS: Proposed exhibit AP consists of material produced in response to
certain summonses. AP1 is the response to summons 20200478 Crown Resorts
Limited; that contains 85 documents produced on 26 March 2020 and 1174
documents produced on 13 May 2020. AP2 is the response to summons 2020124 to
25 Crown Resorts Limited and 2020127 to Ishan Kunaratnam, being 984 documents
produced on 12 September 2020. AP3 is the response to summonses 2020125 to
CPH and 2020126 to Mr James Packer, being 1627 documents produced on 11
September 2020. I tender exhibit AP1, AP2 and AP3 on a position reserved basis.

30 COMMISSIONER: Yes. They're documents, in the main, relating to calls for
documents that were communications under the controlling shareholder protocol, as I
understand it, Mr Condylis; is that right?

MR CONDYLIS: I believe so, Commissioner.

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COMMISSIONER: Yes. Thank you. Those documents will be marked exhibit
AP1, AP2, AP3 with the numbers, and they are on a position reserved basis.

40 **EXHIBIT #AP1 RESPONSE TO SUMMONS 20200478 TO CROWN
RESORTS LIMITED CONTAINING 85 DOCUMENTS PRODUCED ON 26
MARCH 2020**

45 **EXHIBIT #AP2 RESPONSE TO SUMMONSES 2020124 TO CROWN
RESORTS LIMITED AND 2020127 TO ISHAN KUNARATNAM, BEING 984
DOCUMENTS PRODUCED ON 12 SEPTEMBER 2020**

**EXHIBIT #AP3 RESPONSE TO SUMMONSES 2020125 TO CPH AND
2020126 TO MR JAMES PACKER, BEING 1627 DOCUMENTS PRODUCED
ON 11 SEPTEMBER 2020**

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COMMISSIONER: Thank you.

MR CONDYLIS: Proposed exhibit AQ contains 29 documents, that's AQ1 through
10 AQ1 through to AQ29, produced by the ANZ bank in response to summons 2020078. Exhibit
AQ1 through to AQ29 is tendered on a position reserved basis.

COMMISSIONER: Yes. I'll mark those on the same basis, exhibit AQ1 to 29 on a
position reserved basis.

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**EXHIBIT #AQ1 TO AQ29 RESPONSE TO SUMMONS 2020078 TO THE
ANZ BANK CONTAINING 28 DOCUMENTS**

20 MR CONDYLIS: I then propose to tender minutes from Crown board and
committee meetings. These are exhibits FA1 through to FA86; FB1 through to
FB36; FC1 through to FC29; FD1 through to FD19; FE1 through to FE5; FF1
through to FF32; FG1 through to FG29; FM1 through to - - -

25 COMMISSIONER: Just pause there. FG1 to FG29?

MR CONDYLIS: FG 23, Commissioner.

30 COMMISSIONER: Thank you. Yes.

MR CONDYLIS: FM1 through to FM20; FN1 through to FN26; FO1 through to
FO16; FP1 through to FP35; and FQ1 through to FQ2. Those are tendered on a
position reserved basis.

35 COMMISSIONER: I understand that some of those minutes are already in
evidence, but these are gathered together in one place; is that right?

MR CONDYLIS: That should be the case.

40 COMMISSIONER: Yes, thank you. I will mark those exhibits accordingly.

EXHIBIT #FA1 TO FA86 CROWN BOARD AND COMMITTEE MEETINGS

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EXHIBIT #FB1 TO FB36 CROWN BOARD AND COMMITTEE MEETINGS

EXHIBIT #FC1 TO FC29 CROWN BOARD AND COMMITTEE MEETINGS

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EXHIBIT #FD1 TO FD19 CROWN BOARD AND COMMITTEE MEETINGS

EXHIBIT #FE1 TO FE5 CROWN BOARD AND COMMITTEE MEETINGS

10 **EXHIBIT #FF1 TO FF32 CROWN BOARD AND COMMITTEE MEETINGS**

EXHIBIT #FG1 TO FG23 CROWN BOARD AND COMMITTEE MEETINGS

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EXHIBIT #FM1 TO FM20 CROWN BOARD AND COMMITTEE MEETINGS

20 **EXHIBIT #FN1 TO FN26 CROWN BOARD AND COMMITTEE MEETINGS**

EXHIBIT #FQ1 TO FQ2 CROWN BOARD AND COMMITTEE MEETINGS

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COMMISSIONER: Thank you.

30 MR CONDYLIS: Proposed exhibits DA1 through to DA52, DB1, DC1 through to DC19 and DD1 through to DD14 contain documents produced to the Inquiry by Star Entertainment Group Limited. Some of the documents in exhibits DA through to DD are the subject of an extant claim for privilege or confidentiality in whole or in part by The Star. I tender DA1 through to DA52, DB1, DC1 through DC19, DD1 through to DD14 on a position reserved basis.

35 COMMISSIONER: Yes. I'll mark those documents accordingly.

40 **EXHIBIT #DA1 TO DA52 DOCUMENTS PRODUCED TO THE INQUIRY BY STAR ENTERTAINMENT GROUP LIMITED**

EXHIBIT #DB1 AND DC1 TO DC19 DOCUMENTS PRODUCED TO THE INQUIRY BY STAR ENTERTAINMENT GROUP LIMITED

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EXHIBIT #DD1 TO DD14 DOCUMENTS PRODUCED TO THE INQUIRY BY STAR ENTERTAINMENT GROUP LIMITED

MR CONDYLIS: Finally, Commissioner, proposed exhibit EA1 through to EA5 contain documents produced to the inquiry by Melco Resorts and Entertainment Limited. I seek to tender EA1 through to 5 on a confidential basis.

5 COMMISSIONER: Yes. I'll mark those documents on a confidential basis.

**EXHIBIT #EA1 TO EA5 DOCUMENTS PRODUCED TO THE INQUIRY BY
MELCO RESORTS AND ENTERTAINMENT LIMITED**

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MR CONDYLIS: If the Inquiry pleases.

COMMISSIONER: Yes. Thank you, Mr Condylis. Mr Bell.

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MR BELL: Commissioner, in opening submissions on 21 January this year, I outlined the terms of reference and the matters that you were required to inquire into and report on which were raised by the terms of reference. At that time, Melco Resorts and Entertainment Limited, via its nominee MCO KittyHawk Investments Limited, had acquired 9.99 percent of the shares of Crown Resorts Limited through a share sale agreement with CPH Crown Holdings Pty Limited of 30 May 2019. I will refer to that agreement as the "share sale transaction", "share sale agreement" or "the Melco transaction", and I will refer to those four companies as Melco Resorts, KittyHawk, Crown Resorts, CPH Crown, respectively.

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KittyHawk was registered as the owner of that 9.99 per cent holding in Crown Resorts on 6 June 2019. Crown Resorts is the ultimate holding company of Crown Sydney Gaming Proprietary Limited which holds the licence to operate the Barangaroo restricted gaming facility. I will refer to Crown Sydney Gaming Proprietary Limited as "the licensee" and I will refer to the licence to operate the Barangaroo restricted gaming facility as "the licence". The share sale agreement made provision for Melco Resorts to acquire a further 9.99 percent of the shares in Crown Resorts. A variation to the share sale agreement dated 28 August 2019 made completion of the sale of the second tranche of shares subject to conditions which in general terms related to the approval of Melco Resorts as a suitable person to be associated with the management of the casino by various regulators, including the Independent Liquor and Gaming Authority to which I will refer as "the Authority".

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On 6 February this year Melco Resorts entered into an agreement with CPH Crown which terminated its obligation to purchase the second tranche of shares in Melco – in Crown Resorts. Then on 1 May this year, it was announced on the Australian Stock Exchange that Melco Resorts had sold its existing 9.99 per cent of shares in Crown Resorts to the Blackstone Group Inc on 29 April. The termination of the share sale agreement and the departure of Kittyhawk from the share register of Crown Resorts led to the amendment of the terms of reference on 24 June this year. Those provisions in the original terms of reference which requested you to inquire into and report upon the identity and suitability of any new close associates of the

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licensee as a result of the share sale agreement were removed and a requirement to report to the Authority by 1 February 2021 was added.

5 Part A of the amended terms of reference requests you to conduct a suitability review of the licensee in Crown Resorts in the following terms which are set out in paragraph 16: in response to the allegations, the Commissioner is to inquire into and report upon:

- 10 (a) whether the licensee is a suitable person to continue to give effect to the Barangaroo restricted gaming licence;
- (b) whether Crown Resorts is a suitable person to be a close associate of the licensee;
- (c) in the event that the answer to either (a) or (b) above is no, what, if any, changes would be required to render those persons suitable;
- 15 (d) whether or not the disposal of shares held by CPH Crown in Crown Resorts to Melco Resorts or Kittyhawk on or around 6 June 2019 constituted a breach of the Barangaroo restricted gaming licence or any other regulatory agreement;
- 20 (e) whether or not the agreement by CPH Crown to dispose of the second tranche of shares in Crown Resorts to Melco Resorts or Kittyhawk on or before 30 September 2019 constituted a breach of the Barangaroo restricted gaming licence or any other regulatory agreement;
- (f) whether the transfer of the shares in Crown Resorts referred to in (d) above constituted a breach of the Barangaroo restricted gaming licence or
- 25 (g) any matter reasonably incidental to those matters.

30 And these matters are described in the amended terms of reference as the suitability review. The allegations referred to in paragraph 16 of the amended terms of reference are the media allegations identified in paragraph 15 as follows. The allegations include, but are not limited to, allegations that Crown Resorts or its agents, affiliates or subsidiaries:

- 35 (a) engaged in money laundering;
- (b) breached gambling laws;
- (c) partnered with junket operators with links to drug traffickers, money launderers, human traffickers and organised crime groups.

40 Part B of the amended terms of reference requests you to examine the regulatory framework and settings in which the Authority is required to regulate casinos in this state. Specifically, you're requested to inquire into and report on the efficacy of the primary objects under the Casino Control Act in an environment of growing complexity with both extant and emerging risks for gaming and casinos. You're requested to undertake a forward-looking assessment of the Authority's ability to

45 respond to that environment and to identify recommendations in order to enhance the Authority's future capability. In so inquiring and reporting you're requested to take

into account both domestic and international best practice with respect to gaming operation and regulatory frameworks.

5 These submissions address only the suitability review required by part A of the amended terms of reference. On 21 October this year at transcript 4727, line 23, and on 23 October at transcript 4821, line 28 you invited written submissions from those with authorisation to appear in respect of part B of the amended terms of reference.

10 COMMISSIONER: Yes, and I think there's been a public announcement or request for any public submissions in respect of part B as well.

15 MR BELL: Yes. So Commissioner, four of the broad areas to be addressed in my submissions are, first, how suitability is to be assessed in the context of a corporate group. Secondly, the investigation of the media allegations in relation to the China arrests. Thirdly, the influence of Mr Packer on Crown Resorts in the period after the controlling shareholder protocol was entered into on 31 October 2018, and fourthly, whether the Melco transaction constituted a breach of the licence or any other regulatory agreement and the wider question of suitability which is incidental to the consideration of that transaction.

20 The influence of Mr Packer in the period after the controlling shareholder protocol was entered into is both directly relevant to whether the Melco transaction gave rise to a breach of any regulatory agreements and is more generally incidentally relevant to the overall question of suitability. Ms Sharp SC and Mr Aspinall will be making
25 submissions about the suitability issues that arise from the other aspects of the media allegations, namely, money laundering, relationships with junket operators and visa processing.

30 A common theme relating to the China arrests and the Melco transaction, in our submission, is the deleterious impact on the good governance of Crown Resorts caused by its dominant shareholder, CPH, and ultimately, Mr Packer. It's submitted that the impact of that influence put Crown Resorts in breach of its regulatory agreements with the Authority. The adverse impact of CPH in compromising proper reporting lines of Crown Resorts was a factor leading to the China arrests. In those
35 instances, the adverse impact of CPH and Mr Packer, we submit, was ultimately harmful to the public interest which it is a primary object of the Casino Control Act to protect.

40 In summary, we submit that the evidence presented to this Inquiry demonstrates that the licensee is not a suitable person to continue to give effect to the licence and that Crown Resorts is not a suitable person to be a close associate of the licensee. As required by the amended terms of reference, these submissions consider measures which might be taken to address how unsuitability arising from the influence of CPH and Mr Packer might be addressed. How other aspects of unsuitability might be
45 addressed will be dealt with by Ms Sharp SC in her submissions. That will include how unsuitability, demonstrated by the events leading to the China arrests, might be

dealt with as those issues overlap to some extent with the issues of unsuitability in relation to junkets and money laundering.

5 In this regard for the purpose of submissions on 23 October this year at transcript 4821 to 4822 you asked the entities with authorisation to appear to assume unsuitability and to assist with submissions on how to achieve suitability. Accordingly, it could be expected that those entities may have submissions to make in respect of how unsuitability identified in these submissions and by the evidence
10 tendered to the Inquiry might be addressed.

COMMISSIONER: That's because of the two questions that are given to me to answer, the first about suitability and the second, if unsuitable, how to convert to suitability.

15 MR BELL: That's so, Commissioner.

COMMISSIONER: Yes, I see.

20 MR BELL: Now, these submissions will also address at a broad level the steps which might be taken to deal with ongoing suitability should that be necessary, having regard to the legislative framework and the suite of contractual arrangements between the state of New South Wales, the Authority and the Crown Resorts and its associates which were entered into at the time that the licence was issued. We are preparing a written submission of my submissions which will use footnotes to
25 identify all the evidence in support of each proposition, including all exhibits and transcript references and we will have that document available as soon as we can.

COMMISSIONER: Thank you, Mr Bell.

30 MR BELL: Could I turn to the question of how suitability is to be assessed.

COMMISSIONER: Yes.

35 MR BELL: And before reviewing the concept of suitability, it's convenient to first deal with the meaning of "close associate". That term is defined in subsection 3(1) of the Casino Control Act with reference to the meaning set out in the Gaming and Liquor Administration Act 2007. Under subsection (5)(1) of the Gaming and Liquor Administration Act, there are two tests for ascertaining whether a person is a close
40 associate of a licensee: first, the person is a close associate if the person holds or will hold a relevant financial interest or will be entitled to exercise a relevant power in the business of the licensee and, by virtue of that interest or power, is or will be able to, in the opinion of the Authority, exercise a significant influence over or with respect to the management or operation of the licensee's business. A "relevant financial
45 interest" is defined by subsection 5(2) of the Gaming and Liquor Administration Act to mean any share of the capital of the business or any entitlement to receive income, rent or some other financial benefit or financial advantage from the business.

A “relevant power” is defined to mean a power, whether exercisable by voting or otherwise and whether alone or in association with others, to participate in directorial management or executive decisions or to elect or appoint any person to a relevant position; secondly, a person is a close associate if the person holds or will hold any
5 relevant position, whether in the person’s own right or on behalf of another, in the business of the licensee. And “relevant position” is defined in subsection (5)(2) of the Gaming and Liquor Administration Act to mean a director, manager, secretary or other executive position.

10 Under the original Terms of Reference, considerable work was undertaken to investigate whether Melco Resorts or its related entities and their respective officers satisfied the close associate test under section 5 of the Gaming and Liquor Administration Act and that work, in our submission, revealed some shortcomings of the close associate test.

15 COMMISSIONER: You mean in the Act?

MR BELL: In the Act.

20 COMMISSIONER: Yes.

MR BELL: It’s submitted that the current definition of “close associate” in the Act is unduly technical and insufficient to give the Authority the ability to identify readily if and when a person has become a close associate of a licensee. However,
25 for present purposes, it is sufficient to note that Crown Resorts is clearly a close associate of the licensee. As its ultimate holding company, Crown Resorts has a relevant financial interest in the licensee, at least through the receipt of dividends and the benefit it receives from the capital value of its shares, and the Authority could reasonably form the view, particularly in light of the conduct of its officers examined
30 in this Inquiry, Crown Resorts, by virtue of that interest, is able to exercise a significant influence over or with respect to the management and operation of the licensee.

35 So could I turn to consider the meaning of “suitability”. Consideration of the suitability of the licensee in Crown Resorts is, in accordance with paragraph 3 of the amended Terms of Reference, to assist the authority in the discharge of its function under paragraph 141(2)(c) of the Casino Control Act to keep under constant review all matters connected with casinos and the activities of casino operators, persons associated with casino operators and persons who are in a position to exercise direct
40 or indirect control over the casino operators or persons associated with casino operators.

That’s distinct from a consideration of suitability that arises under subsection 35(3) of the Casino Control Act which requires the Authority, in considering whether to
45 approve a major change in the state of affairs of a casino operator which involves a person becoming a close associate of a casino operator, to only provide such approval if it’s satisfied that the person is a suitable person associated with the

management of a casino. Consideration of the suitability of the licensee and Crown Resorts in discharge of the Authority's functions under paragraph 141(2)(c) of the Act, which can take place at any time of the authority's choosing, is also distinct from the suitability review sourced in section 31 of the Casino Control Act, requires
5 the Authority to review the ongoing suitability of a casino operator at periodic intervals not exceeding five years.

Commissioner, there is no definition of "suitable person" in the Casino Control Act. Nevertheless, in considering an application by a person to first commence to hold the
10 licence, subsection 13A(2) of the Casino Control Act sets eight express matters the Authority is required to take into account in forming a view as to whether the applicant and each of its close associates is a suitable person. Those factors are: (a) whether the applicant and its close associates are of sound and stable financial
15 background; (b) whether the applicant has access to suitable and adequate financial resources to operate the Barangaroo facility; (c) whether the applicant has sufficient experience and business ability to operate the Barangaroo facility; (d) where the applicant is not a natural person, it has or has arranged a satisfactory ownership trust or corporate structure; (e) whether the applicant and its close associates are of good
20 repute having regard to character, honesty and integrity; (f) whether the applicant and its close associates have any business association with any person or any association who, in the opinion of the Authority, is not of good repute, having regard to character, honesty and integrity or, otherwise, has undesirable or unsatisfactory
25 financial sources; and (g) whether each director and officer determined by the Authority to be associated or connected with the ownership, administration or management of the operations or the business of the applicant or its close associates is a suitable person to act in that capacity.

In December 1997, the Honourable Peter McClellan QC issued a report in connection with the investigation of whether the Star Proprietary Limited remained a
30 suitable person to continue to hold the licence for the Star Casino in Sydney pursuant to section 31 of the Casino Control Act. And at page 7 of his report, Mr McClellan referred to the New South Wales Crown Solicitor's view that the suitability matters set out in subsection 12(2) of the Casino Control Act, which is the equivalent of
35 subsection 13A(2), when dealing with the suitability of a licensee and its close associates operating a casino other than the Barangaroo facility, are just as relevant to the Authority's review of whether the licensee and its close associates continue to be suitable persons after the licence has been granted as they are when the Authority is first considering that matter. In the words of the Crown Solicitor, the suitability
40 matters:

...in broad terms relate to the corporate structure, probity and financial strength of a casino licence applicant.

And:
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...common sense would suggest that just as these attributes should be present at the time when an application for a licence is granted they should also be present when the licence is reviewed.

5 The Crown Solicitor also considered that those matters, while relevant, are not exhaustive or exclusive.

10 The view that the matters expressly required by the Casino Control Act to be taken into account in assessing suitability at the time an application is originally made for a licence are also relevant in conducting a review of suitability has also been endorsed by Mr Jonathan Horton QC, in a report on 28 November 2016, to assist the Authority to conduct a further periodic review of whether The Star remained a suitable person to continue to hold the licence for The Star Casino pursuant to section 31 of the Act, and also by the Victorian Commission for Gambling and Liquor Regulation, to
15 which I'll refer as the VCGLR, in its June 2016 Sixth Review into the ongoing suitability of Crown Melbourne Limited to hold the licence for Crown Casino in Melbourne, part of the periodic assessment required by the Victorian equivalent of section 31 of the Casino Control Act New South Wales.

20 Likewise, in a suitability review sourced in paragraph 141(2)(c) of the Casino Control Act for the purpose of the current Inquiry, we submit that subsection 13A(2) suitability matters are just as relevant as they are when the authority considers them in originally approving an applicant to hold the licence in connection with Barangaroo facility.

25 In his report, Mr Horton provided an analysis of the suitability matters which we submit is useful to assist you in the current Inquiry. Referring to the good repute having regard to character, honesty and integrity criterion of whether the licensee and its close associates are suitable persons, Mr Horton found that this criterion imports
30 many of the same kinds of inquiries in similar or other legislative contexts to those requiring that persons be fit and proper to hold certain licences or that they be of good fame and character.

35 Mr Horton went on to refer to the High Court's decision in *Australian Broadcasting Tribunal v Bond*, in which it was held that the expression:

... "fit and proper person" takes its meaning from the activities in which the person is or will be engaged, the ends to be served by those activities.

40 That:

...the concept of "fit and proper person" cannot entirely divorced from the conduct of the person ... engaging in those activities.

45 And:

...character, because it provides an indication of likely future conduct, and reputation, because it provides an indication of public perception as to likely future conduct, may be sufficient to ground a finding a person is not fit and proper to undertake relevant activities.

5

Also, in *Bond*, Chief Justice Mason held that concepts of reputation, fitness and propriety ought not to be narrowly construed or confined and may extend to any aspect of fitness or propriety that is relevant to the public interest. Mr Horton also referred to the decisions of the New South Wales Court of Appeal in *Prothonotary of the New South Wales Supreme Court v Da Rocha*, in which it was held that character refers to a person's nature; good character involves the acceptance of high standards of conduct and acting in accordance under pressure. And the decision in *Prothonotary of the New South Wales Supreme Court v Montenegro* in which it was held that qualities of honesty, integrity and a preparedness to comply with the law are essential requirements of someone being a fit and proper person.

Apart from those cases, in *Sobey v Commercial and Private Agents Board* it was held that the assessment of whether a licence holder is a fit and proper person requires consideration of whether the person is possessed of the requisite knowledge of the duties and responsibilities devolving upon him or her as the holder of a particular licence as well as whether the person is possessed of sufficient moral integrity and rectitude of character as to permit him to be safely accredited to the public as a person to be entrusted with the sort of work that the licence entails.

Commissioner, additionally, there's some New Jersey and Massachusetts authority decided in the context of very similar suitability and probity reviews in those states, which requires an assessment of matters, including a casino's integrity, honesty, good character and reputation, which may assist you in determining the issue in this Inquiry. First, in *Re-Bally's Casino Application* the New Jersey Casino Control Commission said, in relation to the assessment of character:

We find this a most difficult task for several reasons. First, "character" is an elusive concept which defies precise definition. Next, we can know the character of another only ... but most clearly through his words and deeds. Finally, the character of a person is neither uniform nor immutable. Nevertheless, we conceive character to be the sum total of an individual's attributes, the thread of intention, good or bad, that weaves its way through the experience of a lifetime. We must judge a person's character by evaluating his words and deeds as they appear from the testimony and from all of the evidence in the record before us. We must focus particularly on those attributes of trustworthiness, honesty, integrity and candour which are relevant to our inquiry.

COMMISSIONER: I think the Massachusetts Commission had to look at individuals at the point.

MR BELL: Yes. So that was considering the issue in the context of individuals, but there is particular guidance, we submit, to be gained from the decision of the Massachusetts Gaming Commission in the matter of Wynn MA, LLC which was dealing with the suitability of a corporate casino operator. And the commission
5 made the important point that it must be remembered that the corporate entity itself is made up of individuals and has no independent character or morality standing alone. The commission referred, in that regard, to the remarks in the case of Merrimac College v KPMG that where the plaintiff is an organisation it can only act through its employees; its moral responsibility is measured by the conduct of those who lead the
10 organisation; thus, where the plaintiff is a corporation, we look to the conduct of senior management, that is, the officers primarily responsible for managing the corporation, the directors and the controlling shareholders, if any.

Of course, the character and integrity and therefore suitability of a company is
15 informed by the character and integrity of those who control its affairs. It follows that a company's suitability may ebb and flow with changes to the composition of the company's board of management and others who influence its affairs over time. If a company's character and integrity has been compromised by the actions of its controlling shareholders then, as noted in re Bally's, it may be possible for a
20 company to remove a stain from the corporate image by removing the persons responsible for the misdeeds. However, that would only be possible if the company could isolate the wrong done and the wrongdoers from the remaining corporate personnel.

It was held in another New Jersey case, Trap Rock Industries v Sagner, that in those
25 circumstances it's necessary to ensure that the corporation has purged itself of the offending individuals, that they are no longer in a position to dominate, manage or meaningfully influence the business operations of the corporation. Finally, it was noted in Wynn that the examination of a company's conduct and business practices
30 as part of a suitability review also requires a more wholistic assessment of the company's corporate governance, including adherence to adopted policies and procedures. Indeed, that observation accords, in our submission, with the view of the Australian Securities and Investments Commission that a company's underlying
35 culture is the key driver of its conduct.

This was emphasised in a recent speech delivered by ASIC Commissioner, Mr John Price, on 9 December 2019 in which he said that:

*ASIC views corporate culture as the underlying mindset of the organisation, a
40 set of shared assumptions and behaviours that represent the collective values, principles, beliefs of the organisation. In short, culture is 'the way we do things around here'. A company's culture often shapes its approach to corporate governance, its response to its regulatory obligations and drives
45 conduct within the firm. That can be either good or bad conduct.*

In an earlier speech on 28 November 2016 Mr Price said that:

5 *Corporate culture can in turn be assessed with reference to an entity's approach to governance and oversight as well as its implementation of best practice corporate governance standards such as those set out by the Australian Stock Exchange in its principles of good corporate governance and best practice recommendations.*

10 In light of these authorities and policy statements we submit that in assessing suitability in the current Inquiry, key focus ought to be on whether the conduct of the licensee and Crown Resorts is indicative of honesty and integrity and whether the conduct provides a foundation for a public perception as an aspect of the repute of the licensee in Crown Resorts that they can fulfil the responsibility of operating the Barangaroo facility. The seriousness of that responsibility is reflected in the primary objects of the Casino Control Act in section 4A:

15 *Ensuring that the management and operation of a casino is free from criminal influence and exploitation, facilitates honest gaming, and controls the risk of harm to the public.*

20 Ultimately, it's those underlying objects, in our submission, that provide the lens through which suitability is being assessed. As the VCGLR observed in the context of comparative provisions in the Victorian legislation:

25 *The licensee's conduct raises doubt about its ability to ensure the statutory objects that necessarily reflects the licensee's general suitability to hold a casino licence.*

30 We submit that in the context of those authorities and policy statements, and in examining the suitability of the licensee in Crown Resorts you ought give particular attention to the underlying culture, governance and accountability frameworks for the entities and their risk management processes and level of compliance with regulatory requirements over time. Further, we submit that the suitability of the licensee is not a matter that can be assessed in isolation from the suitability of Crown Resorts and, indeed, the practices of the entire Crown Resorts group. In the New Jersey and Massachusetts authorities to which I've referred the clear emphasis in assessing the suitability of a particular corporate entity was on the conduct of those identified as being in ownership and control of the company and those who had the ability to manage or meaningfully influence its business and operations, including but not limited to the company's directors, senior management and controlling shareholders.

40 The conduct and, therefore, suitability of a licensee cannot be separated from the conduct of Crown Resorts, CPH Crown and CPH and each of those entities' directors and senior management that have directly shaped and continue to shape the business and operations of the licensee itself.

45 Returning to section 13A of the Casino Control Act, we submit that suitability is ultimately being assessed in the context of what should happen to the licence for the Barangaroo facility, both in terms of the original decision to grant the licence and in

the subsequent review of the licence and its conditions from time to time. It's clear from section 13A in assessing what should happen to the licence and the recommendations that may be made in that regard, that the fortunes of the licensee and its close associates, the focus of those associates being Crown Resorts for the purposes of this Inquiry, are inextricably interwoven.

Commissioner, I would now like to turn to deal with the topic of the China arrests. Although it appears to be a fact which was not known to at least some directors of Crown Resorts at the time, from at least 2010, if not earlier, Crown Resorts employed staff who lived and worked in China. This was distinct from simply having staff who travelled to China for business and resided in neighbouring countries. In the period up to October 2016 the China-based staff were employed by Crown Resorts PTE Limited, a subsidiary of Crown Resorts incorporated in Singapore to which I will refer as Crown Singapore. In October 2016, nine Crown Singapore employees were arrested by the Chinese police.

COMMISSIONER: I think it was more than nine. I think it was 19.

MR BELL: I meant to say 19.

COMMISSIONER: That's all right.

MR BELL: Subsequent to their detention, the 19 employees were charged with offences related to gambling under the criminal laws of China. None of the 19 arrested employees disputed the charges, and 16 were fined and sentenced to fixed terms of imprisonment by the Shanghai Baoshan District Peoples Court in the People's Republic of China on 27 June 2017. Between late July and early August 2019 various media outlets published allegations concerning the conduct of Crown Resorts. This included allegations relating to Crown Resorts operations in China in 2015 and the arrest of the Crown Resorts China-based staff.

Articles published in the newspapers in late July of 2019 contained allegations that Crown Resorts in China had incentivised staff to break Chinese gambling laws, had advised employees to take steps to fly under the radar, had briefed staff about what to do in the event of police raids. In the 60 Minutes program broadcast on 28 July 2019 claimed that Crown Resorts knowingly exposed its staff to danger by its China operations which included the promotion of gambling and the promotion of Crown Resorts casinos. It's claimed that staff were engaged in a high-pressure sales environment in which they received bonuses for luring high rollers and were pushed to meet high sales targets. The 60 Minutes program claimed that the Chinese government had given many warning signs to foreign casinos throughout 2015 which were ignored by Crown Resorts.

So the media allegations relating to the China resorts can be summarised as follows. First, Crown Resorts knew that its China-based staff were breaking Chinese gambling laws. Secondly, Crown Resorts failed to heed warning signs from the Chinese government that its employees were at risk and thereby disregarded their

welfare. Thirdly, as the risk escalated, Crown Resorts directed its China-based sales staff to keep promoting gambling but to do so under the radar. Fourthly, that Crown Resorts instructed staff to falsely claim to the Chinese authorities that they were not working for Crown Resorts in China but were working in other locations. Fifthly,
5 that Crown Resorts tried to side-step Chinese gambling laws by pretending to lure wealthy Chinese gamblers to its Australian hotels rather than to its casinos.

Sixthly, that Crown Resorts deliberately attempted to circumvent Chinese laws related to gambling by disguising its promotion of gambling as the promotion of its
10 Australian hotels and leisure facilities. Seventhly, that Crown Resorts falsely claimed that it was not promoting gambling. And eighthly, that the nature of Crown Resorts corporate governance prevented it from properly managing risks, including risks based in China.

15 In response to the media allegations, the board of Crown Resorts issued an Australian Stock Exchange and media release entitled Message from the Crown Resorts Board of Directors, 31 July 2019. The document listed each director of Crown Resorts at the time as an author. With respect to the media allegations regarding the China arrests, the document stated:

20

Crown Resorts did not know that the conduct of its staff in China constituted an offence in China and did not deliberately breach any laws. Crown Resorts was not charged with or convicted of any offence in China. Crown Resorts understood that its staff were operating in a manner that did not breach article 303 of the Chinese Criminal Law; that at all relevant times Crown Resorts obtained legal and government relations advice from reputable independent specialists; the detention and conviction of its staff was not an indication that the advice was wrong or disregarded, but an illustration of the challenges involved in anticipating how foreign laws could be interpreted and enforced. The 60 Minutes program featured a former junior employee and several purported experts. Whether they were paid for the 60 Minutes appearance was not disclosed. The objectivity of the former employee is open to question on the basis she made an unsuccessful demand for compensation from Crown of over 50 times her final annual salary.

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Commissioner, the Crown Resorts public response to the media allegations focused only on the core allegation that Crown Resorts knew that the conduct of its staff in China constituted an offence in China and that it deliberately flouted Chinese law. In the response, the directors refuted that allegation. The implication of what the
40 directors said in the public response was that Crown Resorts relied on all the government and legal relations advice that was obtained. Crown Resorts didn't address the other media allegations made in relation to the China arrests in its public response.

45 The public hearings of the Inquiry which commenced on 17 August this year concerned the China arrests, the circumstances which led to those arrests and the veracity of the allegations made in the media.

COMMISSIONER: You mean the section in relation to China arrests commenced on 17 August.

5 MR BELL: That's right. That's when witnesses were examined in relation to the issues concerning the China arrests, when that commenced.

COMMISSIONER: Yes.

10 MR BELL: We submit that the facts and circumstances which culminated in those arrests are directly relevant to the present suitability of the licensee in Crown Resorts for at least the following reasons. First, the conduct of senior managers, executives and directors in relation to the business in China and the China arrests provides evidence of Crown Resorts compliance with the governance and risk management structures and structures within Crown Resorts, both in the context of its overseas
15 operations but more broadly across the organisation. We submit that the evidence in relation to the China arrests demonstrates serious and systemic failures within those structures and frameworks.

20 Secondly, the evidence in relation to the China arrests provides an indication as to how Crown Resorts and its leaders may respond to dynamic and changing circumstances that are inherent within its business. This is underscored by the current board's strong public defence of Crown Resorts' conduct in this regard in a manner which, it is submitted, failed to have due regard to the facts and circumstances which led to the arrests. Thirdly, the evidence in relation to the China
25 arrests exposes the culture within Crown Resorts and how it directly has an impact on the manner in which business is conducted and decisions are made. It is submitted that the culture within Crown Resorts exposed its staff to risk and led to the failure to adequately respond in the face of escalating risk.

30 Further, we submit it demonstrates the manner in which the governance structures of Crown Resorts were compromised by the influence of its controlling shareholder which resulted in the failure to recognise and report the escalating risk which culminated in the arrests.

35 In opening the China arrests hearings on 17 August, I put that having regard to the focus on current suitability and the nature of the media allegations, the issues to be considered by this Inquiry were as follows: first, whether the board or senior management of Crown Resorts in 2015 and 2016 believed that the employees in China were acting in breach of Chinese gambling laws or believed that those
40 employees were at risk of arrest, detention or conviction for breach of those laws. Secondly, whether Crown Resorts adopted and promoted a business model for its activities in China which placed its employees in China at material risk of arrest, detention or conviction for breach of those laws. Secondly, whether Crown Resorts adopted and promoted a business model for its activities in China which placed its
45 employees in China at material risk of arrest, detention or conviction for breaches of China gambling laws. Thirdly, whether the board or senior management of Crown Resorts in 2015 and 2016 failed to have regard to or respond appropriately to

warning signs in China which materially escalated the risk of arrest, detention or conviction for its employees in China. Fourthly, whether the conduct of Crown Resorts in China failed to comply with its corporate governance or risk management policies.

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Fifthly, whether Crown Resorts corporate governance and risk management policies and practices were appropriate to meet the risks faced by its activities in China, and finally, if Crown Resorts failed to comply with its corporate governance or risk management policies, what the reasons were for that failure and to what extent has the current board and senior management taken steps to ensure similar failures do not occur in the future. So these submissions will address those questions and identify a number of other matters that have arisen in the context of the China arrests that are demonstrative of the risk management, corporate governance, ethical and cultural failures which we submit the saga demonstrates across the business of Crown Resorts.

At the outset, we should acknowledge there has been no evidence placed before the Inquiry which indicates that either the board or senior management of Crown Resorts in 2015 or 2016 believed that the employees in China were acting in breach of Chinese gambling laws. That allegation was not put to any witness, there being no apparent basis for it in the documentary evidence and it was not established. That, however, does not address the more nuanced issue of whether the board or senior management of Crown Resorts believed that its employees were at risk of arrest, detention or conviction. That is, in essence, we submit, a risk management issue which turns on whether there was an appreciation that there was a risk of arrest, detention or conviction irrespective of whether it was believed that the activities of the staff in China fell technically within the law.

COMMISSIONER: So you're putting that they did not have a positive belief of breach, but that in respect of the concern for the staff there should have been concern in respect of the prospect of arrest in the circumstances that pertained in China? Is that what you're putting?

MR BELL: That's precisely the point, Commissioner.

35

COMMISSIONER: I see.

MR BELL: Could I identify the witnesses relevant to the China arrests from whom evidence has been heard. During the period from January 2015 to October 2016 the following individuals were directors of Crown Resorts: Mr Michael Johnston, appointed in July 2007, a nominee of CPH; Ms Helen Coonan, appointed in December 2011; Mr Harold Mitchell, appointed in February 2011; Mr Andrew Demetriou, appointed in January 2015; Mr John Alexander, appointed in December 2007; Professor John Horvath, appointed in September 2010; Mr Geoffrey Dixon, appointed in July 2007; Ms Rowena Danziger, appointed in July 2007; Mr Robert Rankin, appointed from 30 July 2015, also appointed as a nominee of CPH; Mr

45

Benjamin Brazil, appointed June 2009; Mr Rowen Craigie, appointed May 2007, and Mr James Packer, appointed in July 2007 who ceased from 21 December 2015.

5 With the exception of Mr Rankin, who has refused to appear before the Inquiry, the Inquiry has received evidence from each of those directors of Crown Resorts during that period. Other key executives from whom the Inquiry has received evidence were Mr Barry Felstead, chief executive officer, Australian Resorts; Mr Ishan Kunaratnam, president of VIP development at Crown Resorts and special assistant to Mr Packer; Mr Jason O'Connor, group executive general manager, VIP international gaming room. During the period from January 2015 to October 2016 the directors of Crown Singapore were Mr Rowen Craigie, Mr Barry Felstead, Mr Eugene Lim, Mr Cheng Song Bay. The Inquiry has received evidence from Mr Craigie and Mr Felstead that Mr Lim and Mr Song Bay were the local directors for Crown Singapore whose appointment was arranged via boardroom corporate and advisory services.

15 In addition to those directors and executives, the Inquiry has also received evidence relevant to the China arrests from Mr Drew Stuart, Jan Williamson, Debra Tegoni, Mr Michael Neilson. The Inquiry has not received evidence from Mr Michael Chen who was the president, international marketing, between 2015 and 2016; indeed, he was president earlier than that, from around 2012. Exhibit MC1 in relation to Mr Chen has been tendered. The Inquiry understands that Mr Chen is currently based in the United States. The Inquiry has communicated with Mr Chen through his legal representatives seeking assistance in respect of the matters relating to the China arrests.

25 Relevant correspondence between the Inquiry and Mr Chen's legal representatives is as follows: 21 July 2020 the Inquiry wrote to Mr Chen's legal representatives to inquire whether they had instructions to accept service of a summons to attend. On 22 July 2020 Mr Chen's legal representatives acknowledged receipt of that communication. On 28 July 2020 the Inquiry reiterated its request to Mr Chen's legal representatives to confirm instructions to accept service on Mr Chen's behalf. The letter also enclosed a copy of a transcript of an interview which Mr Chen had given to the VCGLR and requested Mr Chen confirm the accuracy of that transcript and provide any additional information he would like to provide in relation to the matters covered in that interview.

35 On 29 July 2020 Mr Chen's legal representatives informed the Inquiry that they had been unable to contact Mr Chen due to their current schedule and hoped to revert with a response the following week. On 5 August 2020, Mr Chen's legal representatives wrote to the Inquiry confirming that they did not have authority to accept service of a summons to attend on behalf of Mr Chen. There's been no further correspondence received from Mr Chen or his representatives since that time. However, the VCGLR interview of Mr Chen has been tendered and is available to assist the commission.

45 COMMISSIONER: Thank you.

MR BELL: So I turn to address the findings of fact in relation to the China arrests which we submit ought be made and, first, the findings of fact in relation to Crown Resorts and VIP international business, specifically in relation to risk management, governance and culture. Directors and key senior executives of Crown Resorts
5 accepted in their evidence the following statements of principle as published in the Corporate Governance Principles and Recommendations published by the ASX Corporate Governance Council, 3rd edition. It was in force in the period up to the China arrests. That the board of a listed entity is ultimately responsible for deciding the nature and extent of the risks it is prepared to take to meet its objectives. It is the
10 role of the board to set the risk appetite for the entity, to oversee its risk management framework, satisfy itself that the framework is sound. It is the role of management to design and implement that framework and to ensure that the entity operates within the risk appetite set by the board.

15 In respect of the VIP international business various directors and executives further accepted that those principles applied to Crown Resorts in relation to the risks involved in pursuing its business strategy in China. It was also accepted by directors and key senior executives that it was a matter for the board of Crown Resorts in that
20 period to decide whether the business strategy being pursued in China remained within the board's risk appetite. In order for the board to decide if the business strategy in China remained within its risk appetite, it was necessary for the board to be informed of all material facts relating to making that decision, including any escalation of risk to the safety of staff in China.

25 That boards cannot operate properly without having the right information and boards do not operate effectively if they do not challenge management. That the board of a listed entity plays an important role in setting the tone and influencing and overseeing the culture of the entity. In each of its annual reports in 2015 and 2016
30 Crown Resorts provided a corporate governance statement which set out the extent to which Crown Resorts had followed the best practice recommendations by the ASX Corporate Governance Council and made disclosures responding to the ASX Corporate Governance Principles and Recommendations. The response to principle 3, to act ethically and responsibly, Crown Resorts relied on the establishment of separate codes of conduct that outlined the standard of ethical behaviour expected of
35 its directors and employees to demonstrate compliance with this principle to its shareholders.

According to the annual reports, the express purpose of the code of conduct for directors was to ensure that directors had a clear understanding of the expectations of
40 their conduct, to reinforce the statutory duties of directors to, among other things, act with proper purpose and honesty in good faith and in the best interests of Crown as a whole, and with due care and diligence in fulfilling their functions, to avoid improper use of information acquired as a director, proper advantage of the position of director and conflicts of interest. The code of conduct for directors also provides, among
45 other things, that directors must be independent in their actions, take all reasonable steps to be satisfied as to the soundness of all decisions taken by the board, must at all times comply with the spirit as well as the letter of the law, and the principles of

the code of conduct and are encouraged to report suspected unlawful or unethical behaviour, should not engage in conduct likely to bring discredit upon Crown, must encourage the reporting and investigating of unlawful or unethical behaviour.

5 It was accepted by Mr Craigie, the managing director and chief executive officer of Crown Resorts, and a director of Crown Melbourne in the period up to October 2016, that the directors of the subsidiary companies of Crown Resorts were expected to comply with the spirit as well as the letter of the law in all jurisdictions the companies did business, and Mr Felstead, Mr O'Connor and Mr Chen were expected
10 not to be relying on any technical narrow view of the law in China but to ensure they were complying with the spirit as well as the letter of the law in China.

The code of conduct for employees of Crown Resorts in the period stated:

15 *It is a fundamental principle of Crown Resorts Limited that all of our business affairs be conducted legally, ethically and with strict observance of the highest standards of integrity and professionalism.*

20 Directors and key executives of Crown Resorts each accepted that all employees were required to follow that principle in all of the jurisdictions in which they were involved. In terms of risk management policy, Mr Felstead accepted that risk management was an integral part of the casino industry and each Crown Resorts business unit was responsible for identifying, assessing and managing material risks to their business, through their risk management committees. This understanding is
25 broadly consistent with that of Mr Drew Stuart who coordinated the risk management process for Crown Melbourne, being that the ultimate responsibility for a particular risk and the ownership of the risk sat with the departmental head.

30 The Crown Resorts risk management policy dated February 2008 which was applicable in the period up to October 2016 provided a broad description of the risk management processes of Crown Resorts and its wholly owned operating businesses, including Crown Melbourne. According to the risk management policy, while the board of Crown Resorts assumes ultimate responsibility for risk management at Crown Resorts delegated oversight responsibility for risk management and internal
35 control of major risks to the Crown Resorts risk management committee.

The stated goal of the risk management policy was to build a culture of risk awareness and a sense of ownership of risk. In order to develop that culture, Mr Stuart hold the Inquiry that he considered that it was important for the senior
40 managers in the business units to understand that they had a responsibility for managing risk and to coordinate with him on his internal audit activities. The risk management policy stated, among other things, that the Crown risk management committee would meet regularly to review the effectiveness of the company's risk management systems, processes and internal controls and would report its findings to the Crown Resorts board; that each of Crown Resorts wholly owned operating
45 business units would have its own risk management committee that was responsible for maintaining and reviewing the risk profile of its business on a regular basis and

would be responsible for reporting to Crown Resorts risk management committee twice per year or more regularly as requested.

5 It stated that risk registers were in place across all Crown businesses to catalogue material, financial as well as non-financial risks to each business and were to include a description of identified material risks, the likelihood and impact of each risk and the response to identified risks. Identifiable risk mitigation strategies were also to be reported. Responsibility for the preparation and maintenance of the risk registers sat with the individual risk management committees. They were to be reviewed on a regular basis by each relevant Crown business CEO, senior executives, Crown
10 Resorts risk management committee to ensure that the risk registers remained relevant to the changing nature of the business and that appropriate action was taken where necessary.

15 Provided that each Crown business was responsible for identifying, assessing and managing material risks to their business through their individual risk management committees which included senior managers of the relevant business who had a strong understanding of it and were best equipped to identify the associated risks. And it provided that each Crown business would provide for reporting on risk
20 management in regular monthly reporting. In terms of the approach framework and operation of risk management within Crown Melbourne - - -

COMMISSIONER: Just before you go, you say that that was a policy – the risk management policy hadn't been changed since 2008 at that stage.
25

MR BELL: It was in force from 2008 up to and including the time of the arrests.

COMMISSIONER: Thank you.

30 MR BELL: So in terms of the approach, framework and operation of risk management for Crown Melbourne which was relevant to the VIP international unit in China, Crown Resorts operations in China were part of Crown Resorts VIP international business which was a business unit within Crown Melbourne. The management of risk for the VIP international business was therefore reported
35 formally through Crown Melbourne in the period up to the arrests. However, despite the established framework for the reporting and management of risk, in practice the strategy adopted was for the executives of the VIP international business to manage the risks in China themselves without engaging with the risk management processes and structures of the organisation.

40 The formal risk management process for Crown Melbourne was coordinated by Mr Stuart who reported to Ms Debra Tegoni and to Mr Felstead in the period leading up to the arrests. To identify the risks faced by various business units, Mr Stuart said that he depended on, firstly, senior management in the business units and, secondly,
45 the executive risk committee and the executive team. Mr Felstead accepted in his evidence that it was the responsibility of management, including himself, to identify the risks in relation to VIP international business for Mr Stuart so that he could

include them in the risk registers and risk profiles and to identify, through discussions with Mr Stuart, the mitigation controls which were appropriate to regulate the identified risks.

5 In discharge of his responsibilities, Mr Stuart coordinated the formal risk management process for Crown Melbourne. Key documents that were utilised as part of the formal process included the risk management plan and the risk management report, presentation to the Crown Melbourne audit committee which was responsible for risk management at Crown Melbourne. Other key documents
10 were a departmental risk register for gaming operations which covered VIP gaming. Both the risk management plan and the risk management report contained a document referred to as the “corporate risk profile” setting out the high and significant risks as determined by that process.

15 So the formal process at Crown Melbourne comprised the following aspects. The annual risk assessment process commenced in around August each year and culminated in the presentation of the annual risk management plan in November each year to Crown Melbourne audit committee. That plan contained the corporate risk profile. As part of the risk assessment process, Mr Stuart coordinated workshop-
20 style meetings with executives and senior staff of various departments in Crown Melbourne to discuss and review the risk registers and risk profiles for each department and consider whether the controls remained appropriate, consider new and emerging risks and consider generic risks and obtain input from various departments on those.

25 This collaborative process, so Mr Stuart told us, was the foundation for the annual Crown Melbourne risk management plan. Any risks relevant to the VIP international business were intended to be captured in the gaming operations departmental risk register. The VIP international business representatives were involved in the
30 preparation of that document. The risk register and the corporate risk profile were connected by way of a mapping document whereby each risk identified in the risk register was mapped and collated in the corporate risk profile.

35 COMMISSIONER: So you have the gaming operations dealing with VIP gaming domestic, but you also have that dealing with the VIP international business; is that right?

MR BELL: Yes.

40 COMMISSIONER: Yes.

45 MR BELL: Prior to providing the corporate risk profile to the Crown Melbourne audit committee, the approval of the executive risk management committee would be obtained, followed by approval of the Crown Melbourne executive team. Twice a year Mr Stuart arranged meetings with the Crown Melbourne executive team, which included Mr Felstead and Mr O’Connor as the two most senior executive managers responsible for the VIP international business, to report and discuss updates to the

risk profile prior to Mr Stuart's presentation of that document to the Crown Melbourne audit committee. During the executive team meetings, the risk ratings and the corporate risk profile as well as any new risks which had been identified and the mitigation controls required to regulate those risks would typically be discussed,
5 so Mr Stuart said.

Additionally, the executive team meetings provided the opportunity for executives to look at the corporate risk profile as a collective group of executives and trade ideas on it prior to its presentation to the Crown Melbourne audit committee. Once the
10 executive team had provided its approval, Mr Stuart told the Inquiry that he would table for approval the risk management plan or the risk management report, as the case may be, to the Crown Melbourne audit committee. Mr Felstead regularly attended the Crown Melbourne audit committee meetings as an invitee despite not being a member of that committee. Risk management reports also contained the
15 corporate risk profile and they were prepared in or about July or August of the following year to provide updates on risk developments since the provision of the risk management plan in November of the previous year.

Mr Stuart accepted in his evidence that effective risk mitigation has to be dynamic
20 and that risk mitigation strategies need to be regularly updated. As such, he said, it was important for him to have regular discussions with senior management in various business units. Mr Stuart also said in his evidence that he would have taken the core principles of Crown Resorts to act legally, ethically and with strict observance of the highest standards of professionalism and integrity into account
25 when assisting with the identification of appropriate risk mitigation strategies had the risks been drawn to his attention.

In relation to the VIP international business, Mr Stuart determined, he said, that it was important for Mr Felstead and Mr O'Connor to be involved in the formal risk
30 management process in order for it to be effective as they were the two most senior executives in VIP international. The importance of the discussions at the executive meetings and workshop-style meetings with senior staff was to ensure, amongst other things, he said, the relevant risks were identified, analysed and evaluated.

So turning to risk management at the Crown Resorts level, risk management
35 processes at Crown Melbourne were intended to feed into risk management structures of Crown Resorts. Crown Resorts risk management committee, as I've indicated, was delegated oversight responsibility for risk management and internal control of major risks. According to the Crown Resorts risk management committee
40 charter dated 20 February 2014 and the August 2016 version of that charter, the risk management committee was mandated to hold meetings twice a year. This was consistent with the evidence of Mr Stuart that meetings were held twice a year between 2014 and 2016, however, Mr Dixon, the chairman of that committee, gave
45 evidence that they met more frequently. In the period between 2014 and 2016 the key documents that were provided to the Crown Resorts risk management committee included a document referred to as a report against material risks which typically identified the high risks for Crown Resorts and drew upon the risks and risk

management processes identified by the wholly owned businesses, including Crown Melbourne.

5 In particular, Mr Stuart said he provided input into the Crown Melbourne sections based on the knowledge he obtained through the formal risk management process of Crown Melbourne and input from Crown Melbourne personnel including, he said, Ms Tegoni, and the key documents also included a document referred to as a risk profile which was reviewed annually by the Crown Resorts risk management committee. It was a matrix that was not confined to high risks, but also included 10 risks rated as low, moderate and significant. Senior executives, senior legal counsel and Mr Stuart, discussed any proposed updates to the risk profile before it was presented to the risk management committee for discussion and approval.

15 In particular, Mr Stuart said that he provided his input into this document drawing upon his knowledge of the risks affecting Crown Melbourne. Information relating to risks associated with the VIP international business was intended to flow into Crown Resorts by virtue of Mr Stuart's regular attendance at the Crown Resorts risk management committee meetings held, as I've indicated, twice a year. Members of the Crown Resorts risk management committee between – in the period up to 20 October 2016, were Mr Dixon, who was chairman of the risk management committee until November 2019; Mr Craigie, who was a member of the committee until February 2017; and Ms Danziger, who was a member of the committee from 2007 to 2017.

25 Crown Resorts board obtained information relating to risk management issues through various sources, including the minutes of the Crown Resorts risk management committee meetings being included in the board papers provided to the members of the board, regular attendance by Mr Felstead at the Crown Resorts board meetings. Mr Felstead had a standing invitation to attend meetings by virtue of his 30 position as CEO Australian Resorts. He was required to report on all aspects of the business for which he was responsible, including the VIP international business.

35 COMMISSIONER: Mr Felstead went to the Crown Melbourne audit committee as a standing invitation, or a standing invitee, but also to the Crown Resorts board meeting, but not the Crown Resorts risk management committee; is that right?

MR BELL: That's the case. That's the case.

40 COMMISSIONER: Thank you.

MR BELL: The Crown Resorts board also obtained information relating to risk management issues through discussions regarding risk management issues at Crown Resorts board meetings. So could I turn to deal with the VIP international business and facts we submit ought to be found in relation to that.

45 COMMISSIONER: Yes.

MR BELL: We submit you should find the following fact: the VIP international business unit managed, among other matters, the group's overseas operations and the identification and development of relationships with international VIP gamblers to visit Crown Resorts casinos in Australia. I should indicate that Ms Sharp SCs
5 submissions will address other aspects of VIP international business. Crown Resorts considered international VIP gamblers to be persons living outside Australia who participated in a junket or received commissions and other benefits based on turnover played through premium player programs. So they were either participants in a junket or premium players.

10 While the VIP international business unit was within Crown Melbourne it was part of the global strategy and had an impact on multiple properties, being Crown Melbourne, Crown Perth Limited and Crown Aspinalls Limited. VIP international maintained operations in various jurisdictions including Malaysia, Singapore and
15 China. During the period up to the arrests staff with responsibility for VIP international were based in Melbourne, such as Mr O'Connor, or overseas, such as Mr Chen, who was based in Hong Kong. This was in addition to the staff based in mainland China employed by Crown Singapore. The senior executives of the VIP international business unit were Mr Felstead, Mr O'Connor and Mr Michael Chen.
20 Mr Felstead was the most senior executive responsible for the VIP international business unit, and has been so since becoming the CEO of Crown Australian Resorts in August 2013. As at today, Mr Felstead remains CEO of Australian Resorts as well as a director of Crown Melbourne, however, the Inquiry has been told that Mr Felstead will step down before the end of this year. As group executive - - -

25 COMMISSIONER: Do you mean step down? I think we were told that he was retiring, weren't we?

MR BELL: Yes. I was – that's what I intended to convey.

30 COMMISSIONER: Yes, I see. You mean leaving the company?

MR BELL: Yes. I understand he was - - -

35 COMMISSIONER: Yes, I see.

MR BELL: Turning to Mr O'Connor, as group executive general manager of VIP international gaming from 2011 to October 2016, Mr O'Connor reported to Mr Felstead from May 2013 to October 2016. Mr O'Connor confirmed that he was the
40 ultimate decision-maker in the VIP international business unit, however, he said Mr Felstead was often consulted and involved in major strategic decisions such as decisions pertaining to pricing, capital investments and critical customer relationships. Mr O'Connor and Mr Felstead communicated in person or by telephone several times a week, and it was Mr O'Connor's practice to alert Mr
45 Felstead to any issues concerning the VIP international business which Mr O'Connor considered important.

Mr Chen was one of Mr O'Connor's direct reports. Mr Chen held the position of president of international marketing and was the most senior internationally-based member of the VIP international business. A number of senior vice presidents responsible for different geographic regions or business lines within VIP international reported to Mr Chen. In the period between 2014 and 2016, Mr Chen and Mr O'Connor spoke every day or every other day. In addition to Mr Felstead, Mr O'Connor and Mr Chen, Jacinta Maguire, general manager commercial, Mr Roland Theiler, senior vice-president of international business, Mr Ishan Kunaratnam comprised what was internally referred to as VIP international leadership team, being the key individuals involved in commercial decisions looking after the business unit.

Mr O'Connor met with Mr Felstead, Mr Chen, Mr Kunaratnam and Crown Resorts director, Mr Michael Johnston, on a usually weekly basis to discuss operational issues concerning the VIP international business. Mr Kunaratnam, although not employed as a senior executive of the VIP international business, was, nevertheless, significantly involved in, or perceived to be significantly involved in, the leadership strategy of the VIP international business. This was demonstrated through his inclusion in the VIP international leadership team and the operational meetings which he attended with Mr Johnston.

In 2015 to 2016, Mr Kunaratnam reported to Mr Felstead and held a number of titles, including vice-president of entertainment, vice-president of Capital Golf Course, president of VIP development. His role involved running the Capital Golf Club which sat within the VIP international business – which sat within the VIP business, promoting non-gaming events and roadshows on behalf of Crown Resorts. From at least October 2014, Mr Kunaratnam was also conferred the title special assistant to the chairman, Crown Resorts chairman at the time being Mr James Packer. The title was honorary and intended to signal respect to VIP patrons who met Mr Kunaratnam but who were unable to meet Packer. Mr Kunaratnam also confirmed that from around 2015 he was a personal assistant to Mr Packer when Mr Packer visited Melbourne.

So dealing with reporting lines, during the period 2015 to 2016, Mr Felstead reported directly to Mr Rowan Craigie, managing director and chief executive officer of Crown Resorts. Mr Felstead and Mr Craigie did not have formal regular meetings, but conversed on an as-needs basis. According to Mr Craigie, the view at the time was that formal reporting processes were unnecessary due to the regularity of informal communications. Additionally, Mr Felstead prepared a weekly report, referred to as a trading update or similar which contained information on how the VIP international business was performing, as well as the Australian business as a whole. These trading updates were sent to Mr Craigie, Mr Ken Barton, Mr Michael Neilson, Mr Michael Johnston and the chairman at the time.

One of the ways in which information regarding the VIP international business unit was reported to Crown Resorts was via the so-called CEO meetings involving the chairman, Crown Resorts management and select CPH personnel. The Inquiry was told that the CEO meetings were established by Mr Packer, but they were

discontinued by Mr Robert Rankin shortly after Mr Rankin succeeded Mr Packer as chairman in August 2015. The purpose of the CEO meetings was to brief Mr Packer on matters relevant to the Crown Resorts business prior to Crown Resorts board meetings. Regular attendees at the CEO meetings were Mr Packer or, in his absence,
5 Mr Alexander as deputy chairman; Mr Craigie; Mr Felstead; Mr Neilson; Mr Todd Nisbet, who was the executive vice-president of strategy and development; Mr Karl Bitar, who was the head of government relations.

CPH personnel also regularly attended the CEO meetings, such as Crown Resorts
10 and CPH director Mr Johnston and Mr Mark Arbib, who worked for CPH in a business development role. The purpose of Mr Packer's invitation to these CPH attendees, so Mr Craigie understood, was to expose two of Mr Packer's three key advisers within CPH, being Mr Johnston and Mr Arbib, to Crown Resorts management team and CEO reports so that they would be in a better position to
15 advise him. Mr O'Connor also often attended the CEO meetings and presented an update on VIP international business on a monthly or bi-monthly basis.

It was usual practice, we submit you should find, for a specific update on the VIP international business to be prepared and spoken to at each of the meetings by Mr
20 Felstead or Mr O'Connor. The VIP updates had structured reporting topics, such as turnover by region, and included outstanding debts owed to Crown Resorts by VIP international customers and the mechanisms which might be employed to recover those debts. In his evidence to the Inquiry, Mr O'Connor said that due to the structured approach of these VIP updates there could have been occasions when he
25 was aware of matters which he did not disclose in relation to VIP international business at the CEO meetings. However, the VIP updates were not tabled at board meetings or otherwise presented to the board. This is despite the VIP updates being included in the papers prepared for the CEO meetings, which largely comprised papers to be tabled at the following Crown Resorts board meeting, such as the CEO
30 report for management accounts and development updates.

Mr Craigie gave evidence of Mr Packer having a particular interest in VIP international and Mr Packer's desire to drill down into this part of the business. Mr
35 Craigie attributed Mr Packer's interest in the VIP international business to Mr Packer's interests in Asia, the joint ventures with Melco, for which Mr Packer was the architect, and the mathematics of the business, however, Mr Packer, in his evidence, said he had no more interest in the VIP international business of Crown Resorts than any other area of Crown Resorts business.

40 I turn to deal with the VIP working group and its meetings. In 2013, quite possibly at Mr Packer's instigation, but, certainly, with his approval, the VIP working group or CPH working group was established. That group was comprised of VIP international executives and senior CPH personnel. Regular CPH attendees were Mr Johnston; then group investment manager Mr Kady; and the then treasurer, Mr
45 Steve Bennett. Regular attendees from the VIP international business were Mr Felstead, Mr O'Connor, Mr Chen and Mr Theiler. Mr Barton, Ms Maguire and Mr Kunaratnam attended less frequently.

The VIP working group met approximately monthly from about April 2013 to October 2016, however, Mr Johnston said in his evidence that the meetings may have been less frequent. The purpose of the VIP working group was for CPH attendees to provide guidance and advice to senior executives of VIP international. Topics
5 included debt, provision of credit for customers, operational issues, opportunities to grow the business, and strategies relating to the Chinese market. In particular, Mr Craigie gave the following evidence:

10 *Both Mike and James are very numerate and, probably, to understand the complexity of the VIP business, you need to understand the volatility of win rates, you need to understand how the various rebate programs work. It was a sort of a natural fit for Mike's skill set. He was mathematically inclined and financially numerate and that was obviously of assistance to Barry and Jason.*

15 COMMISSIONER: So these started in '13, and the meetings then occurred, did you say, monthly?

MR BELL: Monthly; although Mr Johnston said that they occurred less frequently as time went on.

20

COMMISSIONER: Yes. So this is at about the time that the Barangaroo licence was being - - -

MR BELL: Yes.

25

COMMISSIONER: - - - pursued and granted in New South Wales, obviously.

MR BELL: Yes. Quite.

30 COMMISSIONER: Yes. I see. Yes. Thank you.

MR BELL: And we submit you should find that the VIP working group had an important role in directing the strategy of the VIP international business and making decisions in relation to the business in the period up to October 2016. For example,
35 Mr O'Connor sought and received Mr Johnston's approval for a proposal to offer a particular player a \$1 million dollar bet limit by using an existing junket revenue share program framework. Mr Felstead also accepted, in his evidence, that various decisions made for VIP international had been endorsed by the VIP working group before being implemented, including a double-down strategy, which is referred to in
40 more detail later, platform junket strategy, which Ms Sharp SC will address, and approaches to staffing for the VIP business.

Most significantly, Mr Felstead said that the VIP working group was operating separately from the official reporting structure into the Crown Resorts CEO, Mr
45 Craigie. He also accepted that, on occasions, he provided more information on the VIP international business to the VIP working group than to the Crown Resorts CEO meeting group. We submit that you should find that Mr Packer was central to the

genesis and objectives of the VIP working group, notwithstanding that Mr Packer himself was not an attendee. Now, this is supported by the following matters: first, Mr Johnston confirmed that his participation in the VIP working group was pursuant to Mr Packer's request in or about March 2013, a month prior to the initial VIP
5 working group meeting in April 2013; Mr Craigie agreed that Mr Johnston's role in the VIP working group was effectively to keep an eye on that aspect, being the financial aspect of the VIP business; in response to the following question:

And who allocated him that role?

10

Mr Craigie said:

I imagine that James requested that Mike spend more time with Barry and Jason.

15

Secondly, Mr Craigie characterised the collaboration between Mr Johnston and members of the VIP international team as consistent with Mr Packer's interest in the area, specifically, by putting Mr Johnston in a position to advise James, he said, on an area of the business he was interest in; and thirdly, Mr Craigie linked the origins
20 of the VIP working group to Mr Packer's CEO meetings and, in particular, Mr Packer's desire to discuss the VIP business in a level of detail beyond that required for presentation to the board.

25

Now, in response to a question regarding how the meetings began, Mr Craigie said:

It was coming out of James creating monthly CEO meetings. It probably got to the stage where people were saying let's give this VIP business attention at its own meeting rather than getting jammed at the end of what was a pre-board meeting.

30

Is that a convenient time?

COMMISSIONER: Yes, it is. Thank you, Mr Bell. I'll adjourn for about 10 minutes or so. Thank you.

35

ADJOURNED

[11.32 am]

40

RESUMED

[11.47 am]

COMMISSIONER: Thank you. Yes, Mr Bell.

45

MR BELL: Could I turn to deal with the reporting of VIP international business to Mr Packer.

COMMISSIONER: Yes.

MR BELL: Mr Johnston confirmed that, as a loyal employee of CPH and Mr Packer, it was his practice to update Mr Packer from time to time on issues in
5 relation to the VIP international which Mr Packer asked him to focus on and which Mr Johnston himself considered important. Similarly, Mr Kunaratnam confirmed that for many years he sent emails to Mr Packer in relation to VIP gaming services, Crown Resorts. He also agreed that if something in relation to VIP international
10 business occurred which Mr Kunaratnam thought was important, he was likely to include that in his email communications to Mr Packer. This was confirmed by other witnesses who gave evidence that in the period 2014 to 2016 Mr Kunaratnam was in regular communication with Mr Packer concerning the VIP international business at least in relation to his hosting duties.

15 Though Mr Felstead denied that his loyalties in respect of the VIP international business were directed primarily to Mr Packer and the CPH group rather than to the board of Crown Resorts, he nevertheless conceded that he provided more information to the VIP working group which he also referred to as the CPH working
20 group than to the Crown Resorts proper reporting line.

Mr Packer confirmed that in the period leading up to his resignation as a director of Crown Resorts in December 2015 he expected Mr Kunaratnam, Mr Johnston and Mr Felstead, as persons who had shown complete loyalty to him for many years, to
25 inform him of any important issues in relation to the VIP international business of which those individuals became aware. I turn to deal with the increasing significance of China to the VIP international business.

COMMISSIONER: Just before you leave that; Mr Packer did not attend the VIP working group, but he was reported to in the CEO meetings, but what do you say in
30 respect of the reports to Mr Packer? They were separately done in a conduit from Mr Kunaratnam to Mr Packer and Mr Felstead to Mr Packer or - - -

MR BELL: What we're submitting is that each of those three individuals were
35 individuals who Mr Packer regarded as being completely loyal to him at least, and that they said that they would communicate what they regarded as important information to Mr Packer.

COMMISSIONER: Yes.

40 MR BELL: And Mr Packer said that he expected to receive it, and I'm referring to in informal reporting rather than the formal reporting that came to Mr Packer via the CEO meeting.

COMMISSIONER: Yes, thank you.
45

MR BELL: So turning to the activities of the China-based VIP international staff, they included recruiting customers to travel to and gamble at Crown Resorts casinos in Australia, assisting customers to apply for credit issued by Crown Resorts to - - -

5 COMMISSIONER: Just pause there, Mr Bell. We seem to have lost our counsel who are appearing for those who have been granted leave so we'll just wait.

MR HUTLEY: Sorry to interrupt, but Mr Bell has frozen.

10 COMMISSIONER: You're now back. Yes. Sorry for that interruption. The technology failed us for a moment. Yes, Mr Bell, if you could start that again, please, the China-based.

MR BELL: Yes. We submit that you should find that the activities of the China-based VIP international staff included recruiting customers to travel to and gamble at Crown Resorts casinos in Australia, assisting customers to obtain lines of credit issued by Crown Resorts to be used at the casinos in Australia, assisting customers with their travel arrangements to Australia for the purpose of visiting the Crown Resorts casinos, including relevant visa applications, and encouraging customers to settle any debts which they owed to Crown Resorts as a result of gambling at its casinos.

As at September 2014, approximately 20 staff lived and worked in mainland China. Between September 2014 and October 2016 Mr Alfred Gomez, senior vice president China, who was based in Malaysia but responsible for the teams in China, reported to Mr Chen. The staff in China were divided into seven geographic regions, namely China South-West, China South, China Central, China Shanghai, China Mid-East, China Mid-North, China North, with each of those units reporting to Mr Gomez. By May 2014 the board and senior management of Crown Resorts had established a plan to increase the contribution of the VIP international business to the profitability of the group to support the planned opening of the Barangaroo restricted gaming facility in Sydney and various developments in Asian jurisdictions.

The key objectives for Crown Resorts identified by the Crown Resorts Limited four year financial plan and budget, financial years 2015 to 2018, which was presented to and adopted by the directors of Crown Resorts at a board meeting on 29 May 2014, included as follows: both Australian casinos to capitalise on strong regional growth of the VIP market and regain some of the share of the Asian VIP market lost to the new integrated resorts in Asia, and progress all aspects of the proposed new Crown Sydney VIP gaming resort, including the completion of the licensing process, obtaining all relevant approvals and to commence construction of the resort with a view to opening in late 2019.

Commissioner, these objectives reflected the understanding of senior management of Crown Resorts that the casino licence granted to the licensee to operate the Barangaroo restricted gaming facility relied substantially on attracting VIP gamblers.

COMMISSIONER: From overseas?

MR BELL: Both domestically and from overseas.

5 COMMISSIONER: Yes.

MR BELL: By 2014, we submit you should find China was the region with the highest compound annual growth rate of all the regions where Crown Resorts VIP international was conducting business with turnover increasing year on year from 2014 to 2016. A changing political landscape in China due to a corruption crackdown announced by the government was recognised by those within Crown Resorts at both board and executive level as presenting an opportunity to increase VIP international turnover by causing a downturn in Macau's VIP market and redirecting business from Chinese VIP gamblers to Crown Resorts casinos in Australia.

In light of the corruption crackdown Mr Chen proposed to Mr Felstead two alternative approaches to progress the VIP international business in China. First, described as the double down approach, was to maintain aggressive targets, continue promotional activities and market Crown Resorts casinos as alternative destinations to Macau. The second, dubbed the austerity and profit-milking approach, was to "cut our projections and expectations, freeze hiring and reduce promotional intensity". In his email to Mr Felstead summing-up the two approaches Mr Felstead stated:

25 *It all really depends on the risk appetite of the company.*

COMMISSIONER: Was that Mr Felstead or Mr Chen?

MR BELL: It was Mr Chen in his email to Mr Felstead - - -

30 COMMISSIONER: Yes.

MR BELL: - - - Mr Chen said to Mr Felstead:

35 *It all really depends on the risk appetite of the company. The double-down approach is probably easier to get buy in for but would expose the company to a lot more risk.*

Now, despite widespread recognition by witnesses that the company's risk appetite was a matter for the board, in fact, the decision about the double-down approach was made by the VIP working group led by Mr Johnston. Mr Felstead gave evidence that a six-point plan, consistent with the double-down approach, was put to the VIP working group in September 2014, including targeting higher-value customers, targeting major players from junkets that had lapsed, collaborating with junkets establishing overseas businesses, preparing detailed market plans, upgrading the sales team and cost review. The plan was endorsed, and steps were taken by the VIP

international group to be implemented. When I say endorsed, I mean endorsed by the VIP working group.

5 The strategy translated into pressure placed on the China-based staff to increase sales and pursue targets aggressively throughout 2014, 2015 and 2016 as evidenced by communications to the VIP international staff. Pressure to improve performance was also directed at Mr O'Connor and Mr Chen by Mr Felstead who made comments to them about VIPs poor performance in comparison to their competitors including noting in February 2015 that he was likely to face questions at the upcoming board meeting about Crown's performance in VIP compared to Echo's performance. On 10 20 February 2015, The Australian published an article entitled VIP Influx a Windfall for Crown Resorts which confirmed Crown Resorts ongoing strategy to ramp up its marketing pitch to high rollers from China. The article interviewed Mr Craigie who stated:

15

There is no doubt China will be the major source of tourism and high-end gaming expenditure for the world going forward. Australia still has a very small share of that market. It's possible for Australia to experience very good growth in VIP even if Macau is in decline.

20

A detailed five-year plan for the VIP international business prepared around 17 March 2015 identified the relevant opportunity in relation to the ongoing corruption crackdown in China and weakening economic conditions in China as follows:

25

The poor state of the Macau and Singapore markets has allowed Crown to secure new customers and additional volumes as a proportion of Macau business is shifting to other regions. It's unclear whether these relatively isolated events will continue into financial year '16. To the extent that it does, opportunities for continued growth are good.

30

This five-year plan was ultimately presented to the boards of Crown Melbourne and Crown Resorts and was incorporated into the Crown Resorts financial year '16 to financial year '20 plan. The organisation's increased emphasis on the VIP international business, its relationship to the landscape in mainland China was also expressed publicly in the Crown Resorts 2015 annual report. Mr Robert Rankin, in 35 his chairman's message, stated that:

Standout was the strong growth in international VIP program play turnover across Crown's Australian resorts. This followed greater investment in our VIP international market. The ongoing boom in outbound Chinese tourism is a major positive for our resorts and very encouraging given our ongoing pipeline of investment in high quality tourism assets.

40

45 Now, the increased emphasis on VIP international also reflected in the remuneration and incentivisation of VIP international staff. VIP international senior executives and staff were highly incentivised based on the performance of the VIP international business. As a senior executive of Crown Resorts, Mr Felstead was awarded short-

term incentives based on key performance objectives which included the achievement of VIP turnover growth and market share. In 2015 Mr Felstead received a short-term incentive payment of 40 per cent of his total employment cost at a value of \$864,000.

5

Mr O'Connor participated in a short-term incentive plan eligible to roles with the ability to influence the financial performance of VIP gaming which provided for an annual cash bonus on the achievement or exceeding of the company's VIP gaming targets. As president of international marketing, Mr Chen participated in long and short-term incentive plans based on the revenue of VIP international. Mr Chen was eligible for a yearly bonus capped at 250 per cent with total annual remuneration - - -

10

MR HUTLEY: I'm sorry

COMMISSIONER: We've lost you. You've lost us. We'll just pause there for a moment, Mr Bell. Just adjust the technology, please. So yes, apologies for the technological glitch. I think, Mr Bell, if you could just return to what was last recorded when Mr Hutley said things weren't happening. It's the president of international marketing, Mr Chen – just pause there for one moment, I'm terribly sorry.

20

MR HUTLEY: I'm sorry to say the problem continues.

COMMISSIONER: Yes, just pause there for a moment. My apologies for that interruption. Yes, Mr Bell.

25

MR BELL: I had referred to the incentives available to Mr Felstead and Mr O'Connor. Concerning Mr Chen, as president of international marketing, he participated in long and short-term incentives plans based on the revenue of VIP international. Mr Chen was eligible for a yearly bonus capped at 250 percent of his total annual remuneration under his short-term incentive plan. Separately, Mr Chen was eligible for a maximum bonus of 200 percent of his commencing annual remuneration paid across four years under his long-term incentive plan. According to his payment summary for the financial year ending 30 June 2015, Mr Chen received a VIP bonus for that year of US\$1,823,000.

30

35

In the period up to October 2016, the VIP international sales staff in China, with the exception of the administrative staff, also earned bonus payments or commissions from Crown Resorts based on turnover targets, including the turnover of VIP customers in China and the collection of gambling debts from customers in China. The bonus arrangements were used to push performance as exemplified in the following email by Mr Chen:

40

Those of you who are not yet at minimum acceptable, I remind everyone that all it takes is a couple of big customers to carry you into bonus land. If you don't keep trying, you'll never get these customers in. For those of you who

45

are qualified to receive a bonus, remember that your plans are uncapped: the more you sell, the more you'll make.

5 So I now turn to the findings of fact that we submit should be made by the Inquiry in respect of three key areas.

COMMISSIONER: I think the administrative staff did not have bonuses; is that right?

10 MR BELL: That's our understanding, Commissioner.

COMMISSIONER: And the person who was targeted in the advertisement was a member of the administrative staff, I understand it?

15 MR BELL: I believe that's the case.

COMMISSIONER: Yes. All right. Thank you. Yes.

20 MR BELL: So I turn to deal with three key areas: firstly, the criminal law advice received by Crown Resorts and how it was interpreted; secondly, the business law advice received by Crown Resorts and its interpretation, and related to that is the operation of the unofficial office in Guangzhou, contrary to the interpretation of that advice; and thirdly, I'll deal with the specific events that led up to the arrest of Crown's China-based staff.

25 COMMISSIONER: Thank you.

30 MR BELL: And whilst there's some overlap between those key matters and events, they will be dealt with thematically. So turning to the criminal law advice and its interpretation, 16 of the 19 employees in China who were arrested and detained were ultimately convicted with gambling offences contrary to articles 25 and 303 of the Criminal Law of the People's Republic of China. Following are the English transactions from the original Chinese texts as admitted by Crown Resorts Limited in the class action currently underway.

35 At the relevant time, article 303 of the Chinese Criminal Law relevantly provided:

40 *Whoever, for the purpose of profit, gathers a crowd to gamble or undertakes gambling as a business shall be sentenced to fixed term imprisonment of three years or less, detention, or surveillance, and shall be subject to a fine.*

Article 25 of the Chinese Criminal Law provided:

45 *A joint crime refers to the situation where two or more persons intentionally commit a crime jointly. Where two or more persons negligently commit a crime jointly it will not be punished as a joint crime. Those who should bear*

criminal liability shall be separately punished in accordance with the crime that they have committed.

5 Article 1 of interpretation number 3, 2005 of the Supreme People's Court entitled
The Interpretation of the Supreme People's Court and Supreme People's
Procuratorate about Some Issues Concerning the Application of Law in Gambling in
Criminal Cases provided as follows – this was effective from 13 May 2015:

10 *Any of the situations set out below, if undertaken for the purpose of profit, will
constitute gathering a crowd to gamble as provided by article 303 of the
Criminal Law and, relevantly, organising 10 or more persons who are citizens
of the People's Republic of China to go abroad to gamble from which
kickbacks or referral fees are collected.*

15 From around 2012, Crown Resorts obtained legal advice from WilmerHale, an
international law firm headquartered in the United States of America. That advice
was obtained by the VIP international team through Mr Chen. The first legal advice
concerning the criminal law was received in February 2013. From around March
2015, Crown Resorts also received, through Mr Chen, consulting advice from the
20 Mintz Group. WilmerHale provided various advices on the Chinese Criminal Law
which are relevant for the purposes of this Inquiry.

The VIP international team relied on these advices which concerned two key
concepts: namely, the size of the group being organised to travel to Crown Resorts
25 Australian properties for gambling; and the receipt of a kickback or referral fee. On
19 February 2013, WilmerHale provided the VIP international team with a summary
of relevant regulations and their enforcement and practical implications of marketing
overseas casino business in Australia. Commissioner, can I take you to that
document, which is exhibit M27.

30 COMMISSIONER: Yes.

MR BELL: And the reference is CRL.545.001.0615.

35 COMMISSIONER: Thank you.

MR BELL: And could we start, operator, by zeroing in on the second-last paragraph
on that first page. So the advice states:

40 *As such, to constitute an offence of organising group gambling, two elements in
connection with organising overseas gambling, two elements must be shown at
the same time: (a) organise, gather 10 or more citizens for overseas gambling;
and (b) the organiser benefits from such activities by receiving a kickback or a
referral fee. In other words, the organiser conducts such activities for purpose
45 of make a profit for himself.*

And then if we go to the next page .0616. And zeroing in, please, on the second paragraph and third paragraphs.

5 *The above SPC interpretation in the case suggests that a normal employee of
the casino is unlikely to be deemed as a principal or found guilty under
criminal law by merely marketing or participating in casino operation if such
employee is not directly making a profit from doing so. We have also done
some research and, so far, we're not aware of any notable case where
10 employees of an overseas casino in China were arrested and convicted of
criminal liability by merely marketing overseas casino in China. Having said
the above, we note that if an employee participates in money laundering
activities and receives gains therefrom, such employee may be subject to
separate criminal or administrative charge of money laundering or evasion of
15 foreign exchange regulations.*

I will return to that document later in connection with the business law advice. Now,
the second relevant advice was in February 2015 in response to the announcement
issued by the Chinese authorities of a crackdown on foreign casinos luring Chinese
citizens to gamble overseas. Further advice was sought by WilmerHale to confirm
20 whether there had been any changes in the laws that would alter previous advice, and
that is exhibit M141.

COMMISSIONER: That was advice from WilmerHale, was it?

25 MR BELL: Yes. If we could turn to page ending in .0023, please.

COMMISSIONER: If we could have the full reference.

30 MR BELL: I'm sorry, Commissioner. It's CRL.545.001.0021. If we go to page
.0023. Thank you. And there advice – part of the advice from WilmerHale:

35 *There were a number of cases in the past where foreign casinos rep offices in
China were closed and employees were detained. These cases not only
involved facilitating gambling, but also typically involved money laundering,
ie, employees of rep offices directly involved in money laundering activities
helped their customers transfer money offshore. Based on the above, I would
think that the following points are important: foreign resort hotels rep offices
and employees in China are protected under law so long as the rep office's
employees activities are not in violation of law; introducing hotel resort
40 facilities to potential customers itself should not be any problem, because that
is what the rep officers are supposed and licensed to do, liaison and marketing;
employees should certainly not be involved in any money laundering activities;
employees should also avoid dealing with government officials to the extent
they can because of the ongoing anticorruption campaign; given the
45 highlighted government efforts to crack down on rep offices with core business
to facilitate Chinese individuals gambling abroad, company's rep office's
employees in China should focus its business on introducing the hotel resort*

and facilities rather than engaged in any activities which may be viewed as directly facilitating Chinese individuals gambling offshore.

5 And if you turn to, operator, please, to the previous page, .0022, Mr Chen asked if there'd been any changes to the law that would alter the previous advice, and he provided some factual assumptions for further advice as follows:

10 *As you may recall, the prior understanding of the law was that organising groups of 10 or more for gambling while receiving a commission was clearly illegal. Since none of our staff receive commission, we were in compliance with that law. Wilmer also previously advised, as you have below, that the staff should not be involved in money laundering activities and should certainly not receive any commission for the movement of money. To the best of our understanding, our staff does not engage in any of these activities.*

15

And if we turn, operator, to the first page, .0021, there's a short advice in response at the bottom of that page:

20 *Michael, there is no recent change to law.*

20

Now, Mr Chen then sought further advice as to the scenario where staff assists or refers with remittances of money, which is exhibit 143.

25 COMMISSIONER: Exhibit M1 - - -

25

MR BELL: Exhibit M143, CRL.545.001.0054. And in the second paragraph there, you'll see that Mr Zhou advised that:

30 *Given the current enforcement environment, it would be prudent for staff not to be involved in the money moving activities, because it can be easily interpreted as an effort to facilitate overseas gambling.*

30

Now, the third advice in this period from WilmerHale was on 25 February 2015, which is exhibit M154. CRL.545.001.0128. This is some two weeks after the previous advice. And if we could turn, please, operator, to page .0129. And you see, at the top of the page:

35

40 *Hi Ken. The climate has gotten quite destabilised. We have competitors who have pulled their entire teams out of China. Please advise whether you think our current executives should be avoiding entering China and whether we should be pulling our staff out.*

40

The advice was on the first page, .0128. Zhao says:

45 *I agree it seems prudent to limit travels of senior executives to mainland China at this point given that the regulatory environment is being tightened up and the picture is not entirely clear. I'm not sure that it's come to the point that you*

have to pull the entire team out of China. One option is you would have some key employees tentatively work outside China region, eg Hong Kong.

5 The fourth advice which WilmerHale provided was in June 2015 in response to the South Korean arrests, and that is exhibit M195; that is CRL.545.001.0098. If you turn, operator, to the second page, .0099. And you see that Mr Chen asked:

10 *The real question for us relates to what basis was for the detention and did it involve activity beyond what we normally would do.*

And the response is at page .0098:

15 *It follows that the employees were arrested last Wednesday. The potential charges include luring Chinese to gamble in Korean casinos and violation of Chinese foreign currency policies. The 14 Korean casinos were not based in China, rather, they travelled to China to conduct marketing activities. They worked with local Chinese travel agencies to attract Chinese gamblers to gamble in Korea. Paradise and GKL are the two top foreigners only casinos in Korea and many of their players come from China. We would think this should be read in the following context: the general background is still Chinese*
20 *government's continued crackdown on corruption in recent years. China's government anticorruption enforcement in recent years has been focusing on Macau, thus drawing players from Macau. Chinese gamblers have started to travel more frequently to neighbouring countries, regions, such as South*
25 *Korea, Malaysia and Vietnam and others. South Korea has been one of the most popular destinations for Chinese tourists in recent years, including Chinese VIP gamblers. Many new entertainment casino projects are being constructed.*

30 And then moving down to the second bullet point:

35 *Two Korean casinos, Paradise and GKL, have been penalised by Korean law enforcement agencies in the past for violation of currency policies, purported misconduct involving received RMB and other foreign currency in their respective offices in China and other foreign countries and then giving gambling chips to foreign gamblers when they arrived at the casinos in Korea. This is in violation of both Korean and Chinese currency regulations. This makes the two casinos easy targets for Chinese Government enforcement actions based on reasons that they violated Chinese foreign currency control*
40 *policies –*

and so on. And the final advice received by Mr Chen from WilmerHale was in response to a broadcast on Chinese National Television channel, called CCTV, on the 15th of October 2015, and the advice is exhibit M234.

45

COMMISSIONER: When was that broadcast?

MR BELL: The broadcast was 15 October 2015.

COMMISSIONER: Thank you.

5 MR BELL: And, operator, so that's at CRL.522.001.0076. And look at page – go to page .0079. Mr Chen asked:

Have you seen the CCTV report below? Could you please advise us what your firm is hearing about the current state of affairs.

10

Regards:

With regards to the activities we are undertaking in China, the attached report has shaken many of our team members and we need to have a responsible understanding if the environment has materially changed if there are any new laws or whether there are new risks we should be managing for.

15

And the response is at page .0078. You will see, Commissioner, towards the start of the email, WilmerHale says:

20

The Chinese law itself has not changed. Organising overseas gambling is defined as organising 10 or more Chinese nationals to gamble overseas and receive a commission or introduction fee remains a criminal offence under the Chinese Criminal Law.

25

Then WilmerHale sought to highlight the reasons regarding the enforcement actions regarding the Korean casinos. They say, for example, in the second-last paragraph:

The marketing efforts are clearly gambling. Marketing materials seized by police show the casinos offer free hotel, free air tickets and other free entertainment services to Chinese nationals as long as they gamble at the casinos. These are the evidence used by the police department to prove the marketing activities are illegal and Korean casino representatives have been organising overseas gambling. In addition, there are illegal money laundering and foreign exchanges evasion activities. Korean casinos and their representatives appear to work closely with some Chinese domestic travel agencies to receive money from Chinese gamblers. Money is then wired to underground money laundering organisations in China and eventually wired to Korean casinos.

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And if you turn to the first page, operator, .0077, Mr Chen replied saying:

Can we proceed with business as usual, per previous advice, or is there a need to take different precautions from what we have done previously?

45

And the response is on the same page:

5 *Under the current environment, it appears important that our marketing and marketing material does not expressly promote casino business. It's important to ensure that employees, in their individual capacity or in the capacity of your employees, do not get involved in any activities that may potentially raise money laundering or foreign exchange evasion issues.*

10 That's the full extent of the criminal law advice. In terms of the application of law in China, we submit that you should find that there was a general acceptance and/or belief by Crown Resorts management that the legal system in China was different to the legal system in Australia: China was a place where the law could be enforced inconsistently; that there was a risk of arbitrary action of the Chinese authorities. You would also accept that, in the period up to October 2016, China was a riskier place for Crown staff to be working than in Australia.

15 So the issue of legality turned on two precise questions of interpretation described by some directors as fine distinctions: namely, first, whether the staff in China were organising a total of more than 10 Chinese citizens to travel to Crown Resorts on one single occasion or whether the number of 10 persons would be accumulated over a number of occasions; secondly, that it would be legal for the staff in China to receive a commission from Crown Resorts based on the amount of the gambler's turnover, but it would be illegal for staff to receive a commission from the gambler directly. So I will refer to those as the two criminal law questions.

25 Mr Felstead gave evidence to the Inquiry that, in February 2015, he broadly understood that the two criminal law questions were involved. He accepted that whatever the strict legal position may be, according to the advice, as the senior executive responsible for VIP international, he needed to keep in mind Mr Chen's warning considering the safety of Crown staff living and working in China, making reference to Mr Chen's email to him in March 2013 that:

30 *...staff were living in constant fear of getting tapped on the shoulder in a country where due process is inconsistently applied, it's a risky place to be for all our team.*

35 Mr O'Connor understood that both the two criminal law questions had to be triggered for there to be a breach of article 303. Mr O'Connor said that, while he continued to refer to legal and other advice at the time – and these are his words – he assessed that “through the eyes of a westerner” and didn't fully appreciate that China's legal system doesn't operate the same way as the western legal system does. And just because one might feel that they are on the right side of the strict letter of the law doesn't necessarily mean that that's the way it will be applied in China. He said that he simply assumed – these are also his words – he simply assumed that the advice said they were not offending the law in China so, therefore, they continued approaching the business the way they were and continued to maintain their discretion and respect for the authorities and the culture in China, they would continue to be tolerated.

Mr Craigie's understanding was broadly consistent, but less precise, in relation to the number of people recruited. Mr Craigie said that he learnt about the concept of group gambling and that the definition of a group was less than 10. And he said that:

5 *At the time, I wasn't across the specifics of that.*

He added:

10 *You couldn't recruit a group and you couldn't get commission on their turnover.*

Mr Craigie said that he was concerned to ensure that the staff in China were complying not just with the letter of the law, but with the spirit of the law. He accepted, bearing in mind his assessment that China was a riskier place for the staff to be than in other jurisdictions, that it would be particularly unsafe to rely on some technical construction of Chinese law in those circumstances. He said that in view of the increased risk in China and the requirement to comply with the spirit and the letter of the law, he expected Mr Felstead, Mr O'Connor and Mr Chen not to be relying upon any narrow technical view of the law in China, but to ensure that they were complying with the spirit and the letter of Chinese law.

In terms of the management of the criminal law advice, overall it was accepted by the directors of Crown Resorts in their evidence to this Inquiry that there was an element of risk in management of the VIP international unit, relying on the two criminal law questions being fine distinctions of the precise issues of interpretation having regard to their view about the potential for arbitrary action and inconsistent enforcement of the law by the Chinese authorities. And they said this emphasised the importance of the board of Crown Resorts being kept fully informed of all factors which escalated the risk to safety of the staff in China.

It was also accepted by the directors of Crown Resorts in their evidence that the management of the legal advice that was being obtained was inadequate from a risk perspective, demonstrated by the following matters. First, failure to bring to the attention of the board at least the advices obtained around the time of the crackdown in February 2015. Secondly, management's failure to seek confirmation from Crown Resorts internal lawyers about the soundness of the legal opinions on the Chinese criminal law expressed by WilmerHale. Thirdly, Crown Resorts management's failure to seek confirmation from its internal lawyers about the soundness of the factual assumptions on which WilmerHale was basing their advice.

Fourthly, management relying on VIP international executives who were not legally qualified to interpret the legal advice on the Chinese criminal law, and fifthly management's failure to seek assurances from VIP international executives about the factual assumptions relied upon by WilmerHale. The VIP international team did not escalate the actual criminal law advices from WilmerHale to the Crown Resorts risk management committee or to the board prior to October 2016. This is despite the fact the key executives of VIP international were obtaining legal advices at a time

when they were aware that the Chinese authorities were tightening their regulatory control over foreign casinos.

5 They had been notified of the risks of inconsistent application of the law in China, they had been notified of the fears expressed by the staff in China for their safety, that they had themselves agreed in February 2015 to defer their own travel to China because of the risks that they faced. These matters, we submit, are evidenced by the following. First, the executive with ultimate responsibility for VIP international, Mr Felstead, had been plainly told in March 2013 of fears being expressed by the staff in
10 China. I've referred to that email on a number of occasions.

Secondly, Mr Felstead accepted that this email was a serious warning to him, that whatever the strict legal position may be according to the advice, as the senior executive responsible for VIP international he needed to keep in mind Mr Chen's
15 warning in considering the safety of Crown's staff living and working in China. Thirdly, however, he said in his evidence that he was satisfied that this was sufficiently captured on the Crown Melbourne risk register in the item foreign political policy and it was being managed adequately, as he put it, on the ground. Despite accepting that the item "foreign political policy" on the risk register did not
20 refer at all to the risk of arrests faced by the staff in China and only referred to currency, real estate development and international travel, he denied that he needed to take any further steps to inform the risk management committees. Fourthly, senior executives - - -

25 COMMISSIONER: Just pause there. You say he denied that he needed to take any further steps.

MR BELL: He denied that he needed to take further steps to inform the risk management committees.

30 COMMISSIONER: Yes, I had the impression that he accepted that he made mistakes there, but - - -

MR BELL: Yes, he accepted he should have reported it to the full board - - -

35 COMMISSIONER: Yes, I se.

MR BELL: - - - at a later point in his evidence, but he denied that he needed to take further steps to inform the risk management committee because of this item "foreign
40 political policy" on the risk register which dealt with currency, real estate development and international travel.

COMMISSIONER: No, it didn't deal with the risk at all. Yes.

45 MR BELL: Fourthly, the senior executives of VIP international, Mr Felstead, Mr O'Connor, Mr Chen and Mr Kunaratnam considered that it was too risky for them to travel to China in light of the crackdown on foreign casinos. Mr Felstead said that

this discussion occurred on 11 February 2015 after having received and considered advices from WilmerHale at that time, and that the risk he was concerned about was the risk of the executives drawing attention to themselves from the Chinese authorities. He accepted that if it was too risky for the senior executives to travel to
5 China for a while he must have realised that the staff who were based in China were facing an increased risk. Despite that, he didn't inform the Crown Resorts risk management committee or the full board of the escalation of the risk.

The evidence, Commissioner, indicates that apart from the advice of February 2013
10 the first of the advices to which I've taken you, none of the WilmerHale legal advices on Chinese criminal law were provided to or communicated to the internal legal team of Crown Resorts and/or Crown Melbourne. Ms Tegoni gave evidence that she became aware after the arrests that their internal legal department did not have a significant number of the legal advices and government relations advices
15 being provided to Mr Chen by WilmerHale, and that WilmerHale had to be requested after the date of the arrests to provide copies of all of the advices. She accepted that she received the advice from WilmerHale dated 19 February 2013 and said that she did not turn her mind to criminal law questions until after the arrests had occurred.

20 COMMISSIONER: So Mr Chen was still in Hong Kong; he wasn't arrested.

MR BELL: No.

COMMISSIONER: But she went to WilmerHale rather than Mr Chen to get the
25 advices.

MR BELL: After the – that's right, she did.

COMMISSIONER: Yes. Yes.
30

MR BELL: So far as Mr Neilson was concerned, he said he didn't recall in the period up to October 2016 that he was ever asked to apply his mind to consider whether the activities of the staff employed in China were complying with the criminal laws of China in relation to gambling. He said in that period he was not
35 asked to look at any advice from any other lawyers on that issue. Ms Williamson, another internal lawyer at Crown Melbourne, said that she understood in the period up to the China arrests that the issue of legality under the Chinese law turned on the two criminal law questions. She also said that she believed that there was a potential for arbitrary action by the Chinese authorities and that China was a country where
40 the law could be enforced inconsistently.

She accepted in her evidence that a lot hinged on the interpretation of the two criminal law questions from the point of view of the safety of the staff in China, having regard to her views about the application of law in China. However, she said
45 that she did not communicate these views to the management of VIP international. When asked why, she said because she wasn't asked to do so.

Crown Resorts management, in the period up to the China arrests, did not request any members of the internal legal team to ensure that they were in possession of all the legal advices being obtained from external lawyers to check that those advices were sound or based upon appropriate factual assumptions. Mr Craigie, who didn't
5 recall seeing any of the external advices or asking to see them, said he did not seek confirmation from Crown Resorts internal lawyers about the soundness of the opinions being expressed by the external lawyers, or the soundness of the factual assumptions.

10 Mr Johnston, who also said that he didn't read any of the criminal law advices in the period up to October 2016, nor asked to see any of them, gave evidence that he didn't ask anyone in the internal legal team at Crown Resorts to review the advice being provided by the external lawyers to confirm that the advice was sound and based upon appropriate factual assumptions.

15 COMMISSIONER: In respect of Mr Craigie and Mr Johnston in respect of whom you've said they didn't ask to see any, is it the case they knew they were being obtained, though, at the time?

20 MR BELL: Yes.

COMMISSIONER: I see.

25 MR BELL: They did because they were obtaining their information from Mr Felstead, Mr Chen and Mr O'Connor. Mr Felstead gave evidence that at the start of 2015 his understanding of compliance with Chinese criminal law was based on his discussions with Mr O'Connor and Mr Chen as well as legal advice that he read from time to time. It appears that Mr Felstead didn't seek any input from the internal legal team. Those, including board members, who were aware that legal advice was being
30 obtained about compliance with Chinese criminal law, relied upon the VIP international executives who were not themselves lawyers to interpret and apply the legal advice.

35 COMMISSIONER: I know the advertisement said that Crown did at all times obtain this advice, so I presume that there must have been some knowledge in the board of directors that legal advice was being obtained, but nobody asked to see them.

40 MR BELL: Yes. And of course, the advertisement was July 2019.

COMMISSIONER: Yes.

45 MR BELL: And it was dealing with their state of mind at a much later point of time.

COMMISSIONER: Of course. Of course.

MR BELL: But the evidence would indicate that only some members of the board were aware that legal advice - - -

COMMISSIONER: At the time - - -

5

MR BELL: - - - was being obtained at the time. Indeed, some members of the board weren't even aware that there were staff in China.

COMMISSIONER: Yes. Of course.

10

MR BELL: So far as Mr Craigie was concerned, he gave evidence that he was relying upon the VIP international executives, Mr Felstead, Mr O'Connor and Mr Chen, to tell him what the legal advice was. He understood the necessity to identify the factual assumptions on which legal advice was based, because if the factual
15 assumptions were wrong the conclusions might be wrong. Despite this, he didn't seek any assurances from Mr Felstead, Mr O'Connor and Mr Chen. Mr Johnston said that his source of the understanding about Chinese criminal law in the period up to the China arrests was Mr Craigie, Mr Felstead and Mr Chen. He wasn't aware that Mr Craigie was himself relying upon what Mr Felstead and Mr Chen had told
20 him.

20

He didn't ever ask Mr Felstead, Mr Craigie or Mr Chen to identify the factual assumptions on which the legal advice they were conveying to him was based, nor did he ever seek any assurance from Mr Craigie, Mr Felstead or Mr Chen that the
25 factual assumptions being made by the lawyers in their advices were appropriate. The VIP international team itself didn't adequately examine the legal advices obtained to ensure that the external lawyers had based their advice on accurate factual assumptions. In relation to the criminal law advice, WilmerHale were provided with an assumption of fact by Mr Chen which was at the very least
30 ambiguous in relation to the receipt of commissions, and I've taken you to that document. In requesting further advice on February 2015 in light of the crackdown, he said:

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Since none of our staff receive commission we were in compliance with that law.

Now, that assumed, of course, that the commissions received by sales staff at Crown Resorts itself based on the turnover of gambling would not be treated as kickbacks or referral fees under article 1 of interpretation number 3. Mr Craigie accepted that the
40 factual assumption which Mr Chen was asking WilmerHale to make in that advice could readily be misinterpreted to mean that the staff were not receiving any payments based on turnover of gambling revenue. He also accepted that if he was a recipient of that advice he would have realised that in order for Crown Resorts to safely rely upon that advice it was necessary to ensure that any ambiguity about
45 payments the staff received, whether it constituted a commission, was clarified.

40

45

The significance of the ambiguity in Mr Chen's assumption was underlined when, in October 2016, after the China arrests, when Ms Tegoni requested specific advice on a number of points, WilmerHale indicated that the law was uncertain as to whether the employees would be considered to be making a profit due to their receipt of a salary package including base wage and performance bonuses. They said:

If the sole reason that employees receive salary or bonus is because they organise customers to gamble, there is a possibility 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 bonus will be deemed as profit.

Regrettably, that was only advice obtained after the arrests.

15 COMMISSIONER: Yes.

MR BELL: Could I turn to deal with the business law advice and its interpretation. Neither Crown Resorts nor any subsidiary held any form of licence, authorisation or approval to operate or conduct any business activities of any kind in mainland China. Between 2011 and October 2015, Crown Resorts obtained legal advice regarding the business law requirements relevant to its business activities in China. Having regard to the class action that the advices obtained in 2011 were dealt with in private hearings, and for that reason I won't refer to them in these submissions. But business law advice was obtained in February 2013 as part of an email that I've already taken you to, and I would like to take you back to that part of the email which was exhibit M27. This is CRL.545.001.0615.

COMMISSIONER: Thank you. Yes.

30 MR BELL: If you could turn to page .0616, please, and zero in on the second-last paragraph. So as part of providing advice on criminal law, WilmerHale provided the following advice:

With respect to potential liability on institutions, we would note that conducting business in China requires a business licence or, otherwise, government approval. A casino business is not allowed in mainland China and, thus, no licence will be issued. As such, marketing a casino business may run the risk of being deemed by the government as exceeding the permitted scope of business, ie, marketing hotel resorts and organising overseas tourism. Although the line is not often clear, we would note that, in 2005, the government closed several representative offices of an overseas casino in China based on suspected gambling business and unauthorised business activities.

45 Commissioner, Mr Chen forwarded that email to various Crown Resorts employees, including Mr O'Connor and Ms Tegoni. Mr O'Connor said that he appreciated at the time that WilmerHale was advising that it was necessary to have a business licence

or other government approval to conduct business in China. However, when asked if he was concerned when he read the email that the advice from the Chinese lawyer was that it was necessary to have a licence, Mr O'Connor said:

5 *The presence that we had in China didn't feel to me like it was conducting business.*

10 He never felt that Crown needed to get a licence. However, Mr O'Connor agreed the activities being conducted by the staff in China, when he was taken to them, sounded very much like business activities. He said that he understood, from the advice, that given the nature of the business in China seeking a licence from Chinese authorities would be unsuccessful.

15 Ms Tegoni was not aware of any other advice by WilmerHale in relation to the need for a licence, other than the advice of February 2013, to which I've just taken you. She could not recall discussions she had regarding the advice or what she understood from the advice at the time. However, she said that she understood from re-reading the advice that WilmerHale was advising that conducting business in China required a business licence or government approval. She said that she understood at the time
20 that Crown was conducting a business in China, however, it was one that was not permitted to be licensed. She said that she understood the advice to mean that, even though Crown Resorts could not get a licence to conduct these activities, Crown Resorts could conduct those activities without a licence as long as its employees were not breaking the criminal laws of China. She also interpreted the advice to
25 mean that it was legal for Crown Resorts to employ staff in China to promote gambling without any business licence as long as Crown Resorts was not conducting an office. She understood that Crown Resorts could not get a business licence to conduct the activities it was conducting in China and, therefore, could not legally conduct an office in China.

30 We submit that this was nothing short of an extraordinary interpretation of the WilmerHale advice of February 2013, which didn't refer at all to the issue of offices. The advice, we submit, quite plainly stated that conducting business in China required a business licence. On no reasonable interpretation did it suggest that
35 business could be conducted without a licence as long as an office wasn't established. Nevertheless, that idiosyncratic interpretation was the interpretation which came to be understood by the management of Crown Resorts.

40 Mr O'Connor also said that he understood that, in the period up to October 2016, it was legal for Crown Resorts to employ staff in China to promote gambling without any licence as long as Crown Resorts was not conducting an office in China. Mr Craigie was of the same understanding. He said the reason why he understood that there were no offices in China was because to establish an office would require a business licence and Crown Resorts could not obtain a business licence for the
45 promotion of gambling. Now, this evidence is consistent with what was reported to the directors in July 2019 that Crown Resorts made a conscious decision not to open offices in mainland China.

In the immediate aftermath of the China arrests, in an email chain between WilmerHale and Ms Tegoni, reference was made to that business law advice provided in 2013. WilmerHale said:

5 *The 2013 advice regarding running a casino business and exceeding the permitted scope of business does not apply, because Crown does not have any formally registered legal entities in China. Scope of business applies to China entities only. We did not know about Crown's legal presence in China at the time and was trying to cover different scenarios.*

10 Their legal advice was premised on the assumption, which is quite clear from the email, that Crown Resorts had a legal representative office for which it had a licence.

COMMISSIONER: Very sad.

15 MR BELL: And no-one at Crown Resorts corrected that erroneous assumption at the time. In 2014, WilmerHale emailed Mr Chen regarding a conversation with a Crown Resorts employee, Cynthia Yang, and I will just quote from the email:

20 *I do not know what kind of contracts that we have with our –*
perhaps I should go to the document.

COMMISSIONER: Yes.

25 MR BELL: It's exhibit P7, which is CRL.625.001.0012. Yes. It's CRL.625.001.0012.

COMMISSIONER: Yes. Thank you.

30 MR BELL: Operator, if you would go to the page ending in .0010, please, and blow up the first half of the page, please. WilmerHale says:

35 *I do not know - - -*

COMMISSIONER: I'm sorry. What date was this?

MR BELL: This is 19 August 2014.

40 COMMISSIONER: Thank you.

MR BELL: It says:

45 *I do not know what kind of contracts that we have with our employees/consultants on the ground. It's fine for a foreign company without any presence in China to sign services advisory consulting contracts with Chinese nationals. The contracts should be clear, though, on relevant scope of*

services, marketing and promotion of our hotel and resort and some general terms on service fees. These contracts will become evidence of what our employees do in China. I learnt from Cynthia that we do not or no longer have any dually-registered rep offices, travel services agency companies in China.

5 In other words, she is concerned about doing businesses without any formal business registrations in China. It may be advisable to set up and maintain some formal business registration, such as a rep office in China, so that (a) we at least have some formal business registrations to conduct business on the ground; (b) when we pay employees consultants we can pay the rep office and

10 the rep office will pay its employees, so that we can avoid direct payments from overseas corporate accounts to bank accounts of individual employees/advisers in China.

15 So, at this point, WilmerHale had learnt that Crown Resorts was conducting activities without any business registration and advised that a business registration should be set up and maintained; that advice was apparently ignored.

And then, in February 2015, as part of the advice received from WilmerHale in response to the announcement of the Chinese Government's crackdown on foreign

20 casinos, WilmerHale provided the following advice – and I've taken you to it, but I will just read it again. It was part of exhibit M141:

Foreign resort hotel rep offices and employees in China are protected under law so long as the rep office's employees activities are not in violation of law.

25 *Introducing hotel resort facilities to potential customers itself should not be any problem, because this is what the rep offices are supposed and licensed to do: liaison and marketing. Given the highlighted government efforts to crack down on rep offices with core business to facilitate Chinese individuals gambling abroad, a company's rep office's employees in China should focus its activities*

30 *on introducing the hotel resort facilities rather than engaging in any activity which may be viewed as directly facilitating Chinese individuals gambling abroad.*

35 COMMISSIONER: Yes. That's an odd piece of advice knowing that the company was – really, the company was there to promote gambling, and you've got the lawyers advising that they only refer to the hotel and the resort, when the main purpose and, really, the only purpose, was to get them in for gambling.

40 MR BELL: Yes. And the other aspect is that, in 2013, the lawyers had wrongly assumed, we know, that there was a legal representative office – a licensed representative office. In 2014, they'd advised that a licensed representative office should be established. And here they were clearly assuming that their advice had been followed - - -

45 COMMISSIONER: Yes.

MR BELL: - - - and that a licensed representative office had been established, which was not the case.

5 COMMISSIONER: And the advice that they gave in August 2014 related to the promotion of the hotel and resort rather than any gambling, because they knew that that was the problem.

MR BELL: Yes.

10 COMMISSIONER: Yes.

MR BELL: So Mr Felstead gave evidence that he didn't draw the conclusion, at the time that he read the February 2015 email, that WilmerHale were under the impression that Crown Resorts had a licensed representative office.

15 COMMISSIONER: Yes.

MR BELL: However, re-reading the advice whilst giving his evidence, he said that that may well be the case. Mr Craigie said that he didn't see the February 2015
20 advice at any time prior to the China arrests. However, he conceded that it appeared that WilmerHale were either labouring under a misapprehension as to Crown's licence arrangements or were providing generic advice, and the advice would have needed clarifying as to the factual assumptions on which it was based. Mr Chen forwarded this email to Mr Felstead and expressed his support for the establishment
25 of hotel offices in key cities. And Mr Chen replied that he was reluctant to proceed with offices in China, believing that that was too big a risk, to have them operating in an office.

30 COMMISSIONER: Was that Mr Chen or Mr Felstead who said that?

MR BELL: Sorry. Mr Felstead said that in reply to Mr Chen.

COMMISSIONER: Yes.

35 MR BELL: Mr Felstead understood that the effect of his decision was intended to be that the staff in China would continue to conduct business activities from their homes. He said that, as the senior executive responsible for VIP international, he did not turn his mind at all to whether Crown Resorts or its subsidiary in China should obtain a licence to conduct activities legally. He said it didn't occur to him at the
40 time that it was too business a risk not to have licensed offices in China having regard to the business activities being conducted.

COMMISSIONER: It's odd that, when WilmerHale advised, as it did in February – sorry – in August '14, about the licences, I mean, it's clear that no one ever asked
45 WilmerHale to assist Crown to obtain licences in China. And it must have been some form of an assumption that they'd have a process that they would obtain licences without the assistance of WilmerHale. It's all very odd.

MR BELL: Well, it seems to be the case – we submit that the evidence indicates that, albeit that the interpretation was idiosyncratic, that they could conduct any business activities they liked in China, as long as they didn't have an office and provided they weren't breaking the criminal laws of China.

5

COMMISSIONER: That's a very neutral way of putting it, that idiosyncratic description you've given it, Mr Bell. It's absurd, isn't it? When you look at the way that the advice was crafted, but, in any event, you – the idiosyncratic advice you're referring to is that of Ms Tegoni.

10

MR BELL: Well, the interpretation was Ms Tegoni's, and that seems to have been – one would infer that was the advice that was provided by her to management - - -

COMMISSIONER: Yes.

15

MR BELL: - - - because that was the advice management came to hold.

COMMISSIONER: Yes, I see.

20

MR BELL: Their view was they – that the business law advice meant that they could conduct their business activities there without a licence, provided they weren't breaching the criminal laws, as long as they did not have an office.

COMMISSIONER: Yes.

25

MR BELL: And so that was – that was the – that was what senior management understood was the position, namely, that there was no office. And in the board paper that was provided to the board in July 2019 - - -

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COMMISSIONER: Yes.

MR BELL: - - - it said Crown made a conscious decision not to establish an office. And then it went on to distinguish Crown's activities with those of other foreign casino operators who did at least have a business licence to conduct marketing for their hotels and resorts.

35

COMMISSIONER: Yes.

MR BELL: So they were operating legally provided they didn't market gambling, but, as I say, the interpretation which Crown had at the time was that they could conduct activities legally without any licence at all provided they didn't establish an office, which made it even more remarkable that, in fact, Crown Resorts did establish an unofficial or clandestine office in Guangzhou in breach of its own interpretation of the legal position.

45

COMMISSIONER: Yes, I see.

MR BELL: Is that a convenient time?

COMMISSIONER: It is. Yes. I'll take the luncheon adjournment. Thank you, Mr Bell. And adjourn until 2 pm. Thank you.

5

ADJOURNED

[1.00 pm]

10 **RESUMED**

[1.58 pm]

COMMISSIONER: Thank you. Yes, Mr Bell.

15 MR BELL: Commissioner, notwithstanding management's interpretation of the business law advice to mean that no office could be legally conducted, the evidence establishes that Crown Resorts did in fact operate an unofficial office in Guangzhou from at least 2012.

20 COMMISSIONER: Yes.

MR BELL: From at least 2012, Crown Resorts leased a space in a semi-residential building in Guangzhou which was not legally registered. This was known to the Crown Melbourne legal team and several of Crown Resorts executives as at May 25 2012 when Crown Resorts executive, Mr Stefan Albouy, emailed a proposal to upgrade and formalise the office to Mr Chen, Mr O'Connor and others, describing the existing office arrangements as:

30 *...unsuitable, subject to random checks by authorities and posing many risks.*

Mr Albouy's email stated that the Guangzhou team handled visas for all China regions. He proposed that the Guangzhou visa team move into new premises near the Australian consulate with business registration to give the team a more safe and professional environment to work in. Mr Albouy's email was forwarded to several 35 Crown Resorts executives. Subsequently, Mr Albouy forwarded the email chain to Ms Williamson, requesting her urgent legal advice.

Ms Williamson forwarded the email chain to Ms Tegoni and Ms Williamson told the Inquiry that she discussed the matter with Ms Tegoni. Ms Tegoni said she couldn't 40 recall the discussion, could not recall the email and despite receiving it, claimed that she was not aware that there was a Guangzhou office at any time. Ms Williamson gave evidence that she didn't provide advice to Mr Albouy because she understood external legal advice was being sought by Michael Chen from WilmerHale at that time. Ms Williamson had no knowledge whether that advice was provided and if it 45 was, it has not been produced to this Inquiry. Mr - - -

COMMISSIONER: That office was established prior to the setting up of the VIP working team.

MR BELL: Yes.

5

COMMISSIONER: And that's about all we know about it.

MR BELL: In terms of the temporal situation, yes.

10 COMMISSIONER: Yes. Thank you.

MR BELL: Mr O'Connor gave evidence that no steps were taken to implement Mr Albouy's proposal, that he was aware that Crown Resorts continued to lease the same premises in Guangzhou until at least 2015. Precise details of the arrangements of the Guangzhou office remain unclear, however, Crown Resorts has produced to the Inquiry leases for premises in Guangzhou for the following periods: 27 January 2013 to 28 January 2014; 1 January 2014 to 31 December 2014; 1 January 2015 to 31 December 2015. The leases were held in the name of Alfreed Gomez who held the positions of senior vice president South-East Asia, senior vice president China and Taiwan respectively. In August 2015 a new lease was sign in the name of two employees, one of whom was Mr Gomez, for an apartment in a residential building in Guangzhou.

China-based staff were informed of the new address. Mr O'Connor, however, gave evidence that he was unaware that this had occurred. Following the China arrests, the premises continued to be leased on a rolling basis under the names of the employees as negotiated between Mr Chen and the property's owner in October 2016. The lease continued until August 2017 when an employee of Crown Singapore attending the building to pay bills and maintenance fees under the instruction not to enter the office. The rent for the Guangzhou office was paid by Crown Resorts. The office contained office equipment, including photocopiers, computers, hard drives, gifts and confidential documents containing customer information.

It carried no Crown Resorts signage. An email address entitled "Guangzhou office" was used by the staff members in China. The office was used by staff to perform administrative functions relating to processing visa applications. As at 2012 the Guangzhou team was responsible for assisting with visa applications for all of Macau, Hong Kong and mainland China. Mr Felstead gave evidence that he understood that up until October 2016 the Guangzhou team handled visa applications for all the China regions.

Up until October 2016 several members of Crown Resorts management team were aware of the existence of the Guangzhou office, including Jason O'Connor, Michael Chen and Jan Williamson. Others, including Debra Tegoni, Roland Theiler and William Mackay, were copied on to emails concerning the Guangzhou office. Mr O'Connor gave evidence to the Inquiry that the existence of the unofficial premises

in Guangzhou was not a secret in Crown Melbourne. Other executives involved in VIP international, Mr Craigie, Mr Kunaratnam and Mr Felstead, gave evidence to the Inquiry that they were not aware of the existence of the Guangzhou office prior to the China arrests. Mr Craigie said that he had not authorised the office. Both Mr Packer and Mr Alexander said that they were not aware of the office and had not authorised it.

The establishment of the office was contrary to management's understanding of the business laws of China which was that they were able to operate legally in China without a licence as long as they did not establish an office. Mr Craigie, the managing director of Crown Resorts at the time, said that the unofficial office in Guangzhou was an attempt, or it appeared to be an attempt to disguise from the Chinese authorities the fact that Crown Resorts was conducting an office in Guangzhou. What Mr Craigie said, we submit, is undoubtedly correct. There's no other sensible explanation for the office being established and conducted in this clandestine manner.

Many directors agreed that the conduct of management in establishing this office in Guangzhou was inconsistent with the fundamental principle of Crown Resorts that all of its affairs be conducted ethically, in accordance with the highest standards of integrity. It was plainly unethical in our submission. Many directors agreed that if Crown Resorts was operating an office in that manner, it should have been drawn to the attention of the Crown Resorts risk management committee.

Mr Alexander and Professor Horvath gave evidence that operating an unofficial office in Guangzhou, contrary to the directions of senior management, whilst other casinos openly conducted offices, may have increased the danger to the staff in China if what Crown Resorts was doing came to the attention of the Chinese authorities, and we know that it did come to the attention of the Chinese authorities by no later than July 2015. Neither Mr Packer, the executive chairman at the time, Mr Alexander, the executive deputy chairman at the time, nor Mr Dixon, the chair of the Crown Resorts risk management committee at the time, were able to offer any explanation or insight as to why this unofficial office was not drawn to the attention of Crown Resorts risk management committee.

A number of the executives who were aware of the office in 2012 remain senior executives of Crown Resorts to this day. Ms Coonan said that operating this unofficial office contrary to the directions of senior management suggests a failure in the business culture of Crown Resorts at the time. Ms Coonan accepted that the board of Crown Resorts has to bear the ultimate responsibility for that failure of culture. Ms Coonan also said that this episode reflected a failure of execution of the risk management framework.

Could I turn to deal with external events in 2015 which escalated the risk in China and the response to those events. Firstly, the announcement of a crackdown on foreign casinos in February 2015. On the 6th of February 2015 the Chinese Ministry of Public Security announced a crackdown on foreign casinos recruiting Chinese

citizens to gamble in other countries. The announcement was reported in the mainstream media and in industry publications. The news of the foreign casino crackdown was also captured in media monitoring services, sent to a number of Crown Resorts executives and directors, including Mr Packer, Mr Alexander, Mr Craigie and Mr Johnston.

The announcement of the crackdown caused great concern to the staff of Crown Resorts working in China. Mr Chen was informed on 9 February 2015 that a China-based Crown employee was very nervous about the crackdown. After having sent details of the announcement to Mr O'Connor and Mr Felstead on 7 February 2015, Mr Chen subsequently commented that:

The announcement raises the alert level on the safety of our staff.

In response to the foreign casino crackdown the VIP international team sought legal advice from WilmerHale to which I've referred, and it also sought consulting advice from the Mintz Group in March 2015. Michael Chen, in contacting WilmerHale for clarification of the legal situation, said that the staff were very nervous. WilmerHale provided the advice, to which I've previously referred, focusing on the activities of representative offices and further advised that there was no recent change to the law and they were provided with the assumption to which I've referred that there were no commissions being earned by the staff in China.

I've referred also to the advice on 25 February 2015 – I withdraw that. I've referred to the letter which Mr – the email which Mr Chen sent to WilmerHale on 25 February 2015 stating that the climate in China had gotten destabilised and that some of Crown's competitors had removed their teams in China. Those within VIP international failed to recognise that the assumptions being given to the external lawyers were ambiguous or to take into account that the advice was based on fine distinctions. VIP international management used the advice to confirm their interpretation that their activities were legal. The crackdown on foreign casinos, we submit, was plainly an escalation of the risk to the safety of the Crown Resorts China-based staff as the directors of Crown Resorts agreed in their evidence to this Inquiry.

The precise business activities that Crown staff in China were undertaking had been identified by the Chinese authorities as being subject to the crackdown. China was known to be a place where the law could be applied inconsistently and arbitrarily. The response to the crackdown needed to be considered, informed, have the endorsement of those at the most senior levels of Crown Resorts. However, in contrast the approach was for the VIP international executives to manage the risk themselves. That response was not to change the business activities, but to attempt to make those activities less visible.

In the days following the announcement of the crackdown, Mr Chen emailed VIP international offices to address the announcement, instructing staff that they had engaged a law firm, provided advice and assuring the staff that their activities were

legal and recirculated a document which provided instructions to staff in the event that they were questioned by the authorities. He also said this:

5 *We will be applying for Hong Kong/Singapore work permits for all our China staff that does not currently hold a foreign passport. This is purely a precautionary measure that will allow you to say that you work out of an overseas location and are on business travel in China.*

10 There is no evidence that Mr Chen's proposal to acquire foreign work visas for Chinese staff was adopted. Mr Felstead gave evidence that he was not aware that Crown Resorts acted on Mr Chen's proposal to apply for foreign work permits. Mr Felstead and a number of other Crown Resorts directors and executives also gave evidence that they had no knowledge of the proposal to apply for foreign work permits for China-based staff. Mr Craigie gave evidence that he was unaware of the
15 proposal and said that it could only sensibly be understood as an attempt to disguise or conceal from the Chinese authorities that Chinese citizens were working for Crown Resorts in China. Several witnesses stated that the proposal was contrary to Crown Resorts code of conduct which required staff to act legally, ethically and in accordance with the highest standards of integrity.

20 It is by no means clear, though, that Mr Chen was the only executive responsible for this proposal. Mr O'Connor could not say one way or the other if he discussed this proposal with Mr Chen, however, Mr Chen said that he spoke with – Mr O'Connor said that he spoke with Mr Chen very often, about once a day or at least every second
25 day. Staff were further informed to restrict the numbers of Crown Resorts representatives in meetings, not to engage in money laundering, not to carry out promotional activities carrying gambling content. In response to the crackdown Mr O'Connor, Mr Felstead, Mr Kunaratnam and Mr Chen agreed to limit the travel of senior executives to mainland China and the decision was made, as I mentioned, not
30 to proceed with opening offices.

 Senior executives did refrain from entering China in the aftermath of the announcement of the crackdown as they agreed it was too risky for them. The proposal to register offices in China was also deferred at this time. Mr Chen said that
35 he still wished to proceed with the establishment of hotel offices, but Mr Felstead advised that he was reluctant to do so. Another response to the crackdown identified in an email from Mr O'Connor to Mr Felstead, Mr Kunaratnam and Mr Chen, 11 February 2015, was:

40 *Prepare a list of options and recommendations to avoid China-based staff providing sensitive information to customers (JOC).*

 Although this was apparently an action item for Mr O'Connor, he could not specifically recall what the sensitive information was that he was concerned not be
45 provided to customers in China. He said that the documents provided to customers in China never referred to gambling so it must have been some other sensitive information that he was referring to. Mr O'Connor said that it could have been

marketing information that carried a Crown logo promoting events other than gambling. The best evidence that we have is that it was to remove Crown's logo from the materials which staff were given. Mr O'Connor could not recall if he in fact prepared a list of options or recommendations to remove the sensitive information.

On 12 February 2015, Mr Kunaratnam emailed Matthew Csidei, an executive of CPH, and copied to Mr Felstead regarding the Global Express private jets stating:

10 *With the announcement late last week from the Chinese government targeting Chinese citizens visiting foreign casinos what are your thoughts on losing the logo on the tails of the Globals?*

Mr Kunaratnam gave evidence to the Inquiry that the proposal was in response to the crackdown on foreign casinos in China and that he considered that course of action because he believed it would help make the business of Crown Resorts in China targeting Chinese citizens to visit its casinos more, to use his words, "under the radar". Mr Kunaratnam confirmed that the decision to remove the logos was enacted and planes were used to transport high rollers to Crown Resorts casinos in Australia. In early March 2015, Mintz was engaged by Mr Chen to provide advice on the corruption crackdown, particularly relating to Macau.

COMMISSIONER: Mr Bell, I understand that you rightly indicated that you didn't put to any person in the directors roles or senior management that they knew that they were breaking the law in China, but I find it difficult to understand what all this subterfuge is about. You've got people who were giving instruction to tell the authorities that they're working overseas, or they're just visiting China, and then you've got them, as Mr Ratnam said, losing the logos off the tails of the planes. I understand what you put to me, but it does appear that they were concerned, at a high level, certainly, of the VIP operatives, that they do not expose the workers or the employees or the company, to the vision of the authorities for some reason. And it's not clear to me why it would be that they would be losing the Crown logo other than knowing they shouldn't be in there as gamblers or promoting gambling.

MR BELL: We submit that you should find that the VIP international executives and Mr Johnston knew that there was a risk of arrest, detention and conviction of their staff, notwithstanding that it was technically within the law, because they understood that the risk factors were increasing dramatically.

COMMISSIONER: Yes.

MR BELL: And they understood that the law could be applied inconsistently or arbitrarily. And so whilst I didn't put to them that they knew they were breaking the law, the more nuanced submission which we do make is that they knew their employees in China were at risk of being arrested, detained and convicted.

COMMISSIONER: Yes. Thank you. Yes. I'm sorry to interrupt.

MR BELL: In early March 2015, Mintz was engaged by Mr Chen to provide advice on the corruption crackdown, particularly related to Macau, to assist in assessing the risk to company personnel in mainland China. On 13 March 2015, Mintz provided preliminary advice stating that Crown should:

5

Proceed with marketing efforts, but keep them low key; small groups at a time; and no publicity. They'd be well-advised to avoid cell phone and text message communications dealing with marketing efforts and limit overall use to the degree possible while in country. Concerning business cards, would also limit that to known specific customers and avoid distributing to random individuals.

10

That initial advice was received by Mr Chen, but there's no evidence before this Inquiry as to whether it was provided by him to anyone else at Crown Resorts. On the 25th of March 2015, Mintz provided their final memorandum which re-stated the preliminary advice, but added operational recommendations stating:

15

There is little doubt there will be increased scrutiny on the marketing efforts of foreign casinos in mainland China. As of now, there does not appear to be clear guidance issued to relevant authorities concerning exactly what they are to do about it.

20

Further stated:

That it's likely that relevant Chinese authorities will pursue this crackdown with greater than average vigour, and that each marketing effort should be considered with the above environment in mind and ensure strong adherence to Chinese law and company guidance on how your personnel are to conduct their marketing in country.

25

The evidence before the Inquiry indicates that this advice was only circulated to Mr O'Connor. The government relations advice from Mintz was consistent with the responses implemented by the VIP international executives to make the operations in China less visible rather than to modify those activities in order to protect the safety of the staff.

30

Mr Felstead and Mr O'Connor both gave evidence to the Inquiry that, at the time, they appreciated that the announcement of the crackdown had the potential to create risk to Crown's existing business operations in China, but it was a matter they needed to treat seriously as senior executives responsible for the VIP international business. On the 7th of February 2015, Mr Howard Aldridge, the managing director of Crown Aspinalls in London sent an email to Mr O'Connor attaching an article from Reuters referring to the crackdown by its authorities which said:

35

Are you guys in Melbourne making any adjustments to the financial year '16 business plan based on what is happening across China? Also is there any concern for the Crown staff working in China?

40

45

Mr O'Connor replied by an email on the 9th of February 2015, and he said, among other things:

5 *Personally, I'm very concerned with the international business new term prospects for reasons I'm sure you're well aware of. Our challenge will be convincing our masters that they need to temper their expectations, but with the development plans ahead talk of conservative expectations won't be well received. As for the staff, we are always very concerned for their wellbeing and Michael is consulting our lawyers to get a clearer idea of what this really*
10 *means. In the meantime, we all need to take extra care.*

In relation to his comment to Mr Aldridge that he was sure that Mr Aldridge was well aware of his concerns, Mr O'Connor said that he was concerned that the expectations, business volumes and profits on the VIP international business by those
15 to whom he reported were greater than its ability to deliver. He added:

I felt that, at the time, there was something of a disconnect between the business volumes and profits that our business unit was able to deliver relative to what was expected.

20 Mr Chen didn't give evidence to the Inquiry, however, his contemporaneous notes indicate that he realised the crackdown presented a serious risk. In an email to Jason O'Connor on 23 March 2015, the subject of which was detention, which was sent with high importance, Mr Chen gave instructions as to what should happen to his
25 salary if he was detained in China. Despite the fact that Mr O'Connor and Mr Felstead realised that the crackdown was serious and had potential to risk Crown's activities in China, the escalating risk was not reported. Mr Felstead did not report the announcement to the risk management officers or risk management committees of Crown Resorts or Crown Melbourne. Mr Felstead did not report the crackdown
30 announcement to the board of Crown Resorts. Mr Felstead was a director of Crown Melbourne at the time. He conceded that he didn't inform the board of Crown Melbourne of the announcement. He conceded that he should have escalated the issue to the risk management committee of Crown Resorts. He couldn't recall escalating the issue to Mr Craigie, to whom he reported, but conceded that it was his
35 responsibility to do so, stating that he was of the view Mr Craigie and others would have been aware of the announcements from newspaper reports.

The only member of the board of Crown Resorts who, the evidence establishes, was aware at the time of – at or about the time of the announcement of the crackdown
40 was Mr Michael Johnston. Mr Johnston said he was told of the crackdown by Crown Resorts executives in about March 2015. Mr Johnston provided a statement to this Inquiry, dated 15 September 2020, that, on or about 5 March 2015, he had a telephone call with Mr Felstead, Mr O'Connor and Mr Chen about the crackdown and said:

45 *I recall that was a discussion in that call about Chinese authorities announcing such a focus and that this crackdown was aimed at casino operators*

5 *aggressively targeting Chinese patrons and facilitating movements of funds out of China in contravention of Chinese currency control. I recall being told that it was rumoured that these were South Korean casino operators who were facilitating the movement of money out of China through underground networks.*

10 In his evidence to the Inquiry, Mr Johnston said that he was suggesting that Mr Chen, Mr Felstead and Mr O'Connor told him, on 5 March 2015, that there was a focus on South Korean operators so there was effectively nothing to worry about. He then said that he obtained the date of 5 March from his diary which simply said "urgent call". Mr Johnston was then taken to Mr Chen's email to the lawyers at WilmerHale, dated 24 February 2015, some eight days earlier, which referred to the fact that:

15 *The climate has gotten quite destabilised. We have competitors who have pulled their entire team out of China.*

20 Mr Johnston agreed that he was painting a very different picture of what he was told on the 5th of March from what the emails had conveyed some eight days earlier. Mr Johnston did not accept that his recollection of what he was told on 5 March 2015 was incorrect, however, he later accepted the possibility that his recollection might have been of a conversation at a different time rather than on 5 March. He also accepted that it would be very odd if Mr Felstead, Mr O'Connor and Mr Chen told him what he'd said in his statement when Mr Chen's email of the 24th of February expressed the reality of the concerns of VIP international. We submit that Mr Johnston's statement of 15 September 2020 as to what he was told on 5 March 2015 should be rejected as incorrect. Mr Johnston then accepted in his evidence to the Inquiry - - -

30 COMMISSIONER: Incorrect, as at recorded at that time?

 MR BELL: Yes.

 COMMISSIONER: Yes, I understand.

35 MR BELL: Mr Johnston then accepted in his evidence to the Inquiry that the crackdown did cause him some concern and that he appreciated it was a serious warning when he became aware of it. He stated that it was an important issue in relation to VIP international business in China because it escalated the risk to the safety of the staff in China. There's no evidence before the Inquiry to indicate that Mr Johnston took any steps to escalate the news of the foreign casino crackdown within Crown Resorts or to discuss, with the VIP executives, the steps they took or ought to take in response to the crackdown.

45 Mr Craigie's evidence was that he didn't think he was aware of the crackdown at the time. He agreed that the crackdown was a warning from the Chinese authorities in relation to foreign casinos, including Crown Resorts. He agreed Crown Resorts needed to heed the warning. He said it would have rung alarm bells; would have

caused a discussion to make sure “we were not going to be on the wrong end of this crackdown”, to use his words. He didn’t have any recollection of any discussion about the crackdown until the time of the Korean arrests. He told the Inquiry that he would’ve escalated the issue to the Crown Resorts risk management committee had he become aware of it, so the board could assess its risk appetite in relation to the announcement. However, he did agree that he did become aware of the crackdown on casinos in the context of becoming aware of the South Korean arrests, and he didn’t refer the matter to the risk management committee at that time.

10 Mr Packer gave evidence that, in around June 2015, he learnt of the February
crackdown when he learnt of the Korean arrests. And he said that he believed he
informed Mr Rankin and Mr Craigie to look into it. The evidence indicates that,
apart from Mr Johnston, who learnt of the crackdown in or about February or March
2015, and Mr Packer, Mr Craigie and Mr Rankin, who learned about the crackdown
15 in the context of the South Korean arrests, none of the other directors of Crown
Resorts were made aware of the crackdown on foreign casinos. Other directors of
Crown Resorts gave evidence they had no knowledge of the crackdown or couldn’t
recall if they were aware of it at the time. This was despite the news of the
announcement being well publicised and the receipt by some of them of media
20 monitors which noted the foreign casino crackdown.

Mr Stuart, the general manager of risk and assurance at Crown Melbourne at the time gave evidence that he was not informed by anyone at Crown, at any time up to the China arrests, that there’d been a crackdown on foreign casinos announced by the Chinese authorities in February 2015. He told the Inquiry that, if he had been aware of that, he would have given some consideration at least to whether, in the risk management documents, the foreign political policy risk would be updated and if the risk mitigation strategies needed to be adjusted and whether the risk rating needed to be considered. We submit that it’s clear that the crackdown on foreign casinos was inappropriately managed by those who were aware of the announcement, its seriousness and the concerns of the China-based staff. Management of the response to the crackdown was confined at board level to Mr Johnston and, in the VIP international team, predominantly Mr Felstead, Mr Chen and Mr O’Connor. Ultimately, those people chose to manage the risk themselves.

35 The directors of Crown Resorts agreed that the crackdown was an obvious escalation to risk to the safety of staff in China. They all agreed that the announcement of the crackdown should have been brought to the attention of the Crown Resorts risk management committee and, ultimately, the full board of Crown Resorts. Many directors agreed that the failure to ensure that the crackdown was brought to the attention of the Crown Resorts risk management committee demonstrated a failure in the risk management processes of Crown Resorts at the time. Neither the executive chairman of Crown Resorts at the time, Mr Packer, the executive deputy chairman, Mr Alexander, or the head of the risk management committee at the time, Mr Dixon, could offer any explanation or insights to this Inquiry as to how this failure in the risk management processes occurred.

Apparently, as a consequence of the crackdown on foreign casinos announced in February 2015, in June 2015 around 14 employees of two South Korean casino operators were arrested in China. The fact of the South Korean arrests was well known to a number of individuals, both within VIP international, Crown Melbourne and Crown Resorts. On 20 June 2015 Mr Chen sent an email to Mr Felstead, Mr O'Connor, Mr Kunaratnam and Mr Gomez about the arrests and he indicated he was seeking updated advice from the advisers in China saying:

There was a report today that up to 10 Korean casino marketing staff were detained and arrested in China. I've reached out to our advisers in China to opine on the latest development. I've also reached out to my contacts inside Korea. My friend at Walker Hill confirmed that eight sales staff from six from Walker Hill were indeed detained. I'm actively trying to determine the facts and whether the level of risk has changed.

Mr Johnston told the Inquiry that he had learnt through media articles that a number of employees of two South Korean casino operators had been arrested in China. He also became aware in June that the arrest was part of a wider crackdown on foreign casinos about which he had already learnt. He accepted it was concerning to him. Mr Packer, Mr Alexander, Mr Dixon, Mr Craigie, Mr Felstead, Mr O'Connor, Mr Kunaratnam and Mr Neilson each told the Inquiry they were aware of the South Korean arrests at or about the time that it occurred.

On any measure, the arrest of employees of other foreign casinos which were conducting similar business activities should have triggered heightened concern and swift action within the organisation. Indeed, Mr Rankin, who was to become a director and chairman of Crown Resorts shortly thereafter, on becoming aware of the South Korean arrests issued an instruction on 24 June 2015 to Mr Craigie and Mr Barton indicating that Crown Resorts should be on high alert for this type of regulatory action in China, and specifically the training of new in-country sales staff should be reviewed and be extensive.

The Rankin instruction may have emanated from a conversation between Mr Rankin and Mr Packer. While Mr Packer told the Inquiry he was not aware of the Rankin instruction, he said that the two of them discussed and, as he put it, agreed simultaneously that the company needed to be on high alert, and Mr Packer said he tasked Mr Rankin with "going back and doing a due diligence of our operations in China with Rowen", that is, Mr Craigie, "to make sure we were okay". However, despite being aware of the South Korean arrests and aware of the need for high alert, neither Mr Packer, Mr Craigie nor Mr Johnston formally brought the matter to the attention of the board of directors of Crown Resorts or, indeed, did Mr Rankin, or the Crown Resorts risk management committee for further action. For this, Mr Packer conceded in his words, "The three of us are all guilty for that".

Mr Craigie gave evidence that he understood that Mr Rankin was saying that Crown Resorts should be on high alert for the possible arrest of its staff in China, and there was a serious risk for which Crown Resorts needed to be on high alert. He also said

that he received no instructions from Mr Rankin or Mr Johnston to pursue this further. Mr Craigie accepted that it was incumbent on him as managing director, as a member of the Crown Resorts risk management committee at the time, to notify his colleagues on the risk management committee and ensure that the risk of arrest of staff in China was put before them for their consideration. He also accepted that it wasn't a sufficient discharge of his role as managing director to ensure that Crown Resorts was on high alert to simply forward emails back and forth.

Nevertheless, Mr Craigie did forward the email – the Rankin instruction to Mr Felstead on the same day and Mr Felstead responded as follows:

Thanks, Rowen. We got this information last week. Been doing this for a while now. All staff in the region are trained around what to do and what not to do. Also seek regular updates from relevant third parties on what the current legal climate dictates. Word is that there have been long-term issues with the Korean properties around currency movements and compliance which has upset the Chinese authorities.

Mr Felstead gave evidence that it was at the forefront of his thinking that he had to protect his employees on the ground in China from arrest at this time. Nevertheless, he said it did not occur to him during this time that it was necessary to report this high alert for the risk of arrest to the risk management committee of Crown Resorts. He did, however, brief Mr Johnston on the situation at a VIP working group meeting held over the phone. Mr Johnston gave evidence that he regarded the South Korean arrests as an important development in relation to the safety of the staff in China and told the Inquiry that he raised it at the 10 am meeting of the board of Crown Resorts on 12 August 2015 when he communicated to the board both the fact that the staff of South Korean casinos had been arrested, and the substance of the legal advice that he understood had been obtained by the VIP international executives.

However, Mr Johnston's evidence is not supported by the written minutes for that meeting. Mr Johnston attempted to explain the omission of the matter from the minutes by saying:

It was not on the agenda and therefore I assume that's why the company secretary didn't reflect it in the minutes. The minutes by their nature typically tend to be brief.

COMMISSIONER: But this was two months after the event.

MR BELL: Yes.

COMMISSIONER: It's odd.

MR BELL: Two months after the event and at a time after a Crown Resorts staff member in China had been questioned about the matter about which I will say more shortly.

COMMISSIONER: Yes, but I think there would have been a board meeting after the arrests and before the 12th of August, probably, but Mr Johnston seemed to recollect it was that meeting.

5 MR BELL: From my memory there was a board meeting in late June - - -

COMMISSIONER: Yes.

10 MR BELL: - - - that is, just after the arrests.

COMMISSIONER: Yes.

15 MR BELL: And before the questioning of the staff member in Wuhan. There were then no board meetings until the 12th of August.

COMMISSIONER: So there weren't any in July.

MR BELL: No.

20 COMMISSIONER: Yes. Thank you. Yes, it's very odd that you wouldn't have that recorded in a minute, but didn't he say that it was at some pre-meeting or post meeting in the board – the chairman's room, sitting with others?

25 MR BELL: No, that was what others said.

COMMISSIONER: I see.

MR BELL: Mr Johnston said it occurred in the meeting.

30 COMMISSIONER: I see.

MR BELL: And he told all of the board members at a meeting and explained why it wasn't in the minutes by saying the minutes by their nature typically tend to be brief.

35 COMMISSIONER: Yes. Very brief.

40 MR BELL: Mr Alexander, who chaired the 10 am board meeting – there were two board meetings that day, one at 10 and another one in the evening. Mr Alexander chaired the 10 am board meeting on 12 August 2015 and he gave evidence to the Inquiry that he was unable to recall Mr Johnston saying anything at that meeting about the South Korean arrests or more generally Mr Johnston saying anything to the board either in the board meeting or in the context of the board meeting about the South Korean arrests. Similarly, Mr Neilson, who was responsible for the minutes of the meeting, could not recall whether Mr Johnston had mentioned the South Korean
45 arrests at a board meeting shortly after the event or during informal discussions that day.

Ms Danziger who was a member of the Crown Resorts risk management committee at the time, Ms Coonan, Mr Demetriou and Professor Horvath each told the Inquiry they had learnt about the South Korean arrests from a conversation with Mr Johnston which occurred either prior to or after a board meeting. Their recollections of this
5 conversation were all broadly consistent and they said Mr Johnston mentioned that the South Korean arrests related to currency movements across borders of mainland China and that Crown had received legal advice confirming that Crown staff didn't operate in that way. Professor Horvath also gave evidence that Mr Johnston mentioned that the activities of the Crown employees were consistent with Chinese
10 gaming law.

We submit that Mr Johnston's evidence that the South Korean arrests were brought to the attention of the board at a board meeting should not be accepted by this Inquiry. It's apparent that only some members of the board were informed and were
15 informed in a way which assuaged any concern by distinguishing the conduct of operations by the South Koreans in the conduct of the operations by Crown Resorts. What is particularly remarkable is that in briefing some of his colleagues in August 2015 about the South Korean arrests, he failed to mention the crackdown on foreign casinos, and the fact that three weeks after the South Korean arrests, a Crown Resorts
20 staff member in Wuhan had been questioned by the police.

At the time of the South Korean arrests, Mr Chen sought legal advice from WilmerHale to which I've referred, and also further advice from Mintz. On 19 June 2015 Mr Chen asked if Mintz could urgently verify a report that up to 10 Korean
25 marketing staff were arrested in China. On 28 June 2015, Mintz told Mr Chen that their Beijing Public Security Bureau contact had said that the Koreans were:

*...extremely aggressive in the way that they approached the business and the core issue of the case was about the cash that they were taking out of China for
30 their new clients and it eventually got them arrested. The source said inbound cash is also significant and it's used for substantial client entertainment, etcetera. These Koreans have been contravening Chinese currency laws for some time and it's a relatively isolated case, but the junkets are also being monitored though, as we covered before. Given the above I'm convinced this is an isolated case though pursued in the environment we know is present which is more careful monitoring of activities and not allowing activities to become
35 too high profile. Let me know your thoughts on anything else you would like us to*

Mr Chen forwarded that Mintz advice to Mr O'Connor, Mr Kunaratnam and Mr
40 Felstead who then forwarded it to Mr Neilson, Ms Tegoni, Mr Johnston, Mr Craigie and Mr Barton. Ms Tegoni gave evidence that she was on leave and didn't read this email. Whilst the Mintz advice was providing an explanation on why the situation with the South Korean operatives could be distinguished from others. It ends with a
45 note of warning for Crown referring to the environment being presumably a reference to the crackdown of February 2015. There were no changes made to the

business activities at this time despite the significance of the reference to the environment.

5 The key executives involved in VIP international, including Mr Felstead, treated it as an isolated incident without necessarily drawing the connection between the South Korean arrests and the efforts by the Chinese authorities to crack down on foreign casinos. They considered that it had no relevance to Crown Resorts activities in China, that were significantly different and, accordingly, the South Korean arrests didn't translate, they believed, into a material risk of detention for their own staff.
10 However, Mr Johnston told the Inquiry that he did appreciate that the South Korean arrests were part of the wider crackdown on foreign casinos. He considered that it was an important development in relation to the safety of the staff in China.

15 Nevertheless, it wasn't brought to the board or the Crown Resorts risk management committee for formal consideration. Further, when Mr Johnston did tell some other board members about the matter, he failed to tell them that it was in the context of the wider crackdown by the Chinese authorities against foreign casinos. Professor Horvath and Ms Coonan gave evidence that Mr Johnston did not convey such a message to them. That's supported by Ms Danziger's evidence about her lack of
20 awareness of such a background. Mr Dixon didn't recall how he was informed of the South Korean arrests or by whom. Further, he didn't think he was informed that the arrests had occurred in the context of a wider crackdown by the Chinese authorities, though he said that at some stage this information comes up, he just wasn't sure of the timeframe.

25 We submit that the South Korean arrests were in an escalation of risk which should have been formally reported to the board of Crown Resorts and the Crown Resorts risk management committee to allow them an opportunity to evaluate through its proper processes and channels whether the continuation of the business in China remained within its risk appetite having regard to this development. The
30 asymmetrical provision of incomplete information to only some members is another example, we submit, of a breakdown in risk management processes in Crown Resorts at the time.

35 In July 2015, two members of the Crown Resorts staff were questioned by the Chinese police in relation to their involvement in gambling activities. On 9 July 2015 a VIP international staff member based in Wuhan was approached and questioned by the Chinese police. I will refer to that employee as Mr BX. Police informed Mr BX that he had been reported for organising gambling tours in
40 Australia. Mr BX denied this and asserted, instead, that he worked for Crown Resorts and assisted with organising leisure trips for customers. During his questioning, Mr BX stated to the police that his job was to apply for visas on behalf of clients; that he worked for Crown Resorts; Crown Resorts didn't have an office in China, the company was based in Hong Kong; that without an office, he worked
45 from home; that his company had casinos in Australia, but that he didn't know whether his clients gambled in Australia. The police released Mr BX after two

hours. And the police requested a letter be provided by his employer confirming Mr BXs employment.

5 On the same day, and in accordance with the protocol established by reception guidelines prepared by Crown Resorts in 2012, Mr BX reported the incident to his immediate supervisor, Mr Gomez, who, in turn, reported it to Mr Chen. Mr Chen then engaged Mr Zhou from WilmerHale, who spoke to Mr BX about his interview, recommended a template for the proposed letter to the police. Mr Chen forwarded the advice and template to Ms Williamson in the legal department for approval,
10 copying in Mr O'Connor. Ms Williamson sought guidance from Ms Tegoni and Mr Neilson and advice from WilmerHale regarding the appropriate Crown entity to provide the letter.

15 The template letter from Mr Zhou concluded with the following words in square brackets:

Add one or two sentences on Crown Resorts, such as it is a well-known resort hotel in Australia with a long history.

20 Ms Williamson gave evidence that those sentences, as they appeared in the final letter, were drafted by Mr Chen and, ultimately, Mr Felstead authorised the letter to be signed on behalf of Crown Singapore. The signed letter is exhibit R18. It may be worth having a quick look at it. And the reference is CRL.638.001.0005.

25 COMMISSIONER: Thank you.

MR BELL: The letter is dated 9 July 2015:

30 *To whom it may concern –*

on the letterhead of Crown Resorts Pte Limited. That's the company I referred to as Crown Singapore:

35 *This is to confirm that Mr BX, an employee of Crown Resort Pte Limited, which is a subsidiary of Crown Melbourne Limited as part of the Crown Resorts Limited group of companies. Crown Resorts is one of the leading hotel resort and entertainment companies in Australia and is listed on the Australian Stock Exchange.*

40 That last sentence is part of the letter which was drafted by Mr Chen. The rest of it was the template which had been suggested by Mr Zhou of WilmerHale.

45 Concurrently, Mr Chen sought advice from Mr Philips of Mintz regarding any changes in policy and approach to gambling and casino operators in light of the incident with Mr BX. Mr Philips learned of the approach to the letter, as advised by Mr Zhou, but noted that:

We must also consider that the request for the letter has the effect of contributing to an evidentiary pile that the Public Security Bureau could decide to draw upon in the future.

5 Mr Chen forwarded this email to Ms Williamson. In her evidence to the Inquiry, Ms Williamson conceded that had it seemed to her that Mintz considered that there was the potential for further police action against Crown Resorts employees in China. Though Mr O'Connor and Mr Felstead didn't receive this email from Mintz, they agree they would've reached the same conclusion, in any event, that the letter
10 contributed to an evidentiary pile the Chinese police could draw upon.

On 10 July 2015, Mr BX received the finalised letter from the Chinese police via courier from Ms Williamson. A copy of the letter was emailed by Mr Chen, accompanied with the request that Mr BX respond with notes from his questioning,
15 including identification of the officers involved. Mr BX complied that afternoon by emailing Mr Chen his notes in Chinese. On 15 July 2015, Ms Williamson obtained an English translation of Mr BXs notes, which she provided to Mr Chen and Mr O'Connor. The notes were translated by an employee of Crown Melbourne at the time. This appears to be in accordance with Mr Chen's instructions and, in
20 circulating those notes, he said:

We can have someone in Melbourne translate. We don't want it spread too widely so as not to alarm anyone.

25 That's an overview of one part of the facts concerning this incident. The questioning of Mr BX, we submit, was clearly a serious escalation of the risk to Crown Resorts staff in China. Whilst none of the directors of Crown Resorts, other than Mr Johnston, to which I will return, were aware of the event prior to October 2016. They each gave evidence to the Inquiry that the fact of the questioning of a Crown
30 Resorts staff member by the Chinese police was a matter of serious concern, an obvious escalation of risk to the safety of the staff in China, especially coming only three weeks after the arrest of 14 South Korean casino operators.

Mr Felstead and Mr Johnston, who were aware at the time, accepted those
35 propositions only in hindsight. Mr O'Connor appreciated at the time that an employee in China being questioned by the police about his involvement in gambling tours so soon after the Korean arrests was an escalation of the risk to the safety of the staff in China. He also accepted he was concerned, at this time, not only about the safety of the staff in China, but also about the risk of the existing business strategy of
40 VIP international in China.

Dealing with the issues raised by the Chinese police in their questioning of Mr BX, it's evident in questioning Mr BX that police were focused on his employment. According to Mr BXs interview notes the questioning took place because Mr BX had
45 been reported by an informant for organising gambling tours in Australia. During the interview, the police asked Mr BX about his job, the company he worked for,

whether the company had casinos in Australia. Subsequently, the police requested that a letter be furnished, as I've mentioned, to confirm his employment.

5 What emerges from the evidence regarding the questioning is that Mr BX told the police in China that his role was to assist customers in organising leisure tours only, not gambling tours. He also claimed not to know whether his clients gambled in Australia. Both Mr O'Connor and Ms Williamson gave evidence that they appreciated, at the time, that Mr BX had not been truthful in the answers that he gave to the Chinese authorities. Mr O'Connor specifically confirmed that he was aware
10 that Mr BX was involved in organising gambling tours to Crown Resorts casinos in Melbourne and Perth. Nevertheless, Ms Williamson's evidence is that no one who was aware of the incident in Crown Resorts raised any concern about the fact that the employee in China might have been misleading the authorities about his knowledge and facilitation of Crown Resorts gambling tours. Ms Williamson said that the fact
15 that Mr BX had not been truthful with the authorities suggested there may have been some risk, however, so far as she recalled she said she didn't discuss that with anyone at the time.

20 So the misstatements extended into the letter that was ultimately provided by Crown Singapore to the police. The letter was provided, according to Mr Zhou, because the police department needed a letter from Crown to confirm he is an employee from Crown and, according to Mr Chen in the very same email chain, because the police requested that Crown furnish a letter prior to 12 pm tomorrow corroborating his statement.

25 Mr Felstead, Mr O'Connor and Ms Williamson gave evidence that the letter was not intended to corroborate Mr BXs statement as per Mr Chen's instructions, particularly, to the extent that it inaccurately denied his involvement in gambling operations. They said that the purpose of the letter was to verify that Mr BX was an
30 employee of the organisation he claimed to be, Crown Resorts, as per Mr Zhou's advice. Whatever the understanding was as to the purpose of the letter, on any view, it was clear the police required evidence of BXs employment.

35 Mr Craigie, who read the letter for the first time during his evidence to the Inquiry, observed that in making no mention of gambling the core business of Crown Resorts letter was not fulsome in its description of Crown Resorts. He agreed that due to the omission of the words "casino" and "gambling" or "gaming", the letter ultimately provided to the Chinese police on behalf of Mr BX was not a letter that says he's employed by a gambling company. The only reason that Mr Felstead could give for
40 excluding the reference to gaming was that he considered the provision of the letter to be a legal matter. He relied on the legal advice given. Ms Williamson said that the phrasing was a generic description of Crown Resorts and the way letters were written even in the Australian context. Mr O'Connor denied that the letter was misleading as to the nature of the activities being conducted by Crown Resorts,
45 because he said it also omitted the fact that Crown Resorts operated restaurants.

COMMISSIONER: That distinction is not impressive.

MR BELL: The apparent oversight in the letter was, however, well understood by Mr Chen who it appears appreciated there were aspects to Mr BXs role which would be better for the police not to know. At 11.15 am on 10 July 2015, Mr Chen forwarded to Ms Williamson, via email, the advice received from Mr Philips at Mintz, and he said:

5
10
Based on this, the suggested draft by Wilmer seems appropriate. It's factual about his employment with Crown and does not get into anything about role which could be used in the future.

It wasn't just the identity of BXs employer which interested the police. The evidence of Mr BXs questioning also indicates that the police were interested in the fact Mr BX worked from his home without an office. Police asked:

15 *Do you have an office?*

To which Mr BX responded:

20 *No. Company is in Hong Kong.*

Following that, the police asked:

Where do you work then without an office?

25 To which Mr BX responded:

I just work at home. Visa applications aren't hard to do.

30 Mr O'Connor and Ms Williamson's evidence was that it didn't occur to them at the time that the Chinese police seemed to be focusing on the fact BX was working in Wuhan but not in an office. In the context of Crown Resorts operating in China without any licence or representative office, the increased risk to the safety of the staff in working from their home given the police scrutiny was, we submit, patent.

35 There was a second employee who was questioned by the Chinese police at this time. It wasn't an isolated incident. The second employ, who I'll refer to as JX, was also questioned by the Chinese police in relation to his involvement in gambling activities around this time. In his first email to Mr Felstead in relation to Mr BXs questioning, Mr O'Connor wrote:

40
Hi Baz. For your information, we had another employee questioned by the Chinese police.

45 Similarly, in Mr Chen's email to Mintz requesting an update on gambling policies in China in light of Mr BXs questioning, he wrote:

Hi Randy. We had another staff member yesterday in Wuhan by the local police on a tip-off that he was organising tours for gambling.

5 Now, Mr JX was a VIP international staff member based in Beijing between – in the period up to October 2016. He provided a statement to the VCGLR on 6 February 2018. In that statement, Mr JX refers to his own questioning by the Chinese police around the same time in association with the questioning by Mr BX. He says:

10 *In July 2015, one of my sales team, called Mr BX, was visited by the Chinese police in Wuhan. He was questioned about his activities about promoting Crown Resorts and promoting gambling. Around this time, I was also spoken to by Chinese police at my home about gambling. Police told me someone had told them that I was organising gambling at my home. When I denied this, the police said that maybe the information was made up. They didn't actually ask me what I did or if I worked for Crown. Mr Chen told me and others not to worry and just to continue on with it.*

20 The transcript of Mr Chen's interview with the VCGLR corroborates Mr JX's statement. When asked who the reference to another employee was, Mr Chen said:

I don't know. The only other staff member whoever had an issue with police would have been Mr JX. I don't know if that's what this is referring to. I'm not sure of the timing; that's the only thing I can think of.

25 Further, when asked to describe the incident, Mr Chen said:

Mr JX was visited by a local authority and asked some questions similar to this.

30 "This" being the question of Mr BX. Mr Chen also gave evidence to the VCGLR that, whilst he couldn't recall it specifically, he said he would have reported the questioning of Mr JX to Mr O'Connor. However, Mr O'Connor denied that he was, at any stage prior to his examination, aware of the questioning of Mr JX. He asserted that the reference to another employee in his email was to a different employee who was questioned some 12 or 18 months earlier rather than in the immediately
35 preceding period. Mr Felstead and Ms Williamson gave evidence that they were aware that Mr BX was the second employee of Crown Resorts to be questioned at this time, but only as a consequence of being forwarded the emails from Mr O'Connor and Mr Chen, respectively, referring to BX as "another staff member".

40 Now, there was in fact another Crown Resorts employee based in China, apart from Mr BX and Mr JX, who had been interviewed by the Chinese police in September 2014. I will refer to him as Mr HJ. In an email to Mr Chen, Mr HJ said that he was approached in his home by the police who asked what his job was and why he regularly contacted a particular patron in 2012. In his words:

45 *I told them I'm doing the Crown Hotel marketing in China and only made the hotel accommodation for the patron in Melbourne only.*

Similarly to Mr BX, Mr HJ did not refer to Crown Resorts' gambling activities. Mr Chen did forward this email to Mr O'Connor, copying in Ms Williamson, who subsequently forward it had to Ms Tegoni.

5 In each instance, the employee in China being questioned by the police failed to mention or refer to their involvement in gambling or gambling operations. In his interview with the VCGLR, Mr Chen set out how he expected staff to characterise their work to Chinese authorities as follows. VCGLR:

10 *What would you expect your staff to respond to Chinese authorities?*

Chen:

15 *That we help customers travel to Australia on holiday at Crown and help the process with their visa, all of which is true.*

VCGLR:

20 *What about if they ask your staff do they arrange for customers to travel to Australia to gamble?*

Chen:

25 *I mean, I don't know what they would say, but I don't think anyone would offer up that they're promoting gambling.*

VCGLR:

30 *They wouldn't offer it up?*

Chen:

No.

35 VCGLR:

Wouldn't you expect your staff to be truthful with the authorities in that environment?

40 Chen:

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

Mr Chen was drawing a distinction between being truthful and the practical matter of doing business in China, implying that operating in China necessitated an approach that can't be wholly truthful. Mr O'Connor made a somewhat similar observation in his evidence that he could understand why Mr BX responded as he did to receiving a knock on the door from the authorities in China, which can be somewhat unsettling.

If both Mr Chen and Mr O'Connor recognised the danger to the staff in China being truthful with the authorities about their activities, then the risk to which they exposed the staff in China must have been plain to them, in particular, those risks ought to have been identified through the formal risk management processes in Crown Melbourne and Crown Resorts.

COMMISSIONER: I suppose there was this added layer of there being informants in at least two of the occasions with Mr BX and Mr JX. And if what the police said was true, that is, that somebody had informed on them, and that seems to have just not been recognised as any particular aspect of extra risk to the staff.

MR BELL: Quite so. That was not – doesn't seem to have been – occurred to anyone at Crown Resorts at any time. Now, can I deal with the failure to escalate this issue to the board of Crown Resorts. Despite the significant escalation of risk that the questioning of staff by the Chinese police posed, the questioning of Mr BX, the provision of a letter by Crown Resorts to the Chinese police, the advice received, and the events which followed, it is nothing short of astonishing that none of these events were brought to the attention of the board of Crown Resorts, the Crown Resorts risk management committee or the managing director of Crown Resorts, Mr Craigie. All of the directors of Crown Resorts, with the exception of Mr Johnston, gave evidence that they would not aware that a Crown Resorts employee had been questioned by the Chinese police in July 2015, and that a letter had been provided by Crown Resorts in relation to that questioning. That includes Ms Danziger who, in addition to being a director of Crown Resorts at the time was also a director of Crown Melbourne, chair of the Crown Melbourne audit and risk committee, member of the Crown Resorts risk management committee and chair of Crown Resorts occupational health and safety committee.

Mr Craigie's evidence to the Inquiry was that if he had been informed that within weeks of the South Korean casino arrests, two of its employees had been questioned by the Chinese police and a letter provided to the police in relation to the employment of them by Crown Resorts, he would have re-examined and seriously questioned the advice given to the VIP international business unit that the legal landscape in China had not changed, especially it had not changed regarding gambling, and that a distinction could legitimately be drawn between the activities of Crown Resorts and the activities of the South Korean casinos. He would also, he said, have obtained advice from a separate source and considered with the Crown Resorts risk management committee and the full board of Crown Resorts the scale of the risk and the options which were available.

Mr Craigie said that the effect of not disclosing that information to himself and to the full board of Crown Resorts was to deprive the board of the opportunity to determine the appropriate action to take in response to the escalation of risk. Ms Danziger, Professor Horvath and Mr Alexander gave similar evidence, that the board of Crown Resorts needed to be informed of the incident as it was a matter for the board to consider whether the strategy in China remained within its risk appetite and whether any changes were appropriate. Ms Coonan agreed and further said:

10 *Yes, I would – I would guess that the risk appetite would be nil in those circumstances had the Crown Resorts board been aware of the questioning and the requirement of a letter from the Chinese police.*

Clearly, the decision rested with the board of Crown Resorts and the board of Crown Resorts alone. In Mr Craigie’s words, “It’s not the decision of the VIP department”. Former and current Crown Resorts board members, including Mr Dixon, chair of Crown Resorts risk management committee, accepted that the failure to inform the full Crown Resorts board of questioning of Mr BX by the Chinese police demonstrates a failure in risk management processes of Crown Resorts at the time. Neither Mr Packer, the executive chairman at the time, Mr Alexander, the executive deputy chairman at the time, or Mr Dixon, the chair of the risk management committee at the time, could offer any explanation or insight as to how this failure in risk management processes occurred.

This incident also reveals compromised reporting lines. Former and current Crown Resorts board members accepted that the failure of Mr Felstead to report to his direct superior and managing director, Mr Craigie, demonstrated a failure to follow the proper lines of reporting. This is underscored by the fact that while neglecting to notify his direct report and managing director, Mr Felstead, however, did inform Mr Johnston and Mr Kunaratnam of the questioning of Mr BX. Mr Felstead’s evidence to the Inquiry was that he believed at the time that informing Mr Johnston constituted escalating the matter because of Mr Johnston’s involvement with the VIP working group, however, Mr Felstead conceded that he did not hold the view that informing Mr Johnston would constitute informing the Crown Resorts board.

35 Mr Felstead informed Mr Johnston by forwarding an email containing the initial advice from WilmerHale. The email was accompanied by this comment:

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

40 In his evidence to the Inquiry Mr Felstead confirmed that his email was intended to identify to Mr Johnston the difficulties in doing business in China. Further, Mr Felstead’s evidence was that regarding the incident he believed he said to Mr Johnston words to the effect “We were dealing with the issue through our lawyers in China and through our lawyers in Melbourne and this was some of the things we had to be careful of in China when doing business”. Mr Johnston did not subsequently inform the full board of Crown Resorts about the questioning of Mr BX. According to Mr Johnston’s evidence he didn’t tell anyone.

Mr Johnston's explanation provided to the Inquiry for his inaction is that he didn't think it was serious. He said:

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

10 We submit that Mr Johnston's evidence that he didn't think it was serious that an employee in China had been questioned by the police relating to gambling activities and that the police had required a letter from Crown Resorts is not credible. We submit that's particularly the case in light of seven other pieces of evidence. First, he had an involvement in the VIP international business at the time to the extent that other witnesses did not dispute the reference to the VIP working group meetings as Mr Johnston's meetings. Secondly, he also participated in regular meetings, usually weekly, with Mr Felstead, Mr Chen and Mr Kunaratnam to discuss operational issues concerning the VIP international business. Thirdly, he believed in the period up to October 2016 that China was a riskier place for Crown staff to be working than in Australia.

20 Fourthly, he was aware that in 2015 the Chinese authorities had announced a crackdown on foreign casinos. Fifthly, he was aware that a few weeks prior to this the Chinese authorities had arrested 14 South Korean casino operators. Sixthly, he understood that Mr Felstead was emailing him to inform him about what Mr Felstead believed Crown Resorts was up against in China at the moment, and seventhly, Mr Johnston said that he carefully read the email which identified that one of his staff members in China was being questioned by the Chinese police and accused of organising gambling tours to Australia and indicated that internal and external legal advice had been obtained in relation to the issue. Nevertheless, Mr Johnston claimed:

30 *I did not appreciate the context or import of the email at the time I received it because Mr Felstead did not request any response or action from me.*

35 Did Mr Johnston deliberately decide not to inform other board members of the questioning of a staff member by the Chinese police, especially in circumstances where he subsequently told some board members about the South Korean arrests in October 2015. Mr Johnston denied that suggestion and instead characterised his conduct as an omission. Mr Johnston accepted that in hindsight it was an incident he should have shared with his colleagues on the full board of Crown Resorts. He accepted that the incident should have been picked up by the risk management processes in Crown Resorts at the time. He also accepted that if he had informed his colleagues on the board about this incident it's possible that the board could have put in place mitigation strategies such as removing the staff to Hong Kong which would have prevented the China arrests from occurring.

45 When Mr Packer was asked whether if he had been informed of the matters signifying the escalating risk in China, he was asked:

Do you think you might have pulled your staff out of China or stopped the business?

Mr Packer responded:

5

Certainly. If there was a risk of people being arrested and going to jail, absolutely.

Ms Coonan agreed that:

10

You could actually consider that – properly the business proposition, but I’m assuming it would be subject to the whole board, but it’s not worth a candle if you’ve got these kind of escalating risks.

15

We submit that it was clearly a matter for the board to decide what mitigation strategy to undertake in light of the questioning of Mr BX. Mr Craigie, Mr Packer, Mr Alexander, Professor Horvath, Ms Halton, Ms Coonan and Mr Dixon all gave evidence that the failure of Mr Johnston to share material information with the full board of Crown Resorts suggested a breakdown in the corporate governance of Crown Resorts at the time.

20

We submit that you should find that Mr Johnston failed without justifiable reason to inform his colleagues on the Crown Resorts board of the questioning of staff by the Chinese police and the provision to the Chinese police of a letter. We submit that you should also find that he failed without justifiable reason to inform all his colleagues on the board of the crackdown on foreign casinos luring Chinese citizens to gamble abroad. We also submit that you should find that Mr Felstead failed without justifiable reason to inform his colleagues on the board of Crown Melbourne and to inform all of the directors of Crown Resorts of the questioning of staff by the Chinese police and the requirement by the police of a letter.

25

30

We submit you should also find that he failed without justifiable reason to inform the members of the board of Crown Melbourne and all of the members of the board of Crown Resorts of the crackdown on foreign casinos announced by the Chinese authorities. Mr Johnston wasn’t the only person outside his formal reporting structure that Mr Felstead told about the questioning of the employee in Wuhan. Mr Felstead also forwarded his email which had been sent to Mr Johnston stating “This is what we will be up against in China” to Mr Kunaratnam with the additional casual note:

35

40

Let’s discuss over lunch, loban.

When queried about the term “loban”, Mr Felstead’s evidence to the Inquiry was that:

45

Loban is a Chinese name I would use with Mr Kunaratnam. It just means boss.

Mr Felstead rejected the proposition that he was referring to Mr Kunaratnam as the boss and asserted he was using the term in a light-hearted way. Mr Kunaratnam's evidence is that during their discussions in person Mr Kunaratnam did not tell Mr Felstead that this matter was a concern to him or that it was a matter he should report to Mr Craigie.

COMMISSIONER: Is that Mr Felstead telling Mr Kunaratnam or - - -

MR BELL: Well, this is Mr Kunaratnam saying what he did not tell to Mr – what he did not say to Mr Felstead. He didn't tell Mr Felstead that this matter was a concern or suggest to Mr Craigie – suggest to Mr Felstead that he should report the matter to Mr Craigie.

COMMISSIONER: Certainly, Mr Kunaratnam was aware of it by reason of the email that he forwarded or received from Mr Felstead.

MR BELL: The only people who it can be established by objective evidence were aware of this matter outside the executives of VIP international, Mr Johnston and Mr Kunaratnam. A number of directors of Crown Resorts agreed that Mr Felstead's failure to report this matter to Mr Craigie, in circumstances where he had reported the matter to Mr Johnston, indicated that the proper lines of reporting for VIP international had been compromised. Mr Felstead denied that his first loyalty was to Mr Packer and CPH rather than to Crown Resorts, nevertheless, the fact that Mr Felstead reported this incident to Mr Johnston was a reflection of the establishment of the VIP working group led by Mr Johnston, as well as the weekly reporting to Mr Johnston which in turn was a function of CPHs involvement in and influence over the governance of Crown Resorts.

We submit that the conclusion which should be drawn is that if either Mr Johnston or Mr Felstead had informed the board of the questioning of a staff member in Wuhan of the requirement by the police for a letter from Crown Resorts, it's more probably than not, in light of the evidence from the other board members, that effective risk mitigation strategies would have been put in place which would have avoided the China arrests. The adverse impact on the governance of Crown Resorts caused by the intrusion of informal reporting lines to the VIP working group led by Mr Johnston can therefore be seen to have caused harm to Crown Resorts and very serious harmful consequences to the employees in China. Turning to the role of the internal legal team, Ms Williamson's evidence - - -

COMMISSIONER: But one of the problems with that, I suppose, is that Mr – it would depend upon the way it was reported to the board because it was never escalated to a point of heightened concern in Mr Felstead's mind from the looks of things. When Mr Johnston read what he read he believed that somebody was taking care of it and he didn't seem to be concerned, so I think it would very much depend – your point about the board acting in a way to mitigate the risk would have to be an analysis of how it was reported to the board - - -

MR BELL: Quite so. I accept that the proposition I'm putting is a hypothetical situation where it had been reported as it should have been reported.

COMMISSIONER: Yes, I see.

5

MR BELL: What should have been said to the board is "We are operating in an environment where we are relying upon fine distinctions of Chinese law to conclude that the activities of our staff there are legal and in compliance with Chinese criminal laws. We are acting in an environment where in February this year the Chinese
10 authorities have announced a crackdown on foreign casinos. Since that time 14 South Korean casino operators have been arrested and three weeks after that – three weeks after that, our employee in Wuhan was questioned by the Chinese police about his involvement in gambling activities. He denied that he was involved in gambling activities. The police told him that an informant had told them about his involvement
15 in gambling. What's more, the Chinese police have requested a letter from Crown Resorts confirming this man's employment as an employee of Crown Resorts."

My submission is if that proper report had been made to the board by Mr Felstead and Mr Johnston, as they ought, the probability is the China arrests would have never
20 occurred.

COMMISSIONER: Of course, as Mr Packer said if there was any danger, he would have stopped it.

25 MR BELL: And that was echoed by other board members, including Ms Coonan.

COMMISSIONER: Yes, I see. Yes.

MR BELL: Can I turn to refer to the role of the internal legal team in relation to this
30 incident. Ms Williamson's evidence was that she considered that it was Mr Felstead's responsibility as the senior executive ultimately responsible for VIP international to raise the matter of the employee being questioned by the police with the directors of Crown Resorts. She also said it was perhaps the responsibility of Ms Tegoni and Mr Neilson. Ms Williamson said she didn't raise the issue with any of
35 the directors of Crown Resorts as she didn't have any direct communication with any of them. The matter was not directly raised with then general counsel and company secretary of Crown Resorts, Mr Neilson.

In the course of arranging the letter to the Chinese police, Ms Williamson had
40 emailed Mr Neilson on 10 July 2015 at 9.23 am to ask which employing entity the letter should come from. Her recollection is that Mr Neilson then rang her, and they discussed the email chains. She doesn't recall the substance of that discussion or any subsequent discussion with Mr Neilson about this issue. Some 18 minutes later, at 9.41 am, Ms Williamson sent a further email to Mr Neilson confirming that the letter
45 should come from Crown Singapore and that was the full extent of Mr Neilson's involvement in the matter. Mr Neilson said he had no recollection of the emails from Ms Williamson or the issue being raised with him. Consequently, Mr Neilson also

didn't escalate the matter to Mr Craigie or to the Crown Resorts board and it would appear that Mr Neilson's involvement was minimal.

Ms Williamson also notified the matter to Ms Tegoni to whom Ms Williamson
5 reported in that period. Ms Williamson, firstly, forwarded to Ms Tegoni Mr Chen's
initial email containing advice from WilmerHale to provide a letter to the Chinese
police and then requested guidance from Ms Tegoni regarding the appropriate
employing entity to issue the letter to the police. Ms Tegoni resisted the proposition
that she ever read Ms Williamson's second email in accordance with her usual
10 practice. She also resisted the proposition that it was more probable than not that she
would have read the email despite the urgency suggested by the lateness of Ms
Williamson's email at 10.54 pm to her.

Nor did she read the email despite Ms Williamson's intention stated in the email not
15 to come into the office the next day and her request to please advise who should sign.
She also insisted that she didn't read the draft letter to the Chinese police attached to
Ms Williamson's email and therefore was not focused on its content. It didn't
register that the last sentence of the letter omitted any mention of the fact Crown
Resorts ran casinos. Ms Tegoni's evidence was that she didn't recall discussing any
20 of the information contained in the emails from Ms Williamson with anyone at
Crown Resorts or Crown Melbourne. To the best of her recollection she didn't
inform any director of Crown Resorts conveyed by Ms Williamson in her emails
because it was not a matter she deemed significant to report to.

25 At the time, Ms Tegoni was the executive at Crown Melbourne with ultimate
responsibility for risk management. She said that she was not made aware that there
was a suggestion that Mr BX had given a false version of events to the Chinese
authorities. She gave evidence that if she had been informed of that matter it would
have concerned her. She said it was probable that she was not advised of that
30 because she would have remembered it. As Ms Tegoni said she didn't read the email
sent to her and was not informed that the employee in China had given a false
description of his role, she considered that nothing she had been told or seen was
serious and for that reason she didn't raise the matter with the audit committee of
Crown Melbourne. This is yet another dimension, we submit, of the egregious risk
35 management failures which this episode demonstrates.

COMMISSIONER: It's a little bizarre that this could go through so many
departments and not be escalated, but I suppose the context also – you've got Crown
operating in Macau at the time with Melco as Crown Melco or Melco Crown
40 Entertainment, and so you've got a presence in Macau which seems to be, on one
view of it, a business with which Crown Melbourne is competing because it is going
into mainland China to bring Chinese gamblers who otherwise might go to Macau to
Crown Melco to Australia to Crown Melbourne and Crown Perth. That dimension,
of course, is not really the subject of any evidence; it's just a fact that this was
45 happening at the one time. So you wouldn't know what was the subject of any
informants in China.

MR BELL: No.

COMMISSIONER: But it does seem odd that you have this regime where Crown is operating, obviously, in many respects successfully in Macau, the crackdown in
5 China, then the Australian company is in mainland China effectively, as I understand it, competing because it's sending gamblers here to Australia, not to Macau, as I understand the evidence. That's right, isn't it?

MR BELL: That's right. And what's more, the evidence is that Crown Resorts
10 perceived that it could compete more successfully with Melco Crown and the other Macau casinos because of the corruption crackdown which was persuading Chinese VIP gamblers not to gamble in Macau.

COMMISSIONER: Yes. It's not free from complexity.
15

MR BELL: No. Commissioner, on 13 October 2015 the Chinese public
broadcaster, Chinese Central Television, or CCTV, aired a media program entitled
Topics in Focus on the subject of foreign casinos and their networks within China.
The program focused on the issue of the foreign casinos marketing to Chinese
20 citizens, highlighting South Korean casino operations. It included a discussion of the legal prohibitions on promoting gambling and summed up the hard-line approach being taken by the Chinese government in relation to foreign casinos. On the program the Chinese official was interviewed and claimed since February 2015 the Ministry of Public Security had been running a campaign against gambling included
25 gathering intelligence information and breaking down the chain of personnel and capital infiltrating China from overseas casinos.

A matter of contention in the Inquiry is the correct translation of the program's
description of article 303 of the Chinese Criminal Law, specifically, whether the
30 program stated that a breach of the Chinese Criminal Law would arise where an individual organises people to gamble abroad on multiple occasions with the total number of people across the trips amounting to 10 or more. It will be recalled that the interpretation which Crown Resorts took was that their activities were legal provided there were not more than 10 people in a gambling tour on one single
35 occasion.

Crown Resorts has provided a translation which indicates that the program did not
make reference to multiple occasions and they've submitted an expert report to that
effect. On the other hand, a translation provided to the Inquiry which has been
40 tendered submits that the words "multiple occasions" were used. Irrespective of which translation is correct, it's clear that the program did make reference to China's laws relating to gambling as applying to foreign casinos and this would have been evident to any person watching the program. It's clear that the staff in China were concerned. They watched the program. The CCTV program came to the attention of
45 Mr Chen and others employed by Crown Resorts who were based in China.

For those people, the CCTV program prompted a swift response from those on the ground in China and within VIP international indicating that for them these matters were significant. However, there's no evidence before the Inquiry that the matter was escalated any further than that for deeper or more strategic consideration. The following day after the CCTV program aired, Mr Chen sought legal advice from WilmerHale to which I've referred and consulting advice from Mintz. He impressed the urgency of the advice because he said that staff in China were quite shaken by the program. On 15 October 2015, two days after the program aired, Mr Chen emailed the VIP international office's email address and told staff that advisers within China had been engaged to investigate the situation, talk to the Public Security Bureau and advise of any changes to China law or policy.

He also told the staff to keep meetings with customers limited to small groups with no more than three or four Crown staff at any one meeting and to avoid overt sales and marketing activity. The email was forwarded from Mr O'Connor to Mr Felstead and Mr Kunaratnam. I've already taken you to the content of the WilmerHale advice. Mintz also provided advice stating:

It seems to be pointing to a dedicated effort against the Korean targets rather than a broad-based effort, though the backdrop remains, as we've identified earlier, that there is interest in monitoring all foreign casino marketing on the mainland.

A further email from Mintz on 19 October 2015 stated that their inquiries pointed to the arrests being focused on the Korean entity and not part of a broader crackdown. Mr Chen reported the advice to Mr O'Connor, Mr Kunaratnam and Mr Felstead via email stating that:

The team should not be concerned beyond the need to take normal precautions; that the focus had been on South Korean casino operators.

When asked by Mr O'Connor to gauge the mood of the team for heightened concerns, Mr Chen told the three executives there were definitely heightened concerns and that he would have a conference call with the staff to address questions. Now, it's evident that that conference call was held, but there are no notes of the call that have been produced to the Inquiry.

Further, there's no evidence before the Inquiry that any of the VIP international executive team or Mr Felstead made efforts to inform others in Crown Resorts about the concerns of staff in response to the CCTV program. Mr O'Connor and Mr Felstead attended the Crown Melbourne executive meeting on 20 October 2015 in which the corporate risk profile was discussed. Mr Felstead also attended the Crown Resorts board meeting. The matter was not raised on either of those occasions.

We submit that the CCTV program was another event that indicated an escalation of the risk for the China-based staff. Insufficient inquiries were made as to the content of the program. Mr O'Connor gave evidence he didn't take any steps to find out

what had been reported in the program. Mr Felstead could not recall making any such inquiries. The report, as a piece of journalism from a state-based media, should have indicated to the management of VIP international the seriousness of the crackdown on foreign casinos and confirmed earlier warnings about the operation.

5 The advice that was obtained was not provided to Crown Resorts' internal legal advisers.

Once again, the fears of Crown Resorts China-based staff were not escalated. Mr O'Connor and Mr Felstead were aware that staff were shaken and concerned in response to the program based on emails they received. We submit that the concern of Chinese staff about the program, indeed, their interpretation of its meaning, should have been given due weight in assessing its significance to Crown Resorts' China operations. Expressions of staff of fear for their safety is yet another red flag which didn't prompt any further action. Could I deal with Mr Packer's knowledge of the escalating risk in China.

15
COMMISSIONER: Yes.

MR BELL: Mr Packer said that, in the period up to December 2015, he expected Mr Johnston, Mr Felstead and Mr Kunaratnam, as people with complete loyalty to him, to inform him of any important issue in the VIP international business of which they became aware. Mr Kunaratnam, Mr Johnston and Mr Felstead were all aware of the crackdown on foreign casinos, the questioning of the staff member in Wuhan and the requirement by the Chinese police for a letter. Nevertheless, Mr Packer's evidence was he was not informed by Mr Kunaratnam, Mr Johnston, Mr Felstead, or otherwise, of the events and factors constituting an obvious escalation of risk.

COMMISSIONER: That, in itself, is extraordinary. It is – I don't know what the real reason for not informing Mr Packer is or was, but it may be that, as I discussed with him, they didn't want to give him news that might not have been approved by him. I'm not sure. But there isn't any explanation in any of their evidence that I've read as to why they wouldn't tell Mr Packer, on the basis that they were communicating with him from time to time if not regularly, particularly Mr Ratnam; is that the case?

35
MR BELL: It is, Commissioner. And if you accept Mr Packer's evidence that none of his loyal employees told him any of these things, then perhaps it was the case that Mr Packer's powerful personality meant that the management of Crown Resorts didn't want to bring bad news to his attention, which, he said, it was a possibility. It's either that, or the evidence of Mr Packer can't be accepted.

COMMISSIONER: Well, we know, obviously, that Mr Packer was very busy at this time, late 2015, early 2016, which, I think, is the time that the CCTV program aired in October '15. But it is – I mean, Mr Felstead seemed to suggest to me, when you put to him that Mr Ratnam was the person who was to keep Mr Packer informed, Mr Felstead said, effectively, "No, I was the one, more importantly, to speak to Mr

Packer rather than Mr Ratnam about these matters,” and yet Mr Felstead did not do so.

5 MR BELL: Well, I did put to Mr Packer that he might have forgotten - - -

COMMISSIONER: You did.

10 MR BELL: - - - what he'd been told, but Mr Packer, particularly, in the context of the questioning of the staff member in Wuhan, Mr Packer was adamant that he - - -

COMMISSIONER: Yes.

MR BELL: - - - would have taken action had he been told of that.

15 COMMISSIONER: Quite.

MR BELL: And said with some confidence, yes, he was quite certain he hadn't forgotten.

20 COMMISSIONER: Yes. Yes. Yes. I'm sorry.

25 MR BELL: Can I turn to deal with the response by the Crown Resorts directors to the media allegations in July 2019. At the end of May 2019, the Crown Resorts board was provided with a draft report by the VCGLR into the circumstances leading to the China arrests. The draft report referred to governance and risk management failures by the Crown Resorts and Crown Melbourne boards, especially in relation to the failure to report the questioning of staff by the Chinese police in July 2019 and a contention that Crown had failed to heed warning signs prior to the arrests.

30 The draft VCGLR report was considered by the Crown Resorts board at an in-camera session of the board on 12 June 2019. Concerns about the implications in the document, particularly the implications in the document that some executives of Crown had not fully conveyed to the relevant board committees and the full board the level of risk involved in Crown operating in China were discussed. Ms Coonan gave evidence that the concern about the lack of information flow was a collective concern. At their in-camera session, the board of Crown Resorts requested that Mr Alexander discuss with Mr Felstead issues raised in the draft VCGLR report and that Mr Felstead speak to the draft report at its next meeting.

40 The media allegations made in relation to the China arrests, in July 2019, included allegations that Crown Resorts had failed to heed warning signs escalating the risk to staff in China. Specifically, it was alleged that the arrest of the South Korean casino operators had been a warning to Crown Resorts; following the arrests of the South Korean casino operators, Crown Resorts failed to heed the warning, but continued with its operation to promote gambling in China and, and as the risk escalated, Crown Resorts briefed its staff as to its internal procedures in the event of police raids.

The media allegations also included allegations that Crown Resorts had instructed staff to falsely claim they were not working in China but were working elsewhere. Ms Coonan agreed that this was, in substance, an allegation of an ethical failure. After the broadcast of the 60 Minutes program, the Crown Resorts board issued the

5 full-page advertisement to which I have referred. In responding to the allegations relating to the China arrests, the published response focused on maintaining an argument that Crown Resorts had not breached article 303 of the Chinese law based on its precise interpretation of that law.

10 The response did not acknowledge the concerns that the board held at this time based on the draft VCGLR report about governance and risk management failures arising from the China arrests, despite the fact this had been directly raised in the media allegations. Nor did the response acknowledge that the proposal to provide foreign

15 visas to Chinese citizens was unethical and should not have occurred. Ms Coonan said that these matters were not mentioned in the board's response, because there was not enough space in the advertise meant to deal with those matters. However, Crown Resorts did find the space to attack the objectivity of a junior employee who had been arrested and detained in China, an attack that a number of members of the board acknowledged to be inappropriate. Ms Halton agreed that the language used in

20 to Ms Jiang was inflammatory and unacceptable and said she would not have put it in the advertisement. Ms Coonan, similarly, agreed it was inappropriate to do this.

It was also implied by the board's response, as the directors acknowledge in their evidence, that Crown Resorts had relied on all the legal advice it had obtained in the

25 period up to the China arrests. That was not the case. All the board members acknowledged they were not aware of advice sought and obtained in February 2015 as to whether staff should be taken out of China in light of the increased risk it faced. We submit that the flawed response of the board to the media allegations in July 2019 emphasises that, although the China arrests occurred four years ago, questions

30 of current suitability are raised not by reason of the admitted serious failures or risk management, corporate governance and culture at the time, but also because the flawed response reflects on the culture of Crown Resorts now.

Can I turn, then, to deal with the question of suitability, and can I do so by, firstly,

35 answering the questions which I posed in opening the China arrests hearings on 17 August this year. And we submit that the questions posed should be answered in the following way.

COMMISSIONER: Just before you go to that, at the point that publication is made

40 in July 2019, it's clear that the board – the full board – is concerned enough for the chairman to require an explanation from Mr Felstead as to what was going on in the China environment, to put it neutrally. It does appear from the evidence that that requirement was never satisfied. In other words, Mr Felstead does not seem to have addressed the board or given to Mr Alexander any explanation and, if he did, it

45 wasn't transmitted from Mr Alexander to the board, so it was left, it seems, unexecuted. And yet the next step that is taken is to retain Mr Felstead to assist with the preparation of a report to the board on the very things about which they held

concerns in which he'd been involved; that, in itself, seems to me to be an aspect of the whole process that was continuing to trouble the organisation, in that the man at the centre of the complaint from whom the explanation was sought was then retained to give them the detail on which they could rely for the advertisement and, of course, we know what happened there.

MR BELL: Yes. So far as I'm aware, there's no record of any explanation being provided by Mr Felstead in response to that concern raised at the in-camera session of the board which is consistent with - - -

COMMISSIONER: With the request. Yes. All right then. Thank you. Yes. I'm sorry to interrupt.

MR BELL: So turning to those questions, as I've already indicated, it's not submitted that the board or senior management of Crown Resorts in 2015 and 2016 affirmatively believed that the employees of China were acting in breach of Chinese gambling law. However, as to whether the board or senior management believed that the staff in China faced the risk of arrest or detention or conviction for breach of those laws, the evidence establishes that, whilst it was believed that the activities of the staff in China fell within the law, based on fine distinctions, management appreciated there was a risk of arrest, detention or conviction because there was a widely-held understanding the risk of arbitrary action and inconsistent application of the law.

So far as the board of Crown Resorts was concerned, the individual directors had different levels of understanding about relevant events and that, itself, reflects a failure of risk management and corporate governance. In that regard, no simple finding is available as it appears that at least some members of the board didn't even know there were staff in China. Other board members, such as Ms Danziger, acknowledged that there was a potential for arbitrary action in China and that it was a place where the law could be applied inconsistently, but had no understanding, whatsoever, of the escalating risks that were placing Crown Resorts staff in danger.

Another group of board members, namely Mr Packer, Mr Rankin and Mr Craigie, became aware, in the context of the South Korean arrests, that there was a crackdown on foreign casinos in China. Amongst that group, Mr Craigie, at least, was aware in broad terms of the technical approach the VIP international team had taken to the legality of the operations in China. As Mr Rankin refused to give evidence to the Inquiry in circumstances where an explanation from him was called for, we submit it should be inferred that he was aware that the staff in China were at risk. Amongst this group, it should be found there was at least some appreciation of the risk.

The one member of the board who was aware of all of the escalating risk factors and who chose not to share it with the rest of the board was Mr Johnston. He knew about the crackdown on foreign casinos, the South Korean arrests, the questioning of a staff member in Wuhan, the requirement for provision of a letter by the Chinese police.

He also knew that China was a riskier place to be than Australia and that there was a risk of arbitrary action which was typically politically motivated.

5 We submit that it should be found that Mr Johnston must have appreciated that there was a risk of arrest, detention and conviction even though he was told that legal advice indicated compliance with those laws. We also submit that it should be found that Crown Resorts adopted and promoted a business model for its activities in China which placed the employees in China at material risk of arrest, detention or conviction for breaches of Chinese gambling laws. The evidence establishes as follows: even on Crown Resorts idiosyncratic interpretation of the business laws of China, a conscious decision was made to operate without a business licence and not to open offices. In fact, the unofficial office in Guangzhou was widely known by management at Crown Resorts.

15 Some members of the board acknowledge that the establishment of the unofficial office in Guangzhou without a licence, contrary to the directions of senior management, whilst other casinos openly conducted offices, may have increased the danger to the staff in China if what Crown Resorts was doing came to the attention of the authorities. In response to the announcement of the crackdown on foreign casinos, the management of VIP international determined that an appropriate response for the business was not to change its activities but to make those activities less visible.

25 Knowing, as Mr Johnston and the senior executives of VIP international did, that there was a crackdown on foreign casinos, that staff in China were being questioned by the police as a result of informants providing information to the police, a strategy developed of trying to continue the operations but to try to make them less visible could only ultimately have increased the risk to staff in China. We submit that it should be found that the board and senior management of Crown Resorts in 2015 and 2016 failed to have regard to or to respond appropriately to warning signs in China in 2015 and 2016 which materially escalated the risk of arrest, detention or conviction of Crown Resorts employees in China.

35 The senior executives of VIP international were aware of those escalating risks, that the staff in China were continuing to express fears for their safety. So far as the board is concerned, again, the board members had different levels of knowledge. At one end of the spectrum some board members didn't know there was staff there at all. At the other end of the spectrum stood Mr Johnston who was aware of all of the external warning signs in China and did nothing about it. The evidence before the Inquiry indicates that if the risk management of Crown Resorts had been engaged and properly appraised of the risk which existed in 2015 and 2016, different steps would probably have been taken to respond to that risk.

45 We submit that the conduct of Crown Resorts in China failed to comply with its corporate governance and risk management policies. The directors have acknowledged the failure of risk processes which was demonstrated by the pattern of information regarding increase in risk in China not being escalated to the Crown

Resorts risk management committee or full board. It's also been acknowledged by directors there was a corporate governance failure, indicated by Mr Johnston's failure to alert his colleagues of the questioning of a staff member in Wuhan. The directors have also acknowledged certain activities proposed or undertaken in China to address the risk contrary to Crown Resorts code of conduct for employees to act ethically and with integrity.

We submit that Crown Resorts corporate governance and risk management policies and practices were not appropriate to meet the risks posed by its activities in China. The Crown Resorts board failed in its fundamental responsibilities to set and monitor risk appetite. There was no clear communication by the board of its risk appetite. To the extent that the board informally communicated a risk appetite, it was excessive and inappropriate for a casino licensee. The board by its demands upon the VIP international business and the basis upon which it provided incentives encouraged management to take an inappropriate amount of risk in the pursuit of success in this strategically important business.

COMMISSIONER: Where does that rest? You've told me about the US\$1.8 million per annum that year for Mr Chen, but the fixation of that bonus that was to be earned by the employee, that was a CEO/CFO or whatever function, I presume, rather than a board function or was it a board function?

MR BELL: I'm trying to recall the evidence. I think Mr Felstead said that he had a role in that, but I can't recall at the moment whether there was some broad oversight of that.

COMMISSIONER: And so when you say there was no clear communication – well, first of all, there was no setting of the risk appetite in a clear way, however that appetite might have existed or not, there was certainly a drive for profit in China, and then to have the incentive and the amount of money that's paid to a single employee for a year's work on the ground in China, that bonus was only able to be achieved if he drove the sales in China, as I understand it. Is that right??

MR BELL: It's the very person who was earning this very large bonus was the one person who was left to interpret the legal advice.

COMMISSIONER: Yes, I see. Yes. And so the incentives and the payments to the staff in China was one thing, but the risk appetite, that is, "Will we as a board promote this sort of business model" in circumstances where China has all these problems was never, ever, as I read it, considered by the board.

MR BELL: Not in those terms. It was the board, of course, who had given its imprimatur to the increasing emphasis on VIP international business in view of the Barangaroo development, and it was – it must accept some responsibility for the way in which incentive payments were made to its employees, we would submit.

COMMISSIONER: Yes.

MR BELL: And those matters were indications, albeit flawed indications of a risk appetite which was excessive.

COMMISSIONER: Yes, I see. Thank you.

5

MR BELL: The risk appetite for the VIP international business in China in a very real sense was left to be determined by Mr Johnston's VIP working group which decided, for example, on the double-down strategy. The corporate risk profile documents, we submit, were deficient. They didn't properly or in sufficient detail
10 identify the real nature of the risks associated with the VIP international business or the risks relating to breach of gaming laws and regulatory change. Further, the controls and risk mitigation strategies for the relevant risks as reflected in the corporate risk profiles described at a very high level were imprecise in terms of what was required to mitigate the risks. The controls which were in fact being deployed
15 on the ground, to use that expression which has been used frequently in this Inquiry, were not documented in the risk management controls.

In terms of the reasons for these failures, it's not possible to be unequivocal about the reasons which led to the failures in circumstances where neither the executive
20 chairman at the time, the executive deputy chairman, the chair of the risk management committee are unable to offer any explanation. This is compounded by the fact that the board consciously decided not to investigate facts, matters and circumstances which led to the arrests, apparently on legal advice due to the class action. The board of Crown Resorts deprived itself of the opportunity to understand
25 and learn lessons of the past, nevertheless we submit that there are some themes which emerge. First, Mr O'Connor at least acknowledged both at the time and in his evidence to this Inquiry that the business pressure on VIP international was beyond the capacity of the unit to deliver. He was concerned that conservative expectations would not be well received by Crown Resorts.

30

Secondly, the business operated in a manner which highly incentivised performance and the aggressive pursuit of profit. The incentives provided to executives rewarded short-term profits at the expense of compliance. Thirdly, Ms Coonan and others
35 acknowledged a cultural failure which led the executives to believe they could solve the problems themselves and apparently think that the risk management processes and structures were an unnecessary distraction. The risk management strategies developed by the executives on the ground failed to pay attention to Crown Resorts' fundamental business principles. In terms of that cultural failure, a significant number of the executives involved remain senior executives of Crown Resorts today.

40

Moreover, a significant number of the directors who presided over that failure remain directors of Crown Resorts today. Fifthly, the mismanagement of the legal advices related to the operations in China is symptomatic of a culture that didn't prioritise risk and compliance. The fact that the process was so poorly managed despite the
45 significant risk to the safety of the staff, is consistent with a culture influenced by a high appetite for risk in pursuit of its strategic objectives. Nextly, Mr Dixon acknowledged a breakdown in the process of escalating matters formally to the

Crown Resorts board, the Crown Resorts risk management committee as demonstrated by the failure of key executives, including one board member of Crown Resorts to inform the rest of the board about the escalating risks.

5 Finally, one other matter is we submit it should be found that a significant cause of
the risk management and governance failures was the compromised independence of
the Crown Resorts board by virtue of the dominance of CPH and the insertion by Mr
Packer of informal reporting lines to Mr Johnston and his VIP working group. That
10 led the executives of VIP international to report problems to that group rather than to
their direct reports and the risk management structures. Reporting the risks to Mr
Johnston proved to be a pointless exercise.

So what do the China arrests demonstrate about Crown's present suitability. We
submit that answering those questions posed in opening the China arrests hearings
15 provides the answer to the question of suitability. The board of Crown Resorts has
admitted extensive risk management failures, corporate governance failures, cultural
failures and ethical failures leading to the China arrests. Though the China arrests
occurred four years ago, as I've mentioned, the flawed response by the board to the
media allegations indicates the cultural issues giving rise to unsuitability were not
20 merely historical.

Compounding the problem is that no-one who presided over these disastrous failures
can offer any coherent explanation as to how or why they occurred. Ms Coonan did
give evidence saying that:

25 *I think the root cause of it is pretty obvious and that is that people tried to
manage on the ground. I think they probably missed the political and social
changes in China, and probably put overreliance on legal advice. That's what
I think was the cause.*

30 But that explanation isn't based on any rigorous review of what occurred. Ms
Siegers, who was appointed as group general manager of risk and audit in December
2016 didn't conduct any review of the risk management failures which led to the
China arrests. Despite the current chair of the Crown Resorts risk management
35 committee acknowledging the utility of such a review, it's not taken place,
apparently because of legal advice that it might constitute an admission in a legal
proceeding. That means it's been left to the regulators to investigate failures that it
was the responsibility of the board to investigate.

40 There has been an attempt in certain quarters to suggest that these failures were the
responsibility of one or more individuals. The evidence presented to the Inquiry
establishes that the problems are far more profound and structural than that. At its
heart we submit that the China arrests demonstrates a failure of culture at Crown
Resorts. This is evident from every perspective. It includes the mismanagement of
45 the legal advice, the ethical failures evident from the unofficial office in Guangzhou
and the proposal for foreign work visas, that the failure of VIP international

executives to engage at all with the risk management processes and structures of the organisation and the compromised reporting lines caused by the influence of CPH.

5 The preparedness to rely on fine distinctions in the legal advice also suggests a culture that did not, contrary to the code of conduct for directors, strive to comply with the spirit of the law. We submit that the saga of the China arrests can only lead to a conclusion of unsuitability. Is that a convenient time?

10 COMMISSIONER: It is, yes. What I will do is I will adjourn these proceedings until tomorrow morning at 10. I think there may be some things that we need to deal with shortly, so I will adjourn until 10 o'clock tomorrow morning. Thank you.

MR WHITWELL: Commissioner, sorry, could I interject there – I do apologise.

15 COMMISSIONER: Yes.

MR WHITWELL: I understand there may be a private hearing about to commence. I would seek leave to appear at that hearing if it is to proceed this afternoon, Commissioner.

20

COMMISSIONER: Mr Whitwell, what I'm going to do - - -

MR WHITWELL: Yes, Commissioner, it's Mr Whitwell.

25 COMMISSIONER: I'm sorry? I'm just going to adjourn and I'm going to adjourn the public hearings until 10 o'clock tomorrow morning.

MR WHITWELL: If the Inquiry pleases.

30

**MATTER ADJOURNED at 4.00 pm UNTIL
THURSDAY, 5 NOVEMBER 2020**

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