

Victorian Commission for Gambling and Liquor Regulation

Report prepared pursuant to sub-section 24(3) of the *Casino Control Act (1991) (Vic)* –

In respect of:

An investigation conducted pursuant to sub-sections 24(1) – (2) of the *Casino Control Act (1991) (Vic)* into the conviction and sentencing of Crown employees for gambling related offences in the People's Republic of China, in June 2017.



Victorian Commission for
Gambling and Liquor Regulation





Victorian Commission for
Gambling and Liquor Regulation

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19 February 2021

The Hon Melissa Horne MP
Minister for Consumer Affairs, Gaming and Liquor Regulation
1 Spring Street
Melbourne VIC 3000

Dear Ms Horne

An investigation into the conviction and sentencing of Crown employees for gambling related offences in the People's Republic of China under section 24 of the *Casino Control Act 1991* – report to the Minister.

I refer to the above investigation which has been conducted by the Victorian Commission for Gambling and Liquor Regulation (the Commission) under section 24(1) and (2) of the *Casino Control Act 1991* (the Act).

Section 24(3) of the Act states that the Commission may make a report to the Minister on the results of such an investigation if it thinks it desirable to do so.

Accordingly, the Commission's report is submitted herewith.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Ross Kennedy'.

Ross Kennedy PSM
Chair

Contents

PART 1 MATTERS OF CONTEXT AND INTRODUCTION	6
THE “FAILINGS” CROWN ACKNOWLEDGED ON 22 JANUARY 2021	7
Crown’s accepted failings do not go far enough	8
THE REGULATORY FRAMEWORK OF THIS REPORT	11
Distinguishing this report from casino reviews and other processes	13
Avoiding “hindsight bias”	14
Affording procedural fairness	15
LIMITED EVIDENCE FROM CROWN’S EMPLOYEES IN CHINA	18
PART 2 THE BUSINESS AND ITS ESTABLISHED REPORTING STRUCTURES	21
SOLICITING “VIPS” FROM CHINA	21
Those responsible for Crown’s operations in China “ <i>on the ground</i> ”	24
Messrs Felstead and Craigie’s dual roles as both CEOs and directors	26
Mr Craigie’s role on the Crown Resorts risk management committee	27
FORMAL REPORTING MECHANISMS NOT ENGAGED	28
RISK MANAGEMENT FRAMEWORK	29
The absence of risk management plans specific to China.....	30
Mr Chen “never saw” Crown Resorts’ risk management policy	32
MANAGEMENT REPORTS	35
OTHER REPORTING MECHANISMS	35
CEO Meetings	38
VIP Working Group meetings (aka CPH Working Group meetings).....	39
The potential conflict of interest between CPH and Crown	40
Direct reporting to Mr Packer	41
PART 3 MANAGING THE RISKS IN CHINA “ON THE GROUND”	43
THE PERIOD BETWEEN 2012 AND FEBRUARY 2015	44
“Reception Procedures in the Event of Government Investigations”	44
The “ <i>core</i> ” 19 February 2013 advice and staff concerns in respect of that advice	47
Junket operator detained and information suggesting Chinese laws had changed.....	49
Mr O’Connor is given “inside information” to “remove all...staff...”	50
“Tip from well placed government family” and “risk that might put...staff in”	51
The “ <i>double down</i> ” strategy “ <i>really depends on the risk appetite of the company</i> ”	52
A Crown staff member is questioned by police in China.....	53
THE PERIOD BETWEEN FEBRUARY AND OCTOBER 2015	54
CHINESE MINISTRY OF PUBLIC SECURITY ANNOUNCEMENT	55
Re-circulation of “ <i>Reception Procedures</i> ” and proposal to obtain foreign work visas	58
“... <i>too big a risk</i> ...” to establish an office in China	59

Senior executives refrain from travelling to China and legal advice to limit travel to mainland China	60
Mr O'Connor and a London-based executive director express concern for staff in China	63
Branding is removed from Crown aircraft.....	64
Mr O'Connor again expresses reservations about travelling to China	64
Risk management advice is sought for the first time.....	65
Roadshow proceeds despite conflicting legal and risk management advice	66
Mr Chen's instructions about his salary, in the event he is detained	67
MARKETING STAFF FROM OTHER FOREIGN CASINOS ARRESTED IN CHINA	69
External advice and Mr Chen's opinion that the <i>"key question is why them"</i>	70
CHINESE POLICE INTERVIEW TWO FURTHER CROWN MARKETING STAFF	72
Legal advice in both Australia and China	73
<i>"...contributing to an evidentiary pile..."</i> and the limited budget for obtaining advice	75
CHINESE TELEVISION REPORT	77
Risk management and limited legal advice	78
Failure to consider the legal interpretation referred to in the Chinese television report.....	80
THE PERIOD BETWEEN OCTOBER 2015 AND THE ARRESTS IN OCTOBER 2016.....	81
Online gambling, transaction limits and others arrested in China	82
Staff in China asked to promote <i>"illegal"</i> online gambling	83
<i>"China jobs should all have a significant risk premium"</i>	83
Mr Chen tells Mr Felstead he has <i>"...taken on the risk of being prosecuted in China"</i>	84
Other casino marketing staff are sentenced to fifteen months imprisonment.....	84
PART 4 THE CONSEQUENCES OF MANAGING THE RISKS "ON THE GROUND"	86
CROWN'S STAFF IN CHINA HAD NO VOICE.....	86
ADVICE INADEQUATELY OBTAINED	86
No evidence advisers were given the details of Crown's operations in China.....	87
No evidence advisers were told about Crown's risk management structures or regulatory obligations in Australia.....	88
The previous relationships between Mr Chen, WilmerHale and Mintz	89
Retaining Americans to advise about China	89
STATEMENTS THAT MAY HAVE HEIGHTENED THE RISKS	90
PART 5 KNOWLEDGE OF THE ACCEPTED RISK ESCALATION EVENTS	93
KNOWLEDGE OF THE MINISTRY OF PUBLIC SECURITY ANNOUNCEMENT	94
Messrs Packer, Alexander and Craigie	94
Mr Johnston	95
Mr Felstead.....	96
KNOWLEDGE OF THE ARRESTS OF OTHER FOREIGN CASINO MARKETING STAFF	97
Messrs Packer, Rankin, Craigie (and Barton).....	97
Messrs Felstead and Johnston (including Mr Johnston's reporting of the arrests).....	99
Conflicting evidence about whether Mr Johnston informed the entire board of Crown Resorts	99

The knowledge of Ms Danziger, Ms Coonan, Mr Demetriou and Professor Horvath100

Messrs Dixon, Barton, and Neilson101

 Crown’s response to the Commission’s propositions and the knowledge of those who sat on Crown
 Resorts’ risk management committee102

Ms Tegoni.....103

KNOWLEDGE THAT CHINESE POLICE HAD QUESTIONED CROWN STAFF.....103

 The Commission’s limited understanding of this matter, prior to December 2020104

 Mr Felstead and Ms Williamson105

 The letter confirming employment105

 Mr Johnston109

 Ms Tegoni.....111

 A further matter related to the questioning112

KNOWLEDGE OF THE CHINESE TELEVISION REPORT113

 Mr Felstead.....113

PART 6 MATTERS ARISING DURING THE INVESTIGATION.....115

CROWN’S RESPONSE TO MEDIA ALLEGATIONS115

LOOKING AT MATTERS “THROUGH THE EYES OF A WESTERNER”.....116

CROWN’S APPROACH TO THE INVESTIGATION.....118

CROWN’S WORK TO ADDRESS ITS ACCEPTED FAILINGS123

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PART 1

MATTERS OF CONTEXT AND INTRODUCTION

1. On or about 13 October 2016, 19 Crown¹ employees were detained by Chinese police in respect of conduct associated with their employment, by Crown, in the People's Republic of China (**China**).
2. Eight months later, on 26 June 2017, following pleas of guilty, those employees were sentenced for having contravened a Chinese criminal law which provides that:

"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."²
3. At least sixteen of the employees were sentenced to terms of imprisonment, of either nine or ten months, and fined.
4. Notwithstanding the pleas of guilty, Crown does not accept that its staff contravened the criminal law of China. It also does not accept that the Commission should interpret the guilty pleas as suggesting that Crown's employees did in fact contravene the criminal law of China, by reason of their employment.
5. Rather, Crown says that:
 - a. the guilty pleas were necessary so that Crown's employees could obtain some certainty about the period of imprisonment and fine that they would receive;
 - b. the executives who were responsible for Crown's business in China had obtained legal advice to the effect that its operations in China were not contrary to the specific Chinese law that the employees were convicted of contravening; and
 - c. on that basis, the guilty pleas, conviction and sentencing should not be relied upon by the Commission as a basis for suggesting that Crown's staff knew that what they were doing was illegal or that Crown employed staff in China to engage in conduct that Crown knew was illegal.
6. Whilst the Victorian Commission for Gambling and Liquor Regulation (**Commission**) notes that as Crown's position, the Commission also notes that it is not the purpose of this report to determine whether Crown's employees did or did not breach the criminal laws of China. That is an issue for the Courts of China. The relevant Courts accepted the guilty pleas. The purpose of this report is to consider the broader circumstances which preceded the arrests and subsequent convictions, and further

¹ In this report the term "Crown" is used for convenience to describe the group of companies that includes Crown Resorts Ltd ACN 125 709 953 (**Crown Resorts**), Crown Melbourne Ltd ACN 006 973 262 (**Crown Melbourne**) and the Singapore registered company Crown Resorts Pte Ltd (199407460G) (**Crown Singapore**) whenever it is unnecessary, by reference to the context in which the term is used, to distinguish any of the individual corporate entities that make up the Crown group of companies.

² Adopting the translation of what is described as "Article 303 of the Chinese Criminal Law" which appears at paragraph 65 of Annexure A to Crown's submissions to the inquiry conducted under section 143 of the *Casino Control Act 1992* (NSW) (**NSW Inquiry**).

consider what those circumstances reveal about the way in which Crown conducted its business in the period prior to the arrests.

7. Furthermore, the Commission's consideration of those matters is for the purpose of determining the extent to which they might be relevant to the operation of the Melbourne Casino by Crown.

THE "FAILINGS" CROWN ACKNOWLEDGED ON 22 JANUARY 2021

8. It is in the context of an investigation that has been conducted for that purpose then that, on 22 January 2021,³ Crown accepted, for the purpose of the Commission's investigation and "*with the benefit of hindsight*"⁴, that:

*"There is no dispute that failings occurred in relation to China. Risk-management structures and processes were not utilised. Important developments in the operating environment in China were not escalated to board-level committees and to the wider board. They should have been. The failure to escalate those developments meant that a small group of individuals made the decisions about how to respond to them. The board should have made those decisions. That small group, and not the board, set the risk appetite of Crown in relation to China. This should not have happened."*⁵

...

Crown accepts that the following matters ought to have been exposed to wider consideration and assessment through Crown's risk-management structures and procedures (through which they would have come to the attention of the wider board):

- (a) the 6 February 2015 press conference held by Chinese authorities;*
- (b) the 17 June 2015 arrests of [other foreign casino marketing staff];*
- (c) the questioning [of two Crown employees] in June 2015 (sic),⁶ and the request for the letter confirming [one of those employee's] employment;*
- (d) the [Chinese television] news program in October 2015."*

Crown accepts that the failure to ventilate these matters through the risk-management processes and to draw them to the attention of the wider board was unacceptable."⁷

³ Being concessions which were also previously made to the NSW Inquiry in or about mid-December 2020.

⁴ Crown's response to the Commission's propositions received on 22 January 2021, page 16, paragraph 10.

⁵ At [59].

⁶ This event in fact occurred in or about early July 2015.

⁷ At [68] – [69].

9. The Commission collectively refers to the four events identified in Crown's paragraphs (a)-(d) above as the "**accepted risk escalation events**".⁸
10. In the Commission's view, these and the other concessions that have now been made, although made very late, are appropriate, having regard to the evidence that has been produced to the Commission.

Crown's accepted failings do not go far enough

11. In the Commission's view however, the concessions that Crown has now accepted do not go far enough, particularly to the extent that the evidence plainly demonstrates that:
- a. the person to whom issues of risk management were almost exclusively left in China, namely Crown's Hong Kong-based "President of International Marketing," Michael Chen, did not possess the relevant knowledge, skills and experience for the very important risk management work that he undertook on behalf of Crown, including to the extent that he told the Commission that he "*never saw*" Crown Resort's risk management policy during the time he was employed by Crown;
 - b. Crown's risk management procedures were deficient to the extent that they provided for no specific consideration of Crown's business operations in China;
 - c. in addition to the four accepted risk escalation events, there were several other matters that arose between at least 2012 and the arrests in October 2016 that should have been elevated into the risk management structures and boards of Crown Melbourne and Crown Resorts;
 - d. in addition to the Crown executives who were responsible for managing Crown's business in China "*on the ground*", there were several others within Crown's governance structure who knew about the accepted risk escalation events but failed to elevate those matters into Crown's risk management structures and the boards of Crown Melbourne and Crown Resorts;
 - e. there was potential for a conflict existing between the interests of:
 - Crown and its staff who were arrested and convicted on the one hand; and
 - the private investment company of Crown Resort's former chairman Mr James Packer (Consolidated Press Holdings Pty Limited (**CPH**), which was and remains a significant shareholder in Crown Resorts) on the other.
12. Having regard to these matters, in the Commission's view, it would have been more accurate and appropriate for Crown to accept that:
- a. Crown left important matters of risk management "*on the ground*" almost exclusively to Mr Chen, even though he had no particular experience in matters of risk management, and did not have the requisite knowledge, skills or support necessary for him to undertake this most important task;

⁸ The full extent of the matters that have been accepted by Crown for the purpose of the Commission's investigation as set out the written submissions that Crown made to the NSW Inquiry

- b. whilst, for the most part, it was the executives who were responsible for Crown's operations in China who sought to manage the risks associated with doing business in that country "*on the ground*", there were also many instances of the accepted risk escalation events becoming known to persons who held relevant directorships or were internal lawyers employed by Crown;
 - c. the accepted risk escalation events that were known by those directors and/or lawyers should have been elevated by those people into the risk management structures and boards of both Crown Melbourne and Crown Resorts.
13. Furthermore, in the Commission's view, Crown's accepted failings should have also acknowledged that, in addition to the accepted risk escalation events, there were several other matters that arose between at least 2012 and the arrests in October 2016 that needed to be addressed. The Commission considers it incongruous, for example, that matters such as:
- a. the preparation of "*guidelines*" relating to what Crown's staff in China should do if they were questioned or detained police;
 - b. another instance of Crown staff having been questioned by police in China, which is not part of any accepted risk escalation event;
 - c. Crown's staff expressing concerns that they would be detained;⁹ and
 - d. senior executives altering travel arrangements and giving instructions about what should be done with their salary if they were detained in China;
- are not also matters that Crown considers worthy of elevation into the risk management structures and boards of Crown Melbourne and Crown Resorts.
14. The Commission considers that the failure of the senior executives who were managing Crown's business in China "*on the ground*" (particularly the failure of the General Manager of Crown Melbourne's VIP International Department, Jason O'Connor) to even consider matters such as these for risk management and board consideration demonstrates that those senior executives have or had little or no understanding of the responsibilities that come with being senior executives of the licensed Melbourne Casino.
15. Meanwhile, specifically in respect of the accepted risk escalation events, in the Commission's view, Crown's concessions should have also expressly acknowledged that:
- a. the accepted risk escalation event constituted by a Chinese Ministry of Public Security announcement that was made in February 2015 (some 20 months before Crown's staff were arrested) became known to a small group of directors which included:
 - Mr Felstead; and
 - Mr Johnston;

⁹ Being a topic the Commission will address further later in this report.

each of whom failed to ensure that this accepted risk escalation event was elevated into the risk management structures or boards of Crown Melbourne and Crown Resorts;

- b. the accepted risk escalation event constituted by the arrest of other foreign casino marketing staff in China in June 2015 (more than 16 months before the arrests of Crown's own staff) became known to a large group of directors including:

- Mr Packer (Crown Resorts' former chair);
- Mr Rankin (Crown Resorts' former chair);
- Ms Coonan (Crown Resorts' current chair);
- Mr Barton;
- Mr Craigie;
- Ms Danziger;
- Mr Demetriou;
- Professor Horvath;
- Mr Johnson;
- Mr Dixon; and
- Mr Felstead;

each of whom failed to ensure that this matter was elevated into the risk management structures or boards of either Crown Melbourne or Crown Resorts;

- c. the accepted risk escalation event constituted by the questioning of one or more Crown employees by Chinese police in July 2015 (about 15 months before the arrest of Crown staff) became known to some directors and also some internal lawyers at Crown, including at least:

- Mr Felstead;
- Mr Johnston;
- Ms Tegoni; and
- Ms Williamson

each of whom failed to ensure that this matter was elevated into the risk management structures or boards of either Crown Melbourne or Crown Resorts;

- d. the accepted risk escalation event constituted by the Chinese television program that aired in October 2015 (about a year before the arrests) became known to at least the Crown Melbourne director Mr Felstead who failed to ensure that this matter was elevated into the risk management structures or boards of either Crown Melbourne or Crown Resorts.

16. Knowledge of the accepted risk escalation events by these directors and internal lawyers represented opportunities pursuant to which matters could and should have been raised within the governance structures of Crown Melbourne and Crown Resorts in a manner which might have resulted in the operating environment in China being formally (and properly) considered by the Crown Melbourne and Crown Resorts boards.
17. These missed opportunities were quite apart from any failure on the part of the executives who were managing "on the ground" in China to report these matters.
18. Unfortunately for the Crown staff who were arrested, convicted and sentenced in China, these opportunities were missed and never acted upon. As such, matters relevant to the operating environment in China were never considered as part of Crown's risk management structures or by the boards of either Crown Melbourne or Crown Resorts, before Crown's staff were arrested in October 2016.

THE REGULATORY FRAMEWORK OF THIS REPORT

19. It is illegal to operate a casino in the State of Victoria unless the casino is authorised by the issuing of a licence, granted by the Commission, pursuant to the provisions of the *Casino Control Act 1991* (the **CC Act**).
20. Crown Melbourne is the sole holder of a casino licence in Victoria and, pursuant to that licence, operates the Melbourne Casino. As the holder of a casino licence, Crown Melbourne is not only the largest private sector employer in Victoria but also, as Crown's former employee, Mr Chen, put it during the Commission's investigation operates the Melbourne Casino "at the pleasure of the jurisdiction"¹⁰.
21. In that context, the Commission serves an important purpose in ensuring not only that Crown Melbourne conducts itself appropriately but also in ensuring that the citizens of Victoria can have confidence in the way in which Crown conducts its business, including the Melbourne casino.
22. The Melbourne Casino is the largest casino in the Crown group and in 2017 – 18 (FY18) generated 73 per cent of Crown's normalised Earnings before Interest, Tax, Depreciation and Amortisation (EBITDA)¹¹
23. As well as being licensed to operate the Melbourne Casino, Crown Melbourne is also directly connected with the various entities and persons who are referred to in this report, in that Crown Melbourne is:
 - a. controlled or overseen by Crown Resorts, which is a company that is listed on the Australian Stock Exchange (**ASX**);
 - b. the controlling entity of Crown Singapore, which is both:
 - a wholly owned subsidiary of Crown Melbourne; and

¹⁰ Being a matter that was noted by Mr Chen in response to q178 of those put to Mr Chen by the Commission's investigators.

¹¹ See Crown Resorts Ltd 2018 Full Year presentation 9 August 2018, Crown Resorts Normalised EBITDA - \$878.3m and Crown Melbourne Normalised EBITDA \$645m

- the company that directly employed most of the Crown employees who were convicted and sentenced in China;
 - c. the employer of Mr O'Connor who was one of those convicted and sentenced in China;
 - d. the entity through which Crown has, for many years, operated its "VIP International Department", being the department within Crown which is (or was) responsible for operating Crown's business in China;
24. Section 9 of the CC Act sets out the matters that must be considered when it comes to determining applications for a casino licence and among other things, relevantly provides that:
- (1) The Commission must not grant an application for a casino licence unless satisfied that the applicant... is a suitable person to be concerned in or associated with the management and operation of a casino.*
- (2) In particular, the Commission must consider whether:*
- a.
 - b.
 - c. *in the case of an applicant that is not a natural person, the applicant has, or has arranged, a satisfactory ownership, trust or corporate structure;*
 - d. *the applicant has or is able to obtain financial resources that are adequate to ensure the financial viability of the proposed casino and the services of persons who have sufficient experience in the management and operation of a casino;*
 - e. *the applicant has sufficient business ability to establish and maintain a successful casino;*
 - f. ...
 - g. *each director, partner, trustee, executive officer and secretary and any other officer or person determined by the Commission to be associated or connected with the ownership, administration or management of the operations or business of the applicant is a suitable person to act in that capacity.*
25. Section 18 of the CC Act provides, among other things, that a casino licence is to remain in force for the period for which it was granted, and specifically in respect of the licence that has been granted to Crown Melbourne, that *"the Melbourne Casino Licence remains in force until 18 November 2050, unless it is sooner cancelled or surrendered"* under the CC Act.
26. In that context, the functions of the Commission include overseeing the operation and regulation of the Melbourne Casino, including Crown Melbourne's compliance with the provisions of its casino licence and the various other statutory obligations that are imposed upon Crown Melbourne, through the suite of legislation which applies to its operation of the Melbourne Casino.

27. One of the mechanisms by which that oversight occurs is through section 24 of the CC Act which, among other things, provides that:
- (1) *The Commission may investigate a casino from time to time and at any time that the Commission thinks desirable to do so...*
 - (2) *The investigation may include (but is not limited to) an investigation of any of the following matters –*
 - a. *the casino and operations in the casino;*
 - b. *the casino operator...;*
 - c. *...*
 - (3) *The Commission may make a report to the Minister on the results of such an investigation if it thinks desirable to do so..."*
28. The Commission considers that a report to the Minister in respect of this matter is desirable and this report has been prepared accordingly.

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Distinguishing this report from casino reviews and other processes

31. Confidential the Commission considers that it is important to also note the regulatory context in which this report has been prepared. This report is a general investigation conducted pursuant to section 24 of the CC Act and is therefore separate and distinct from regular investigations that the Commission conducts into Crown Melbourne's suitability to hold a casino licence pursuant to section 25 of the CC Act, which

among other things, requires consideration of whether it remains in the public interest that a casino licence, such as the licence that is presently held by Crown Melbourne, should continue in force.¹²

32. As such, this investigation is also separate and distinct from the process which is set out in section 20 of the CC Act by which issues such as cancellation, suspension or variation of Crown Melbourne's casino licence may be considered. The Commission considers that any decision about whether it is appropriate to cancel, vary or suspend Crown Melbourne's casino licence would more appropriately occur following a review of the entirety of Crown Melbourne's business and suitability, carried out either pursuant to section 25 of the CC Act or any other inquiry or similar process that may be instituted by government.
33. In that regard, although this investigation has been limited to considering only one aspect of Crown Melbourne's business (namely Crown's operations in China), the Commission considers that its investigation of this matter has raised broader issues which require a broader assessment of Crown Melbourne's business to be undertaken.
34. That broader assessment of Crown Melbourne's business will occur in the context of the next casino review or any other inquiry or similar process that may be instituted by government.

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Avoiding "hindsight bias"

35. For much of this investigation, Crown has been anxious to remind the Commission of the need to avoid what it calls "*hindsight bias*".
36. That is to say that Crown has been anxious to ensure that the Commission's consideration of this matter is not coloured by the fact that Crown's staff in China were ultimately arrested, convicted and sentenced, and by reference to that fact, interpret the events which preceded the arrests as indicators that the arrests, convictions and sentencing were inevitable.
37. The Commission agrees that hindsight bias should be avoided. Furthermore, the Commission notes that it has not approached its consideration of this matter on the basis that the events that occurred, prior to the arrests, should be considered as inevitable indicators that those arrests, convictions and sentencings would occur.
38. Instead, the approach that the Commission has taken to its assessment of the evidence has been to identify what could or should have been reported about the operating environment in China, pursuant to either or both Crown's risk management procedures or the other board reporting mechanisms that were part of Crown's corporate governance structures at the relevant time.
39. Each of these matters has then been considered objectively and on its own merits for the purpose of determining whether, in the Commission's opinion, each matter was of sufficient seriousness to justify

¹² See particularly section 25(1)(d)

that issue being raised as part of either the risk management processes or broader corporate governance structures that existed at Crown Melbourne and Crown Resorts.

40. Some officers within Crown now say that they took a different view of the seriousness of certain matters. One example is that no one within Crown apparently considered the questioning of a Crown staff member by police in China in 2014 about activities related to their employment by Crown, to be of sufficient seriousness to justify either risk management or board reporting of this matter. In the Commission's view, these subjective (and retrospective) opinions of Crown officers should not be given too much weight.
41. What is called for is an objective assessment of the material facts that could or should have been reported to the boards of Crown Resorts and Crown Melbourne about Crown's operations in China. The Commission has approached its consideration of the evidence accordingly.
42. Furthermore, in undertaking this objective assessment, the Commission has also had regard to the position that Crown adopted in its submissions to the NSW Inquiry and then later, also, for the purpose of the Commission's investigation, to the extent that it included the statement that:

"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 that decision, including any escalation of risk to the safety of staff in China.

Boards cannot operate properly without having the right information and boards do not operate effectively if they do not challenge management."

43. With respect, the Commission agrees and furthermore notes that, having regard to the concession that Crown has now made in these terms, a large part of the investigation that has been conducted in respect of this matter has focused precisely on the question of what "*material facts*" could or should have been reported into the risk management structures and to the boards of Crown Resorts and Crown Melbourne about Crown's operations in China.
44. It should also be noted that, in making that assessment, the Commission has taken the view that any matter which expressly relates to the personal safety of Crown's staff, being as they were staff employed by companies that form part of a group that is both controlled by an ASX-listed entity and is also the holder of a casino licence in Victoria, is a matter of sufficient seriousness to have constituted a "*material fact*" that should have been elevated into the risk management structures and reported to the boards of Crown Melbourne and Crown Resorts.

Affording procedural fairness

45. Although the Commission notes that both this report and the investigation to which it relates have been conducted pursuant to section 24 of the CC Act, which is a section that does not specifically require the Commission to afford procedural fairness when giving a report such as this one to the Minister, the Commission also notes that throughout this investigation Crown has, on several occasions, asserted a right to procedural fairness in respect of the Commission's consideration of this matter.

46. As such, the Commission has in turn taken several steps to afford Crown the procedural fairness it has asserted. Those steps have included:
- a. at all times maintaining an open dialogue with Crown by which the Commission remained receptive to receiving information from Crown about its understanding of the events that occurred in China. By reason of that open dialogue, among other things, Crown made several presentations to the Commission, including a presentation that the former Chief Legal Officer of Crown made to the Commission in August 2017, shortly after the conviction and sentencing of Crown's staff in China, which had occurred in June 2017;
 - b. at all times providing Crown with ample time in which to respond whenever the Commission exercised its compulsory powers in respect of this matter. Among other things, this included granting extensions of time for compliance with notices requiring the production of documents and furthermore scheduling compulsory interviews with Crown staff at times that not only afforded them sufficient time to prepare for such interviews but scheduling those interviews at times that were convenient to those Crown staff who were interviewed;
 - c. consenting to Crown's request that lawyers representing Crown be permitted to attend at the Commission's interviews with Crown staff;
 - d. providing Crown with a draft report of the Commission's findings that was then in turn considered by the Crown Resorts board at an "in camera" session of that board on 12 June 2019;
 - e. when in late 2019, after the preparation of the draft report, Crown waived legal professional privilege over certain legal advice that is relevant to this matter, the Commission sought to consider the additional information constituted by that legal advice in as timely a fashion as possible;
 - f. when, during its consideration of the additional information constituted by the legal advice, it appeared to the Commission that the NSW Inquiry would result in additional matters becoming known to the Commission, carefully considering those additional matters as and when they came to light during the pandemic-affected 2020;
 - g. because of matters that became known during the NSW Inquiry, making additional use of compulsory powers to reduce the production of documents in a manner which afforded Crown sufficient time to produce these and, where extensions of time were sought, granting those extensions;
 - h. because of both the evidence that had been given to the NSW Inquiry and also specific concessions that had been made by Crown at the NSW Inquiry:
 - inviting Crown to also make the concessions that had been made at the NSW Inquiry for the purpose of the Commission's investigation;

- inviting Crown to accept a series of additional propositions that were based upon the Commission's assessment of the evidence that is referred to in this report and the evidence that had been given by Crown witnesses at the NSW Inquiry;

in respect of which, the Commission notes that Crown made the same concessions as it made at the NSW Inquiry for the purpose of the Commission's investigation but agreed with very few of the propositions that were based upon the Commission's assessment of the evidence that is referred to in this report.

An example of one proposition that Crown was invited to accept but declined to do so was a proposition in terms that:

"the totality of the events that occurred in China constitute a failure of Crown's risk management, corporate governance, ethics and culture".

Crown was not prepared to accept that proposition, saying that the proposition:

"...is very broadly expressed [and] it cannot accept a rolled-up proposition of the breadth of that..."¹³

- i. granting an extension of time sought by Crown so that its lawyers could have the time they needed to consider both the invitation to make concessions and propositions;
 - j. specifically considering the issue of whether the evidence, in fact, supports some of the matters that Crown sought to advance during both its written submissions to the NSW Inquiry and also in reply to the Commission's propositions.
47. In any event, notwithstanding the extensive degree to which the Commission has sought to afford procedural fairness to Crown, the Commission notes that Crown remains unwilling to accept most of the propositions that the Commission put to it, based on the Commission's assessment of the evidence referred to in this report.
48. As such, there remain several differences of opinion between the Commission and Crown. However, to the extent those differences remain, those matters cannot be attributed to any absence of procedural fairness.

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50. In deciding that those matters are appropriate, the Commission has done so in a way that has been procedurally fair to Crown.

¹³ Crown's response to the Commission's propositions received on 22 January 2021, page 11, paragraph 4.

LIMITED EVIDENCE FROM CROWN'S EMPLOYEES IN CHINA

51. Before moving on to Part 2 of this report, there is one final matter of context and introduction that the Commission considers important to raise. That is, that only limited evidence has been available to the Commission from Crown's employees in China, who were arrested and later convicted and sentenced for gambling-related crimes in that country.
52. In that regard, during its investigation, the Commission was concerned about the absence of a detailed documentary record of the communications that had occurred between Crown's staff in China prior to the arrests. The Commission raised that matter with Crown who explained this absence on the basis that the communication platforms that were used by Crown staff in China were generally of a nature that meant that few records of such communications were kept.
53. Nevertheless, the Commission remained concerned about the absence of direct evidence from Crown's former staff in China throughout its investigation. Furthermore, the Commission's concerns in that regard became more acute when, during the investigation:
- a. Messrs Chen, O'Connor, Felstead and to a lesser extent Craigie, were eager to eschew any notion that Crown's staff in China had themselves been fearful for their safety;
 - b. one of Crown's employees who had been detained in China, Ms Jenny Jiang, made very serious allegations in the media,¹⁴ including allegations which in effect contradicted Messrs Chen, O'Connor and Felstead's attempt to eschew that the staff in China were concerned;
 - c. Crown sought to amplify the fact that it says:

*"...the evidence does not support that management were aware that Crown's staff in China were concerned or fearful that they would be detained by reason of the activities they undertook in the course of their employment"*¹⁵.
 - d. Crown has sought to resist propositions to the effect that its risk management structures were inadequate on bases which have included that:

*"A risk or concern identified by sales staff in China, for example, could be passed on to Mr Chen, and from Mr Chen to Mr O'Connor, Mr Felstead, and Mr Craigie"*¹⁶.
54. As such, having regard to:
- a. the absence of a detailed documentary record;
 - b. the very serious allegations that had been made by Ms Jiang;
 - c. Crown's ongoing resistance to any propositions that its staff in China feared for their safety or that its risk management structures were inadequate prior to the arrests;

¹⁴ See for example *The Age*, Saturday 27 July 2019, "Crown's Links to Asian Crime."

¹⁵ Crown's response to the Commission's propositions received on 21 January 2021, page 15, paragraph 7(e).

¹⁶ Crown's response to the Commission's propositions received on 21 January 2021, page 19, paragraph 14(a).

- d. the difference of opinion that exists between the Commission (based as it is on the evidence described in Part 3 of this report) and Crown about the very important question of whether Crown's staff in China themselves were concerned about the risk that they would be arrested by reason of their employment and took steps to raise those concerns with their superiors in a manner that was not acted upon;

the Commission considers it appropriate to note that, during its investigation, the Commission sought to conduct interviews with each of the Chinese staff who had been convicted and sentenced.

55. As part of that process, the Commission asked Crown to produce documents that were relevant to the employment of the detained Crown employees, including any documents that set out the terms of any ongoing obligations that those employees might still have to Crown, notwithstanding the cessation of their employment.
56. In that context, the Commission analysed copies of documents that are characterised as "finalisation deeds" and/or "separation deeds" that have been executed between Crown Singapore and most, if not all, of the former Chinese employees that Crown had employed in China. Among other things, these documents contained terms which indicated that, without an admission of liability, Crown had agreed to:
 - a. pay the employees compensation both:
 - by reason of their detention; and
 - if certain future events might occur, such as in the event of divorce, within a specified time; and
 - b. pay ongoing medical and associated costs for a specified period following the execution of the deeds.
57. As well as providing for these payments, these deeds also contained terms by which the former employees had, among other things, agreed not to disclose any story or narrative concerning any aspect of their employment with Crown, the criminal proceedings in China or the penalties that were imposed upon them in China.
58. Having regard to both the absence of a detailed documentary record and also the existence of the deeds containing terms to this effect, the Commission took the view that, in the interests of obtaining a complete picture of the operating environment in China, the Commission should seek to make arrangements for each of Crown's Chinese employees to travel to Melbourne so that the Commission could make use of its compulsory evidence-gathering powers in order to interview all of the former employees of Crown who had been convicted and sentenced in China.
59. The Commission asked Crown to produce the current contact details of each of the Chinese employees accordingly. Crown duly produced those details and the Commission then invited all Crown employees who had been convicted and sentenced in China to contact the Commission's investigators so that the necessary arrangements might be made and interviews conducted.

60. In all but a very few instances, each of those former employees (including Ms Jiang) either:
- a. did not respond to the Commission's invitation;
 - b. after an initial response declined to proceed with an interview;
 - c. agreed only to discuss their experiences in an off-the-record context, to ensure that any information that was given to the Commission could not be attributed to any individual employee.
61. Having regard to these matters, the Commission, very late in its investigation, made one final attempt to address the issue of the absence of evidence from Crown's employees in China.
62. That attempt was in the form of a proposition that the Commission invited Crown to accept for the purpose of the Commission's investigation that was, in turn, based on a submission that had been made by Counsel Assisting the NSW Inquiry, to the effect that from at least 2013, Crown's staff in China had been expressing fears for their safety.
63. Crown refused to accept that proposition and rather told the Commission that:
- "The word '[f]rom' implies that staff continually expressed safety fears beginning in 2013 and running up until the arrests in October 2016. **There is no clear evidence of that.**"¹⁷ [emphasis added]*
- ...
- ...the evidence does not support that management were aware that Crown's staff in China were concerned or fearful that they would be detained by reason of the activities they undertook in the course of their employment."¹⁸*
64. Having regard to that response to the Commission's propositions, the Commission notes that, notwithstanding that the Commission acknowledges that the evidentiary record specifically insofar as it concerns Crown's employees in China is less than complete, to the extent that the Commission has evidence of staff concerns, prior to their arrests, the Commission considers that those concerns are amply made out by the evidence that is referred to in detail later in Part 3 of this report.
65. Furthermore, to the extent that Crown seeks to persist in advocating to the contrary, in the Commission's view any asserted lack of evidence from the employees in China is explicable given the deeds those former Crown employees signed and the payments they apparently are continuing to receive from Crown.
66. For these reasons, the Commission is not prepared to accept Crown's ongoing assertions insofar as they are based on what Crown says is any gap constituted by there being no direct or "clear" evidence from Crown's former employees in China.

¹⁷ Crown's response to the Commission's propositions, received on 22 January 2021, page 7, paragraph 2(f)

¹⁸ Crown's response to the Commission's propositions, received on 22 January 2021, page 15, paragraph 7(e); page 17, paragraph 13(a).

PART 2

THE BUSINESS AND ITS ESTABLISHED REPORTING STRUCTURES

67. In this, Part 2 of its report, the Commission deals with three main topics.
68. Those topics are, first the nature of Crown's business, including how it was that Crown went about soliciting "VIPs" from China to gamble at its Australian casinos, including the Melbourne casino. As part of that topic, the Commission also identifies the relevant reporting lines that existed from the staff in China, up to a more senior executive who was based in Hong Kong (Mr Chen) and then in turn to the executives and directors who were based in Australia. (Messrs O'Connor, Felstead and Craigie)
69. The second topic is what the Commission has characterised as the formal reporting lines that were not engaged and the extent to which these reporting lines were constituted by the risk management framework and management reports. Among other things, in dealing with this topic, the Commission also identifies some serious concerns it has about the extent to which Crown has persisted in seeking to argue that its risk management structures were appropriate prior to the arrests in October 2016. They include the Commission's concerns arising from the absence of any risk management plans specific to China and also, from Mr Chen's evidence to the Commission that he "*never saw*" Crown Resort's risk management policy during the time that he was employed by Crown.
70. Part 2 then concludes with consideration of a third topic, namely, the other reporting mechanisms in respect of Crown's operations in China.
71. The reason why the Commission has included this topic as part of this report is that, during its investigation, it emerged that, in addition to the formal reporting lines, there were also other mechanisms by which issues in relation to Crown's business in China were discussed at very senior levels. The Commission has included this third topic because it considers it necessary and appropriate to record the extent to which, in the period prior to the arrests, directors and officers of the private investment company of Crown Resorts' former chairman, Mr Packer, (CPH), were involved in certain decisions concerning Crown's operations in China. Having regard to these matters, among other things, the Commission has identified a possible conflict of interest that might have arisen accordingly.

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SOLICITING "VIPs" FROM CHINA

73. Since the inception of the Melbourne Casino in 1994, Crown's business operations have included actively soliciting "VIP" gamblers from overseas to travel to its casinos, including the Melbourne Casino, to gamble.

74. This part of Crown's business is or was conducted by Crown Melbourne via its VIP International department and, for at least 20 years prior to the arrests of Crown staff in China in October 2016, included the active solicitation of "VIP" gamblers from China.
75. The VIP International department has historically been a substantial part of Crown's business and generated turnover in the many billions of dollars.
76. This turn-over is depicted in tabular form (in billions) in the table immediately below.

	F13	F14	F15	F16	F17	F18
Crown Melbourne	\$38.9	\$37.1	\$52.3	\$50.1	\$25.2	\$43.8
Australian Casinos	\$50.7 ¹⁹	\$49.9 ²⁰	\$70.8 ²¹	\$65.1 ²²	\$33.3 ²³	\$51.5 ²⁴

77. Between at least 2014 and the arrests that occurred in October 2016, Crown's China operations had the highest compound annual growth rate of all regions in which Crown's VIP International department was at the time conducting business.²⁵
78. In the Commission's opinion, Crown's operations in China were not only a substantial part of Crown's business but were also of a magnitude that justified detailed and careful consideration of Crown's operations in China by the risk management structures and boards of both Crown Melbourne and Crown Resorts.
79. From about 2012 or 2013, the growth in Crown's "VIP" International business was attributable to several factors, including not only the extraordinary success of Crown's staff in growing Crown's "VIP" business. It was also attributable to a "crackdown" that occurred in China which meant, among other things, that Chinese gamblers who had previously attended the Macau Special Administrative Region of the People's Republic of China (**Macau**) were targeted by Crown and increasingly began to travel to Australia, instead of Macau, to gamble.
80. Crown actively sought to take advantage of this Chinese "crackdown" on gambling in Macau by adopting what some within Crown called the "*double down approach*"²⁶ in response to the crackdown, which involved, among other things, promoting Australia as an alternative to Macau, for reasons which

¹⁹ See Crown Resorts 2013 Full Year Results announcement 23 August 2013.

²⁰ See Crown Resorts 2014 Full Year Results announcement 14 August 2014.

²¹ See Crown Resorts 2015 Full Year Results announcement 13 August 2015.

²² See Crown Resorts 2016 Full Year Results announcement 17 August 2016.

²³ See Crown Resorts 2017 Full Year Results announcement 4 August 2017.

²⁴ See Crown Resorts 2018 Full Year Results announcement 9 August 2018.

²⁵ Presentation slides entitled: "*VIP International Business Update – July 2014*" CRL522.001.0238 at .0243 (email attachment).

In respect of this and other documents referred to in this report which use the "CRL" document identification prefix, although these document identification numbers were those used during the NSW Inquiry (as distinct from the Commission's investigation), the Commission has included CRL document identification numbers where available to assist any readers of this report who may wish to consider the specific source documents that have been referred to.

²⁶ Email Mr Chen to Mr Felstead dated 15 August 2014.

included that, in Australia, Chinese gamblers could expect a degree of confidentiality about their gambling activities that could not be expected in Macau.

81. In implementing its business strategy, including to the extent that such strategy involved actively seeking to take advantage of China's "crackdown" on gambling in Macau by "doubling down", Crown employed staff who lived and worked in China and who were organised into teams by reference to the regional and sub-regional areas in which they operated.²⁷
82. In general terms, Crown's staff in China sought to attract Chinese gamblers by meeting with those gamblers in informal settings such as at coffee shops or restaurants. From time-to-time "roadshows" were also conducted which, among other things, involved more senior Crown employees, including the executives who were responsible for overseeing Crown's operations in China, travelling to that country so that they too could participate in the meetings that were conducted with China's "VIP" gamblers.
83. Although in the period prior to the arrests in October 2016, the specific plans, or strategies for the solicitation of Chinese "VIPs" were given different labels ultimately those strategies all had the same objective, namely the attraction of as many high turnover "VIP" gamblers from China as possible.
84. In implementing these strategies, the activities of Crown's staff in China were the subject of established reporting lines which meant, among other things, that the work of the Chinese staff was overseen by a group of executives who were not themselves based in China.
85. All but the most junior of Crown's staff in China were remunerated in a way which included being incentivised by reference to the gambling turnover that was generated from the Chinese "VIP" gamblers that each employee arranged to travel to Australia to gamble. Furthermore, although the evidence available to the Commission does not allow it to make an accurate assessment of the precise value of the incentive payments that were made to individual staff in China, the Commission notes that the evidence does include that:
 - a. in July 2014, the external auditor of Crown Melbourne noted an increase in the expenditure for the provisions of bonuses from \$2.4 million to \$4.8 million, due to the VIP International Sales team achieving its volume driven targets for FY14;
 - b. in July 2015, the external auditor of Crown Melbourne further noted the increase in the provision for bonuses from \$4.8 million to \$21.1 million and that this significant increase was due to Crown Melbourne achieving its targets for FY15.
86. Whilst the Commission emphasises that it has not been possible for it to determine the proportion of these amounts that were specifically paid to Crown's staff in China, the Commission does consider that, at least in a general sense, these notations by Crown Melbourne's external auditor serve to demonstrate the extent to which Crown's VIP International sales staff were incentivised by reference to bonus

²⁷ These teams included the Northern China team which comprised the sub-regional teams of North (Shengyang, Jilin, Dalian) and Middle North (Beijing, Shangdong, Shangxi, Tianjin); the Central China team which comprised the sub-regional teams of Central (Nanjing), Shanghai, and Middle East (Zhejinag, Hangzhou); and finally the Southern China team which comprised the sub-regional areas of South (Guangzhou, Xiamen, Fujiang) and South West (Chengdu, Sichuan, Kunming) – See China staffing information provided by Crown and the Affidavit of J Preston dated 29 March 2018 in Class action VID1317/2017.

payments. Indeed, an email that Mr Chen sent to Crown's staff in China on 28 April 2016 (less than six months before the arrests in October that year) put the matter this way:

*"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. You don't keep trying you'll never get those customers in. For those of you who are qualified to receive a bonus, remember that your plans are uncapped. The more you sell, the more you will make."*²⁸

Those responsible for Crown's operations in China "on the ground"

87. Crown's operations in China were, for the most part, overseen by two senior executives and two Chief Executive Officers (CEOs) who were also directors of relevant companies within the Crown corporate group.
88. Of the two senior executives, Mr Chen was based in Hong Kong and Mr O'Connor was based in Australia.²⁹
89. For his part, Mr Chen was essentially the conduit between the staff in China on the one hand and Mr O'Connor and the Australian based executive directors who also had responsibility for Crown's China operations on the other.
90. The evidence indicates that although he was based in Hong Kong, Mr Chen was in regular contact with Crown's staff in mainland China, particularly via telephone.
91. Among other things, he conducted several "all hands" meetings or telephone conferences with the staff in China where topics relating to the operating environment were discussed. As has already been noted, the Commission does not have a complete picture of what occurred during these telephone conferences because, as noted above, despite its best efforts, it has been unable to speak with most of Crown's former employees in China.
92. In any event, Mr Chen's position description refers to his role as including the development and growth of Crown's VIP client base. When interviewed by the Commission, Mr Chen also described his role as being that of a contributor to the strategy of the VIP International business unit and the profitability of the business. He said that his primary purpose was to meet Crown's profit objectives.
93. Like Crown's China-based employees, Mr Chen was also remunerated in a way that meant he was incentivised by reference to the gambling turnover that was generated from the Chinese "VIPs" who Crown's staff in China arranged to travel to Australia to gamble. Indeed, the incentives were so great that, in the period leading up to the arrests in October 2016, Mr Chen received bonuses on his base annual salary (which at least in 2012 was about US\$750,000 per annum) of 112 per cent in FY14, 245 per cent in FY15 and 235 per cent for the period immediately prior to the arrests in FY16.

²⁸ Email from Mr Chen to VIP International Offices, et al, dated 28 April 2016.

²⁹ Mr Chen was based in Hong Kong and, like the majority of those who were convicted and sentenced in China, was an employee of Crown Singapore.

94. According to his payment summary for the financial year ending 30 June 2015 (that is the financial year ending about four months before the arrests of his colleagues), Mr Chen received a "VIP Bonus" of USD\$1,823,649.55.³⁰
95. Although he was never arrested, convicted or sentenced, Mr Chen travelled to mainland China from Hong Kong at least monthly. The purpose of this travel included meetings with both Crown's staff and "VIP" customers in China, including as part of various marketing "roadshows" that Crown conducted in China from time to time.
96. Mr Chen ceased his employment with Crown in March 2017, being five months after his colleagues were arrested.
97. Meanwhile, according to his position description, Mr Chen formally reported to Mr O'Connor³¹ and between at least 2014 and Mr O'Connor's arrest in October 2016, Mr Chen and Mr O'Connor spoke every day or every other day.³²
98. Mr O'Connor was or is employed by Crown Melbourne; based in Melbourne; and also the holder of a casino special employee licence.
99. Like Mr Chen, Mr O'Connor was also a regular visitor to China.
100. Up to the time of his arrest in October 2016, four divisional VIP International managers reported to Mr O'Connor, one of whom was Mr Chen. According to Mr O'Connor, Mr Chen took up about half of Mr O'Connor's time because Mr Chen was the primary interface with customers in China, and together, they spent a lot of time focussing on what Mr Chen was doing.
101. According to his position description, Mr O'Connor was, among other things, responsible for the overall financial performance and integrity of the domestic and international VIP business (which included China) and the development and implementation of the strategic vision and direction of the VIP International operation.³³
102. Mr O'Connor apparently considered himself to be the ultimate decision-maker in the VIP International business unit, which included Crown's China operations, notwithstanding that the CEO of Crown Australian Resorts who was also a director of Crown Melbourne, Mr Felstead, was always consulted and involved in major strategic decisions, such as decisions pertaining to pricing, capital investments and critical customer relationships.³⁴
103. Like Mr Chen, Mr O'Connor was also very well remunerated, including through bonus or incentive payments that were linked to the gambling turnover that was generated from the Chinese "VIPs". Although the Commission did not receive the precise details of all the bonus payments that were received by Mr O'Connor, the limited information that is available indicates that, in addition to bonus

³⁰ CRL 519.001.1226.

³¹ In addition to that, Mr Chen also regularly communicated directly with the CEO of Crown's Australian Resorts, Barry Felstead

³² Mr O'Connor's evidence to the NSW Inquiry – 3 September 2020 – T1990/1-10

³³ Position Description Group Executive General Manager – VIP International

³⁴ See Mr O'Connor's evidence to the NSW Inquiry – 3 September 2020 – T1987/35 – T1988/13.

payments, Mr O'Connor is or was also the recipient of benefits associated with longer-term executive incentive plans linked to both share values and earnings across multiple Crown casinos.

104. Mr O'Connor was detained by Chinese authorities on 13 October 2016, when he was in China as part of a Crown marketing "roadshow." He was subsequently convicted and sentenced for contravening the criminal law of China. He was released from custody in August 2017.
105. Mr O'Connor is the only Crown senior executive who had direct responsibility for Crown's operations in China who remains employed by Crown as at the date of this report.

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Messrs Felstead and Craigie's dual roles as both CEOs and directors

107. As noted above, two of the Crown officers who were responsible for Crown's business operations in China were both CEOs and also directors of relevant entities within the Crown group of companies.
108. The first of those who occupied such dual roles was Mr Felstead, being the person to whom Mr O'Connor directly reported between at least February 2011 and his arrest in October 2016.
109. Mr Felstead was not only the CEO of Crown's Australian resorts but also a director of both Crown Melbourne (which employed Mr O'Connor) and Crown Singapore (which employed all of Crown's China-based staff who were convicted and sentenced in China).
110. Mr Felstead was actively engaged in overseeing the VIP International department and was also involved in key strategic decision making in respect of its operations in China. According to Mr Chen, Mr Felstead was very involved in international marketing and Mr Chen engaged with him on a regular basis. According to Mr O'Connor, he spoke with Mr Felstead in person or by telephone several times a week and it was Mr O'Connor's practice to alert Mr Felstead to any issues concerning the VIP International business (which included Crown's operations in China) which Mr O'Connor considered important.³⁵
111. As well as attending board meetings of Crown Melbourne in his capacity as a director of that company, Mr Felstead also had a standing invitation to attend meetings of the Crown Resorts board by virtue of his position as CEO of Australian Resorts. As part of that standing invitation Mr Felstead was required to report to the Crown Resorts board on all aspects of the business for which he was responsible, including the VIP International business,³⁶ encompassing as it did Crown's operations in China.
112. Although he was himself never detained, after 2013 Mr Felstead regularly travelled to China, including a visit he made very shortly before Crown's staff were detained in October 2016.
113. In or about December 2020, Mr Felstead decided that he would "bring forward" his retirement, and the Commission understands that he either has or will shortly retire from all positions held at Crown.

³⁵ Mr O'Connor's evidence to the NSW Inquiry – 3 September 2020 – T1981/1-10; T1990/12-20; T2005/4-12.

³⁶ Mr Felstead's evidence to the NSW Inquiry – 17 August 2020 – T1096/36; T1097/5; T1097/17-21; T1097/7-15. Also see evidence of Geoff Dixon to the NSW Inquiry – 20 August 2020 at T4693/29-40.

114. Mr Felstead in turn reported to the second of the Crown officers who occupied the dual role of CEO and director of relevant entities within the Crown group of Companies. That person was Mr Craigie.
115. Mr Craigie was a director of Crown Melbourne (which employed Mr O'Connor); Crown Singapore (which employed the other Crown staff who were arrested, convicted, and sentenced in China); and Crown Resorts.
116. As well as being a director of Crown Resorts, Mr Craigie was also a member of the risk management committee of Crown Resorts.
117. Messrs Craigie and Felstead conversed on an "as needs" basis³⁷ and Mr Craigie was the most senior executive who oversaw Crown's operations insofar as they concerned the VIP International Department and in turn Crown's operations in China.
118. Like Mr Chen, Mr Craigie ceased active employment with Crown four months after the arrests, in February 2017. He also ceased to be a director of at least Crown Resorts and Crown Melbourne on 28 February 2017³⁸.
119. The Commission considers it very important to its consideration of this matter to note that Mr Craigie and Mr Felstead were not only the most senior executives responsible for Crown's operations in China but were also directors of Crown Melbourne and Crown Singapore (in the case of both Mr Felstead and Mr Craigie) and Crown Resorts (in the case of Mr Craigie). The Commission also considers it important that Mr Felstead had a standing invitation to Crown Resorts board meetings.
120. The Commission considers the dual roles that Messrs Felstead and Craigie occupied (and Mr Felstead's standing invitation) to be important because, to the extent that they were aware of matters relevant to China, they regularly attended board meetings at which matters relevant to the operating environment could have been raised by them.
121. As such, the Commission does not consider this to be a case where there was a significant structural gap or disconnect between the executives who operated Crown's business in China and the boards to which those executives reported.
122. To the contrary, Messrs Craigie and Felstead were (albeit to varying degrees) intimately involved not only with Crown's business operations in China, but also at the very highest levels of Crown's governance structures, including at the very levels that were responsible for important matters such as setting the risk appetite and culture of Crown's operations.

Mr Craigie's role on the Crown Resorts risk management committee

123. Insofar as Mr Craigie is concerned, there is one further matter that the Commission considers it particularly important to note in respect of the dual positions of executive and director that he occupied.

³⁷ Mr Craigie's evidence to the NSW Inquiry – 20 August 2020 – T1453/28-43.

³⁸ 2017 Crown Resorts Annual report p45.

124. That is, in addition to his dual roles as both a CEO and director in a general sense, Mr Craigie was also someone who for most of the period prior to the arrests in October 2016 was also a member of the Crown Resorts risk management committee.
125. The Commission considers it to be inexplicable that, despite occupying these dual roles and also being a member of the Crown Resorts risk management committee, Mr Craigie did not raise matters relevant to the operating environment in China during the Crown Resorts risk management meetings that he attended.
126. Indeed, the Commission considers that is particularly the case given that Mr Craigie became aware of one of the accepted risk escalation events (namely the arrest of other foreign casino marketing staff in China) at about the time this event occurred in June 2015, but failed to raise this matter for consideration by the Crown Resorts risk management committee.
127. The Commission is even more concerned to note that on the evidence available, it seems that the risk management committee of the Crown Resorts board met at least twice in the period between other casino marketing staff being arrested (in June 2015) and the subsequent arrest of Crown's own staff (in October 2016).³⁹
128. On that basis, Mr Craigie had at least two separate opportunities to raise the fact that other casino marketing staff had been arrested in China with the risk management committee but failed to do so.
129. The Commission will return to this specific matter concerning Mr Craigie in further detail later in Part 5 of this report.

FORMAL REPORTING MECHANISMS NOT ENGAGED

130. Having regard to the failure to elevate the accepted risk escalation events into the risk management structures or boards of Crown Melbourne or Crown Resorts, it is perhaps not surprising that in their recent evidence to the NSW Inquiry, directors in the relevant period, Professor Horvath, Mr Brazil, Mr Mitchell and Mr Demetriou, said that they were not aware, prior to the arrests of Crown staff in China in October 2016, that Crown employed staff who lived and worked in mainland China.⁴⁰
131. That is not to say however that Crown did not have reporting mechanisms in place that might have been engaged so that these and other directors might have become aware of the presence of staff in China and matters that were relevant to their operations in that country.
132. Furthermore, it would seem on the Commission's assessment of the evidence available to it, that the available mechanisms were both formal and informal.

³⁹ Namely in October 2015 and June 2016.

⁴⁰ Crown accepted that this was the effect of these directors' evidence in its response to the Commission's propositions received on 22 January 2021, page 16, paragraph 9.

RISK MANAGEMENT FRAMEWORK

133. Insofar as formal reporting mechanisms are concerned, consistent with ASX Corporate Governance Principle 7, Crown had an established risk management framework which applied to both Crown Melbourne and Crown Resorts prior to the arrests.
134. Although Crown accepts that these structures were never engaged it also says that:
- “...this is a serious failing, which can be characterised as a cultural failing. But it is not a failing of the risk-management structures themselves – those structures were simply not engaged...”⁴¹*
- “...The failure to engage the risk-management structures that occurred in respect of China can be described as a cultural failing (and is accepted as such by Crown), but it is not a failure of the risk management structures themselves...”⁴²*
135. The Commission does not agree.
136. As well as being clear evidence of the cultural failing that is accepted by Crown, the Commission considers that Crown's risk management structure was inadequate to the extent that it failed to identify the risks associated with the operating environment in China (including the accepted risk escalation events), so that those risks could then be managed pursuant to that structure.
137. Furthermore, it is in that context then that the Commission notes that, insofar as Crown Resorts is concerned, its risk management policy⁴³ provided, among other things, that whilst the Crown Resorts board maintained ultimate responsibility for the risk management of Crown, that board had delegated oversight of risk management and internal control of major risks to the Crown Resorts risk management committee.
138. As has already been noted, one of the members of this committee (to which the Crown Resort's board responsibility for oversight and internal control had been delegated) was also the most senior Crown executive with responsibility for Crown's operations in China, Mr Craigie.
139. As has also already been noted, Mr Craigie was aware of at least one of the accepted risk escalation events yet failed to raise that matter with the risk management committee. Furthermore, as will be discussed in detail later in Part 5 of this report, the evidence also establishes that other members of Crown's risk management committee were also aware of at least one of Crown's accepted risk escalation events, yet also failed to raise that issue. They were Mr Dixon and Ms Danziger.
140. In any event, at the level below the risk management committee, each wholly-owned Crown business unit had its own risk management committee, consisting mostly of the senior managers who were responsible for the operation of that business unit.

⁴¹ Crown's response to the Commission's propositions received 22 January 2021, pages 19 – 20, paragraph 14(b).

⁴² Crown's response to the Commission's propositions, received 22 January 2021, page 21, paragraph 16.

⁴³ CRL Risk Management Policy 2008 (File 1)

141. Each of these business-unit-level risk management committees were responsible for maintaining and reviewing the risk profile for its business unit and also for reporting on the risks associated with their business unit to the Crown Resorts risk management committee twice per year.
142. As part of this structure, Crown had risk registers in place across each business unit which catalogued both the nature and potential severity of those matters that had been identified as material risks to each business.
143. Concurrently, insofar as Crown Melbourne is concerned, the Crown Resorts risk management policy meant that Crown Melbourne had its own executive risk management committee and maintained its own annual risk management plan and risk profile.
144. This Crown Melbourne risk management committee reported to the Crown Melbourne audit committee, which oversaw risk management for Crown Melbourne.
145. As both a senior executive with responsibility for Crown's operations in China and a director of Crown Melbourne, Mr Felstead was intimately involved in the risk management processes, at least insofar as Crown Melbourne was concerned.
146. Among other things, this included him receiving quarterly reports on the risk matrix, receiving verbal reports and reviewing the draft risk management plans prior to their submission to the Crown Melbourne audit committee.
147. The Commission considers it inexplicable that, in the context of his intimate knowledge of the matters that occurred in China, Mr Felstead did not make changes to the Crown Melbourne risk matrix or risk management plan by reference to both Crown's accepted risk escalation events and the other obvious risk management events that are described in detail in Part 3 of this report, when those events occurred.

The absence of risk management plans specific to China

148. In considering the risk management structures that existed at both Crown Melbourne and Crown Resorts in the period prior to the arrests, the Commission notes that none of the evidence that has been produced by Crown during this investigation suggests that any entity within the Crown group ever established or maintained a risk management plan specifically in respect of:
 - a. Crown Melbourne's VIP International Department;
 - b. Crown's operations in China;
 - c. the company that employed Crown's staff in China, namely Crown Singapore.
149. As this was of particular concern to the Commission, it was an issue that was raised during the interview that was conducted with Mr Craigie.
150. During that interview, Mr Craigie confirmed that there was no specific risk management structure which was designed to consider the VIP International business or Crown's operations in China. Rather, according to Mr Craigie, in the absence of specific risk management consideration being given to these

business units, the risks associated with these parts of Crown's business were instead considered as part of the various risk management plans that were established for each of Crown's casino entities.

151. In the Commission's view, the absence a risk management framework specifically in respect of Crown's VIP International business, its business operations in China and in respect of the company which employed Crown's staff in China, namely Crown Singapore, was a glaring omission and an obvious gap in the risk management structure that Crown sought to deploy in the period prior to the arrests.
152. Furthermore, in the Commission's view, the absence of risk management plans specific to China resulted in a purported reliance on plans that were totally unsuited to the environment in which Crown was operating in China.
153. To take but one example, the Commission notes that the risk management structures that Crown says were applicable to its operations in China were predicated on there being ongoing communication and engagement between Crown, the government, and regulators. Furthermore, the risk management structures that Crown apparently considered applicable to China prior to the arrests were then in turn predicated on this ongoing communication being a means by which risks such as material breaches of legislation might be controlled.
154. Such an approach is divorced from reality, particularly to the extent that Mr Chen made clear both at interview and by his conduct in obtaining the third party legal and risk management advice that is referred to in detail in Part 3 of this report, that ongoing communication and engagement between Crown, the government and regulators was not possible in China. Indeed, this was also a point that Mr O'Connor sought to make when he was interviewed by the Commission.
155. In the Commission's view, any risk management structure that Crown applied in respect of China prior to the arrests needed to consider the extent to which such communication and engagement with government and regulators was impossible.
156. The inevitable uncertainty and difficulty in risk management that would arise as a result should have also been considered.
157. In the Commission's view, these are all matters that might have been easily rectified by Crown had Crown adopted, as part of its risk management framework, processes and procedures that were designed to specifically consider the unique environment in which Crown was conducting its business in China.
158. Furthermore, the Commission is also concerned about the explanation (or lack thereof) that it was given as to why no separate risk management structure or risk register was ever established or kept in respect of Crown Singapore.
159. In that regard, the explanations the Commission received suggest that (notwithstanding that it was the employer of most of the staff who were arrested, convicted and sentenced), Crown Singapore was considered little more than an entity that was required for local regulatory and administrative purposes.
160. As Mr Craigie put it when he was interviewed by the Commission:

- a. Crown Singapore (of which Mr Craigie was a director) did not have a risk register as it was not an operational company and the operation was at the Crown Melbourne level (being a company of which Mr Craigie was also a director); and
 - b. the requirements of Crown's risk management framework did not mean that risk registers were required "across all Crown Businesses"⁴⁴.
161. For his part, Mr Felstead explained that Crown Singapore, as the entity that employed Crown's Chinese staff and also of which Mr Felstead was a director, had no risk register because, he assumes, there was a risk register in Melbourne and Perth, and these risk registers were adequate for the Crown Singapore business because, according to Mr Felstead, the people were closely managed out of Melbourne.
162. With respect, whilst the Commission agrees with Mr Felstead's assessment that the people in China were fairly closely managed by the people in Melbourne, the fact of close management is not a reason which could justify there being no specific risk management structure for the purpose of Crown's VIP International business, Crown's operations in China and/or specifically in respect of Crown Singapore.
163. The Commission considers the absence of risk management processes specifically in respect of each of these three aspects of Crown's business operations, in the period prior to the arrests in October 2016, to have been a further example of the inadequacies of the risk management structures that failed to identify and manage the risks associated with Crown's operations in China prior to the arrests.

Mr Chen "never saw" Crown Resorts' risk management policy

164. Before leaving the issue of there being no risk management plans or registers, specifically in respect of Crown's operations in China, there is one further matter that, in the Commission's opinion, is very important and therefore justifies specific consideration.
165. That matter arises from the evidence that each of Messrs Chen, O'Connor and Felstead gave to the Commission when they were interviewed for the purpose of this investigation, and in particular the extent to which Mr Chen told the Commission that he did not know that Crown had any form of risk management policies that were applicable to Crown's operations in China.
166. In that regard, Mr Chen had the following exchange with Commission investigators when he was interviewed in the United States for the purpose of the Commission's investigation:

Q176 ...*This is an overall Crown Resorts Ltd risk management policy. It's 1, 2, 3, 4 pages. Do you agree that that's what I'm showing you?*

A Yes.

Q177 *Can you ever recall seeing that document?*

A *I've never - I never saw this document during my time.*

⁴⁴ See paragraph 3.1 of the Crown Resort's Risk Management Policy 2008.

Q178 What was your understanding of Crown's risk management policy in your role?

A I didn't know there was a policy per se, a written policy. Obviously as a regulator and I understood that compliance was an important part of the way we did business, that we were - that we had a business at the pleasure of the jurisdictions that we're in and we had to manage risks from gaming risk, you know, security, country risk and all those things were part of any corporate business, not just gaming. So I would have expected there to be some sort of risk policy although I hadn't seen it."

167. The Commission notes that, having regard to the risk management structure that was described earlier in this report, without having seen (or even known about the existence of) the Crown Resorts' risk management policy, it would have been impossible for Mr Chen to have any proper understanding of the risk management structure which operated within Crown at the time.
168. The Commission considers this to be of the utmost importance as the entire risk management structure that existed at the relevant time was predicated on risks associated with Crown's VIP International business (which included Crown's operations in China) flowing up for consideration by Crown Resorts through mechanisms which included Crown's most senior risk management professional being advised of risk-related matters by other senior executives, such as Messrs Chen, O'Connor and Felstead.
169. In the absence of this information flow, the Commission considers that it would have been impossible for Crown's senior risk management staff⁴⁵ to have identified and assessed matters relevant to China for the purpose of determining, among other things, whether those matters required consideration by the twice-yearly Crown Resorts risk management committee meetings⁴⁶ or the wider boards of Crown Melbourne and Crown Resorts.
170. It is perhaps not surprising in these circumstances that during its investigation the Commission has identified no evidence to suggest that any of Crown's risk management professionals ever visited Mr Chen in Hong Kong or Crown's staff in China for the purpose of asking them what they thought of the risks associated with the environment in which they were operating.
171. The Commission considers this failure to visit Mr Chen and Crown's staff in China for the purpose of asking them what they thought about the risks associated with their work to be yet another example of the inadequacy of the risk management structures that Crown had in place prior to the arrests of its staff in China in October 2016.
172. As well as that, however, the Commission also notes in respect of Mr Chen's lack of knowledge about the risk management structures that existed within Crown at the relevant time, that such a lack of knowledge is consistent with other evidence that was produced to the Commission, including to the extent that:

⁴⁵ Other than Ms Tegoni who became aware of matters in other ways, which are specifically referred to later in Part 5 of the Commission's report.

⁴⁶ Evidence of Mr Drew Stuart to the NSW Inquiry – 17 August 2020 – T1081/13-27.

- a. the position description relevant to the role of "President of International Marketing" that Mr Chen occupied contains no reference to risk management being a part of that role;
 - b. there is no evidence to suggest that Mr Chen ever received any training from Crown about either:
 - the regulatory obligations of Crown as a group that includes both the ASX-listed Crown Resorts and the casino licensed Crown Melbourne; or
 - the structures, including risk management structures, that Crown had in place so that it could meet its regulatory obligations in Australia;
 - c. in the very detailed consideration of Mr Chen's qualifications that occurred in the context of his application to the Commission for a Casino Special Employee Licence, there was no suggestion that Mr Chen would be undertaking the risk management tasks that were in fact left to him in respect of China, and furthermore there was little or no information which suggested that Mr Chen had any experience in matters of risk management before he commenced working for Crown and sought a licence from the Commission.
173. Consequently, based on its assessment of the evidence, the Commission considers that Mr Chen had a distinct lack of relevant knowledge and experience in respect of both risk management and also the broader regulatory environment in which Crown operates. Furthermore, to the extent that matters of risk management were matters that Crown expected Mr Chen to undertake as part of his role, the Commission's assessment of the evidence is also that Crown did not provide Mr Chen with either any, or any adequate, training.
174. Having regard to his lack of training, knowledge, and experience, the Commission is also concerned at the extent to which, at interview, Mr Felstead told Commission investigators that he considered:
- a. Mr Chen to be the best person to consider issues of risk associated with Crown's operations in China, because he was on the ground, a regular visitor to China and had a team in China; and
 - b. there was no danger in relying on Mr Chen because Mr Chen travelled to China and is "*a Harvard educated gentleman, incredibly intelligent, incredibly strategic, he would not put himself or his team at risk for money*".
175. Similarly, for his part, Mr O'Connor said at interview that he:
- a. relied on Mr Chen very heavily and placed a lot of trust in him;
 - b. considered that Mr Chen was highly educated, Harvard-educated, worked for blue chip consulting organisations, and spent time living and working in Hong Kong, Macau and China;
 - c. considered Mr Chen to be "*connected both within the industry and outside the industry, politically*".
176. Mr Chen himself acknowledged that Mr Felstead and Mr O'Connor relied upon him heavily to undertake risk assessments on the ground in China.

177. With all due respect to Mr Chen, the Commission has no reason to doubt that he possesses all the qualities that have been ascribed to him by Messrs Felstead and O'Connor. However, in the Commission's opinion, that is not the point.
178. In the Commission's view, unless Mr Chen was made aware of the details of the risk management structures that existed at the relevant time; was trained in respect of the regulatory environment in which Crown Resorts and Crown Melbourne operated in Australia; and also had some experience in matters of risk management, it would have been impossible for him (however well-intentioned he may have been) to have understood what was expected of Crown and in turn what it was that was expected of him when it came to both assessing the operating environment in China and furthermore when it came to obtaining external, expert advice in respect of that operating environment.
179. Having regard to the contrast between Mr Chen's lack of relevant knowledge, training, and expertise on the one hand and the evidence about the extent to which Messrs O'Connor and Felstead relied on Mr Chen on the other, the Commission considers Crown's reliance on Mr Chen in respect of matters of risk management to have constituted a further failure of the risk management structures that existed prior to the arrests in October 2016.

MANAGEMENT REPORTS

180. Management reports were provided to both the Crown Resorts and Crown Melbourne boards which included details about the VIP International business.
181. Dealing first with the reports that were provided to the Crown Resorts board, between at least August 2014 and October 2016, the Crown Resorts board received written reports from the Crown Resorts CEO (Mr Craigie). These reports provided a forum by which, quite apart from any risk management framework, Mr Craigie provided information to the Crown Resorts board.
182. An analysis of these reports shows that they were almost entirely focused on the financial performance of Crown's VIP program at each of Crown's Australian casinos, including the Melbourne casino.
183. No information was provided to the Crown Resorts board in the reports about the operating environment in China.
184. Insofar as the Crown Melbourne management reports are concerned, these reports were also bereft of information relating to the operating environment in China. Furthermore, to the extent that they did contain any reference to the VIP International Department (which was the part of Crown Melbourne's business via which Crown conducted its operations in China), these references were limited to commercial matters such as the purchase of a fleet of aircraft and a small number of references to the financial performance, including the growth in the Chinese and North Asian markets.

OTHER REPORTING MECHANISMS

185. The Commission notes that in addition to what might be described as the formal reporting mechanisms that were constituted by the risk management structure and management reports, there were also at

least six other mechanisms by which risks associated with Crown's operations in China might have been elevated for broader consideration.

186. On the Commission's view of the evidence, these structures either operated mostly at the executive level or appear to be less formal reporting mechanisms than those that were constituted by the risk management structure and the formal management reports.
187. In respect of two of these specific mechanisms, namely the CEO Meetings and what the Commission has referred to as the VIP/CPH working group meetings, Crown is anxious to emphasise that:

"The CEO meetings and the VIP [CPH] Working Group were meetings, not reporting lines. Crown made this point at paragraph 175 of its submissions [to the NSW Inquiry]. Further, those meetings were not specifically concerned with Crown's operations in China but covered a range of other topics."⁴⁷

188. Regardless of whether these are:
- a. considered as "meetings", "reporting lines" or the Commission's preferred characterisation of "reporting mechanisms"; and
 - b. dealt with a range of topics concerning Crown's business and not just matters relating to China;

in the Commission's view, the point remains that there were several mechanisms within Crown's structure, both formal and informal, which might have been engaged for the purpose of considering matters relating to the operating environment in China.

189. Those reporting mechanisms that were informal to the extent that they sat outside the documented risk management structure and the formal board management reports were constituted by, at least, the:
- a. meetings of the "VIP International Leadership Team" which consisted of not only Messrs Felstead, O'Connor and Chen but also Jacinta Maguire (General Manager of Commercial), Roland Theiler (Senior Vice President of International Business) and Ishan Kunaratnam (also known as Ishan Ratnam) who, although not employed in the VIP International business was nevertheless part of the "VIP International Leadership Team"⁴⁸;
 - b. meetings (generally held weekly) that were conducted between Messrs O'Connor, Felstead, Chen and Ratnam and also Mr Michael Johnston, who was at the time both a director of Crown Resorts and also a director of CPH. At these meetings, operational issues concerning Crown's VIP International business were discussed.⁴⁹

⁴⁷ Crown's response to the Commission's propositions received 22 January 2021, pages 21/22, paragraph 17.

⁴⁸ Mr O'Connor's evidence to the NSW Inquiry – 3 September 2020 – T1986/36 – T1987/33; Presentation slides entitled "VIP Marketing Kickoff Workshop F15" CRL.638.001.0690 (email attachment).

⁴⁹ Mr O'Connor's evidence to the NSW Inquiry – 3 September 2020 – T1988/15-24).

The Commission notes that, in respect of these meetings, Crown is again concerned to emphasise that although Crown accepts that Mr Johnston attended these meetings, according to Mr O'Connor, Mr Johnston's attendance was only occasional.⁵⁰

- c. weekly reports known as "trading updates" (or similar) which were prepared by Mr Felstead and included, among other things, information about how Crown's VIP International business was performing. These trading updates were sent to each of:
 - Mr Craigie;
 - Mr Ken Barton (a Crown Resorts director);
 - Mr Michael Neilson (Crown Resorts' general counsel and company secretary);
 - Mr Johnston; and
 - whoever occupied the position of Chairman at the time, which in the period prior to the arrests in October 2016 was a role variously occupied by Messrs Packer and Rankin.
- d. "CEO meetings" which were held for at least part of the time prior to the arrests, until they were discontinued in August 2015. These meetings involved not only Messrs Felstead and Craigie as persons with direct responsibility for operations in China, but also included the Chairman of Crown Resorts at the relevant time (including Mr Packer in the time that he was Chairman), Crown Resorts management and selected personnel from CPH;
- e. "VIP Working Group meetings" (also referred to by some as "CPH Working Group meetings") which were held approximately monthly⁵¹ between April 2013 and the arrests in October 2016. Those who attended these meetings varied over time but included regular attendance from senior Crown executives including Messrs Felstead, O'Connor, Chen and Theiler.⁵² It also included regular attendances from CPH representatives Mr Johnston, the then Group Investment Manager of CPH Brad Kady and the then treasurer of CPH Steve Bennett.⁵³ Less frequent attendees also included Mr Barton, Ms McGuire and Mr Ratnam;⁵⁴
- f. direct reporting, outside any formal reporting structure, by each of Messrs Felstead, Ratnam and Johnston direct to Mr Packer, including in the time that Mr Packer was the chairman of Crown Resorts.

190. Of these six other mechanisms by which risks associated with Crown's operations in China might have been elevated for broader consideration, the Commission considers that three, namely those of the

⁵⁰ Crown's response to propositions put by the Commission, received 22 January, page 8, paragraph 2(g), referring to Mr O'Connor's witness statement in the Federal Court class action at [18] and Mr O'Connor's evidence to the NSW Inquiry T5712/16-24.

⁵¹ Mr Alexander's evidence to the NSW Inquiry – 1 October 2020 – T3433/14-35; Mr O'Connor's evidence to the NSW Inquiry – 2 September 2020 – T1872/22-25. Although it is noted that Mr Johnston's evidence was that these meetings occurred less frequently – see Mr Johnston's evidence to the NSW Inquiry – 25 September 2020 – T2934/41-47.

⁵² Mr Johnston's evidence to the NSW Inquiry – 25 September 2020 – T2934/41-47.

⁵³ Mr Johnston's evidence to the NSW Inquiry – 25 September 2020 – T2935/13-17.

⁵⁴ Mr Felstead's evidence to the NSW Inquiry – 17 August 2020 – T1121/15-25.

CEO meetings, the VIP (CPH) Working Group meetings and the direct reporting to Mr Packer, merit closer consideration.

191. Indeed, the Commission particularly takes that view to the extent that, as is referred to later in Part 5 of this report, many of the participants in these less formal reporting mechanisms became aware of the accepted risk escalation events at the time that they occurred.
192. The Commission is concerned that those participants did not make use of the available mechanisms to raise those events with a broader audience within Crown.

CEO Meetings

193. In respect of the CEO Meetings, the Commission notes that the evidence to the NSW Inquiry was that these meetings were established by Mr Packer⁵⁵ when he was Chairman of Crown Resorts for the purpose of briefing him (that is Mr Packer) on matters relevant to Crown Resorts business, prior to the Crown Resorts board meetings.⁵⁶
194. The Commission also notes that these CEO Meetings were the subject of detailed consideration at the NSW Inquiry and that Counsel Assisting the NSW Inquiry summarised the evidence that was given on this topic in their written submissions.
195. Among other things, that included summarising the evidence that the regular attendees at these CEO Meetings either were or included Mr Packer (or in his absence, Mr Alexander as deputy chairman of Crown Resorts), Messrs Craigie, Felstead and Neilson, as well as Mr Todd Nisbet who held the title of Executive Vice President of Strategy and Development and Mr Karl Bitar who held the role of Head of Government Relations.⁵⁷
196. CPH personnel who also regularly attended the CEO meetings were the Crown Resorts and CPH director, Mr Johnston, as well as Mr Mark Arbib, who worked for CPH in a business development role.
197. At least insofar as Mr Craigie understood matters, the reason why Mr Packer included CPH attendees in the CEO Meetings was to expose two of Mr Packer's key advisers within CPH (i.e., Messrs Johnston and Arbib) to the Crown Resorts management team and CEO reports, so that they would be in a better position to advise him.⁵⁸
198. Mr O'Connor also often attended the CEO Meetings and presented an update on the VIP International business, which included Crown's operations in China, on a monthly or a bi-monthly basis.⁵⁹
199. It was usual practice for a specific update on the VIP International business to be prepared and spoken to at each of the CEO Meetings by Mr Felstead or Mr O'Connor.⁶⁰

⁵⁵ Mr Craigie's evidence to the NSW Inquiry – 20 August 2020 – T1447/21-42.

⁵⁶ Mr Johnston's evidence to the NSW Inquiry – 25 September 2020 T2933/9-13; Mr Craigie's evidence to the NSW Inquiry – 20 August 2020 – T1447/21-42.

⁵⁷ Mr Johnston's evidence to the NSW Inquiry – 25 September 2020 – T2933/15-25.

⁵⁸ Mr Craigie's evidence to the NSW Inquiry – 20 August 2020 – T1449/44 – T1450/22.

⁵⁹ Mr O'Connor's evidence to the NSW Inquiry – 23 September 2020 – T1873/7-11.

⁶⁰ Mr Craigie's evidence to the NSW Inquiry – 20 August 2020 – T1448/43 – T1449/7; Mr O'Connor's evidence to the NSW Inquiry – 3 September 2020 – T1983/28-31.

200. In the context of this usual practice, it seems that no matters relating to the environment in which Crown's staff were operating in China were ever reported to the CEO Meetings.
201. Furthermore, in the context of that apparent absence of evidence, the Commission also notes that in his evidence to the NSW Inquiry, Mr O'Connor said that, due to the structured approach that was applied to the updates that he gave to the CEO Meetings, there could have been occasions where he was aware of, but did not disclose, issues of importance relating to the VIP International business to the CEO Meetings.⁶¹
202. As well as not referring to any matters relating to the operating environment in China, Mr O'Connor's VIP updates were also not tabled or otherwise presented at board meetings.⁶²
203. Although the CEO meetings were in operation for a period which encompasses the time when there occurred three of the four accepted risk escalation events, the Commission notes that these CEO Meetings were discontinued by Mr Rankin shortly after he succeeded Mr Packer as chairman in August 2015.
204. Consequently, these meetings were no longer occurring by the time the fourth of the accepted risk escalation events occurred and furthermore these meetings had also ceased some fourteen months before the arrests of Crown staff in October 2016.

VIP Working Group meetings (aka CPH Working Group meetings)

205. Like the CEO meetings that are described immediately above, the VIP Working Group meetings (known by some as the CPH Working Group meetings) were also the subject of detailed consideration in evidence before the NSW Inquiry. Subsequently that evidence was also summarised by Counsel Assisting the NSW Inquiry in their written submissions in terms that included that these meetings commenced in 2013, quite possibly at Mr Packer's instigation, but certainly with his approval.⁶³
206. The Commission notes that, at least insofar as Messrs Alexander and Johnston are concerned the purpose of these meeting was so that the CPH attendees could provide guidance and advice to the senior executives of Crown's VIP International business,⁶⁴ which included Crown's operations in China.
207. Among the issues considered at these working group meetings were matters of strategy insofar as they concerned Crown's VIP International business and operations in China. Furthermore, the Commission notes that this working group also endorsed certain important decisions that were relevant to the way in which the VIP International department conducted Crown's operations in China, including the strategy that became known as the *"double down strategy"*.
208. That strategy is a matter that the Commission will return to in both Parts 3 and 5 of this report to the extent that it was not only adopted by the VIP International department in about 2014, but was also a

⁶¹ Mr O'Connor's evidence to the NSW Inquiry – 3 September 2020 – T1983/40-44.

⁶² Mr Craigie's evidence to the NSW Inquiry – 20 August 2020 – T1488/14-31.

⁶³ Mr Craigie's evidence to the NSW Inquiry – 20 August 2020 – T1460/1-8.

⁶⁴ Mr Alexander's evidence to the NSW Inquiry – 1 October 2020 – T3433/14-40; Mr Johnston's evidence to the NSW Inquiry – 25 September 2020 – T2935/19-22.

strategy, the adoption of which Mr Chen described as depending “...on the risk appetite of the company”.

209. In any event, notwithstanding the regular attendance of persons who were aware of important matters relating to the operating environment in China (including Messrs Chen, O'Connor and Felstead), it seems that such matters were not generally the subject of discussion at these meetings, except with one significant exception.
210. That exception is the extent to which this VIP / CPH Working Group was the forum at which Mr Felstead (a director of Crown Melbourne who also had a standing invitation to the board meetings of Crown Resorts) raised one of the accepted risk escalation events with Mr Johnston (a director of both Crown Resorts and CPH).
211. That matter was the arrest of other casino marketing staff in China in June 2015 (some 16 months before Crown's own marketing staff were arrested in October 2016).⁶⁵
212. Notwithstanding that it was a matter raised by Mr Felstead with Mr Johnston, in the forum constituted by a VIP / CPH Working Group meeting, there is significant controversy about whether this matter was then in turn raised at a board meeting of either Crown Melbourne or Crown Resorts by Mr Johnston.
213. That controversy is addressed further in Part 5 of this report.

The potential conflict of interest between CPH and Crown

214. Having regard to the reporting structures that existed in the context of both the CEO meetings and that of the VIP / CPH Working group meetings, the Commission considers that it is possible that a conflict may have existed between the interests of CPH on the one hand and that of Crown on the other.
215. Indeed, the Commission particularly takes that view to the extent that:
- a. CPH is, in effect, Mr Packer's private investment company;
 - b. although it is an approved associate of Crown Melbourne, unlike Crown Melbourne which is a casino licensee and Crown resorts which is an ASX listed company, CPH is an unlisted private company and therefore is not subject to the same level of regulatory scrutiny or accountability as exists in respect of Crown Melbourne and Crown Resorts.
216. In those circumstances, the Commission is particularly concerned at the extent to which the imposition of CPH as well as its executives, advisers, and directors, through the existence of both the CEO meetings and also the VIP/CPH Working Group meetings, may have resulted in a conflict arising between the investment objectives of CPH on the one hand and the safety of Crown's staff in China on the other.
217. Furthermore, in respect of this concern, the Commission notes that this is an issue that may persist, notwithstanding the extensive resignations that have recently occurred within Crown in circumstances

⁶⁵ Mr Felstead's evidence to the NSW Inquiry – 18 August 2020 – T1213/9-47.

where CPH publicly stated on or about 13 February 2021 that it intended to retain its significant 37 per cent shareholding in Crown Resorts.⁶⁶

218. Although the Commission identifies this matter as a concern, it also notes that issues of such a potential conflict are not, strictly speaking, a matter that is within the regulatory ambit of this report. As such, the Commission notes that it has not considered this matter in fine detail, including to the extent that it did not seek to direct any exercise of its compulsory powers towards CPH in the context of the investigation that has given rise to this report (notwithstanding that such powers might in the future be exercised by the Commission in respect of CPH, noting its status as an associate of Crown Melbourne, the holder of the Melbourne casino licence).
219. In any event, the Commission considers it necessary and appropriate to specifically mention this matter and furthermore notes that:

Confidential

Confidential

Direct reporting to Mr Packer

220. Finally on the issue of other reporting mechanisms that might have been engaged (and the potential conflict between the interests of CPH and Crown), the Commission notes that in the course of his evidence to the NSW Inquiry, Mr Packer said that in the period leading up to his resignation as a director of Crown Resorts in December 2015 (being about 10 months before the arrests in China), he expected that each of Messrs Felstead, Johnston and Ratnam, as persons who had shown complete loyalty to him for many years, would inform him of any important issues in relation to the VIP International business of which they became aware.⁶⁷
221. Indeed, the Commission also notes that in their evidence to the NSW Inquiry, at least Messrs Johnston⁶⁸ and Ratnam⁶⁹ agreed that it was their practice to update Mr Packer about matters they considered important in respect of Crown's VIP International operations.
222. This evidence is of particular concern to the Commission for several reasons, including to the extent that the documentary record that has been produced to the Commission overwhelmingly demonstrates that:
- a. each of these three individuals were aware of important matters, including the accepted risk escalation events, and yet apparently failed to inform Mr Packer of these matters;⁷⁰
 - b. each of these individuals also sent several emails to people other than Mr Packer in respect of some or all of the accepted risk escalation events;
 - c. notwithstanding his expectation that Messrs Ratnam, Felstead and Johnston would report important matters to him and their knowledge of certain risk escalation events, it seems that the

⁶⁶ The Weekend Australian "Packer's 'sadness' at cutting ties with troubled Crown" 13-14 February 2021.

⁶⁷ Mr Packer's evidence to the NSW Inquiry – 6 October 2020 – T3588/36-40; T3589/19-23; T3590/28-32.

⁶⁸ Mr Johnston's evidence to the NSW Inquiry – 25 September 2020 – T2938/27-33.

⁶⁹ Mr Ratnam's evidence to the NSW Inquiry – 20 August 2020 – T1402/13-36.

⁷⁰ Insofar as Mr Ratnam is concerned, these matters are considered in detail in Part 3 of this report; insofar as Mr Felstead is concerned, these matters are considered in detail in both Part 3 and Part 4 of this report; and finally insofar as Mr Johnston is concerned, these matters are considered in Part 4 of this report.

documentary record that has been produced by Crown is entirely bereft of evidence to suggest that any of the matters or any of the accepted risk escalation events were reported to Mr Packer by any of Messrs Ratnam, Felstead or Johnston.

223. Although as has already been noted, the Commission did not, during its investigation, seek the production of evidence directly from CPH, the Commission notes that, in the absence of such direct evidence, it has done its best to reconcile the obvious tension that is created by what seems to be this conflict in the evidence.
224. Having done its best to reconcile this conflict however, the Commission can offer no explanation as to why these processes of direct reporting to Mr Packer did not result in him being informed about the accepted risk escalation events by any or all of Messrs Ratnam, Felstead and Johnston.
225. In that regard, whilst the Commission is unable to offer its own explanation, the Commission does however note that in his evidence to the NSW Inquiry, Mr Packer accepted as a possibility⁷¹ (after it was put to him by Counsel Assisting the NSW Inquiry) that his strong personality had perhaps resulted in none of Messrs Johnston, Ratnam or Felstead wanting to bring bad news to his attention.

⁷¹ Mr Packer's evidence to the NSW Inquiry – 8 October 2020 – T3747/24-30.

PART 3

MANAGING THE RISKS IN CHINA “ON THE GROUND”

226. Crown has quite properly acknowledged that the accepted risk escalation events should have been elevated into the risk management framework and boards of Crown Melbourne and Crown Resorts but were not.
227. Crown has further acknowledged that, in the absence of such elevation, matters were instead dealt with “on the ground” in China.
228. In those circumstances, the Commission has given careful and detailed consideration to the attempts that were made to manage the risks of Crown doing business in China “on the ground” and it is that topic that forms the basis of the matters that are the subject of this Part 3 of the Commission’s report.
229. In doing so, the Commission has divided this Part 3 itself into three separate time periods, which are constituted by:
- a. the period which begins shortly after Mr Chen started working for Crown and concludes immediately before the first of the accepted risk escalation events;
 - b. the period which begins with the first of the four accepted risk escalation events and concludes with the last of those four accepted risk escalation events; and
 - c. the period which begins immediately after the last of the four accepted risk escalation events and concludes at the time of the arrests of Crown’s staff in October 2016.
230. The Commission has decided to structure this part of its report in this way in order to provide a framework by which it can address certain matters that Crown has persisted in seeking to press in respect of the events that are relevant to this matter. These include, for example, matters such as the extent to which Crown continues to assert that there is no evidence that its staff had expressed concerns that they might be arrested in China and also to the extent that Crown continues to seek to assert that there is a “*gulf*” of about a year between the last of the accepted risk escalation events and the arrests which occurred in October 2016.
231. To the extent that the Commission is of the view that the evidence does not support the position that Crown seeks to advocate in respect of such matters, the structure of this Part 3 provides the Commission with a framework to address those matters by reference to the evidence that has been produced to it during this investigation.
232. That framework has also provided the Commission with a basis upon which to identify the matters that occurred both before and after the period in which the accepted risk escalation events occurred that, in the Commission’s opinion, might have also justified elevation into the risk management structures and to the boards of Crown Melbourne and Crown Resorts.
233. On that issue, as the Commission has previously noted in Part 1 of this report, given their respective statuses as the holder of a casino licence (in the case of Crown Melbourne) and an ASX-listed company

(in the case of Crown Resorts) in the Commission's view, any matter relating to the risk that staff might be questioned or arrested by police by reason of conduct they have engaged in for the purpose of their employment should have been elevated.

234. In the Commission's opinion, so too should any instances where staff expressed concerns for their safety.
235. In the Commission's view, the elevation of matters in these categories would be no different to the approach that the Commission would expect a casino licensee to take to the risk of regulatory intervention by Australian regulators or if Crown's staff in Australia ever expressed a fear or concern that they might be questioned or arrested by police as a result of matters arising from their employment.

THE PERIOD BETWEEN 2012 AND FEBRUARY 2015

236. From very shortly after he commenced his employment with Crown, Mr Chen sought external legal advice from a law firm that had an office in China, known as WilmerHale.
237. According to the retainer letter that was produced to the Commission by Crown, that firm was first retained on or about 5 June 2012 to advise "*Crown Limited*" "*...in connection with potential inquiries from Chinese authorities related to dealings with particular customers*"⁷².
238. After this initial retainer in June 2012, Mr Chen was then in regular contact with WilmerHale and, for the most part, particularly with one solicitor from that firm, Kenneth Zhou.

"Reception Procedures in the Event of Government Investigations"

239. It seems that one of the earliest instances of Mr Chen obtaining advice from WilmerHale included that firm providing Mr Chen with a document entitled "*Reception Procedures in the Event of Government Investigations*"⁷³.
240. According to Mr Chen, this was a document that was created in consultation with WilmerHale and was designed to bring a degree of rigour to his understanding on what the laws were in China. Among other things, that document states that:

"Government authorities can arrive at any time to conduct a surprise investigation. The authorities have a wide range of powers and any investigation must be taken very seriously. It is very important that you act quickly and properly to preserve all of our [i.e., Crown's] rights...

The following instructions apply in the event that officials of Chinese government authorities (including but not limited to public security bureau (police), the administration of industry and commerce, the state secrets bureau, customs or tax bureau) arrive to conduct an investigation.

...

⁷² CWN.502.022.5716.

⁷³ CRL.514.070.7079.

*If you are asked by officials to go to government authorities for further investigation, you should know that without an official government detention order, subpoena, or a court order, such a request is an **'invitation'** which you can choose to cooperate or not.*" [original emphasis]

241. Furthermore, according to this document, if one of Crown's employees in China were the subject of a government inquiry in China, they were to contact one or all of Mr Chen, an internal Crown lawyer, Debra Tegoni or the external solicitor that Mr Chen had retained to advise Crown in China, Mr Zhou.
242. The evidence available to the Commission indicates that this document was provided to Crown's staff in China on more than one occasion between 2012 and the arrests in October 2016.
243. The evidence also indicates that Mr Chen specifically provided this document to those he reported to, Messrs Felstead and O'Connor, when he sent an email to them which included this document as an attachment, on 26 March 2013.⁷⁴ Among other things, as well as noting that Mr Chen had received "definitive advice that the activities that we undertake in China do NOT [original emphasis] violate any criminal laws" that email included the following:

"As you know, politically motivated detentions are common in China, dating back to the Mao Zedong days...

...

*This is one thing that it is important to understand when it comes to **the China team** [emphasis added]. They are living in constant fear of getting tapped on the shoulder. In a country where due process is inconsistently applied, **it is a risky place to be for all of our team** [emphasis added]. This overall feeling is not uncommon...Most folks in the industry just think it is in the gray area and that they are at risk of arrest. The truth is they are no (sic) engaging in any criminal activity; however, because of the variety of reasons one may still be detained without due process, **staff have cause to take precautions** [emphasis added]."*

244. When Mr Felstead was asked about this document during the NSW Inquiry, and particularly to the extent that this email referred to the staff in China:

"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..."

Mr Felstead 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 in considering the safety of Crown's staff living and working in China..."⁷⁵

245. Having accepted this matter during his evidence at the NSW Inquiry, the Commission considers it extraordinary that the fact that Mr Chen had obtained the "Reception Procedures" document and in the course of sending it to Mr Felstead had told him, among other things, that politically motivated detentions are common in China, that Mr Felstead did not consider this to have been a matter of sufficient

⁷⁴ CWN.514.070.7077.

⁷⁵ Mr Felstead's evidence to the NSW Inquiry – 17 August 2020 – T1159/14-19.

importance for it to have been elevated into Crown's risk management procedures and to the boards of Crown Melbourne (of which he was a member) or Crown Resorts (to which he had a standing invitation to all board meetings).

246. Indeed this is particularly so to the extent that Mr Felstead was also a director of Crown Singapore and as such, a director of the company that employed the very staff who Mr Chen said *"have cause to take precautions"*.

247. In any event, by reason of Mr Felstead's evidence to the NSW Inquiry, the Commission raised this specific document with Crown and invited Crown to accept that the existence of the *"Reception Procedures"* and Mr Chen's email to Mr Felstead which attached it was a matter that should also have been elevated for risk management and board consideration.

248. Crown is not prepared to accept a proposition to that effect and instead said of this email:

*"Mr Chen's email to Mr Felstead was to tell him what action was being and had been taken, and why it had been taken...not to alert Mr Felstead to an unremedied or irremediable problem."*⁷⁶

249. With respect, whether the *"problem"* was *"unremedied or irremediable"* is not the point.

250. The point is that the *"problem"* of the risks associated with the operating environment in China existed and those risks needed to be considered as part of the risk management framework and by the boards of Crown Melbourne and Crown Resorts.

251. As well as this, Crown also says in respect of this email from Mr Chen that, whilst the possibility of police questioning of staff (as distinct from detention)⁷⁷ was known to be a risk, that:

"...Read in context, it is sufficiently clear that Mr Chen had in mind [in this email] the possible detention of Chinese VIP patrons as part of the corruption crackdown..."

252. With respect, the Commission does not agree. The context of Mr Chen's email plainly demonstrates that he was referring to the specific risk that Crown's staff in China might be detained and it was for that reason that Mr Chen's email includes the words that:

*"This is one thing that it is important to understand when it comes to **the China team. They are living in constant fear...** **it is a risky place to be for all of our team...** because of the variety of reasons one may still be **detained** [as distinct from questioned] without due process, **staff have cause to take precautions.**" [emphasis added]*

253. In the Commission's opinion, it is abundantly clear from this email that Mr Chen was informing Mr Felstead of the risk that Crown *"staff"* / *"the China team"* may be *"detained"* and were *"living in constant fear"* because China is or was *"a risky place to be for all of [Crown's] team"*.

⁷⁶ Crown's response to propositions received by the Commission on 22 January 2021, page 7, paragraph 2(f).

⁷⁷ See Crown's response to the Commission's propositions received on 22 January 2021, page 13, paragraph (c) which states *"Crown management's understanding was that there was a possibility that Crown staff could be questioned by Chinese authorities about their, or their customers' activities."*

254. Furthermore, in the Commission's opinion, there is no sound basis upon which Crown can properly seek to assert, as it continues to,⁷⁸ that its management did not think that there was a risk that Crown's staff in China might be detained because of their employment.
255. Mr Chen's email to Mr Felstead clearly and obviously demonstrates that he thought that Crown's staff in China were at risk of being detained, if not from 2012 when he first obtained the "*Reception Procedures*" then certainly from 26 March 2013 when Mr Chen sent this email to Mr Felstead, copied to Mr O'Connor.
256. In the Commission's view, Mr Felstead as a director of Crown Melbourne should have elevated that risk for consideration by the risk management structures and the boards of Crown Melbourne and Crown Resorts immediately upon his receipt of this email. Furthermore, in the Commission's opinion, Mr O'Connor should have done the same.

The "core" 19 February 2013 advice and staff concerns in respect of that advice

257. Meanwhile, quite apart from the "*Reception Procedures*" and their provision to Messrs Felstead and O'Connor in March 2013, Mr Chen also sought legal advice from Mr Zhou on or about 19 February 2013.⁷⁹
258. In its dealings with the Commission, Crown has referred to this advice as "*the core 19 February 2013 advice*" and sought to emphasise that it was passed on to Crown's internal lawyers in Melbourne the day after Mr Chen received it.⁸⁰
259. From the text of Mr Zhou's email itself it seems that Mr Chen had asked him to advise in respect of at least two separate topics, namely:
- a. whether Crown's activities in China might be in breach of the exact Chinese criminal law that some 44 months later would become the basis upon which Crown staff would be detained and then later convicted and sentenced; and
 - b. what is somewhat euphemistically referred to in the email as "*liability on institutions*".
260. There are several matters about this email that the Commission considers to be of some importance to the events and advice which followed it. Those matters are:
- a. there is nothing in this email to suggest that, in giving advice, Mr Zhou knew anything about Crown's risk management, corporate governance or regulatory obligations in Australia;
 - b. given its apparent importance and Crown's characterisation of it as "*core*" advice, it is superficial to the extent that it contains no express consideration of the way Crown conducted its business in China and, in the absence of such a consideration, is nothing more than a description of

⁷⁸ Including most recently in its response to the Commission's propositions received 22 January 2021, page 13.

⁷⁹ CWN.514.071.6286.

⁸⁰ Crown's response to the Commission's propositions, page 22, paragraph 18.

Chinese law, as distinct from advice about the application of Chinese law to the particular circumstances of Crown's business in China;

- c. was circulated to several senior Crown employees including Mr O'Connor and the internal Crown lawyer Ms Tegoni, neither of whom considered the matters described in it to be of sufficient seriousness to merit their inclusion in Crown's risk management structures; and
 - d. was obtained by Mr Chen who is not a lawyer.
261. Furthermore, it is not only the Commission who holds or held concerns about this advice.
262. In that regard, according to the report that has been produced by the Hon Patricia Bergin SC and tabled in the NSW Parliament (**the NSW Report**)⁸¹ it seems that Crown staff themselves may have also held concerns about the "core" advice at or about the time that it was obtained by Mr Chen. In particular, it seems to have prompted an email from Crown's Senior Vice President, China and Taiwan, Mr Stefan Albouy, which included the following:
- "While all the below gives comfort to the legal aspect of the gaming laws in China, the recent sentiment and messages we are receiving is...far more serious and I do not believe we can risk relying on the information below [i.e., the advice] when it comes to protecting our team. The issue is not the conviction, as we discussed today, but the fact that the authorities 'may' apprehend our team for questioning which we need to avoid at all costs."*
263. In the context of an email in those terms, the Commission considers it important to note that not only does this contradict Crown's position in respect of its ongoing assertion that its staff were not expressing concern for their safety, it also contradicts the position that Crown has adopted about the nature of the issue that it says was being considered by its executives at the time, particularly to the extent that some of those executives have persisted in seeking to claim that they were of the belief that if they operated within the bounds of the law there was no risk. Quite plainly that was not the view of Crown's then Senior Vice President, China and Taiwan.
264. However, in addition to those issues, there is also one other very important matter that the Commission considers necessary to raise in respect of this email.
265. The email chain containing this detail was not produced to the Commission until very late in its investigation, in October 2020. Prior to that production, and the Commission's subsequent review of the NSW Report, the Commission was unaware of the existence of this email and the extent to which it contradicted several important aspects of the way in which Crown has sought to approach the Commission's investigation. Furthermore, since becoming aware of this email, the Commission has sought to identify the reason why it had not been produced to the Commission prior to October 2020. Having done so, it would seem that notwithstanding that:

⁸¹ Page 259, para 119.

- a. it is an email between executives which could and should have been produced irrespective of any claim of legal professional privilege that might have existed in respect of the advice the email superficially refers to;
- b. privilege was waived on the advice that is superficially referred to in this email in late 2019, following which a copy of the actual advice referred to in this email was produced to the Commission;

this email remained unproduced until October 2020.

266. To that extent, this email appears to be one of several examples of documents that were produced by Crown to the NSW Inquiry that:
- a. were not produced to the Commission; or
 - b. were produced to the Commission very late in its investigation and only after either:
 - production in NSW had occurred; or
 - discovery in the shareholder class action to which Crown is a defendant had occurred.

Confidential

Junket operator detained and information suggesting Chinese laws had changed

268. After he had obtained the “core” advice on 19 February 2013, Mr Chen again sought advice from Mr Zhou on 19 May 2013, because, as he put it:⁸²

“One of our junket operators called us today and told us he was detained by authorities in Guangzhou. He reports over 100 “agents” / junkets had been detained for questioning. This operator said he was not allowed to leave China for one year. He also claimed that the government had revised the laws governing the organisation of gambling trips and that one no longer needed to be receiving a commission in order to be in violation of the rule prohibiting the organization of gambling for more than 10 people.

I was wondering if you could verify whether such law has indeed been changed or verify that is (sic) has not?”

269. Mr Zhou replied three days later, on 22 May 2013, to the effect that he had checked; the law remained unchanged; there was no new judicial interpretation and that Guangdong and Guangzhou public security seem to engage in regular “crackdowns” on local gambling, particularly gambling machines.

⁸² CWN.515.073.1867.

270. Later that evening, Mr Chen then forwarded the email he had received from Mr Zhou to a Crown Chinese employee Eric Liang (copying the email chain to others including Mr Felstead and Mr O'Connor), telling Mr Liang:

"Our law firm has confirmed that there has been no change in the laws governing the organization of groups for gambling. The former advice remains unchanged."

271. It would seem possible that Crown employee Mr Liang may have been the person whom the junket operator had called as referred to in Mr Chen's email. It further seems possible that Mr Liang may have contacted Mr Chen because he was concerned about this matter and that it was in an attempt to deal with those concerns that Mr Chen had obtained advice from Mr Zhou and then emailed Mr Liang to tell him that the former advice remained unchanged.
272. The Commission considers that Mr Chen's email to Mr Liang suggests that Crown's staff in China were concerned about their safety.
273. Notwithstanding what appears to be these staff concerns, there is no evidence to suggest that Mr Liang's concerns resulted in any further management of the matters that had been identified in Mr Chen's email of 19 May 2013.

Mr O'Connor is given "inside information" to "remove all...staff..."

274. Irrespective of whether Mr Liang was in fact concerned for his safety, some six months later, a person who appears to have at the time been a Crown employee, Veng Anh, sent a text message which unequivocally expressed safety concerns.
275. That text message was sent to Mr O'Connor on 28 September 2013 and included the following:

"Hi boss, I am not at work yet boss but just a call from Xu with inside information from China, strictly silent. From April to May, China government will begin to arrest a lot anti-corruption people and anything to do with gambling or moving money out of country. Warn us not to enter China at this time and should remove all our staffs out of the country for 1month, that is his advice. Please inform Michael and Alfreed to let his staffs to be alert. Thanks

Veng"

"Yes Veng. Got the message. MC also heard that from someone else connected to Xu. Xu also told Ishan. Bit alarming..."

276. In the Commission's view, this text message is a clear and unequivocal statement of safety concerns, at least to the extent that it suggests that Crown's staff should be removed from China for at least a period and that Veng Anh has asked Mr O'Connor to inform Mr Chen (i.e., Michael) about this issue.
277. The Commission has identified no evidence to suggest that this matter, notwithstanding its status as a clear expression of concern for safety and the consequent need to "remove all our staffs", resulted in any of Messrs O'Connor, Chen or Ratnam (noting the reference to "Ishan" in Mr O'Connor's reply) taking steps to alter Crown's approach to conducting business in China.

“Tip from well placed government family” and “risk that might put...staff in”

278. Following this text message, the evidence that has been produced to the Commission contains no record of any significant events occurring in respect of the operating environment in China for a period of about six months, until on 6 March 2014, Mr Chen again sought advice from WilmerHale, by writing to Mr Zhou, in terms that included the following:⁸³

“The reason I am writing is that we recently received a tip from a well placed government family that the Chinese government is about to escalate their campaign against corruption starting in April targeting gambling.

Have you heard any rumblings of this and if so, could you advise what risk that might put my staff in and what precautions we ought to be taking?...”

279. Mr Zhou replied four days later, on 10 March 2014, in terms which included the following:

“... ”

Both Premier Li’s central government work report and the Supreme People’s Court’s report have emphasized that government and law enforcement agencies in China will continue to strengthen supervision and combat corruption in 2014...

In addition, we also note that the [Central Disciplinary Commission] has recently re-emphasized the importance of enforcing two [of the] CDC’s earlier decrees (attached) both of which mention that gambling is a form of corruption.

... ”

280. In addition to this, Mr Zhou’s email also contained a suggestion to Mr Chen that during this period that more robust internal controls be established such as having Crown’s staff in China conduct background checks on individuals to:

“...avoid marketing to senior government officials or leadership of leading State-owned enterprises. In addition, our staff should use caution when they review travel documentation or make travel plans for individuals who we know have affiliation with the government”.

281. Later that evening, Mr Chen replied to Mr Zhou by telling him, among other things *“We will take the necessary precautions”.*

282. The following day, Mr Chen also forwarded the email he had received from Mr Zhou to another Crown employee, who was at the time based overseas in Malaysia. That employee was the Senior Vice President, China, Alfreed Gomez.⁸⁴ Shortly after, Mr Gomez replied to Mr Chen and said: *“Will need to be caution (sic)”.*

⁸³ CWN.502.034.5319.

⁸⁴ As to Mr Gomez’s role see: Presentation slides entitled: *“VIP Marketing Kickoff Workshop F15”* dated 5 October 2014. CRL.527.001.1826 at .1831.

283. The Commission considers that Mr Gomez's email referring to the need to show caution or be cautious is a clear expression of concern by Crown's staff overseas in respect of the safety of Crown's staff in China.
284. Notwithstanding that expression of concern, in the documentary record that has been produced to it, the Commission has found no evidence to suggest that in the context of:
- a. Mr Zhou's advice about the need to take additional precautions;
 - b. Mr Chen's acknowledgment that the recommended precautions would be taken; or
 - c. Mr Gomez's opinion of the need to be either cautious or to show caution;
- any consideration was given, at any level, to the impact these matters might have had on the operating environment for Crown's staff in China, including the risk that they might be detained.

The “double down” strategy “really depends on the risk appetite of the company”

285. Following that exchange in March 2014, there was a further five-month gap until there is another reference in the documentary record to an expression of concern by one of Crown's overseas-based employees.
286. On this occasion, that expression of concern was one that was made by Mr Chen himself in the context of an email he sent to Mr Felstead (copied to others including Messrs O'Connor, Ratnam and Johnston on 15 August 2014).⁸⁵ The email referred to the alternative strategies that Crown might seek to adopt to take advantage of China's “crackdown” on gambling in Macau. The two options were the “double down strategy” and the alternative “austerity (profit milking) approach”. Mr Chen said:
- “It 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”.*⁸⁶
287. In respect of this email, on the evidence available to the Commission, the view that this double down strategy “would expose the Company to a lot more risk” was never considered or approved by the board of either Crown Melbourne or Crown Resorts. Nor was the extent to which this email from Mr Chen constituted an expression of concern for the safety of himself and the employees who worked in China ever considered.
288. It seems that no one ever asked Mr Chen precisely what the risks were that he was referring to.
289. Rather it would seem that the “double down” strategy was approved by the VIP / CPH Working Group that was referred to earlier in Part 2 of this report as one of the informal reporting mechanisms which existed in respect of Crown's operations in China. This appears to have consisted at the time of at least Messrs Chen, O'Connor, Felstead, Ratnam⁸⁷ and Johnston.

⁸⁵ Email Mr Chen to Mr Felstead dated 15 August 2014.

⁸⁶ CRL.527.001.2324.

⁸⁷ See emails and draft memorandum dated 20 September 2014, CRL.527.001.2317.

290. Furthermore, the Commission notes on this topic that during his evidence to the NSW Inquiry, Mr Felstead said that the following month, in September 2014, a six-point plan, consistent with the double down approach, was both put to and endorsed by the VIP Working Group, led by Mr Johnston.⁸⁸
291. The VIP International department then proceeded to implement the double down approach that “*would expose the Company to a lot more risk*” unbeknown to the boards of either Crown Melbourne or Crown Resorts.

A Crown staff member is questioned by police in China

292. The next significant event in respect of the operating environment in China, which in the Commission's view was sufficiently serious as to justify elevation for risk management and board consideration, occurred less than a month after Mr Chen's email referring to the risks associated with the “*double down*” approach, when a Crown staff member was questioned by police in China.
293. This questioning occurred on or about 18 September 2014 and was the first of what would eventually be three separate instances of police questioning Crown's staff in China, before the arrests that occurred in October 2016.
294. The fact of this event is recorded in an email chain that Mr Chen sent copied to Mr O'Connor (among others).⁸⁹ One part of this email chain is an account of what had occurred from the perspective of the Crown employee who had been questioned. That account includes that the employee:
- “...told them [i.e., the Chinese police] I'm doing the Crown Hotel marketing in China and only make the hotel accommodation for [the Crown customer] in Melbourne only.”⁹⁰*
295. The Commission is very concerned that from this account, if one draws the reasonable inference that this employee was in fact arranging Chinese VIPs to travel to Australia and gamble, then the Crown employee who was questioned by police may not have been truthful.
296. The Commission considers the fact that this employee was not truthful when questioned to be further evidence that Crown's staff in China were concerned for their safety, and had concerns about the legality of their activities in China. Were they not concerned about that matter, there would have been no reason not to disclose the fact that Crown was arranging Chinese “VIPs” to travel to Australia to gamble.
297. The Commission also considers to the extent that this email was sent to Mr O'Connor and others, it should have caused them to make enquiries about why this employee would not have been truthful when questioned, including for the purpose of determining whether it was safety concerns or concerns about legality that had resulted in this lack of truthfulness.

⁸⁸ Evidence of Mr Felstead to the NSW Inquiry – 17 August 2020 – T1149/34 – T1151/13.

⁸⁹ CRL.527.001.1301.

⁹⁰ CRL.527.001.1301 at .1303.

298. Furthermore, on the topic of this employee not being truthful when questioned, the Commission notes that, based on evidence produced to the NSW Inquiry this account of events from the questioned employee was forwarded to not only Mr O'Connor, but also to two Crown internal lawyers, namely Ms Jan Williamson⁹¹ who then in turn forwarded the email chain to Ms Tegoni.⁹² Mr Chen's provision of the China-based employee's account to Mr O'Connor and Ms Williamson was a report that he was making to them in accordance with what Mr Chen described as a "protocol."⁹³
299. Although this would represent the first of at least two occasions that Crown internal lawyers would become aware that Crown staff in China were questioned by police, it is of particular concern to the Commission that, on the evidence presently available to it, neither of these lawyers identified that this Crown China-based employee had not been truthful with Chinese police when questioned or took steps to enquire about why the employee had not been truthful.
300. The knowledge of Crown's internal lawyers in respect of the accepted risk escalation events is a matter about which the Commission will return to in Part 5 of this report, however, for present purposes it is sufficient for the Commission to note in the context of this issue that, to the extent that she was aware of this employee's lack of truthfulness when questioned by police, Ms Tegoni was the executive and lawyer at Crown with ultimate responsibility for risk management.⁹⁴ She was also the person to whom the Crown employee responsible for the coordination of the formal risk management process at Crown Melbourne and Crown Resorts (Mr Drew Stuart) reported.⁹⁵
301. Having regard to this employee's lack of truthfulness when questioned and the roles held by Ms Tegoni, the Commission is particularly concerned about the extent to which the evidence suggests that she took no steps to report the fact of the questioning and/or the employee's lack of truthfulness to anyone at the time, including her subordinate Mr Stuart, so that it might have been considered for inclusion in Crown's risk management structures.

THE PERIOD BETWEEN FEBRUARY AND OCTOBER 2015

302. After the questioning of the Crown staff member who was, it appears, not truthful when questioned by Chinese police in September 2014, there is a further gap in the relevant documentary record of about five months, until the first of the accepted risk escalation events that Crown acknowledges should have been elevated to the risk management structures and boards of Crown Melbourne and Crown Resorts.
303. The first of those accepted risk escalation events was the Chinese Ministry of Public Security (MPS) announcement that was made on 6 February 2015.
304. The Commission will now turn to consider the way in which that issue was managed "on the ground" before then turning to consider the three other accepted risk escalation events that Crown now

⁹¹ CRL.527.001.1301 at .1302.

⁹² CRL.527.001.1301 at .1302.

⁹³ CWN.514.045.5060.

⁹⁴ Ms Tegoni's evidence to the NSW Inquiry – 10 September 2020 – T2309/45 – T2310/1.

⁹⁵ Mr Stuart's evidence to the NSW Inquiry – 17 August 2020 – T1074/44-47; T1075/11-33.

acknowledges should have been elevated for risk management and board consideration, culminating in a Chinese television broadcast that occurred in October 2015.

CHINESE MINISTRY OF PUBLIC SECURITY ANNOUNCEMENT

305. On 6 February 2015, the Deputy Bureau Chief of the Chinese MPS made an announcement that included the following:

"Some foreign countries see our nation as an enormous market, and we have investigated a series of cases."

"A fair number of neighbouring countries have casinos, and they have set up offices in China to attract and drum up interest from Chinese citizens to go abroad and gamble. This will also be an area that we will crack down on."

306. These statements were then reported by numerous media outlets both at the time and subsequently,⁹⁶ including reports in terms such as:

"Chinese President Xi Jinping has officially declared war on the global gambling industry, warning foreign casinos that Chinese citizens will be gambling much less in China, neighbouring countries, and the US... In other words, Xi is telling companies around the world that saw their revenue triple when Macau opened up to foreigners that the Chinese gambler will not be following them abroad to countries like Singapore and the Philippines where billions have been spent on new projects to attract those same people. Asian companies have heretofore capitalised on the travelling Chinese gambler in the Philippines, Australia and especially Singapore. ... Now that's set to take a hit ...

So Xi's declaration is coming when companies around the world- from MGM to Las Vegas Sands, from Macau-based companies Melco to SJM Holdings – are at their most vulnerable."⁹⁷

307. Among other things, the reporting that occurred in respect of this MPS announcement specifically included reporting which identified the purpose of what the Chinese authorities called "Operation Chain Break" as being to stop the flow of money from the Chinese mainland to foreign casinos⁹⁸. This reference to "operation chain break" came to be a matter that would also be referred to in later Chinese government reporting.
308. Contrary to Crown's continued assertion that Crown's staff in China expressed no concerns for their safety, the evidence available to the Commission indicates that this announcement caused considerable disquiet amongst Crown staff in China.

⁹⁶ See for example - *Corrected – China to crackdown on foreign casinos seeking Chinese gamblers* Reuters article 6 February 2015; *"China clamps down on foreign casinos wooing Chinese gamblers"* Business Times 6 February 2015 at <https://www.businesstimes.com.sg/consumer/china-clamps-down-on-foreign-casinos-wooing-chinese-gamblers>; *"What lies behind China's clampdown on foreign casino's"* The Conversation, 12 February 2015; *"China's President just declared war on global gaming"* Yahoo news article 7 June 2015; *"China cracks down on foreign casinos luring Chinese gamblers"* Online article at casino.org, 8 February 2018.

⁹⁷ *"China's President just declared war on global gaming"* Yahoo news article 7 June 2015.

⁹⁸ www.afr.com/business, *"Crown aggressively chased big gamblers in deals with Macau junket operators"* 27 October 2016; <https://news.worldcasinodirectory.com/beijing-launches-operation-chain-break-to-crack-down-on-casino-promoters-11686> (news article 12 August 2015) accessed on 28 August 2018.

309. For example, on 8 February 2015, shortly after the announcement, one of Crown's China-based employees, Jessica Liu, sent an email to Mr Gomez which included the following:

"One of is to heat (sic) overseas casino staff and agency which is set up and located in mainland. below is black and white in Chinese for your reference. Do you think we should inform our management about it since I am very nervous" [original spelling and syntax].

310. Perhaps because of this, or perhaps because of his own concerns, Mr Gomez himself also sent an email to Mr Chen on 8 February 2015. That email included a weblink to a media article about the MPS announcement and included the following:

"Could you check on the seriousness of this one in China for our team based in China. Many have called and expressed concern when news came out in the social media.

Here is another link."

311. Meanwhile quite apart from the matters expressed in these emails from Crown's more junior staff, Mr Chen had himself separately started to produce emails which suggest that he was concerned about the development constituted by the MPS announcement. On the day after the announcement Mr Chen sent two emails in which he expressly stated his concerns.

312. One of those emails was an email Mr Chen sent to Messrs Felstead and O'Connor on 7 February 2015, which specifically referred to the announcement and included the following words:⁹⁹

"This suggests that we may need to delay our plans on establishing a physical office presence in China.

Also, this raises the alert level on the safety of our staff. Recently, Nelson Wang from MGM immediately left China when he heard the news of increased scrutiny on overseas casinos.

We will need to assess the threat level..."

313. The other relevant email that Mr Chen sent on the day following the announcement was an email to Mr Zhou at WilmerHale, by which Mr Chen sought advice in respect of the MPS announcement.

314. Among other things, the email that Mr Chen sent to Mr Zhou on 7 February 2015 contained a web-link to a media article about the MPS announcement and included the following words:¹⁰⁰

"I don't know if you have seen the recent news suggesting that the Chinese government will start targeting foreign casinos trying to attract Chinese gamblers.

...

We have a very nervous China staff seeking guidance on whether this should change any of their protocols and behaviours. We are also in the midst of a major recruiting effort which this impacts.

⁹⁹ CWN.502.032.8809.

¹⁰⁰ CWN.502.016.8751.

I would like some advice from Wilmer as to what you all know about this initiative and advice as to how it should or should not impact us. Obviously, I'd like to be able to calm the nerves of both staff and prospective candidates.

Time is of the essence here ..."

315. Mr Zhou replied later that same day and, among other things, confirmed that the Chinese MPS had indeed held a press conference on 6 February 2015 and that one of the topics of that press conference was to "crack down" on "foreign casino's representative offices in China which facilitates Chinese individuals to gamble overseas...". Mr Zhou also confirmed that he had conducted various searches of what he called "recent enforcement cases relating to closure of foreign casino's representative offices in China but found very little information".

316. He then concluded his email with three points that, according to Mr Zhou, were "important", the third of which was:

"Given the highlighted government efforts to crack down on rep offices with core business to facilitate Chinese individuals gambling abroad, the company's [i.e., Crown's] rep offices/employees in China should focus its business on introducing hotel/resort and facilities, rather than engaged in any activities which may be viewed as directly facilitating Chinese individuals gambling offshore".

317. The Commission is particularly concerned about this last part of Mr Zhou's advice to the extent that Crown's core business in China plainly involved in large part (even if not exclusively) "facilitating Chinese individuals gambling offshore".

318. It seems that just as the Crown employee was not truthful with Chinese authorities about his activities when he was questioned by Chinese police in September 2014, Crown's lawyers in China considered it advisable that no mention be made of Crown's core business in China, namely that of arranging Chinese "VIPs" to travel to Australia to gamble.

319. In any event, after he received this email from Mr Zhou, Mr Chen sent two further emails to Mr Zhou in which he sought to follow up specific issues. In respect of these follow-up emails:

a. in one, it appears he attempted to verbal Mr Zhou as follows:

"Can you confirm that there has been no change in laws that would alter your prior advice regarding our activities in China?"

As you may recall, the prior understanding of the law was that organizing 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...

To the best of our understanding, our staff also does not engage in any of these activities..."

Mr Zhou replied to this email on 10 February 2015 and told Mr Chen that there had been no change in the law;

- b. in the other, Mr Chen asked Mr Zhou the further question of: *"How about if staff assists or refers with remittances of money?"*; In reply to which Mr Zhou advised, among other things, that:

"If staff knows about a third party engaged in money laundering activities and still makes introduction or referral, it will be problematic under law. If staff knows that certain arrangement to remit the money is not in compliance with law, and still assists the customer to do so, it will also be problematic.

Given the current enforcement environment, it will 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."

- 320. Mr Chen then forwarded his email exchanges with Mr Zhou to others including Messrs Felstead and O'Connor and in doing so, among other things, advised them he had already circulated a communication to the staff in China *"regarding protocols and procedures related to any approaches they may get from government officials"* and that he would follow up with a further communication *"to help calm the staff and give them confidence that [the] Company is taking these things seriously and has protocols in place to deal with issues that may arise"*.
- 321. The Commission is concerned that the documentary evidence contains nothing to suggest that any of Messrs Felstead, O'Connor or Chen took any steps to address Mr Zhou's advice that:
 - a. *"staff not to be involved in the money-moving activities because it can be easily interpreted as an effort to facilitate overseas gambling;"* or
 - b. Crown staff should not refer to its core business of arranging Chinese "VIPs" to travel to Australia to gamble.

Re-circulation of "Reception Procedures" and proposal to obtain foreign work visas

- 322. Furthermore, in addition to these matters, and as Mr Chen noted in his email to Messrs Chen and O'Connor referred to immediately above, one of the things he did in response to the announcement by the Chinese MPS was to circulate *"protocols and procedures"*. It appears that this was a reference to the *"Reception Guidelines"* that were referred to earlier in this part of the Commission's report, which Mr Chen again emailed to Crown's VIP International Offices on 9 February 2015,¹⁰¹ shortly after the MPS announcement.
- 323. In addition to that however, when he recirculated the *"Reception Procedures"*, it seems that Mr Chen also told Crown's staff in China that:¹⁰²

¹⁰¹ CRL.545.001.0025.

¹⁰² CRL.545.001.0025.

"We will be applying for HKG/Singapore work permits for all of 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 for an overseas location and are on business travel to China".

324. In the Commission's opinion, this proposal can only sensibly be understood as reflecting a further expression of concern for the risks associated with the operating environment in China. Furthermore, in the Commission's opinion, if Crown's staff in China were not at risk of being detained by reason of their employment, there would have been no reason for Mr Chen to have made the proposal to obtain foreign work visas to facilitate them asserting that they worked for a foreign location and were on business travel in China.
325. In respect of this proposal, the Commission also notes that it has identified no evidence to suggest that the proposal to acquire foreign work visas for Crown's Chinese staff working in China was adopted and the evidence about whether any of Crown's Australian-based executives or directors knew about this proposal is, at best, equivocal. In particular:
- a. Mr Felstead said that he was not aware of this proposal;¹⁰³ and
 - b. Mr O'Connor said that he could not say one way or the other whether he discussed the proposal to obtain foreign work visas with Mr Chen.¹⁰⁴
326. In the context of this evidence, however, the Commission notes that during his evidence to the NSW Inquiry, Mr Craigie said that whilst he was unaware of this proposal, it could only sensibly be understood as being an attempt to disguise or conceal from Chinese authorities that Chinese citizens were working for Crown in China.¹⁰⁵
327. With respect to Mr Craigie, insofar as his evidence concerns the issue of concealment, the Commission agrees.
328. Furthermore, in the Commission's opinion, that concealment can only sensibly be understood as a response to the concerns that Crown's staff in China had at the prospect of being detained by reason of their activities on behalf of Crown in China, or as to the legality of those activities
329. The Commission is very concerned that, rather than take direct action to protect the staff in response to the Chinese MPS announcement, Crown's response was one of either doing nothing or seeking to conceal the truth of what it was that Crown's staff were doing in China.

"...too big a risk..." to establish an office in China

330. In addition to these matters, there is one further issue in respect of the events that occurred in the immediate aftermath of the Chinese MPS announcement of 6 February 2015.
331. That matter is Mr Felstead's expression of his opinion that it would *"...too big a risk..."* to establish formal offices in China.

¹⁰³ Mr Felstead's evidence to the NSW Inquiry – 17 August 2020 – T1173/28.

¹⁰⁴ Mr O'Connor's evidence to the NSW Inquiry – 3 September 2020 – T2016/25-42.

¹⁰⁵ Mr Craigie's evidence to the NSW Inquiry – 20 August 2020 – T1484/23-30.

332. In that regard, among the emails he sent shortly after the MPS announcement, Mr Chen referred to the issue of the potential establishment of Crown offices in China being a matter that was raised in circumstances where, for the most part, Crown's staff in China worked from home.
333. Mr Felstead replied to that aspect of Mr Chen's emails directly and unequivocally by telling Mr Chen:¹⁰⁶
- "I am reluctant to proceed with offices in China at this point in time. I believe it to be too big a risk, having them operate as non gaming offices doesn't seem overly practical to me".*
334. In the Commission's opinion, Mr Felstead's opinion that it was too big a risk to establish offices in China is yet another expression by Crown staff of the reality of the situation in China, including the risks that were involved in Crown's activities in China.
335. The Commission considers it extraordinary that Mr Felstead's opinion that it was "*too big a risk*" to establish offices in China was never included for consideration in the risk management framework or by the boards.
336. Furthermore, the Commission also considers it extraordinary that it has identified no evidence which could suggest that anyone paid Crown's employees in China the courtesy of telling them that Mr Felstead (as a director of the company who employed them) considered it to be "*...too big a risk...*" to establish offices in China.
337. In the Commission's opinion, quite apart from any view one might take by reference to the legal niceties of the matter, Crown should have informed its staff in China of Mr Felstead's opinion so that they could make their own decisions about whether the risks that he thought existed were risks that they themselves were prepared to take, by reference to their own personal circumstances.

Senior executives refrain from travelling to China and legal advice to limit travel to mainland China

338. As well as these matters that occurred in the immediate aftermath of the MPS announcement on 6 February 2015, the Commission also notes that in the month that followed that announcement, Crown was planning to conduct a "roadshow" that would see Messrs Felstead, O'Connor and Chen travel to China in March 2015.
339. On that topic, the evidence to the NSW Inquiry included evidence that on 11 February 2015 (five days after the announcement), a discussion occurred between at least Messrs Felstead, O'Connor, Chen and Ratnam about the risk of them travelling to China in the wake MPS of the announcement.¹⁰⁷
340. In his evidence to the NSW Inquiry, Mr Felstead accepted both that:
- a. senior executives, presumably including himself as well as Messrs O'Connor, Chen and Ratnam, refrained from entering China in the immediate aftermath of the MPS announcement because it was too risky for them;¹⁰⁸

¹⁰⁶ CWN.502.016.8751.

¹⁰⁷ CRL.527.001.0406.

¹⁰⁸ Mr Felstead's evidence to the NSW Inquiry – 18 August 2020 – T1194/17 – T1195-15.

- b. if it was too risky for the senior executives to travel to China, he must have realised that the staff who were based in China were also facing an increased risk.
341. Despite altering his travel plans, Mr Felstead took no steps to escalate the risk into the risk management structures or to the boards of Crown Melbourne and Crown Resorts.¹⁰⁹
342. Meanwhile, after this, the issue of whether the senior executives should travel to China continued to be the subject of consideration, and on 20 February 2015, Mr O'Connor sent Mr Chen an email which included the following:
- "Are you (we) comfortable with folks travelling through PRC at the moment?"*
343. It would seem this email from Mr O'Connor may have prompted Mr Chen to seek yet further legal advice in that, on the evening of 24 February 2015, Mr Chen sent an email to Mr Zhou which included the following:¹¹⁰
- "The climate has gotten quite destabilized. We have competitors that have pulled their entire teams out of China.*
- Could you please advise whether you think our executives should be avoiding entering China and whether we should be pulling our staff out."*
344. On the evening of 25 February 2015, Mr Chen received a response to his request for advice from Mr Zhou which included:
- "I agree that it seems prudent to limit travels of senior executives to Mainland China at this point given that the regulatory environment being tightened up and the picture is not entirely clear. I am not sure whether it has come to the point that you have to pull the entire team out of China. One option is that you could have some key employees tentatively work outside China (e.g., Hong Kong)."*
345. Later that same night, Mr Chen (who was, it will be recalled, based in Hong Kong) responded to Mr Zhou in the following terms:
- "Interesting. I was prepared to go into China but your advice is causing me to have second thoughts."*
346. In the context of this evidence, the Commission notes that Crown has sought to make something out of the fact that Messrs Felstead and O'Connor travelled to China and in Mr Felstead's case this sometimes included travelling with his wife, as a basis to suggest that neither Messrs Felstead nor O'Connor should be taken to have considered the risk of detention to have been material.
347. The Commission does not accept that. Regardless of any travel that was undertaken, the reservations that at least Messrs O'Connor and Chen held in respect of their travel to China are obvious from these emails. Their concerns in that regard arising as they did from the accepted risk escalation event that is

¹⁰⁹ Mr Felstead's evidence to the NSW Inquiry – 18 August 2020 – T1195/34-47.

¹¹⁰ CWN.502.069.3498.

constituted by the MPS announcement should have been considered as part of the risk management structure and by the boards of both Crown Melbourne and Crown Resorts.

348. Furthermore, in the context of these expressions of concern by Messrs O'Connor and Chen, the Commission is particularly concerned that in the period shortly after Mr O'Connor had asked Mr Chen if he was "*comfortable*" with people travelling to China and Mr Chen was seeking advice on that question, Mr Chen was also in communication with Crown's staff in China.
349. In that regard, on the morning of 25 February 2015 (being a time that was after Mr Chen had sought advice on whether he and Mr O'Connor should be travelling to China, but before he had received advice on that question from Mr Zhou), Mr Chen appears to have sent an email to the staff in China that was entitled "*Update on China Policy*"¹¹¹.
350. For the most part this "*Update on China Policy*" email is a copy-and-paste of selected parts of the legal advice that Mr Chen had earlier obtained from Mr Zhou in the immediate aftermath of the MPS announcement that had been made some eighteen days before.
351. The Commission is concerned however that there are two glaring omissions from Mr Chen's cut-and-paste, constituted by his failure to mention that:
- a. Mr O'Connor had expressly asked him if he "*was comfortable with folks travelling through PRC at the moment...*"; and
 - b. this had caused Mr Chen to seek further advice specifically on whether "*executives should be avoiding entering China and whether we should be pulling our staff out*".
352. Furthermore, the Commission is also very concerned that, after he received express and unequivocal advice from Mr Zhou mere hours after he had sent the "*Update on China Policy*" email and, in response to that advice, had himself told Mr Zhou that he was having "*second thoughts*" about travelling to China, the Commission has located no evidence to suggest that Mr Chen took the time to further "update" Crown's staff in China to tell them that:
- a. Mr Zhou's advice was that:
 - "*...it seems prudent to limit travel of senior executives to Mainland China...*"
 - "*...the picture is not entirely clear...*"
 - "*...you could have some key employees tentatively work outside China...*"
 - b. insofar as Mr Chen himself was concerned he "*was prepared to go into China but [Mr Zhou's] advice [was] causing [him] to have second thoughts*".
353. In the Commission's view, as a matter of common courtesy, quite apart from any considerations of risk management and corporate governance that might have been applicable, Mr Chen should have

¹¹¹ CWN.502.040.3592.

communicated both Zhou's advice and also the reservations that Messrs Chen and O'Connor had about travelling to China to the staff that Crown had living and working in China.

354. Had Mr Chen done so, it would have, at the very least, allowed Crown's staff in China to make their own decisions, by reference to their own personal circumstances, about whether they were prepared to take the risks that Messrs Zhou, Chen and O'Connor thought were associated with the operating environment in China at the time.
355. Instead of that however, Mr Chen let his *"Update on China Policy"* stand as a record of his attempts to actively diminish the concerns of Crown's staff in China.
356. In the Commission's opinion, this sequence of events is yet another example of the expressions of concern that Crown's staff had about the risk of being detained in China; the lack of knowledge, training, and expertise that Mr Chen brought to the tasks of risk management that were left to him; and the general level of disrespect that appears to have been shown to Crown's staff in China.

Mr O'Connor and a London-based executive director express concern for staff in China

357. In addition to the senior executives' concerns at the prospect of travelling to China in the wake of the MPS announcement, this event also caused a degree of anxiety for the managing director of Crown's Aspinall's Casino in London, Howard Aldridge.
358. In that regard, the day after the announcement was made on 6 February 2015, Mr Aldridge sent a web-link to a Reuters news article on the subject and asked Mr O'Connor whether (apparently because of the matters referred to in the article) he had any concerns about Crown's business and the welfare of Crown's staff in China. On 9 February 2015, Mr O'Connor responded in terms which included:

"Happy to discuss this Howard,

...

As for the staff, we are always very concerned for their wellbeing and Michael is consulting our lawyers to get a clearer view of what this really means. In the meantime, we all need to take extra care."¹¹²

359. Plainly, Mr O'Connor's purported concern for the staff in China and what he identified as the need to take extra care did not extend to Mr O'Connor (or indeed Mr Aldridge) raising these concerns and the need for extra care as part of the risk management structures or with the boards of either Crown Melbourne or Crown Resorts.

¹¹² Emails between Mr Aldridge and Mr O'Connor on 7 and 9 February 2015.

Branding is removed from Crown aircraft

360. Yet another event that appears to have occurred in response to the Chinese MPS announcement was the decision that was taken to remove the branding or livery from the fleet of private jet aircraft that Crown utilised to transport at least some of its Chinese "VIPs" to Australia.
361. In that regard, on 12 February 2015 (six days after the MPS announcement had been made), Mr Ratnam sent an email to Matthew Csidei (who is or was an executive director of CPH), copied to Mr Felstead, which included the following:¹¹³
- "...with the announcement late last week from the Chinese government on targeting Chinese citizens visiting foreign casinos, what are your thoughts on us losing the logo on the tails of the Globals".*
362. In respect of this email, the Commission notes that the reference to "Globals" is a reference to the type of aircraft that are or were used by Crown to transport "VIPs" from China to Australia. Furthermore, the Commission notes that Mr Ratnam gave evidence about this email to the NSW Inquiry and that evidence included that his proposal to remove the branding or livery from Crown's aircraft was in response to the MPS announcement that had been made and furthermore that it was a course of action that he considered because it would help to make Crown's business in China more "under the radar".¹¹⁴
363. In giving evidence to that effect, Mr Ratnam also confirmed that a decision was taken to remove the branding or livery from Crown's aircraft accordingly and these aircraft (without branding) were then used to transport Chinese "VIPs" to Crown's casinos in Australia.¹¹⁵
364. The Commission is very concerned about this matter. If the staff were not at risk of being detained in China, there would have been no need to remove the livery from Crown's aircraft.
365. The Commission considers it inexcusable that steps were taken to make Crown's operations in China less obvious in this way, but no steps were taken to include matters relevant to the operating environment in China as part of Crown's risk management structure or to have matters relating to that operating environment considered by the boards of Crown Melbourne and Crown Resorts.

Mr O'Connor again expresses reservations about travelling to China

366. Notwithstanding Mr Zhou's unequivocal advice on 25 February 2015 that "*it seems prudent to limit the travels of senior executives to Mainland China at this point*" and the decision of the senior executives to act on that advice and refrain from travelling to China at that time, it would seem that the issue of travel to China was soon back on the agenda for Crown's executives, particularly to the extent that consideration continued to be given to whether Crown should press ahead with the "roadshow" that was planned for March 2015.

¹¹³ CRL 522.001.2864.

¹¹⁴ Mr Ratnam's evidence to the NSW Inquiry – 20 August 2020 – T1425/21 – T1426/3.

¹¹⁵ Mr Ratnam's evidence to the NSW Inquiry – 20 August 2020 – T1427/1-9.

367. Amongst the documents that have been produced to the Commission is a chain of emails¹¹⁶ which includes an itinerary for travel by Mr O'Connor and others to Chengdu, Wuhan, Xian and Beijing during the week commencing 16 March 2015.

368. One of the emails in this chain is an email that Mr O'Connor sent to Mr Chen on the evening of 4 March 2015 in the following terms:

"I really think we should reconsider going into PRC. Remember, Alfred will have phone calls etc with CJH".

369. Mr Chen replied to that email later that same evening in terms which included that: *"I am getting further advice from ex-CIA"* which, on the Commission's assessment of the evidence would appear to be a reference to the risk management advice that Mr Chen would not long after obtain from the Mintz group and its former United States Central Intelligence Agency (CIA) consultant, Mr Randy Phillips.

370. The Commission considers this to be yet another example of an expression of concern by Crown staff for their safety. Furthermore, the Commission considers it to be yet another instance of the evidence contradicting the assertion that Crown persists in seeking to maintain, namely that:

"...the evidence does not support that management were aware that Crown's staff in China were concerned or fearful that they would be detained by reason of the activities they undertook in the course of their employment"¹¹⁷.

371. The Commission does not agree.

372. Rather, in the Commission's opinion, there is ample evidence to support that management were aware that staff in China were concerned or fearful that they would be detained by reason of the activities they undertook in the course of their employment. Indeed, not only does the evidence support that the staff were fearful, it also supports that senior members of management was also fearful.

373. In the context of those expressions of fear (particularly now that the MPS announcement has been acknowledged by Crown as an accepted risk escalation event), the Commission considers it inexplicable that those expressions of fear did not form the basis of matters being raised in the risk management processes and/or with the wider boards of both Crown Melbourne and Crown Resorts.

Risk management advice is sought for the first time

374. As Mr Chen mentioned in his email to Mr O'Connor on 4 March 2015, at about this time, Mr Chen commenced to seek risk management advice, in addition to the legal advice that he had, up until then, been receiving. That advice was sought from a firm called *"Mintz Group"* which describes itself as:

"A due diligence and investigations firm that helps clients identify, manage, and mitigate risks across the globe — before relationships, during disputes and after allegations".

¹¹⁶ CWN.514.011.7622.

¹¹⁷ Crown's response to the Commission's propositions received 22 February 2021, page 15, paragraph 7(e).

375. On 7 March 2015 Mr Chen received Mr Phillips' proposal to provide his services and on the same day, Mr Chen also sought Mr O'Connor's approval to retain Mr Phillips.¹¹⁸
376. By later that day, Mr Chen had evidently received approval to retain Mr Phillips and emailed him to that effect in terms that included that:¹¹⁹

"We have a roadshow scheduled for March 16 so any preliminary findings in advance of that to guide whether we continue with that roadshow would be helpful."

Roadshow proceeds despite conflicting legal and risk management advice

377. No doubt having regard to Mr Chen's request for any preliminary findings, Mr Phillips provided Mr Chen with an "interim update" dated 13 March 2015.¹²⁰
378. This document is brief (one and a half pages) and refers to information that Mr Phillips apparently received from various sources including a journalist, a person or persons within the Chinese Public Security Bureau (**PSB**), and a junket operator. As well as setting out the information that Mr Phillips said he had received from these "sources," this document also includes the following:

"Bottom Line Assessment Thus Far – proceed with marketing efforts, but keep them low-key, with small groups at a time, and no publicity. It would 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 distribution to random individuals".

379. The Commission notes that by providing this "bottom line assessment" which included to "...proceed with marketing efforts..." this risk management advice diverged from the legal advice that Mr Zhou had provided some weeks earlier on 25 February 2015 to the extent that it advised "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".
380. There is nothing in the documentary record which suggests that the specific issue of this apparent divergence between the legal and risk management advice was the subject of specific consideration at that time. One possible explanation for that is that the documentary record also suggests that unlike Mr Zhou's legal advice to limit travel, which was circulated more broadly by Mr Chen, it seems that Mr Phillips' advice to proceed with marketing efforts may have only been circulated to Mr O'Connor.¹²¹
381. In any event, to the extent that this divergence might have even occurred to Messrs Chen and O'Connor, it seems that that they decided that they would act in accordance with the risk management advice rather than the legal advice, such that on or about 16 March 2015 a marketing roadshow commenced that included mainland China.

¹¹⁸ CWN.514.006.7946

¹¹⁹ CWN.502.032.7192

¹²⁰ CWN.502.015.9530

¹²¹ See emails from Mr Chen to Mr O'Connor dated 26 March 2015, CRL.545.001.0119; CRL.545.001.0120.

Mr Chen's instructions about his salary, in the event he is detained

382. Notwithstanding that the decision was taken to proceed with the marketing roadshow in March 2015, it appears that Mr Phillips' advice had not completely assuaged the "second thoughts" that Mr Chen had expressed to Mr Zhou in his email to him on 25 February 2015.
383. In that regard, on 23 March 2015 (being a date that Mr Chen may well have been in China as part of the marketing "roadshow" that was conducted from 16 – 27 March 2015 inclusive), Mr Chen sent an email to Mr O'Connor with the designation of high importance and the subject heading of "Detention".
384. In this email Mr Chen gave instructions to Mr O'Connor about what should be done with his salary if he was detained in China. That email included the following words:¹²²

"Hi Jason,

In the event that I am detained in China during any payroll payment period, please note that I am providing Crown instructions to divide my paycheck (sic) (both salary and allowances and expense reimbursements) into 3 payments.

50% to my existing payroll account

20% payment is to go to the account of ...

30% payment is to go to the account of ...

Please see the attached for wire transfer instructions. (use the brokerage account instructions).

Thanks. This is simply for the abundance of caution.

Regards,

Michael".

385. Shortly after he received this email, Mr O'Connor acknowledged its receipt and proceeded to seek further information for the purpose of confirming Mr Chen's instructions.
386. Meanwhile, the day after Mr Chen gave these instructions to Mr O'Connor, on 24 March 2015, Mr Phillips' formalised his interim risk management advice by providing Mr Chen what is described as a Final Memorandum on Project Wager ("Project Wager" being the name that Mintz and Mr Phillips had apparently assigned to the engagement by Mr Chen).
387. Mr Chen reviewed this memorandum and requested more guidance on the risk assessment. Specifically, he requested that Mr Phillips review the summary section and "beef that up a bit"¹²³.
388. In response, on 25 March 2015, Mr Phillips provided an "Updated Project Wager Memo" to Mr Chen.¹²⁴
389. In the covering email to that memo, Mr Phillips noted that "I beefed up the areas requested per attached, and believe this covers areas of primary interest." Like the interim update that had been received about

¹²² CWN.514.008.1147.

¹²³ Email from Mr Chen to Mr Phillips dated 24 March 2015 (folder 3).

¹²⁴ CWN.502.069.1519.

a fortnight earlier, this memorandum contained information from a range of sources including the PSB, junket operators, marketing representatives, a journalist and media coverage.

390. The updated memorandum also included a risk assessment, operational recommendations and what are characterised as “*Final Thoughts*”.

391. Each of these three sections express a degree of uncertainty to the extent that:

a. the risk assessment includes:

“...The coming months likely will feature an increasing level of scrutiny by [Chinese police], and possibly other, authorities directed at foreign casino marketing and other personnel in the mainland, though its likely to be uneven in its application by authorities similar to other areas of investigatory concern”.

b. the operational recommendation includes:

“Though there is little doubt that 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, but rather have passed along the task to at least several provincial public security bureaus – particularly Guangdong – to come up with a plan of action... This is a subject worthy of continued monitoring in the coming months to ascertain exactly how widespread this order was sent, and more importantly, how the provincial and local authorities plan to enforce it”.

The recommendation then goes on to say that given this situation “...it would seem prudent to proceed with planned marketing efforts, but keep them low-key...” before then giving advice about the steps that might be taken to ensure that marketing efforts were indeed kept “low-key” through such measures as:

- avoiding cell phone and text message communications dealing with marketing efforts and assume that all communications are being monitored; and
- limiting the distribution of business cards or other hard copy marketing materials “to known, specific customers, and avoid distributing to random individuals.”

c. the final thoughts include:

“If history and experience is any guide... it is likely that the Chinese authorities will pursue this crackdown with greater than average vigour and with that would seem likely that provincial authorities tasked with putting together and carrying out a plan to more aggressively monitor foreign casino marketing activities will get their act together relatively quickly; and there will be a desire to show results within the coming two to 2-3 months. This does not mean that all marketing efforts should cease in this period – or even afterwards – just that each marketing effort should be considered with the above environment in mind, ensure strong adherence to Chinese law and company guidance on how your personnel are to conduct their marketing efforts in country, and maintain effective communication”.

392. Evidently, from this point, rather than being guided by its risk management structures or the boards of Crown Melbourne and Crown Resorts, Crown's operations in China were conducted by reference to the advice that Mr Chen had received from the former CIA agent, Mr Phillips.
393. Mr Chen circulated the final version of the Project Wager memo that he had received from Mr Phillips to Mr O'Connor on 26 March 2015²⁵ at which time it was also provided to others at very senior levels within Crown's corporate governance structure.
394. The extent to which others within Crown's corporate governance structure also became aware of the acknowledged risk escalation event constituted by the Chinese MPS announcement that occurred on 6 February 2015 and matters associated with that event, including the content of Mr Phillips' risk management advice, is considered later in Part 5 of the Commission's report.

MARKETING STAFF FROM OTHER FOREIGN CASINOS ARRESTED IN CHINA

395. The second of the accepted risk escalation events that Crown has acknowledged should have been elevated into the risk management structures and to the boards occurred approximately three months after the MPS announcement, when several marketing staff who had travelled to China as part of their employment with casinos located in South Korea were detained by Chinese police.
396. In response to this event, Mr Chen sent emails reporting the fact of the detentions both up and down the reporting lines of which he was a part.
397. These emails included those Mr Chen sent on Saturday 20 June 2015, when he sent two relevant emails, one reporting up and one reporting down.
398. Insofar as his email reporting up is concerned, Mr Chen sent an email to Messrs Felstead, O'Connor and Ratnam in which he noted, among other things, that the arrests had occurred and that he had sought advice on the topic from Mr Phillips' firm, Mintz.
399. Meanwhile, insofar as his reporting down goes, Mr Chen sent an email to an address identified as vipinternationaloffices@crownmelbourne.com.au (which the Commission understands was a group email address encompassing Crown's employee in China). The email included the following:

"We have our advisers working urgently to fully understand what has transpired so that we know how we ought to respond.

...

...What we don't know yet is the cause of the detainment. As we have discussed before, our normal activities should not cause any issues. It may well be that these Korean sales staff were engaged in activities that went [beyond] their normal activities.

²⁵ CWN.502.069.1519.

I will take this opportunity to remind everyone of our protocol and procedure in the event one is approached by officials. In the unlikely event that one is approached, please follow the protocol and the company will have significant support resources ready to assist.

..."

400. Having regard to Mr Chen's report down the line to the staff in China, there seems to be little doubt that those staff members were, at this time, very nervous. This is how one of Crown's former China-based employees put it when he spoke to the Commission:

"When the Chinese police arrested the South Koreans in June 2015 for allegedly inciting Chinese people to gamble in their country...I and other colleagues were nervous but Crown took no action".

External advice and Mr Chen's opinion that the "key question is why them"

401. Meanwhile, as well as reporting both up and down his reporting lines, Mr Chen also set about obtaining both legal and risk management advice specifically in respect of the arrests of other casino marketing staff.

402. Insofar as risk management advice is concerned, on 19 June 2015 (the day before he reported the matter both up and down his reporting lines), Mr Chen sent the external risk management adviser Mr Phillips an email which included a weblink to a media article and the following words:¹²⁶

"It was reported today that up to 10 Korean marketing staff were arrested in China.

Could you urgently help us verify the story and understand any implications..."

403. The following day Mr Phillips replied to Mr Chen and told him that the matter would be considered as soon as possible. In turn, Mr Chen replied to Mr Phillips in terms that included:¹²⁷

"...[The] key question is why them if they were undertaking normal activity like we do. Or can we verify those folks were doing something untoward".

404. Insofar as the legal advice is concerned, Mr Chen again sought advice from Mr Zhou at WilmerHale on 22 June 2015 by sending him an email that included the following:¹²⁸

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

405. The Commission is concerned at the extent to which Mr Chen sought both legal and risk management advice that was designed to focus on any differences which might have existed between Crown's operations and those of the other casino marketing staff who had been arrested, without paying sufficient regard to the similarities between the activities of the other casino staff and Crown staff.

¹²⁶ CWN.502.032.1639.

¹²⁷ CWN.502.032.1639.

¹²⁸ CWN.502.050.2956.

Consequently, this failed to address the risks associated with the operating environment for Crown's staff in China.

406. In any event, Mr Zhou replied to Mr Chen the following day in terms that included that, although Mr Zhou had limited information about the arrest, in accordance with the question he had been asked, he also set out a series of factors which might have distinguished the conduct of the other foreign casino marketing staff from the activities of Crown's staff in China.
407. Among others, these distinguishing factors included that these staff were from Korean casinos and, in the past, two Korean Casinos had been penalised in Korea for breaches of currency policies concerning the receipt of Chinese currency and furthermore that, in the period prior to the arrests, the Chinese government had been discouraging Chinese tourists from travelling to Korea.
408. Meanwhile, insofar as the government relations advice is concerned, Mr Phillips gave his advice in the form of an email dated 24 June 2015.¹²⁹
409. That email refers to Mr Phillips having consulted various "sources", including Beijing PSB contacts, a few junket operators, and security staff in Macau. Based on information received from those sources, Mr Phillips also set out some factors which sought to distinguish the conduct of the arrested casino marketing staff from that of Crown's employees including:
- a. "over aggressive loan issues" related to debt collection; and
 - b. the Korean government not co-operating with China for joint operations on junket operators.
410. Mr Phillips also noted that his two Beijing PSB contacts had become silent and declined to provide further comments.
411. A few days later, it seems that at least one of Mr Phillips' PSB sources may have altered their position and decided to provide him with information.
412. Having done so, on 28 June 2015, Mr Phillips provided Mr Chen with further written advice in the form of an email¹³⁰ which notes, among other things, that one of Mr Phillips' PSB Beijing sources had referred to the Koreans' "extremely aggressive" approach to business (compared to others in the sector), especially about bringing cash in and out of China, and that the Koreans had been contravening Chinese currency laws for some time.
413. In his advice on 28 June 2015, Mr Phillips also noted that he (that is, Mr Phillips) was convinced that the South Korean arrests were an isolated case "*though pursued in an environment we know is present which is more careful monitoring of activities and not allowing activities to become too high profile*".
414. Mr Chen duly forwarded this email to Messrs Felstead, O'Connor and Ratnam shortly after he received it.¹³¹

¹²⁹ CWN.502.013.4099.

¹³⁰ CWN.514.015.8186.

¹³¹ CWN.514.015.8186.

415. The extent to which others within Crown's corporate governance structure, including directors of Crown Resorts and Crown Melbourne also became aware of the accepted escalation event constituted by the arrest of other casino marketing staff in China, is considered later in Part 5 of the Commission's report.

CHINESE POLICE INTERVIEW TWO FURTHER CROWN MARKETING STAFF

416. The next significant event in the operating environment in China was when two of Crown's staff in China were questioned by Chinese police in early July 2015.
417. The Commission notes that this is both:
- a. an accepted risk escalation event, insofar as Crown is concerned, and
 - b. an event that occurred approximately a fortnight after the arrests of the South Korean marketing staff referred to immediately above.
418. In that context, the Commission also notes that, as was referred to earlier in this Part 3 of the Commission's report, a Crown staff member had previously been questioned by police in China some nine months earlier, in September 2014. As such, this questioning constituted at least the second and third times respectively that Crown staff had been questioned by police in China.
419. Of those questioned in early July 2015, one was a sales manager who was questioned on 9 July 2015 in Wuhan.
420. According to the translation of the report that this employee gave to Mr Chen in Chinese following his questioning,¹³² this employee was asked various questions and told Chinese police, among other things, that:
- a. he worked for Crown;
 - b. his job was "*applying for visas for clients*";
 - c. his employer has casinos in Australia; and
 - d. he did not know if the clients gambled in Australia.
421. Just as his colleague had done nine months before him, this employee may not have mentioned to Chinese police that his role in China included arranging Chinese "VIPs" to travel to Australia to gamble.
422. Also, according to the translation of his report, it seems that this employee asked the police why he was being questioned and, whilst he did not receive a direct response, said that he was told that the issue was "*that I have organised people to gamble in Australia*"¹³³.

¹³² Email dated 10 July 2015 from Mr Xiong to Mr Chen in Chinese characters (later translated on 15 July 2015 by Fred Lu, Crown employee (Management Accountant) in Melbourne).

¹³³ Translation by Mr Lu in email dated 15 July 2015.

423. The second Crown employee questioned in China in July 2015 was employed as a director of international sales.
424. This employee gave a signed statement to the Commission in which he said, among other things, that in or around July 2015 he was questioned by Chinese Police, at his home, about gambling and that the police had told him that they had received information that he had been organising gambling at his home.
425. This employee told the Commission that he raised the fact of his questioning with Mr Chen and Mr Chen told both him, and possibly also other members of Crown's staff in China, not to worry about it and just to continue with their jobs.¹³⁴
426. This employee denied the allegation that he was organising gambling at his home and the police said that the allegation may have been made up. According to this former Crown employee, the police did not ask him the nature of his occupation or whether he worked for Crown.
427. Although he told this employee not to worry about it, as he had with previous incidents, Mr Chen obtained both legal and risk management advice as a result of the police questioning that occurred in July 2015.

Legal advice in both Australia and China

428. The Commission notes that whilst Mr Chen obtained legal advice in respect of the questioning of Crown's staff in China in July 2015, the way this legal advice was obtained differed from that which he had obtained in respect of previous events concerning the risk environment in China.
429. In that regard, unlike previous events where it would appear the advice that Mr Chen obtained was limited to advice only from the solicitor he had retained in China, Mr Zhou, Mr Chen appears to have considered the questioning of Crown's own staff to have perhaps been more important to the extent that he not only sought advice from Mr Zhou, but also sought to involve Crown's internal lawyers in Melbourne.
430. In that regard, the Commission notes that the involvement of these Australian lawyers in respect of Crown's response to the questioning of its staff in China is the subject of further specific consideration in Part 5 of the Commission's report.
431. For present purposes, however, the Commission notes that the documentary record suggests that on 9 July 2015, shortly after one of the Chinese employees had been questioned, that employee had a conversation with Crown's Chinese solicitor, Mr Zhou, which in turn caused Mr Zhou to report to Mr Chen in terms which included the following:¹³⁵

"I just spoke with [the relevant employee]. He said that the interview was straightforward. The police department asked him what he does, and he said that he is an employee of Crown Hotel

¹³⁴ As a matter of completeness, the Commission also notes that, Mr O'Connor said during his evidence to the NSW Inquiry that he was not aware that this employee had been questioned by Chinese police: Mr O'Connor's evidence to the NSW Inquiry – T2028/9-17; T2032/38 – T2033/13.

¹³⁵ CWN.541.002.0044.

(sic) and assists Chinese tourists who are interested to go to Australia and visit the hotel in preparing visa application material. The police department said that somebody has reported that he organizes overseas gambling tours, and he said he had no knowledge about it. He believes that police department was persuaded by his explanation because he has a good record. The police department needs a letter from Crown to confirm that he is an employee of Crown.

Based on the above, I would think that the letter should be very simple and straightforward. Here is my suggested languages (sic) (pls feel free to adjust wording as you see fit)..."

[original syntax retained]

432. Following this, the documentary record shows that in addition to his communications with Mr Zhou on 9 July 2015, Mr Chen also sent a lengthy email to an internal Crown lawyer, Ms Jan Williamson, copied to Mr O'Connor, in respect of the employee who had been questioned.
433. The Commission notes that the version of the email Mr Chen sent to Ms Williamson on 9 July 2015 that has been produced to the Commission is, for the most part, redacted based on an ongoing claim of legal professional privilege. However, the Commission also notes that the unredacted portion of that email includes the following:¹³⁶

Hi Jan

Our staff in Wuhan...was invited by local police late this afternoon to come in for an interview.

He was told by police that a tipster reported that he was organizing going (sic) tours. [The employee] denied it and said he worked for Crown Resorts and assisted in organizing leisure trips for customers.

After two hours, he was released. The police requested that Crown furnish a letter prior to 12pm tomorrow corroborating his statement.

..."

434. By the following day, it seems that direct communication had been established between the solicitors in that Mr Zhou and Ms Williamson were emailing each other directly. On the morning of 10 July 2015, Ms Williamson sent Mr Zhou an email relating to the request that Chinese police had made for a letter from Crown, which included the following:¹³⁷

"...can you confirm asap that the letter is to be from Crown Resorts Ltd the ASX listed Company?"

435. Mr Zhou then replied by telling Ms Williamson that the letter should be from the employee's "direct employing entity".

¹³⁶ CWN.514.035.2262.

¹³⁷ CWN.541.002.0044.

436. This in turn caused Ms Williamson to email Mr Felstead and ask him to “*authorise Tim spearman (sic) to sign on behalf of [Crown Singapore]*”. Mr Felstead duly responded by saying “*Fine by me thanks Jan*”.
437. On the Commission’s assessment of the documentary record, it would seem that, other than some very limited advice that was given in respect of the provision of the letter that had been sought by Chinese police, no legal advice was either sought or given in respect of the potential impact this event might have had on the operating environment for Crown’s employees in China, and Mr Chen took no steps to inform his staff in China that this event had occurred.

“...contributing to an evidentiary pile...” and the limited budget for obtaining advice

438. In addition to the legal advice that he sought following the questioning of Crown staff, this event also prompted Mr Chen to again seek risk management advice from Mr Phillips.
439. Among the documents relating to that advice are two separate sets of emails between Mr Chen and Mr Phillips, both of which appear to concern issues relating to the questioning of Crown staff by Chinese police.
440. The first set includes an email on 10 July 2015¹³⁸ which indicates that Mr Chen brought the questioning of at least the Crown staff member who had been asked to provide a letter to the police to the attention of Mr Phillips. In doing so, Mr Chen asked Mr Phillips to let him know if he hears of any new changes in policy or approach.
441. There was then an exchange about whether Crown should in fact provide the employment letter that had been requested by the Chinese police. Mr Phillips advised that it is normal for Chinese police to ask for such a letter and that it was necessary for Crown and the employee who had been questioned to comply. He went on however to note that:

“...we must also consider that the request for a letter has the effect of contributing to an evidentiary pile that [Chinese police] could decide to draw on in the future...

...one unintended and unavoidable consequence of this is that it could be used by [Chinese police] in the future should they wish to point to a variety of marketing activities”¹³⁹.

442. Meanwhile, the second set of emails between Messrs Chen and Phillips is one that commences in the early afternoon of 10 July 2015 with an email in which Mr Phillips says:

“Further to our email exchange this morning, please find attached our proposal on the potential new project. Look forward to your thoughts”¹⁴⁰.

¹³⁸ Email dated 10 July 2015 to Mintz (folder 1).

¹³⁹ CRL.638.001.0001.

¹⁴⁰ CWN.502.049.6605.

443. Following this, Mr Chen and Mr Phillips sent each other several emails both on 10 July 2015 and in the days which followed by which Messrs Chen and Phillips sought to agree a price for the additional work that Mr Chen was seeking to have Mr Phillips undertake.
444. Among others, these emails include an email from Mr Chen to Mr Phillips on the evening of 10 July 2015 which includes the following:
- "I have AUD\$20k to get two independent opinions. One from an investigations firm like Mintz (or Hall & Associates) and one from a law firm"*
445. Mr Phillips replied:
- "Given the limited budget, my recommendation to you is that you just focus on the law firm, and have them provide the assessment."*
446. In the context of these emails, the Commission notes that it has identified no evidence that in response to Crown's own staff being questioned by police that Mr Phillips provided Mr Chen:
- a. reports like those which he had produced in the immediate aftermath of the arrests of the other casino marketing staff that had occurred less than a month earlier;
 - b. any further advice in respect of any change in Chinese policy or any intelligence information from Mr Phillips' "sources" about the questioning of Crown staff by Chinese police; or
 - c. any advice about whether Crown should continue its current marketing activities.
447. If, as appears to be the case, no such further advice was obtained, then the reason for this is likely to be the budgetary constraints that had been placed on Mr Chen, as reflected in his comment that he only had *"AUD\$20k to get two independent opinions. One from an investigations firm... and one from a law firm."*
448. The Commission considers it unacceptable that such budgetary constraints were placed in relation to such an important issue as the questioning of staff by Chinese police about matters relating to their employment, particularly having regard to:
- a. the nature and volume of events which had preceded that questioning, including the significant response that was triggered by the previous two acknowledged escalation events, which did not directly impact Crown's staff, namely the Chinese MPS announcement and the arrest of other foreign casino staff; and
 - b. the enormous turnover that was generated for Crown by its staff in China.
449. In any event, in addition to this apparent failure to obtain detailed advice in response to the arrest of Crown's staff in China, it would also seem that Mr Chen did not tell Crown's other staff in China that one or more of their number had been questioned by Chinese police, as he had following the arrests of the other casino marketing staff.
450. The Commission considers this apparent failure to be yet another example of the lack of respect and concern that was displayed for Crown's staff in China, particularly by Mr Chen.

451. In the Commission's view, Mr Chen should have told all of Crown's staff in China that one or more of their number had been questioned by police as a matter of decency and quite apart from any risk management or corporate governance obligations he might have had. Had Mr Chen done so, it would have allowed Crown's employees in China to make their own decisions, based on their own personal circumstances, about whether they were prepared to take the same risks that had resulted in their colleagues being questioned by police.
452. The Commission also considers these matters to be further examples of the lack of relevant knowledge, training and expertise that Mr Chen brought to the task of risk management, and the extent to which it was inappropriate for that important work to be left to him.

CHINESE TELEVISION REPORT

453. Following on from the questioning of two of its China-based employees in July 2015, the next significant event relevant to the operating environment in China was a Chinese television report which:
- a. aired approximately three months after Crown's Chinese employees were questioned, on 13 October 2015; and
 - b. is now the fourth of the accepted risk escalation events that Crown acknowledged should have been elevated into the risk management structures and boards of both Crown Melbourne and Crown Resorts.¹⁴¹
454. In that context, the Commission notes that CCTV is the Chinese national television broadcaster and a source which conveys messages that are consistent with Chinese government policies.
455. On 13 October 2015, it aired a report entitled "*Overseas Casinos Setting up Networks inside China*".
456. Among other things, this report addressed the Chinese government's approach to the activities of foreign casinos generally and used the arrest of the South Korean casino staff that had occurred some four months earlier as an example of the type of conduct that was being considered.
457. This report also contained messages that the Chinese authorities were actively monitoring the activities of foreign casinos as part of its "chain breaking" campaign.
458. Like previous events, this television broadcast and the subsequent media coverage which followed it¹⁴² caused considerable disquiet amongst Crown's staff in China, who were concerned for their safety.
459. Indeed, as one of Crown's former employees who gave a signed statement to the Commission put it:

"When...the Chinese government warned on state TV that they were targeting sales people from outside China who were promoting and organising gambling in China. I and other colleagues were nervous but Crown took no action."

¹⁴¹ See Crown's submissions to the NSW Inquiry at [73(d)] as in turn accepted for the purpose of the Commission's investigation on 22 January 2021.

¹⁴² See "Korean casino lures Chinese gamblers with models and C-Listers", en.people.cn, 13 October 2015; "China arrests South Koreans for luring Chinese to casinos", Reuters, 14 October 2015; "13 South Korean Casino Managers and 34 Chinese Recruiters arrested for allegedly enticing people from China into Gambling in South Korea", Korea Portal, 3 November 2015.

460. In the Commission's opinion this is yet more evidence which directly contradicts Crown's continued assertion that its staff in China were not concerned for their welfare and did not express any concerns in that regard.

Risk management and limited legal advice

461. Although when interviewed by the Commission, Mr Chen glibly described this acknowledged risk escalation event as just "*another in a series of messages that have come from the Chinese government... over the 10 years I've been in the gaming industry*", he nevertheless considered it to have been of sufficient importance to justify yet again obtaining external advice.
462. In that regard, insofar as risk management advice is concerned, Mr Chen again consulted with Mr Phillips, this time by sending him an email on 14 October 2015 (the day after the television program had aired) that was headed "*Casinos outside our frontiers, establishing networks inside out frontiers*"¹⁴³.
463. Among other things, in this email Mr Chen asked Mr Phillips to advise him:
- "...about the current state of affairs with regards to the activities we are undertaking in China",*
noting that Crown
- "...need to have a responsible understanding of (sic) the environment has materially changed, if there are any new laws or whether there were new risks we should be managing for".*
464. It appears that Mr Chen considered that there was some urgency in this request for advice as the following Monday Crown was commencing a further "roadshow" in China. Mr Chen sought a response prior to the commencement of that roadshow accordingly.
465. On 15 October 2015, Mr Phillips replied to Mr Chen and noted that they had made inquiries with knowledgeable "sources" and:
- "...all seems to be pointing to a dedicated effort against there (sic) Korean targets rather than broad based effort, though the backdrop remains as we've identified earlier that there is interest in monitoring all foreign casino marketing in the mainland.... your team should not feel overly concerned".*
466. On 19 October 2015, Mr Phillips then reiterated his advice from four days earlier by again advising that his sources pointed to the recent arrests as being specific to the Korean entity and not part of a broader crackdown underway. Mr Phillips further advised that Mr Chen's team should "*be in good shape*" for its activities that week (apparently a reference to the roadshow that was to commence the following Monday) though Mr Phillips also reminded Mr Chen that Crown's staff in China should follow the same ground rules as had previously been advised¹⁴⁴.
467. Having regard to Mr Phillips' view that matters were pointing to a dedicated effort against the Korean targets, the Commission notes that the documentary record that has been produced to the Commission

¹⁴³ See email dated 14 October 2015 and translation by NAATI Advanced Translator dated 5 October 2018.

¹⁴⁴ Email from Mr Phillips to Mr Chen dated 19 October 2015.

includes a series of emails between Messrs Chen, O'Connor, Felstead and Ratnam which commences with an email Mr O'Connor sent early on the morning of 20 October 2015 with the subject line "*South Korean Casino Employees Arrested In China*"¹⁴⁵.

468. It seems that much of the executive level consideration that was given to this matter was predicated on a conflation of this Chinese television program with the earlier accepted risk escalation event constituted by the arrests of other foreign casino marketing staff who were, at the time, working for foreign casinos based in South Korea.
469. In any event, shortly after he had received this email from Mr O'Connor, Mr Chen replied (also copying Messrs Felstead and Ratnam) in terms which included the following:

"I have received reports back from Randy Philips (sic) of the Mintz Group. They have made inquiries to high level contacts within the Public Security Bureau, and they have been advised that this was a targeted effort against the Korean casinos – not part of a broad based effort against foreign casinos..."

Mintz has advised that our team should not be concerned beyond the need to take normal precautions as per our standard protocol. They continue to monitor the situation carefully and will advise if anything changes;

We have also sought advise (sic) from Wilmer-Hale, who have advised that there has been no change to the law on promotion of gambling. Their advice was to refrain from activities that may be seen to be aiding and abetting illegal money movements."

470. Mr O'Connor then replied thanking Mr Chen and asking him to:

"gauge the mood of the team in China...and let me know if you sense any heightened concerns".

471. Mr Chen then further replied to Mr O'Connor (again copying Messrs Felstead and Ratnam) by saying:

"There are definitely heightened concerns, but I will hold a conference call this week to address questions".

472. Although the evidence suggests that this conference call occurred, the Commission has been unable to identify any notes or other record of what was said during this conference call in the evidence produced by Crown.
473. Nevertheless, even in the absence of such notes or other record, the Commission considers the content of both Messrs O'Connor and Chen's emails to be an obvious expression of concern on behalf of Crown's staff for their safety, by reason of their employment with Crown in China.
474. That these expressions of concern were not acted on is yet another example of the lack of respect that was shown to Crown's staff in China and also of Mr Chen's lack of knowledge, training, and expertise as the person to whom the important matters of risk management were left "*on the ground.*"

¹⁴⁵ CWN.514.019.6099.

Failure to consider the legal interpretation referred to in the Chinese television report

475. Before leaving the topic of the accepted risk escalation event constituted by the Chinese television report that was aired on 13 October 2015, there is one further matter that the Commission considers important.

476. That matter is both the specific reference that this broadcast made to the criminal law that would form the basis of the arrests of Crown's staff about 12 months later and subsequently the convictions of those staff some 20 months later.

477. In that regard, the relevant television broadcast not only referred to the criminal offence of organising more than 10 persons to travel abroad to gamble but did so in terms that were contrary to the interpretation that Crown had and continues to adopt to the extent that it noted:

*"China's laws clearly stipulate that for anyone who organises more than ten people to go abroad on one occasion, or **organises people to go and gamble abroad on multiple occasions and the accumulative number reaches ten**, and when the gambling funds or commission reach a certain amount, the public security organisations shall investigate the cases for suspected gambling crimes."* [emphasis added]

478. The Commission has carefully considered this issue and notes that it has identified no evidence to suggest that:

a. the distinction between the interpretation of Chinese criminal law that Crown has and continues to press (namely that its conduct was legal as long as it did not arrange for more than 10 gamblers to travel to Australia at the same time) and the clear message broadcast by Chinese state television that the relevant prohibition contained in the Chinese criminal law includes instances of those who "*organise people to go and gamble abroad on multiple occasions and the accumulative (sic) number reaches ten*" was ever identified by Mr Chen or his advisers in China, Messrs Phillips, and Zhou; or

b. Mr Chen, or anyone else for that matter, asked for advice specifically based on the interpretation that was referred to in this Chinese State television report and thereby asked the question:

"If we assume that the Chinese state television interpretation of Chinese criminal law is correct and was applied, would that mean that Crown's staff in China would be guilty of contravening Chinese criminal law?"

479. The Commission considers it extraordinary that no one thought to specifically ask this question in the period that immediately followed the accepted risk escalation event constituted by the Chinese State television report.

480. Indeed, the Commission considers it even more extraordinary that, notwithstanding the guilty pleas, the convictions and the sentences, Crown and some of its senior executives persist in denying that Crown's activities in China contravened Chinese law. This persistence is reflected in both the submissions that

Crown made to the NSW Inquiry and also in the evidence Mr O'Connor gave to that inquiry, including as it did statements to the effect that he:

"...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 law doesn't necessarily meant that that's the way it will be applied in China."⁴⁶

481. With all due respect to Mr O'Connor, *"that China's legal system doesn't operate the same way as the western legal system"* was an important reason why matters in China should have been elevated into the risk management structures and for board consideration.
482. It certainly was not a reason or an excuse for failing to do so.
483. Furthermore, in the context of Mr O'Connor's evidence in NSW *"that China's legal system doesn't operate the same way as the western legal system"*, the Commission considers that the failure to identify the interpretation that was broadcast by Chinese State television and furthermore the failure to seek specific advice based on that interpretation to be a particularly acute example of why matters such as these needed to be elevated for consideration within the risk management structures and by the wider boards of both Crown Melbourne and Crown Resorts.
484. Furthermore, the Commission also considers Mr Chen's failure to identify the important message of how Chinese State media considered that Chinese anti-gambling laws would be interpreted by Chinese Courts to be yet another example of the lack of knowledge, training and expertise that Mr Chen brought to the important role of risk management that was left to him by Crown.

THE PERIOD BETWEEN OCTOBER 2015 AND THE ARRESTS IN OCTOBER 2016

485. The Commission turns now to the period between the last of the accepted risk escalation events constituted by the Chinese State television report in October 2015 and the subsequent arrests of Crown staff almost a year to the day later.
486. First it is important to deal specifically with the events that occurred in this period, particularly to the extent that Crown has and continues to assert that there is *"a gulf"* of approximately 12 months between the Chinese television report in October 2015 and the arrests in October 2016, where no matters relevant to the operating environment in China occurred that could or should have been elevated into the risk management structures and to the boards.
487. The Commission does not accept that there was any such *"gulf"*. Rather, on the Commission's view, important matters continued to arise in respect of the operating environment in China and risks associated with that environment continued to be identified on a regular basis between October 2015 and October 2016. Furthermore, in the Commission's view, at least eight of these matters were of

⁴⁶ Mr O'Connor's evidence to the NSW Inquiry – T2060/32-36.

sufficient importance to have justified consideration as part of Crown's risk management structures and in turn be considered for elevation to the boards of Crown Melbourne and Crown Resorts.

488. The Commission will now turn to consider those matters that occurred after October 2015 accordingly.

Online gambling, transaction limits and others arrested in China

489. First, in December 2015, Chinese police arrested 98 people connected to online gambling networks in China for:

*"involvement in an online gambling network that has opened more than 500 online casinos, attracting a million members and the investigation was ongoing"*¹⁴⁷.

490. The Commission accepts that there is no evidence to suggest that Crown operated any form of online gambling in China. However, the Commission considers that it is of concern that the evidence that has been produced to the Commission contains no indication that this matter came to the notice of anyone responsible for Crown's operations in China. The crackdown on online gambling is relevant to the operating environment in China and is a matter that should have been of interest to Crown.

491. Secondly, in January 2016, transaction limits on overseas withdrawals using "UnionPay" cards were introduced and other existing control measures were further implemented which required fully completed documentation when banks made foreign currency transactions¹⁴⁸.

492. This was a matter about which Crown was aware, and it was specifically referred to in the business planning documents that have been produced to the Commission by Crown. Notwithstanding that corporate knowledge however, the potential relevance of this matter to the operating environment in China and its potential relevance to the risks associated with that operating environment were never considered by those who were responsible for Crown's operations in China, nor as part of any risk management structure that existed within Crown at the time.

493. Thirdly, in April 2016, "Asia Gaming Brief" reported that Chinese police had arrested a further 218 suspects for allegedly luring Chinese residents to fake online casinos¹⁴⁹.

494. As in relation to the arrests that occurred in December 2015, the Commission notes that whilst there is no evidence to suggest that Crown was operating any form of online gambling in China at this time, it is of concern that in the evidence that has been produced to the Commission, there is nothing which suggests that this matter came to the notice of those who were responsible for operating Crown's business in China. Furthermore, there is also no evidence that anyone within Crown's corporate governance or risk management structures became aware of this matter. These arrests were relevant to the operating environment in China and should have been of interest to Crown.

¹⁴⁷ Asian Gaming brief "98 people arrested for illegal online gambling: China" 13 December 2015 (<https://agbrief.com/headline/98-people-arrested-for-illegal-online-gambling-china/>).

¹⁴⁸ *China tightens controls on moving money overseas*, AFR 21 Jan 2016; *China steps up capital controls to stem outflows*, Financial Times, 22 Jan 2016; *Trends in China's Capital Account*, Bulletin June Quarter 2018, Reserve Bank of Australia.

¹⁴⁹ *Chinese police bust fake casino scam*, 4 April 2016, Asia Gaming Brief.

Staff in China asked to promote “illegal” online gambling

495. Fourthly and related to the matter of online gambling that is the subject of the first and third matters referred to above, there was an email exchange between Crown’s China-based Regional Vice President – China East Region Sales Team, Wang Xun, and Crown’s Hong Kong based Senior Vice President, China, Alfredo Gomez, on 29 May 2016.¹⁵⁰

496. That exchange occurred in the context of an email a “Crown VIP Host” Samantha Demmler had sent to Mr Gomez to promote a particular online gambling offering to Crown’s clients in China “*who love to bet on sports and racing and are not currently with CrownBet...*”.

497. Ms Demmler’s email was then forwarded by Mr Gomez to Wang Xun who replied to Mr Gomez in terms that included the following:

“Internet gambling is illegal in China. Sales Team will take high risk! So please (sic) think carefully”.

498. In reply which, Mr Gomez further emailed Wang Xun on 29 May 2016 in the following terms:

“No worries Wang Xun.

I can promote to my customers myself.

If you are too worried about something within the grey line, how are you going to develop the regions for me???

Time to think seriously about your role.

Many thanks.

Alfredo Gomez.”

499. Although from this email it seems that it fell to Crown’s staff in China to take steps to protect themselves from this attempt by marketing staff in Australia to have them engage in conduct that was typically illegal in China, there is no evidence to suggest that Crown’s marketing staff in Australia understood the operating environment in China or the extent to which their activities in Australia, including the marketing of online gambling, might have been illegal in China.

500. The Commission considers that this is yet a further indication that Crown’s risk management structures were inadequate prior to its staff being arrested in October 2016.

“China jobs should all have a significant risk premium”

501. Fifthly, in an email that Mr Chen sent to Mr O’Connor on 2 June 2016, after Mr O’Connor had sent him an email which, among other things, dealt with the remuneration payable to the Crown staff in China, Mr Chen responded to Mr O’Connor’s email and expressed the view (among others) that:

¹⁵⁰ CWN.518.014.1508.

“...the China data looks to me to be skewed very low especially since the China jobs should all have a significant risk premium.

While this is useful as a guide, in a talent starved industry, we will pay what we need to get the talent. Guide be damned...”¹⁵¹

502. This is yet another instance where Crown’s staff (in this case Mr Chen) expressed concerns about the risks associated with Crown’s operations in China including, in this instance, that those risks justified the payment of what Mr Chen characterised as “a significant risk premium” or, put more colloquially, might otherwise be referred to as “danger money”.

Mr Chen tells Mr Felstead he has “...taken on the risk of being prosecuted in China”

503. Sixthly, in an email Mr Chen sent to Mr Felstead on 26 June 2016 (about four months prior to the arrests), Mr Chen said that he had:

“...taken on the risk of being prosecuted in China, threatened bodily harm by customers, and abused health-wise by the demand (sic) of entertaining in this job...”.

504. The “risk of being prosecuted in China...” could not be more plainly stated. In the Commission’s view Mr Chen knew he had taken on that risk and that was a matter that should have been elevated through the risk management structures and to the boards of Crown Melbourne and Crown Resorts.
505. It is again incongruous that, having received an email from the very person who Mr Felstead told the Commission had responsibility for risk management in China, which referred to the specific risk of Mr Chen himself being prosecuted in China, that Mr Felstead would not have sought to raise that matter through the risk management structures and directly with the boards of Crown Melbourne and Crown Resorts.

Other casino marketing staff are sentenced to fifteen months imprisonment

506. Seventhly, in August 2016 (less than two months before Crown’s staff were arrested), the South Korean casino marketing staff who had themselves been arrested in June 2015 were found guilty and sentenced for breaching the criminal anti-gambling laws of China. They were sentenced to 15 months’ imprisonment and then deported¹⁵².
507. This matter should have been considered as part of the risk management structures and by the boards of Crown Melbourne and Crown Resorts.
508. In particular, the Commission considers that specific consideration should have been given to any judgment or sentencing remarks of the court that might have been published in respect of this

¹⁵¹ CWN.514.007.3120.

¹⁵² DFAT chronology p5, Information from Korean Embassy in Beijing.

sentencing, and specific consideration should have been given to the relevance of any such judgment or sentencing remarks to Crown's operations in China.

509. On the evidence available to the Commission, there is nothing to suggest that such consideration was ever given.
510. Eighthly, in an email Mr Chen sent at about the same time as this sentencing occurred, on 11 August 2016, and in the context of a Crown marketing "roadshow" that Crown conducted from 11 – 22 August 2016, Mr Chen advised against another Crown executive attending that roadshow and noted that:
- "China remains sensitive and we do not want to show up to meetings with more than a couple of folks"¹⁵³.*
511. Again, this is an expression of concern for the safety of both Mr Chen and the other executive who was planning to attend the roadshow and is furthermore a matter that should have been elevated through the risk management structure and to the boards.
512. In respect of all eight of these events, there is nothing in the documentary record that was produced to the Commission which suggests that any of these matters ever came to the notice of anyone within the Crown corporate governance or risk management structures. They ought to have been.
513. It is then for these reasons that the Commission does not accept that there is or was in fact any "gulf" between the last of the accepted risk escalation events constituted by the Chinese State television report that occurred in October 2015 and the eventual arrests of Crown staff a year later upon which it could be suggested that the risks to Crown's staff in China had in that period somehow diminished.

¹⁵³ Email exchange Mr Chen to Mr de Lima 11 August 2016.

PART 4

THE CONSEQUENCES OF MANAGING THE RISKS “ON THE GROUND”

514. This Part considers the way in which Messrs Chen, O'Connor, Ratnam and Felstead attempted to manage the risks associated with Crown's operations in China “*on the ground*”.
515. In that regard, the Commission considers that there were three main failings in managing the risks in China “*on the ground*”, constituted by:
- a. Crown's staff in China had no voice, and their interests were given little or no consideration;
 - b. the external advice that was obtained was inadequate; and
 - c. Crown made public statements about the success of its business in China which rather than reducing or managing the risk to its staff in China likely increased the risk to its staff in that country.

CROWN'S STAFF IN CHINA HAD NO VOICE

516. In earlier parts of this Report, the Commission has set out in detail the evidence which the Commission considers amply demonstrates the extent to which Crown's staff in China sought to express their justified concerns. Those concerns were never addressed by Messrs Chen, O'Connor, Felstead or others. In particular, prior to the arrests of the Crown staff in October 2016, the risks that gave rise to the concerns were never considered as part of Crown's risk management structures or by the wider boards.
517. The arrests were a consequence of denying Crown's employees in China a voice in managing the risks that they themselves were facing as employees who lived and worked in China. Crown should have been as concerned with their safety and the legality of their activities on its behalf as it was with the safety of its employees in Australia and with the legality of its activities in Australia. It failed its employees in China.

ADVICE INADEQUATELY OBTAINED

518. As was described in detail earlier in Part 2 of the Commission's report:
- a. Crown maintained no risk management structure specifically in respect of its operations in China;
 - b. in the absence of such a specific structure, it was mostly left to Mr Chen to manage the risks associated with Crown's China operations “*on the ground*”;
 - c. Mr Chen told the Commission that he did not know anything about the risk management structures that Crown had in place in Australia;

d. Mr Chen:

- had a position description which did not mention him as having responsibility for matters of risk management;
- had no experience in matters of risk management, before he was employed by Crown;
- was never trained by Crown, specifically in respect of Crown's risk management structures in Australia or in respect of Crown's regulatory obligations in Australia;

e. notwithstanding these matters, Crown relied on Mr Chen, almost exclusively, to take the steps that were designed to manage any risks associated with the operating environment in China.

519. In that context, the Commission notes that one of the consequences of this approach was that it was left to Mr Chen to select and retain the external solicitors and risk management advisers on whose advice Crown would later proceed.
520. The Commission considers that there were several failings in the way in which the external legal and risk management advice was obtained by Mr Chen on behalf of Crown. These are discussed below.

No evidence advisers were given the details of Crown's operations in China

521. First, it would be a glaring failure if – as appears likely to have been the case – Mr Chen sought advice at various times without ever giving the external advisers detailed and accurate instructions about the precise way in which Crown conducted its business in China.
522. In that regard, a careful analysis of the various communications between Mr Chen and the external advisers he retained on behalf of Crown suggests that much of the communication between them was relatively informal. The emails suggest that, for the most part, Mr Chen often sought advice by making telephone calls to Messrs Zhou and Phillips. These telephone calls were then generally followed up with very brief emails confirming the nature of the issue about which Mr Chen was seeking advice.
523. In turn, with only the limited exception of one detailed risk management advice that Mr Chen received from Mr Phillips in the aftermath of the Chinese MPS announcement that has already been referred to above in Part 3 of this report (being an advice that was obtained on 25 March 2015), the various responses that Mr Chen received were equally brief, particularly to the extent that at no time did any of the legal or government relations advice contain a statement of what it was that the external advisers knew or understood about Crown's operations in China.
524. For that reason, it has not been possible for the Commission to assess the basis upon which the external advice was given or to make an informed assessment of whether those advising Crown did in fact adequately understand what it was that Crown was doing in China.
525. The Commission considers the absence of this detail from the external advices that Mr Chen obtained to be a matter that should be addressed by Crown in future. It is not acceptable that Crown Melbourne

is unable to produce evidence to the Commission which demonstrates the precise basis upon which external advice about Crown's operations in China was both sought and received.

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No evidence advisers were told about Crown's risk management structures or regulatory obligations in Australia

527. As well as the Commission being concerned about the absence of evidence about what the external advisers knew about Crown's operations in China, the Commission is also concerned about the absence of evidence relating to what it was that Mr Chen told the external advisers about Crown's obligations in Australia.
528. In that regard, whilst it is perhaps not surprising that Mr Chen would not raise matters specific to Crown's risk management procedures (noting that these are matters about which Mr Chen was unaware), Mr Chen did know that Crown Melbourne operated, as he put it, "*at the pleasure of the jurisdiction*".
529. It appears that several important facts were never communicated by Mr Chen to the external advisers he retained on behalf of Crown, including that:
- a. many of Crown's Chinese customers gamble at the Melbourne casino, which operates pursuant to the sole licence that has been granted to it by the Commission;
 - b. in the absence of the licence granted by the Commission, gambling in Victoria is illegal;
 - c. Crown Melbourne is controlled or overseen by Crown Resorts which is an ASX-listed public company;
 - d. as an ASX-listed public company, Crown Resorts and its directors have important governance responsibilities which include being responsible for matters of setting the risk appetite of Crown Resorts;
 - e. the directors of both Crown Melbourne and Crown Singapore include Australian directors who are responsible for ensuring the occupational health and safety of the employees of those companies, including when those employees are overseas.
530. The Commission considers the failure to communicate these important matters to the external advisers meant that the advisers could not give advice that gave due regard to Crown's obligations in Australia and was neither too aggressive or nor too risk averse in the light of those obligations.

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The previous relationships between Mr Chen, WilmerHale and Mintz

532. As noted above, Mr Chen selected both the law firm WilmerHale and the risk management firm Mintz to provide advice. Mr Chen had existing business relationships with both firms prior to his employment by Crown.
533. There is no evidence that Mr Chen engaged in any form of process (competitive or otherwise) to determine whether WilmerHale and Mintz were the most appropriate firms to provide the advice he sought.
534. There is also no evidence that any Crown internal lawyers and risk management professionals who were acquainted with the regulatory and corporate governance environment in Australia were involved in the retention of WilmerHale or Mintz.
535. Furthermore, whilst there is some evidence that Mr O'Connor and Mr Chen discussed the retention of these firms,¹⁵⁴ and also evidence that Mr O'Connor supported their retention, the evidence also strongly indicates that it was Mr Chen alone who selected WilmerHale and Mintz to give advice.
536. In the Commission's opinion, the fact that Mr Chen as someone who lacked the relevant knowledge, training and expertise was allowed to select and retain his existing business associates to advise Crown in respect of matters of such importance as the safety of Crown's staff in China is a further failing by Crown in respect of this matter.

Retaining Americans to advise about China

537. As well as being existing business associates of Mr Chen, the Commission also notes that Mr Chen is an American. He was born in the United States and is a United States citizen¹⁵⁵.
538. The websites of both WilmerHale and Mintz reveal that both these firms are based in the United States but have operations in China. In these circumstances, the Commission considers that the external firms that Mr Chen retained on behalf of Crown should fairly be described as American.
539. Indeed, the extent to which the firms retained by Mr Chen were American is emphasised by the fact that Mr Chen's initial contact at WilmerHale was Charlene Barshefsky, who was not only someone with whom Mr Chen said he had an existing professional relationship but also a former United States trade representative to China.
540. Similarly, when it came to retaining the United States-based Mintz, Mr Chen emphasised that the consultants to that firm included Mr Randy Phillips. Mr Phillips was also someone with whom Mr Chen had an existing professional relationship. Furthermore, according to Mr Chen, he was also a former agent of the United States CIA.
541. Whilst the documentary record reveals that Mr Chen in large part dealt with the Chinese solicitor Mr Zhou at WilmerHale, the Commission is concerned that Mr Chen appears to have selected Crown's

¹⁵⁴ Transcript of Mr Chen interview p59 – 60.

¹⁵⁵ Passport for Mr Chen submitted with casino special employee licence application (file 17).

external advisers by reference to his existing American business contacts and not by reference to whether there might have been Chinese legal and/or risk management firms who might have been better placed to assess the operating environment in China.

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STATEMENTS THAT MAY HAVE HEIGHTENED THE RISKS

543. The final matter is that of the, probably unintended, consequence of statements Crown made in the period prior to the arrests in October 2016, which may have in fact increased the risk that Crown's staff in China would be arrested.
544. In that regard, as has already been noted, Crown's operations in China were highly successful for several reasons, including the extraordinary efforts of Crown's staff in China and the extent to which those staff were able to attract Chinese gamblers who had previously gambled in Macau.
545. At the strategic level, this success was also attributable to the business strategy that Crown adopted by which it sought to attract more Chinese gamblers to Crown's Australian casinos, including through the strategy that Mr Chen called the "*double down approach*". Critically, this involved, among other things, promoting Australia as a confidential place for Chinese citizens to gamble.
546. Indeed, the success of Crown's business in China is evident when one considers that in FY15, Crown achieved a record turnover of \$70.8 billion from its "VIP" gambling at Crown's Australian Resorts. This was an increase of 41.8 per cent from the previous financial year. Crown largely sustained this massive growth in F16 (in the period immediately prior to the arrests) with its second highest turnover of \$65.1 billion.
547. By reference to this success, Crown made several relevant public statements or announcements in the period leading up to the arrests of its staff in October 2016.
548. These statements or announcements included:
- a. an article in *The Australian* on 20 February 2015 (14 days after the MPS announcement that was referred to in detail earlier in Part 3 of this report) entitled "*VIP influx a windfall for Crown Resorts*" which, among other things:
 - noted that "*Crown Resorts will continue to ramp up its marketing-pitch to high-rollers from China ...*," and
 - contained statements by the then CEO of Crown Resorts, Mr Craigie, relating to both Crown putting additional resources in China as well as the benefits to Crown resulting from China's "crackdown" on Macau;
 - b. the FY15 Crown Resorts annual report in which the then Chairman of Crown Resorts, Mr Rankin, included a message that:

"A stand-out was the strong growth in international VIP program play turnover across Crown's Australian resorts. This followed greater investment in our VIP international marketing.

...

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";

- c. a *Forbes Asia* article in August 2016 (shortly before the arrests in October of that year) entitled "Chinese win big for Australian casinos" which noted, among other things, that more than a third of Crown Melbourne's revenue comes from international visitors, including a significant proportion from China. The article also referred to expansion plans that Crown Melbourne had at that time "to meet future visitor demand, particularly from Chinese"¹⁵⁶;
- d. the FY16 Crown Resorts annual report which was released on 19 September 2016 (only a few weeks before the arrests in October 2016) and included statements from Mr Felstead (who was at the time both a director of Crown Melbourne and also the CEO of Crown's Australian Resorts) which noted that:
 - in FY16 there was a marked rise in international visitors, particularly from China;
 - Crown Resorts' sustained focus on growing numbers from China had "paid off" with the resorts in Melbourne and Perth now among the most visited tourist destination in their respective states;¹⁵⁷ and
 - more than a third of revenue generated by the Australian casinos was generated by international visitors, predominantly from mainland China.

549. In the Commission's view, it is difficult to deny that Mr Felstead should have considered whether making statements such as these in his CEO report was appropriate, having regard to the sheer number of matters he was aware of in respect of the operating environment in China, as are referred to in Part 3 of this report.
550. In any event, these, of course, are all statements that one might assume were made with the endorsement of the board of Crown Resorts and/or Crown Melbourne, but perhaps without those boards having the benefit of properly understanding the operating environment which existed in China at the time.
551. The Commission also considers that it is highly likely that these public announcements and reports by Crown would have come to the attention of Chinese authorities and have been considered disrespectful, particularly in circumstances where, at about the same time that Crown was making public statements about its success in deriving profits from Chinese gamblers, Chinese authorities were themselves making public statements about their efforts to combat the activities of foreign casinos who sought to attract Chinese citizens to gamble abroad, and to stop the out-flow of money from China accordingly.

¹⁵⁶ www.forbes.com/sites/muhammaddock/2016/08/23/ "Chinese visitors win big for Australian Casinos".

¹⁵⁷ Crown Resorts Annual report 2016 p12.

552. The Commission considers that the combination of these two sets of public announcements may have had a negative impact on the operating environment that existed in China in the period immediately prior to the arrests and significantly increased the risk that Crown staff in China would be questioned, detained, convicted and sentenced for gambling-related crimes in China. Apart from failing to act in the interests of its staff in China, Crown failed to even consider whether its statements were consistent with proper risk management.
553. In the Commission's view, had the various risk management structures been engaged in relation to both the four accepted risk escalation events and also the other matters that have been described in detail in Part 3 of this report, it is likely that Crown might have carefully considered, at the very least, making less ostentatious statements about its success in luring Chinese gamblers to its Australian casinos.

PART 5 KNOWLEDGE OF THE ACCEPTED RISK ESCALATION EVENTS

554. As has already been noted in Part 1 of this report, there are four specific matters that Crown now accepts should have been elevated to the relevant risk management structures and boards of Crown Melbourne and Crown Resorts but were not.
555. Having regard to that acknowledgment by Crown, one of the steps that the Commission has taken during its investigation has been, specifically by reference to that concession that Crown has now made to, consider the evidence that is available about precisely who within the Crown governance structure knew about these four accepted risk escalation events and when.
556. The primary purpose for considering these matters has been to identify whether persons other than Messrs Chen, O'Connor, Felstead, Ratnam and others who are referred to in Part 3 of this report knew of these matters but also failed to elevate them for consideration by the boards of Crown Melbourne and Crown Resorts.
557. In that context then, this Part 5 of the Commission's report is divided into four parts, constituted by a separate consideration of each of the four topics that are constituted by the four accepted risk escalation events.
558. In respect of each of these four accepted risk escalation events, the Commission has then considered the issue of precisely who knew about each of these four events when they occurred.
559. Furthermore, in considering that question, in this part of its report, the Commission has generally paid closer attention to what was known by those outside of the group of executives who were responsible for operating Crown's China business "on the ground".
560. The Commission has taken this approach because the Commission considers from the detailed consideration that has been given to each of the four relevant matters in Part 3 of this report above, it is clear that at least insofar as Messrs O'Connor, Chen and Ratnam are concerned, they were abundantly aware of the accepted risk escalation events and yet failed to elevate them.
561. Meanwhile, insofar as Mr Felstead is concerned, notwithstanding the overwhelming nature of the evidence establishing his knowledge of the accepted risk escalation events, the Commission has decided that Mr Felstead (and indeed for that matter also Mr Craigie) should specifically be referred to in this Part 5 of the Commission's report to the extent that they were not only CEOs, but were also directors of at least two or more of Crown Melbourne, Crown Singapore and/or Crown Resorts at the time these events occurred (and also because of Mr Felstead's standing invitation to attend Crown Resorts' board meetings).

KNOWLEDGE OF THE MINISTRY OF PUBLIC SECURITY ANNOUNCEMENT

562. As described in detail in Part 3 of the Commission's report above, on 6 February 2015, the Chinese MPS made an announcement to the effect that it would be conducting a "crackdown" on the activities of foreign casinos in China.
563. Crown has acknowledged that this is an event that should have been reported into the risk management structures and boards of Crown Melbourne and Crown Resorts so that those boards might have considered the extent to which this matter constituted a risk that was within the risk appetite of those companies' business operations.
564. The Commission considers that acknowledgment to be appropriate – the MPS announcement should have resulted in an immediate response at the highest levels of both the Crown Melbourne and Crown Resorts governance structures.

Messrs Packer, Alexander and Craigie

565. At the time of the MPS announcement:
- a. Mr Packer was the executive chairman of Crown Resorts;
 - b. Mr Alexander was the executive deputy chairman; and
 - c. Mr Craigie was not only the CEO of Crown Resorts but also a director of each of Crown Melbourne, Crown Resorts, Crown Singapore, and a member of the risk management committee of the Crown Resorts board.
566. Together with other members of the Crown Resorts board, each of Messrs Packer, Alexander and Craigie were in the habit of receiving reports from media monitoring services which, the evidence suggests, included reports about the Chinese Ministry of Public Security announcement at the time that announcement was made.¹⁵⁸
567. Notwithstanding that they were in the habit of receiving reports from media monitoring services, and other evidence such as that which Mr Felstead gave to the NSW Inquiry to the effect that he assumed that Mr Craigie and others would have been aware of the Chinese MPS announcement from media reports,¹⁵⁹ the Commission has been unable to identify any documentary evidence that any of Mr Packer, Mr Alexander or Mr Craigie became aware of the MPS announcement at the time in a way that caused them to take any steps in response to it.
568. Furthermore, in the absence of documents to that effect, the Commission also notes that:

¹⁵⁸ In respect of Mr Packer see CPH.001.703.0086; Mr Alexander see CRL.522.001.5174; Mr Craigie see CRL.522.001.3090.

¹⁵⁹ Mr Felstead's evidence to the NSW Inquiry – 17 August 2020 – T1171/10-14.

- a. in his evidence to the NSW Inquiry, Mr Packer said that he did not become aware of the MPS announcement until June 2015 (the announcement having been made on 6 February 2015), but when he did find out about it, he *"informed Mr Rankin and Mr Craigie to look into it"*¹⁶⁰;
- b. in his evidence to the NSW Inquiry, Mr Craigie agreed that (although he did not become aware of the effect of this announcement until later):
 - this event was a warning from the Chinese authorities in relation to foreign casinos including Crown Resorts;¹⁶¹
 - Crown Resorts needed to heed that warning.¹⁶²

569. As well as this, Mr Craigie said that, had he known about it at the time (although he failed to raise it with the boards when he later did become aware of this event),¹⁶³ he would *"have caused a discussion to make sure that we were not going to be on the wrong end of this crackdown"*¹⁶⁴. Mr Craigie also told the NSW Inquiry that he would have escalated the matter to the Crown Resorts risk management committee (of which he was a member) had he become aware of it at the time, so that the board might have assessed its risk appetite in respect of the MPS announcement.¹⁶⁵
570. In any event, the Commission considers that, based on the evidence available, it cannot be satisfied that, notwithstanding their receipt of reports from the media monitoring services, that Messrs Packer, Alexander and Craigie were in fact aware of the MPS Announcement at the time it was made.
571. As noted above, Messrs Packer and Craigie did become aware of the MPS Announcement some four months later in the context of the arrest of casino marketing staff from South Korea. That is the subject of further consideration later in this Part 5 of this report.

Mr Johnston

572. Mr Johnston was both a member of the Crown Resorts board and also aware of the MPS announcement, at about the time it was made. He failed to raise that matter into to the risk management structures or otherwise bring the matter to the attention of the Crown Resorts board.
573. In that regard, the Commission notes that Mr Johnston's evidence on this topic was the subject of specific and detailed consideration at the NSW Inquiry. Furthermore, the Commission notes that whilst Mr Johnston's evidence on this topic altered over time, he ultimately accepted during the NSW Inquiry (noting that there may be some ambiguity about precisely when it was that Mr Johnston became aware of either the fact or the substance of the announcement)¹⁶⁶, that this was a matter that did cause him *"some concern"* and that he appreciated that it was a serious warning when he became aware of it.¹⁶⁷

¹⁶⁰ Mr Packer's evidence to the NSW Inquiry – 7 October 2020 – T3608/13-27.

¹⁶¹ Mr Craigie's evidence to the NSW Inquiry – 20 August 2020 – T1482/15-18.

¹⁶² Mr Craigie's evidence to the NSW Inquiry – 20 August 2020 – T1482/20-23.

¹⁶³ Mr Craigie's evidence to the NSW Inquiry – 20 August 2020 – T1482/31-35; T1483/20-25; T1497/14-32.

¹⁶⁴ Mr Craigie's evidence to the NSW Inquiry – 20 August 2020 – T1482/27-28.

¹⁶⁵ Mr Craigie's evidence to the NSW Inquiry – 20 August 2020 – T1482/37-46.

¹⁶⁶ Which may have either been on 24 February 2015 (see CRL 545.001.0128 and Mr Johnston's evidence to the NSW Inquiry – 25 September 2020 – T2960/25 – T2961/9); or 5 March 2015 (see Mr Johnston's evidence to the NSW Inquiry – 25 September 2020 – T2960/8).

¹⁶⁷ Mr Johnston's evidence to the NSW Inquiry – 25 September 2020 – T2963/17-31.

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Mr Felstead

576. As has been noted earlier in this report, Mr Felstead was not only a CEO with responsibility for Crown's operations in China, but he was also a director of Crown Melbourne in the period prior to the arrests.
577. During his evidence to the NSW Inquiry, Mr Felstead conceded that he knew about the MPS announcement at the time that it was made but failed to inform:
- a. the board of Crown Melbourne;¹⁶⁸
 - b. the risk management committee of Crown Resorts;¹⁶⁹ or
 - c. the board of Crown Resorts.¹⁷⁰
578. Mr Felstead also gave evidence to the NSW Inquiry that at the time of the MPS announcement he appreciated that it had the potential to create a risk to Crown's existing business operations in China¹⁷¹ and that it was a matter that he needed to treat seriously.¹⁷²
579. Having regard to both this evidence by Mr Felstead and also Crown's acceptance of the MPS announcement as an acknowledged risk escalation event, this matter should have been elevated for consideration by the risk management structures and boards of Crown Melbourne and Crown Resorts.

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¹⁶⁸ Mr Felstead's evidence to the NSW Inquiry – 17 August 2020 – T1196/40-T1197/45.

¹⁶⁹ Mr Felstead's evidence to the NSW Inquiry – 17 August 2020 – T1169/34-37; T1195/43-1196/34.

¹⁷⁰ Statement to Mr Felstead in the proceeding known as *Zantran Pty Limited v Crown Resorts Ltd*, 17 December 2019; CRL540.001.0114.

¹⁷¹ Mr Felstead's evidence to the NSW Inquiry – 17 August 2020 – T1167/44 – T1168/13.

¹⁷² Mr Felstead's evidence to the NSW Inquiry – 17 August 2020 – T1167/15-18.

KNOWLEDGE OF THE ARRESTS OF OTHER FOREIGN CASINO MARKETING STAFF

582. As was described in detail in Part 3 of the Commission's report above, in June 2015, several marketing staff who were employed by casinos in South Korea and who had travelled to China to undertake marketing activities were arrested by Chinese police.
583. Crown has acknowledged that this is an event that should have been reported into the risk management structures and to the boards of Crown Melbourne and Crown Resorts so that those boards might have considered the extent to which this matter constituted a risk that was within the risk appetite of those companies' business operations.
584. In the context of this acknowledgment by Crown, the Commission has carefully considered the evidence that exists in respect of the extent to which those outside the small group who were managing this event "on the ground" knew about this matter but failed to elevate it for consideration by the boards of Crown Melbourne and Crown Resorts.
585. In doing so, the Commission considers that the extent to which this matter was known to each of Messrs O'Connor, Chen and Ratnam is amply demonstrated by the detailed discussion that appears in Part 3 of this report. The Commission has not sought to further refer to that evidence in this part of the report.

Messrs Packer, Rankin, Craigie (and Barton)

586. The evidence available indicates that each of Messrs Packer, Rankin, Craigie and Barton (who were all directors of Crown Resorts at the relevant time) became aware that other casino marketing staff had been arrested in China at or about the time that these arrests occurred.
587. Notwithstanding that it is a matter which Crown now acknowledges should have been elevated, all these directors failed to elevate this matter for board consideration.
588. In that regard, in their evidence to the NSW Inquiry, Messrs Packer and Craigie both said that they were aware that other casino marketing staff had been arrested in China at about the time that event occurred.¹⁷³
589. Furthermore, insofar as each of Messrs Packer, Rankin and Craigie are concerned, Mr Packer also gave evidence at the NSW Inquiry that he and Mr Rankin discussed these arrests and:
- "...agreed simultaneously that the company needed to be on high alert and [that Mr Packer] tasked him [i.e., Mr Rankin] with going back and doing a due diligence of our operations in China with Rowen [i.e., Mr Craigie], to make sure we were okay"¹⁷⁴.*
590. Insofar as Mr Rankin is concerned, although he was neither interviewed by the Commission, nor gave evidence to the NSW Inquiry, the documentary record suggests that not long after the arrests, on 24

¹⁷³ Mr Packer's evidence to the NSW Inquiry – 7 October 2020 – T3608/13-17; T36131-4; Mr Craigie's evidence to the NSW Inquiry – 20 August 2020 – T1494/41-44.

¹⁷⁴ Mr Packer's evidence to the NSW Inquiry – 7 October 2020 – T3621/3-33.

June 2015, Mr Rankin issued a directive of sorts to each of Messrs Craigie and Barton which included the statement that Crown:

"...should be on high alert for this type of regulatory action in China...the training of new in country sales staff should be reviewed and be extensive..."¹⁷⁵

591. In response to the Commission's propositions, Crown says this email:

"...does not say that staff training needed to be 'extensively reviewed'"¹⁷⁶

(presumably because it refers only to "new" in country sales staff). The Commission considers this response to be pedantic. However, it is unhelpful for Crown to speculate on what Mr Rankin (who has never been asked about this email) meant by the words he wrote.

592. In any event, at least for his part, Mr Craigie told the NSW Inquiry that, as he understood it, by sending an email in these terms, Mr Rankin was seeking to convey that:

"...Crown Resorts should be on high alert for possible arrest of its staff in China...[and it was]...a serious risk for which Crown Resorts needed to be on high alert..."¹⁷⁷

593. Mr Craigie also received a copy of the risk management advice from Mr Phillips at the Mintz group that had been obtained by Mr Chen in the immediate aftermath of these arrests when he was copied on an email from Mr Felstead entitled "Update" on 28 June 2015.¹⁷⁸

594. In the context of these matters, Mr Craigie acknowledged during his evidence to the NSW Inquiry that as an executive director of Crown Resorts and also as a member of the risk management committee of that company's board, that he should have notified his colleagues on the risk management committee so that the risk that Crown's staff in China might be arrested could have been considered by that committee.¹⁷⁹

595. Having regard to this evidence from Mr Craigie and also Crown's acknowledgment that this matter should have been elevated for board consideration, the Commission also notes that, insofar as Mr Barton is concerned, the Commission has identified no evidence to suggest that he informed anyone of the email that he received from Mr Rankin on 24 June 2015.

596. Also, in the context of this evidence, the Commission notes that in the course of questions asked of him by Counsel Assisting the NSW Inquiry, which had to that point established that each of Messrs Packer, Craigie and Rankin were aware both of the arrests of other casino staff and the need to be on "high alert" and yet failed to escalate the matter for board consideration, Mr Packer said *"...the three of us are all guilty for that"*¹⁸⁰.

597. With all due respect to Mr Packer, the Commission agrees.

¹⁷⁵ CRL 522.001.3082.

¹⁷⁶ Crown's response to the Commission's propositions received 22 January 2021, page 16, paragraph 11.

¹⁷⁷ Mr Craigie's evidence to the NSW Inquiry – 20 August 2020 – T1494/46 – T1496/1.

¹⁷⁸ CRL 522.001.4220.

¹⁷⁹ Mr Craigie's evidence to the NSW Inquiry – 20 August 2020 – T1497/7-23.

¹⁸⁰ Mr Packer's evidence to the NSW Inquiry – 8 October 2020 – T3755/42-47.

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Messrs Felstead and Johnston (including Mr Johnston's reporting of the arrests)

599. In addition to the evidence in respect of Messrs Packer, Craigie, Rankin and Barton, the evidence that has been reviewed by the Commission also establishes that Messrs Felstead (a director of Crown Melbourne) and Johnston (a director of Crown Resorts and CPH) also knew about the arrests of other casino marketing staff and, at least insofar as Mr Felstead is concerned, failed to elevate the issue for board consideration.
600. In that regard, as the Commission has already noted briefly in Part 2 of this report, when dealing with the reporting line constituted by the VIP / CPH Working Group meetings, in his evidence to the NSW Inquiry, Mr Felstead said that whilst it did not occur to him at the time that the arrest of other casino marketing staff was a matter that he needed to report to either the board of Crown Melbourne (on which he sat), or the risk management committee of Crown Resorts,¹⁸¹ he nevertheless did proceed to brief Mr Johnston about this issue at a VIP / CPH Working Group meeting that was held via telephone.¹⁸²
601. Furthermore, the Commission also notes that Mr Felstead further brought this matter to Mr Johnston's attention on 28 June 2015 when he copied him on an email entitled "Update" which, among other things, included a copy of the risk management advice that Mr Chen had obtained from Mr Phillips in the immediate aftermath of the arrests.¹⁸³

Conflicting evidence about whether Mr Johnston informed the entire board of Crown Resorts

602. For his part, Mr Johnston told the NSW Inquiry that he considered the arrests of other casino marketing staff in China to have been an important development in relation to the safety of Crown's staff in China. Mr Johnston also said that he understood these arrests to be part of a wider "crackdown" on foreign casinos operating in China.¹⁸⁴
603. In the context of that evidence, Mr Johnston says that accordingly he raised the matter of the arrests at the 10.00am board meeting of the Crown Resorts board that occurred on 12 August 2015 (that is about two months after the arrests had occurred).
604. Mr Johnston also told the NSW Inquiry that, in doing so, he not only told the board about the fact of the arrests, but also of the substance of at least the risk management advice that had been obtained from Mr Phillips by Mr Chen in response to this issue.¹⁸⁵

¹⁸¹ Mr Felstead's evidence to the NSW Inquiry – 18 August 2020 – T1212/4 – T1213/7.

¹⁸² Mr Felstead's evidence to the NSW Inquiry – 18 August 2020 – T1213/9-47.

¹⁸³ CRL 522.001.4220.

¹⁸⁴ Mr Johnston's evidence to the NSW Inquiry – 25 September 2020 – T2965/1-45

¹⁸⁵ Mr Johnston's evidence to the NSW Inquiry – 25 September 2020 – T2965/20 – T2966/17; also see Mr Johnston's written statement in the proceeding known as *Zantran Pty Ltd v Crown Resorts Ltd*.

605. In the context of his evidence to that effect however, the Commission notes that the minutes of this meeting do not refer to Mr Johnston having in fact raised this matter which Crown now accepts should have been raised for board consideration¹⁸⁶, and when this fact was brought to Mr Johnston's attention during his evidence to the NSW Inquiry, Mr Johnston sought to explain its absence from the minutes in the following terms:

"...it was not on the agenda and, therefore, [Mr Johnston] assumes that's why the company secretary didn't reflect it in the minutes. The minutes by their nature typically tend to be brief"¹⁸⁷

606. Furthermore, the Commission also notes that Mr Johnston's evidence that he informed the board of Crown Resorts about the arrests of other casino marketing staff in China at the Crown Resorts board meeting that occurred on 12 August 2015 is not supported by others who attended that meeting, including in particular:

- a. Mr Alexander who chaired this meeting. In his evidence to the NSW Inquiry, Mr Alexander said that he had no recollection of Mr Johnston saying anything about other casino marketing staff having been arrested either in the context of a formal board meeting or more generally;¹⁸⁸ and
- b. Mr Neilson who, in his capacity as Crown Resorts company secretary, was responsible for keeping the minutes of this meeting. In his evidence to the NSW Inquiry, Mr Neilson said he could not recall whether Mr Johnston had mentioned the arrests of other casino marketing staff at any board meeting, shortly after the arrests had occurred or more generally.¹⁸⁹

607. On the evidence available to it, the Commission does not consider it open to conclude that Mr Johnston did in fact raise the matter of the arrest of other foreign casino marketing staff at the Crown Resorts board meeting that occurred on 12 August 2015.

The knowledge of Ms Danziger, Ms Coonan, Mr Demetriou and Professor Horvath

608. Regardless of that however, the Commission notes that it is of particular concern that in their evidence to the NSW Inquiry each of Ms Danziger (who was a member of the Crown Resorts risk management committee at the time), Ms Coonan, Mr Demetriou and Professor Horvath (all of whom held relevant directorships at the time) said that Mr Johnston did in fact tell them about the arrests of other casino marketing staff on 12 August 2015. They said that this occurred in a conversation that occurred either before or after the formal board meeting of Crown Resorts that was conducted on that day.¹⁹⁰

609. In that regard, the Commission is concerned that Crown now accepts that this is a matter that should have been considered by the wider boards and was also a matter that was known by each of these four directors when they were told about it by Mr Johnston.

¹⁸⁶ CRL 512.001.7497.

¹⁸⁷ Mr Johnston's evidence to the NSW Inquiry – 25 September 2020 – T2966/19 – T2967/17.

¹⁸⁸ Mr Alexander's evidence to the NSW Inquiry – 1 October 2020 – T3453/20-37.

¹⁸⁹ Mr Neilson's evidence to the NSW Inquiry – 10 September 2020 – T2354/23-46.

¹⁹⁰ Ms Danziger's evidence to the NSW Inquiry – 24 August 2020 – T1604/7-44; Ms Coonan's evidence to the NSW Inquiry – 16 October 2020 – T4398/15 – T4399/17; Mr Demetriou's evidence to the NSW Inquiry – 12 October 2020 – T3933/6 – T3934/3; Professor Horvath's evidence to the NSW Inquiry – 13 October 2020 – T4131/35 – T4132/19.

610. Furthermore, the Commission is also concerned that, specifically in the case of Mr Demetriou, as well as giving evidence of what Mr Johnston told him about the arrest of other foreign casino marketing staff in China during a conversation on 12 August 2015, he gave evidence to the effect that he was not aware, prior to the arrests in October 2016, that Crown employed staff who lived and worked in China. It is difficult to understand how in these circumstances, Mr Demetriou could have made any assessment of the relevance of the information that he says Mr Johnston gave him on 12 August 2015.
611. In any event, the Commission notes that in addition to giving evidence about what they were told by Mr Johnston, each of Ms Danziger, Ms Coonan, Mr Demetriou and Professor Horvath seemed to suggest that in doing so, Mr Johnston sought to down-play the seriousness of the arrest of other casino marketing staff including by emphasising that:
- a. the marketing staff arrested in June 2015 had been involved in currency movements that were apparently not part of Crown's operations;
 - b. the executives who operated Crown's business in China had obtained legal advice that confirmed that Crown staff did not operate in precisely the same way as those who had been arrested;
 - c. as Professor Horvath put it, "...the activities of Crown employees [in China] were consistent with Chinese gaming law"¹⁹¹.
612. The Commission considers that it is of little relevance whether Mr Johnston did or did not attempt to down-play the seriousness of this matter. Furthermore, it is also of little relevance if Mr Johnston did not convey that he considered these arrests to have been part of a wider "crackdown" on the activities of foreign casinos operating in China or otherwise conveyed the background of these events.¹⁹²
613. Rather, in the Commission's view, Crown is right to accept that this matter should have been elevated to the risk management structure and for consideration by the board of Crown Resorts.
614. Each of Ms Danziger, Ms Coonan, Mr Demetriou and Professor Horvath should have formally raised it for consideration at board level. Furthermore, by reason of her position on the Crown Resorts risk management Committee, Ms Danziger should have also raised this matter with that committee.

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Messrs Dixon, Barton and Neilson

616. In addition to those who were told about the arrest of other foreign casino marketing staff by Mr Johnston on 12 August 2015, the Commission notes that the evidence indicates there was also another group of

¹⁹¹ Professor Horvath's evidence to the NSW Inquiry – 13 October 2020 – T4131/35 – T4132/8.

¹⁹² Ms Danziger's evidence to the NSW Inquiry – 24 August 2020 – T1604/23-27; Ms Coonan's evidence to the NSW Inquiry – 16 October 2020 – T4398/45 – T4399/23; Professor Horvath's evidence to the NSW Inquiry – 13 October 2020 – T4132/15-19.

directors and/or the company secretary and Crown general counsel who became aware of this matter, namely Messrs Dixon, Barton and Neilson.

617. In that regard, insofar as Mr Dixon is concerned, he agreed during his evidence at the NSW Inquiry that, whilst he could not recall who told him,¹⁹³ he knew about this matter at about the time that it occurred.¹⁹⁴ Mr Dixon chaired Crown Resorts risk management committee at the time.
618. Meanwhile, insofar as Messrs Barton and Neilson are concerned, the documentary record indicates that (in addition to the email that Mr Barton also received from Mr Rankin that was referred to above)¹⁹⁵, both Messrs Barton and Neilson were also copied on an email from Mr Felstead by which he, in effect, circulated the risk management advice that Mr Chen had obtained from Mr Phillips in respect of this matter.¹⁹⁶
619. Furthermore, specifically in relation to Mr Neilson, the Commission also notes that he gave evidence to the NSW Inquiry which confirmed that he was aware that other casino marketing staff were arrested in China at about the time those arrests occurred.¹⁹⁷
620. In his evidence to the NSW Inquiry, Mr Dixon also indicated that he could not be sure about whether he was informed that these arrests were part of a wider "crackdown" by Chinese authorities on foreign casinos operating in China.¹⁹⁸ In the Commission's view that is of little relevance for the same reason as is referred to above in respect of the evidence of Ms Danziger, Ms Coonan, Mr Demetriou and Professor Horvath on that issue.
621. The point is that Crown has now acknowledged that this matter should have been raised for risk management and broader board consideration and it was not. It does not matter whether Mr Dixon knew about any broader context when he became aware of this matter shortly after it occurred. He was the chair of the risk management committee and should have raised it.

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Crown's response to the Commission's propositions and the knowledge of those who sat on Crown Resorts' risk management committee

623. It is necessary to deal with a specific matter that Crown raised in response to a series of propositions that the Commission asked Crown to accept, based on the Commission's assessment of the evidence in this matter.
624. In that regard, Crown's response to those propositions included a response to a proposition relating to the adequacy of Crown's risk management structures which included an assertion that:

¹⁹³ Mr Dixon's evidence to the NSW Inquiry – 21 October 2020 – T46536/30 – 45.

¹⁹⁴ Mr Dixon's evidence to the NSW Inquiry – 21 October 2020 – T46536/30 – T4654/20.

¹⁹⁵ CRL 522.001.3082.

¹⁹⁶ CRL 522.001.4220.

¹⁹⁷ Mr Neilson's evidence to the NSW Inquiry – 10 September 2020 – T2354/12-21.

¹⁹⁸ Although he did also say that information about a wider "crackdown" did come up "at some stage...I'm just not sure of the timeframe." Mr Dixon's evidence to the NSW Inquiry – 21 October 2020 – T4653/30 – T4654/20.

"There was no evidence to the NSW Casino Inquiry [c/f no evidence at all] to the effect that, had the important operating developments identified in [Crown's submissions to the NSW Inquiry, including as they did the four specific risk escalation events that are specifically addressed in this part of the Commission's report] been drawn to the attention of...the Crown Melbourne Audit Committee, or the Crown Resorts Risk Management Committee, they would not have been appropriately elevated."

625. With respect, the Commission does not agree.
626. On the evidence before the Commission, as has been described in detail immediately above, there is ample evidence that the accepted risk escalation event constituted by the arrest of other foreign casino marketing staff was brought to the attention of each of Mr Dixon (who chaired the Crown Resorts risk management committee), as well as Ms Danziger and Mr Craigie (who were also members of the Crown Resorts risk management committee). Notwithstanding that, each of Mr Dixon, Ms Danziger and Mr Craigie all still failed to appropriately elevate the matter.
627. The Commission is concerned that Crown continues to adopt positions on important issues that are plainly not supported by the evidence.

Ms Tegoni

628. Finally, before leaving the topic of who knew about the arrests of other casino marketing staff in China in June 2015, the Commission notes that there is documentary evidence which establishes that Ms Tegoni was also copied on the email by which Mr Felstead, in effect, circulated the risk management advice that Mr Chen had obtained from Mr Phillips in the immediate aftermath of these arrests.¹⁹⁹
629. When Ms Tegoni was asked about this email during the NSW Inquiry she said she was on leave at this time and therefore did not read the email by which Mr Felstead circulated that advice.²⁰⁰ Confidential

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KNOWLEDGE THAT CHINESE POLICE HAD QUESTIONED CROWN STAFF

630. As was described in detail in Part 3 of the Commission's report above, after other casino marketing staff had been arrested in China in June 2015, in early July 2015 at least two of Crown's own marketing staff were questioned by Chinese police.
631. On 22 January 2021, Crown acknowledged for the purpose of the Commission's investigation that this is an event that should have been reported into the risk management structures and to the boards of

¹⁹⁹ CRL 522.001.4220.

²⁰⁰ Ms Tegoni's evidence to the NSW Inquiry – 10 September 2020 – T2294/33 – T2295/38.

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Crown Melbourne and Crown Resorts so that those boards might have considered the extent to which this matter constituted a risk that was within the risk appetite of those companies' business operations.

632. In the context of that acknowledgment, the Commission has carefully considered the evidence that is available to it in respect of the extent to which those outside of the small group who were managing events *"on the ground"* knew about this matter but failed to elevate it for consideration by the risk management structures and the boards of Crown Melbourne and Crown Resorts.
633. The extent to which this was a matter that was known to each of Messrs O'Connor, Chen and Ratnam is discussed in detail in Part 3 of this report. The Commission does not specifically deal further with that evidence in this part of its report.
634. Before proceeding with its analysis of the evidence on this topic however, there is a matter that needs to be mentioned at the outset.

The Commission's limited understanding of this matter, prior to December 2020

635. As has already been noted above in Part 3 of this report, the questioning by Chinese police of Crown staff in China in July 2015 was a matter that included the involvement of both the Crown internal lawyers and external solicitors.
636. Insofar as the involvement of Crown internal lawyers is concerned, the Commission notes that Crown has continued, for most of the Commission's investigation, to make various claims of legal professional privilege in respect of the involvement of those internal lawyers.
637. Furthermore, Crown's assertion of that legal professional privilege has persisted to the extent that many of the source documents such as emails that have been produced to the Commission in respect of this issue are extensively redacted.
638. Consequently, for most of its investigation, the Commission has had a very limited understanding of the events that surrounded the questioning of Crown's staff by Chinese police in July 2015.
639. That however changed in early December 2020, when Crown produced to the Commission a copy of the written submissions that had been made by Counsel Assisting the NSW Inquiry.
640. The Commission has carefully considered those written submissions of Counsel Assisting (that were produced by Crown) and notes that, notwithstanding the ongoing assertion of legal professional privilege insofar as the Commission's consideration of this issue is concerned, it seems Crown may have either been:
- a. required to produce privileged documents to the NSW Inquiry; and/or
 - b. waived privilege in respect of certain documents at the NSW Inquiry; and/or
 - c. agreed a protocol with the NSW Inquiry in respect of any documents that remain the subject of a claim of legal professional privilege;

a combination of any of all of these factors seems to have resulted in the NSW Inquiry being provided with additional information by Crown to that which had been provided to the Commission by Crown.

641. Consequently, following Crown's production to the Commission of the written submissions of Counsel Assisting the NSW Inquiry, the Commission became aware, for the first time, of several very important matters in respect of Crown's response to the questioning of its staff by Chinese police in July 2015.
642. This part of the report is based not only on the limited documents that were made available to the Commission by Crown, but also upon the written submissions of Counsel Assisting the NSW Inquiry. As already mentioned, those were produced to the Commission in or about early December 2020.
643. Crown's claims of legal professional privilege, including insofar as it concerns this issue, are the subject of further specific consideration later in Confidential

Mr Felstead and Ms Williamson

The letter confirming employment

644. The detailed facts surrounding the questioning of two Crown marketing staff in China in July 2015 are set out above in Part 3 of this report.
645. Whilst it is unnecessary to re-state those facts here in their entirety, it is necessary for the Commission to note for present purposes that one of the matters that occurred in the context of this questioning was that, during their interview of the Crown employee who was questioned on 9 July 2015, Chinese police asked that Crown employee to provide them with a letter confirming the details of that Crown employee's position.
646. That request for a letter was then a matter that the employee raised with Mr Chen who then proceeded to in turn raised the issue with Crown staff in Australia.
647. After Mr Chen did that, several of Crown's Australian-based employees became involved in considering issues relating to the provision of the letter. This included consideration of the appropriate Crown entity from whom the letter should be sent, and who was the most appropriate person to sign the letter.
648. Several emails that Crown produced to the Commission, including emails dated 10 July 2015, identify the involvement of Mr Felstead (a director of Crown Melbourne), internal Crown lawyers Ms Williamson and Ms Tegoni and also the Human Resources executive Tim Spearman in the provision of the letter.
649. Whilst the versions of these emails that have been produced to the Commission have been redacted, it remains clear from these redacted documents that Mr Felstead's permission was sought to issue the letter that had been requested by Chinese police. Ultimately, the letter was signed by Mr Spearman.
650. Furthermore, it can also be ascertained, notwithstanding the redactions, that among the information that was provided to the Melbourne-based Crown lawyer Ms Williamson was an email that Mr Chen had received from the risk management adviser Mr Phillips in which Mr Phillips proffered his opinion that:

“...we must also consider that the request for the letter has the effect of contributing to an evidentiary pile that [Chinese police] could decide to draw upon in the future”²⁰².

651. Ms Williamson gave evidence about this at the NSW Inquiry. Further, the Commission also notes that when she did so she conceded that it seemed to her that the risk management adviser that Mr Chen had retained, Mr Phillips, thought that Chinese police might take further action against Crown's staff in China.²⁰³
652. This was the third time that Ms Williamson had become aware that a Crown employee had been questioned by police. In particular, Ms Williamson:
- a. had received emails about a different Crown employee having been questioned in China in 2014;²⁰⁴
 - b. gave evidence to the NSW Inquiry that she was aware at the time that the employee in respect of whom a letter was sought was the second employee to be questioned at that time, because she had been forwarded other emails from Messrs O'Connor and Chen that referred to there being “another” staff member who had been questioned at this time.²⁰⁵
653. The Commission considers that it is likely that Ms Williamson was aware of much of the background to Crown's operations in China. In particular, it seems she may have been party to a conference with the law firm Baker & McKenzie which considered the business law obligations of Crown in China.²⁰⁶
654. Furthermore, it also seems that she received what Crown has characterised as “the core 19 February 2013 advice” that had been prepared by WilmerHale in respect of Crown's operations in China, not long after Mr Chen had commenced his employment at Crown.²⁰⁷
655. In the context of her having that extensive level of knowledge, Ms Williamson then took various steps to facilitate the provision of the letter that the Chinese police had requested.
656. Among others, these steps included Ms Williamson:
- a. making enquiries of the solicitor Mr Chen had retained in China in respect of the entity within the Crown group from whom the letter should be sent;²⁰⁸

²⁰² CRL.638.001.0001.

²⁰³ Ms Williamson's evidence to the NSW Inquiry – 9 September 2020 – T2224/19-29.

²⁰⁴ CRL.527.001.1301 at .1302.

²⁰⁵ Ms Williamson's evidence to the NSW Inquiry – 9 September 2020 – T2223/4 – T2224/17. The Commission also notes that based on these emails referring to “another” employee that most of those involved in this matter, including Mr Felstead, were aware that more than one Crown employee had been questioned at this time. The Commission also notes that Mr Felstead confirmed this during his evidence to the NSW Inquiry to the extent that he gave evidence that the employee in respect of whom the letter had been requested was the second employee who had been questioned by Chinese police at about this time. See Mr Felstead's evidence to the NSW Inquiry – 18 August 2020 T1219/12-29.

²⁰⁶ In this respect, the Commission notes that it is presently unable to make any definitive statements about Ms Williamson's knowledge because of those matters in circumstances where Crown has advised the Commission that: “...Crown maintains legal professional privilege over communications recorded in handwritten notes made by Ms Williamson in 2011. Crown has not waived privilege over those communications. Crown was summonsed to produce them to the NSW Casino Inquiry in circumstances where s 17(1) of the Royal Commissions Act 1923 (NSW) removed privilege as a ground for objecting to the production pursuant to that summons.” See Crown's response to the Commission's propositions received 22 January 2021, page 23, paragraph 21(b). The Commission has decided not to probe those claims of legal professional privilege as it may have unnecessarily delayed the completion of this report.

²⁰⁷ Crown's response to the Commission's propositions received on 22 January 2021, page 22, paragraph 18.

²⁰⁸ CWN.541.002.0044.

- b. obtaining the approval of Mr Felstead for “*Tim Spearman to sign on behalf of [Crown Singapore]*”,²⁰⁹
 - c. on 10 July 2015, arranging for the original of the letter she had facilitated to be couriered to the Crown employee who had been questioned by Chinese police; and
 - d. emailing a request to Mr Chen to in turn ask the employee who had been questioned by police to provide notes from his questioning, including the identification of the Chinese police officers involved.²¹⁰
657. Although the Commission has no evidence available to it of the extent to which Mr Spearman was involved in this matter, he did sign a letter that included the following:

“To whom it may concern

This is to confirm that Mr ... (passport no..) is an employee of Crown Resorts Pte Ltd (Hong Kong), which is a subsidiary of Crown Melbourne Ltd and is part of Crown Resorts Limited group of companies (Crown Resorts). Crown Resorts is one of the leading hotel, resorts and entertainment companies and is listed on the Australian Stock Exchange.”

Signed by Tim Spearman as authorised signatory of CRPL.

Dated 9 July 2015”

658. The Commission is particularly concerned, in the context of a letter in this form, that the letter fails to mention that this employee’s tasks in China included that of organising gambling tours to Australian casinos, including the Melbourne casino, and that furthermore it fails to mention that Crown’s primary business is that of operating casinos.
659. Further, the Commission is also particularly concerned about the explanations that Mr Felstead and Ms Williamson gave to the NSW Inquiry about why this letter failed to include any mention of Crown’s business of operating casinos, particularly to the extent that:
- a. Mr Felstead said the “*only reason*” for excluding a reference to Crown’s business of running casinos was that he considered the letter to be a legal matter and relied on the legal advice he received in respect of the letter accordingly;²¹¹
 - b. Ms Williamson (as the person who was apparently providing the legal advice about the letter upon which Mr Felstead says he relied) could only say that the phrasing was a generic description of Crown’s business and the way that letters were written, even in the Australian context.²¹²

²⁰⁹ CWN.541.002.0044.

²¹⁰ INQ.950.002.0145; INQ.950.002.0146.

²¹¹ Mr Felstead’s evidence to the NSW Inquiry – 18 August 2020 – T1232/5-26.

²¹² Ms Williamson’s evidence to the NSW Inquiry – 9 September 2020 – T2255/24-34. In addition to this evidence given by Ms Williamson on this topic, the Commission also notes that Mr O’Connor was also asked about the failure to refer to gaming operations in this letter during his evidence to the NSW Inquiry. The Commission further notes that in the context of that evidence, Mr O’Connor denied that the letter was misleading for not mentioning Crown’s business of operating casinos

660. The Commission considers these purported explanations to be unsatisfactory.
661. Meanwhile, the Crown staff member who was questioned by Chinese police also gave a written account of his experience to Mr Chen (in Chinese) on 10 July 2015.
662. Mr Chen forwarded that written account, without translation, and on 15 July 2015 Ms Williamson obtained a translation of the written account (the translation having been undertaken by another Crown employee).²¹³
663. This translation of the employee's account (consistent with the letter that had been drafted to be provided to Chinese police) indicates that the employee had not told the Chinese police that his primary function (or at least one of his functions) was that of arranging Chinese gamblers to travel to Australia to gamble.
664. Ms Williamson was asked about that translated account during her evidence to the NSW Inquiry. During that evidence, she said that she appreciated at the time that when this Crown employee had been questioned, the employee had not been truthful in the answers that the employee had given to the Chinese police.²¹⁴
665. Further, Ms Williamson also said in her evidence to the NSW Inquiry that:
- a. notwithstanding that this employee appeared to have misled the authorities, that no one who was aware of this incident within Crown raised that matter as a concern;²¹⁵
 - b. the fact that this employee had not been truthful with the Chinese police suggested that there might have been some risk to this employee; however, so far as she could recall, she did not discuss the possibility that the giving of misleading answers might have been suggestive of risk with anyone at the time.²¹⁶
666. Ms Williams gave no explanation at the NSW Inquiry of why she did not elevate this matter into the risk management structure that existed within Crown at the time, particularly in circumstances where it was her immediate superior, Ms Tegoni, who had ultimate responsibility for that risk management structure.²¹⁷
667. Rather, according to her evidence at the NSW Inquiry, Ms Williamson:
- a. considered that it was Mr Felstead's responsibility as the senior executive responsible for the VIP International business to raise the matter of the employee being questioned in China at director level;²¹⁸ and

because, he said, the letter also failed to mention other aspects of Crown's business such as the extent to which it includes the operation of restaurants. See Mr O'Connor's evidence to the NSW Inquiry – 3 September 2020 – T2033/25-42.

²¹³ INQ.950.002.0157.

²¹⁴ Ms Williamson's evidence to the NSW Inquiry – 9 September 2020 – T2221/43 – T2222/4. It is also noted that Mr O'Connor also gave evidence to a similar effect, including evidence that specifically confirmed that he was aware that the Crown employee who was the subject of this questioning was involved in organising gambling tours to Crown Resorts' casinos in both Melbourne and Perth. See Mr O'Connor's evidence to the NSW Inquiry – 3 September 2020 – T2031/12-15, 42-46.

²¹⁵ Ms Williamson's evidence to the NSW Inquiry – 9 September 2020 – T2257/42-46.

²¹⁶ Ms Williamson's evidence to the NSW Inquiry – 9 September 2020 – T2258/11-23.

²¹⁷ Ms Tegoni's evidence to the NSW Inquiry – 10 September 2020 – T2309/45 – T2310/1.

²¹⁸ Ms Williamson's evidence to the NSW Inquiry – 9 September 2020 – T2230/34 – 46.

- b. did not herself raise the issue with any directors because she did not have direct communication with them.²¹⁹

668. With all due respect to Ms Williamson, the Commission considers that these purported explanations are unsatisfactory. There was nothing stopping her, particularly as a lawyer employed by Crown and a person who was providing advice in respect of this matter, from taking steps to include this event in the risk management procedures that existed within Crown at the relevant time. Ms Williamson could have, and should have, done that either via her immediate superior, Ms Tegoni, or otherwise.
669. Furthermore, that is a step that Ms Williamson could and should have taken, irrespective of any expectations she might have had of Mr Felstead or any lack of direct communication that might have existed between Ms Williamson and directors, other than Mr Felstead (who himself, of course was a director of Crown Melbourne and a person who had a standing invitation to attend meetings of the Crown Resorts board and as such was director with whom Ms Williamson was in fact in direct communication).
670. Having regard to these matters, the Commission considers that each of Mr Felstead and Ms Williamson knew about these matters in a manner that meant that they should have been elevated by them either through the risk management structures or direct to the wider boards of Crown Melbourne and Crown resorts.

Confidential

Mr Johnston

672. In addition to the evidence relating to the involvement of Mr Felstead and Ms Williamson in the events that followed the questioning of Crown staff in China in July 2015, the Commission notes that Mr Johnston was also told about this matter.
673. The Commission has already referred to the extent to which Mr Felstead raised this issue with Mr Johnston in the context of a VIP/CPH working group meeting²²⁰.
674. In addition to this, Mr Felstead also sent Mr Johnston an email which included advice Mr Chen had obtained from WilmerHale on the topic and an additional notation from Mr Felstead that: *"This is what we will be up against in China at the moment"*²²¹.
675. After he received this information from Mr Felstead, Mr Johnston not only failed to inform the board of Crown Resorts (on which he sat) about the matter, but also, according to his evidence at the NSW Inquiry, he did not mention it to anyone.²²²

²¹⁹ Ms Williamson's evidence to the NSW Inquiry – 9 September 2020 – T2231/5 – 7.

²²⁰ Mr Felstead's evidence to the NSW Inquiry – 18 August 2020 – T1221/28-37.

²²¹ CRL 636.001.1747.

²²² Mr Johnston's evidence to the NSW Inquiry – 25 September 2020 – T2979/42 – T2980/3.

676. According to Mr Johnston's evidence to the NSW Inquiry, the reason why he did not mention it to anyone was because he *"didn't think it was serious"*²²³ in circumstances where, he said:

*"...I am not – I'm certainly not an expert in doing business in China. The Chinese lawyers were not alerting us to the fact that it was a serious issue. Nor were Crown's local lawyers"*²²⁴.

677. The Commission is very concerned that Mr Johnston as a director of Crown Resorts at the time did not consider the questioning of Crown staff by Chinese police to be a serious matter, irrespective of what any lawyers might have failed to say.

678. The Commission considers that the questioning of an overseas-based staff member by police in respect of matters directly relevant to their employment would always be a serious matter that would justify being elevated for consideration as part of both formal risk management structures and wider board consideration. Indeed, that is particularly so in circumstances where Crown Melbourne is a casino licensee and Crown Resorts is listed on the ASX.

679. In this case the seriousness of the matter was increased by the circumstances that existed at the time that including the circumstances that Mr Johnston acknowledged (during his evidence to the NSW Inquiry) that:

- a. in the period prior to the arrests that eventually occurred in October 2016, Mr Johnston considered China to be a riskier place for Crown staff to work than Australia;²²⁵
- b. he knew that, less than six months before the questioning, the Chinese MPS had announced a "crackdown" on foreign casinos operating in China;²²⁶
- c. he knew that, shortly before the questioning of the Crown staff member, Chinese police had arrested several marketing employees in China who worked for other foreign casinos based in South Korea;²²⁷
- d. in his email informing Mr Johnston of the fact of the questioning, Mr Felstead had expressly told Mr Johnston that *"this"* (that is, questioning by police) is what Mr Felstead thought that Crown was *"up against"* in China at the time;²²⁸
- e. he carefully read the email that he had received from Mr Felstead relating to the questioning,²²⁹ which included details that the person questioned by Chinese police had been accused of organising gambling tours to Australia²³⁰ and that advice had been sought from both internal and external solicitors in respect of that issue.²³¹

680. Furthermore:

²²³ Mr Johnston's evidence to the NSW Inquiry – 25 September 2020 – T2975/10 – 17.

²²⁴ Mr Johnston's evidence to the NSW Inquiry – 25 September 2020 – T2974/15 – 23.

²²⁵ Mr Johnston's evidence to the NSW Inquiry – 25 September 2020 – T2949/5-9.

²²⁶ Mr Johnston's evidence to the NSW Inquiry – 25 September 2020 – T2973/31 – 34.

²²⁷ Mr Johnston's evidence to the NSW Inquiry – 25 September 2020 – T2973/36 – 39.

²²⁸ Mr Johnston's evidence to the NSW Inquiry – 25 September 2020 – T2973/10 – 18.

²²⁹ Mr Johnston's evidence to the NSW Inquiry – 25 September 2020 – T2974/39 – 41.

²³⁰ Mr Johnston's evidence to the NSW Inquiry – 25 September 2020 – T2971/11 – T2972/29.

²³¹ Third statement of Mr Johnston to the NSW Inquiry dated 15 September 2020; WIT.CPH.006.0001 at .0016.

- a. on his version of events, Mr Johnston had previously considered the arrest of non-Crown casino marketing staff to have been of sufficient seriousness to raise with the board of Crown Resorts in August 2015;
- b. on the evidence of at least Ms Danziger, Ms Coonan, Mr Demetriou and Professor Horvath, Mr Johnston had raised the arrest of non-Crown marketing staff with them on 12 August 2015;
- c. in hindsight, he accepted that he should have shared this event with his colleagues on the full board of Crown Resorts²³² and this matter should have been included in the Crown risk management processes that existed at the time.²³³

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Ms Tegoni

682. As has already been noted in this section of the Commission's report, the internal Crown lawyer with whom Mr Felstead was dealing, for the most part, in respect of the accepted risk escalation event that is constituted by the questioning of a Crown staff member by Chinese police in July 2015 was Ms Williamson. Furthermore, as has also been noted, Ms Williamson reported directly to a more senior lawyer, Ms Tegoni.
683. In the context of that reporting structure between these two lawyers, Ms Williamson gave evidence to the NSW Inquiry that she considered that it was "*perhaps*" the responsibility of Ms Tegoni²³⁴ to bring the fact of the questioning of a Crown employee or employees to the attention of the boards of Crown Melbourne and/or Crown Resorts.
684. Having regard to Ms Williamson's evidence to that effect, the Commission has considered it appropriate to specifically consider the question of Ms Tegoni's involvement in this matter and furthermore the question of whether she too should have reported the questioning of Crown staff by police in China.
685. In that regard, on the evidence available to the Commission, it appears that Ms Williamson notified Ms Tegoni of the fact that a Crown staff member had been questioned by police on 9 July 2015²³⁵ and then later also requested guidance from Ms Tegoni regarding the appropriate employing entity for the purpose of the letter that had been requested by Chinese police.²³⁶
686. Although when questioned about these matters in the course of the NSW Inquiry, Ms Tegoni was not prepared to accept that she read these emails which she had received from her direct report Ms Williamson (even though they included a request for Ms Williamson for Ms Tegoni to "*p/s advise*" her)²³⁷, it does seem implicit in Ms Tegoni's evidence that, even if she did not read these emails, she was

²³² Mr Johnston's evidence to the NSW Inquiry – 25 September 2020 – T2976/126 – 20.

²³³ Mr Johnston's evidence to the NSW Inquiry – 25 September 2020 – T2980/13 – 18.

²³⁴ Ms Williamson's evidence to the NSW Inquiry – 9 September 2020 – T2230/34 – 46. Furthermore, the Commission notes that Ms Williamson also thought that it was "*perhaps*" also the responsibility of Mr Neilson. In respect of that evidence, the Commission notes that, having considered the matter, the evidence available suggests that Mr Neilson's involvement in this matter was minimal and as such, he may not have in fact been sufficiently aware of relevant matters.

²³⁵ CRL 636.001.0411.

²³⁶ CRL 636.001.2132.

²³⁷ Ms Tegoni's evidence to the NSW Inquiry – 10 September 2020 – T2304/35 – T2307/17.

nevertheless aware of the fact that Chinese police had questioned a Crown staff member in July 2015, at about the same time as that questioning occurred.

687. Furthermore, the Commission notes that such an implication arises from Ms Tegoni's evidence about the reason why she did not raise this matter with anyone in the period prior to the arrests that occurred in October 2016.
688. In that regard, Ms Tegoni did not seek to assert that she did not raise this matter because it was something about which she was unaware. Rather, she said in her evidence at the NSW Inquiry that she did not raise it because she did not deem it to have been of sufficient importance to have reported to anyone.²⁵⁸
689. In the Commission's view, Ms Tegoni's explanation to that effect is unsatisfactory for several reasons including that:
- a. Ms Tegoni was the executive with ultimate responsibility for risk management. It is incongruous for Ms Tegoni to have held that role within a group of companies that includes both an ASX-listed entity (Crown Resorts) and also the exclusive holder of a casino licence in Victoria (Crown Melbourne) and for her not to consider that the questioning of an employee by police about matters directly relevant to a staff member's employment was not a matter that would justify active risk management and reporting (at the very least);
 - b. the questioning of its staff in China has now, quite properly, been acknowledged by Crown as being one of the accepted risk escalation events;
 - c. the evidence reveals that this accepted risk escalation event was not an isolated incident insofar as Ms Tegoni was concerned in that when she became aware of this matter, it constituted at least the second time Ms Tegoni had become aware that a Crown employee had been questioned by police in China – she having also been aware of the employee who had been questioned in 2014.

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A further matter related to the questioning

691. In addition to the issue of precisely who had knowledge of the questioning of a Crown staff member by Chinese police in July 2015, there is also one further issue that should be raised in respect of this matter.
692. That issue is the evidence which indicates that the employee who was questioned by Chinese police on 9 July 2015 travelled to Melbourne four days after the questioning, on 13 July 2015.

²⁵⁸ Ms Tegoni's evidence to the NSW Inquiry – 10 September 2020 – T2309/32 – 43.

693. Whilst according to Mr Chen this was a planned trip²³⁹ and unrelated to being questioned by Chinese police shortly before, on the evidence available, there is nothing which suggests that any Crown employees in Melbourne met with the Chinese employee who had been questioned to discuss their experience or to gather further information about their police interview.
694. There is also no evidence that any of the senior executives or directors in Australia who knew about this matter took any steps to ensure that issues such as the welfare or mental health of the employee who had been questioned were addressed, either in China or whilst this employee was in Melbourne in the immediate aftermath of this event.
695. The Commission considers this apparent failure to address issues associated with the health and safety of this employee to be yet another matter which is indicative of the disrespect with which Crown's China-based employees were treated.
696. Had this employee been an employee of an Australian company, the Commission would have taken steps to consider what further action might have been taken, including further action based on the extent to which the conditions to which Crown's employees in China were exposed might have constituted a breach of Australian occupational health and safety laws.
697. However, as Crown's China-based employees were employed overseas by a company incorporated in Singapore, the Commission considers it unlikely that it would be able to take further action in that respect.

KNOWLEDGE OF THE CHINESE TELEVISION REPORT

698. The final matter that Crown has acknowledged as a matter that should have been elevated for consideration by the boards of Crown Melbourne and Crown Resorts is that of the Chinese television report that was broadcast on 13 October 2015.
699. That report was the subject of specific and detailed consideration earlier in this report at Part 3.
700. Here the Commission notes only that it has identified no evidence to suggest that this issue was considered at director level, other than the evidence which establishes Mr Felstead's involvement as a director of Crown Melbourne.
701. That is perhaps not surprising when one considers that this accepted risk escalation event is constituted by a Chinese language television report that aired (it would seem) only in China.

Mr Felstead

702. Notwithstanding that however, the evidence indicates that on the same day as he attended a board meeting of Crown Resorts (namely 20 October 2015), Mr Felstead received an email from Mr Chen

²³⁹ Email from Mr Chen to Mr O'Connor dated 13 July 2015.

which specifically referred to this event and the risk management advice that Mr Chen had obtained from Mr Phillips in respect of it²⁴⁰, which was referred to earlier in Part 3 of this report.

703. Among other things, this email also referred to the extent to which Crown's staff in China were upset or concerned by the program.
704. Notwithstanding this, there is no evidence to suggest that Mr Felstead raised this matter for consideration by the board of Crown Resorts (or otherwise for consideration by the board of Crown Melbourne, of which Mr Felstead was a director).
705. The Commission considers that an expression of fear by staff who were working for Crown overseas on the same day as Mr Felstead was attending a board meeting should have been enough for Mr Felstead to have raised those fears with the boards of both Crown Melbourne and Crown Resorts.
706. The Commission considers the absence of such evidence, when taken together with Crown's acknowledgment that this matter should have been elevated, to be a very serious matter.

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²⁴⁰ CRL 522.001.0493 at 0494.

PART 6

MATTERS ARISING DURING THE INVESTIGATION

708. In this Part 6 of its report, the Commission addresses events that have occurred in the period since the Commission commenced investigating this matter.
709. The Commission considers Crown's conduct in respect of these matters is unsatisfactory.

CROWN'S RESPONSE TO MEDIA ALLEGATIONS

710. During July 2019, several media outlets made serious allegations about Crown and its business operations in China, including an allegation to the effect that Crown had instructed its staff in China to falsely claim that they were not working in China, but in fact, were working elsewhere.
711. Shortly before these allegations, the Commission had provided Crown with an early version of a draft report that had been prepared in respect of this investigation. Among other things, that draft report included specific reference to the concerns that the Commission held at that time (based on the limited information then available to it) about many of the matters that are now referred to in this report.
712. Among others, these issues included the Commission's concerns about the apparent failure to engage Crown's risk management structures in respect of the operating environment in China and also the more general failure to report matters to the boards of Crown Melbourne and Crown Resorts. These concerns also included those that were based on the apparent failure to report the four matters that Crown now accepts should have been reported but were not so reported.
713. After it was provided to Crown, the Commission's draft report was specifically considered during an "*in camera*" meeting of the Crown Resorts board on 12 June 2019. At that meeting, among other things, the implications of the Commission's draft report were discussed, including the:
- "...implications in the [Commission's draft report] that some executives of Crown had not fully conveyed to the relevant board committees and the full board the level of risk involved in operating in China"²⁴¹.*
714. The current chairperson of Crown Resorts, Ms Coonan, was asked about this meeting during her evidence at the NSW Inquiry and gave evidence that included that the implications about executives not having fully conveyed the level of risk involved in operating in China was a "*collective concern*" of the Crown Resort's board.²⁴²
715. Notwithstanding this "*collective concern*", Crown published a highly provocative response to the media allegations that had been made in about late July 2019.

²⁴¹ CRL 569.001.0010.

²⁴² Ms Coonan's evidence to the NSW Inquiry – 16 October 2020 – T4426/20-29.

716. In the Commission's view, this media response, insofar as it concerned matters relevant to the China arrests, was highly inappropriate for at least the following reasons:
- a. it failed to mention the "*collective concern*" of the Crown Resorts board, based as it was on the draft report that the Commission had earlier provided;
 - b. it sought to imply that Crown Resorts had relied upon legal advice that it had obtained prior to the arrests in October 2016, when it is now abundantly clear that no such advice was ever provided to the boards of Crown Melbourne and Crown Resorts, at least prior to the arrests;
 - c. it sought to question the motives of the Crown employee who was quoted and/or appeared in the media stories that had contained the allegations in circumstances where, it was said, that employee had sought compensation from Crown because of her experience of having spent considerable time incarcerated in China.
717. Several Crown Resorts directors gave evidence about the media response at the NSW Inquiry, including Ms Coonan²⁴³ and Ms Halton²⁴⁴ who agreed that, in hindsight, Crown's response to the media allegations was inappropriate, including to the extent that it failed to acknowledge the "*collective concern*" that the board held at the time, based as it was on the Commission's draft report.
718. The Commission considers that the response to the media allegations is a further instance of a break-down in the corporate governance structures at Crown Melbourne and Crown Resorts. It has also raised concerns about the capabilities of the individual directors, some of whom are or were directors of Crown Melbourne, at the time the response to the media allegations was published by Crown.

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LOOKING AT MATTERS "THROUGH THE EYES OF A WESTERNER"

720. Although it has conceded that "*failings occurred*" which resulted in the risk that Crown employees might be detained in China never being elevated into the risk management structures or to the boards of either Crown Resorts or Crown Melbourne, Crown has also sought to qualify that concession including on the basis that:

"...An important matter of context is that those making the decisions looked at operating in China, as Mr Jason O'Connor put it, "through the eyes of a westerner." They assumed that operating within the law would not lead to arrest and conviction for gambling crimes. That assumption was ultimately shown to be mistaken, but it was an understandable assumption to make."

²⁴³ Ms Coonan's evidence to the NSW Inquiry – 16 October 2020 – T4436/14-29.

²⁴⁴ Ms Halton's evidence to the NSW Inquiry – 15 October 2020 – T4284/4-32.

721. The Commission is concerned about this purported qualification to Crown's concession, particularly to the extent that it persists in seeking to assert that the gross errors of judgment made by Mr O'Connor and the other executives who failed to raise the risk of detention with the board can be justified based on what Crown seeks to characterise as Mr O'Connor's "*understandable assumption*".
722. In the Commission's view, Crown's characterisation of the conduct of its executives, including Mr O'Connor, as being caused by an "*understandable assumption*" cannot be justified and there are several matters that need to be addressed in that regard.
723. As it has already noted in Part 1 of this report, the Commission has undertaken an objective assessment of the documentary record, rather than a retrospective (or "hindsight") view coloured by the fact that Crown's staff were ultimately convicted and sentenced for gambling crimes in China or by any subjective opinion that might have been held by Mr O'Connor, including whether he looked at the issue "*through the eyes of a westerner*".
724. The evidence of the risks in China that needed to be considered as part of the risk management structures and by the boards of Crown Melbourne and Crown Resorts is overwhelming. Furthermore, the matters that should have been elevated are plainly not just limited to the four specific events that Crown now acknowledges as the accepted risk escalation events.
725. Rather, having taken an objective approach, the Commission has concluded that Crown's purported qualification of its concessions is not justified and should not be accepted. Furthermore, the Commission has also concluded that Crown's purported qualification of its concession based on Mr O'Connor's after-the-fact subjective opinion:
- a. misstates the nature of the risk that Mr O'Connor and the other executives were obliged to elevate to the board for consideration. In that regard, it was the risk of detention in China and the concerns that Crown's staff (both in China and in Australia) had about that issue that needed to be elevated. Furthermore, although Mr O'Connor's subjective opinion of whether Crown was "*operating within the law*" may have been a part of any consideration that the board might have been called upon to give to the risk of detention, any subjective opinion that he (or others) held in that regard did not excuse him or the other executives from elevating the risk of detention so that it could be properly considered by the risk management structures and boards of Crown Resorts and Crown Melbourne;
 - b. quite apart from any subjective opinion that Mr O'Connor and the other executives might have had about whether Crown's employees were in a strict sense acting illegally in China (and notwithstanding Crown's continued refusal to accept it as a fact), in the Commission's view there is ample evidence to show that both Crown's staff in China and also the senior executives in Hong Kong and Australia who were responsible for Crown's business operations in China were very concerned about the risk of detention in China. The emails and text messages that they sent prior to the arrests that are set out in Part 3 of this report plainly bear that out.
726. In the circumstances, the Commission does not accept that, even if Mr O'Connor's assertion that he looked at matters through the eyes of a westerner was accepted, such an assertion in any way excuses

the conduct of himself or the other executives and directors who had knowledge of important matters that could and should have been considered by the risk management structures and the boards of Crown Melbourne and Crown Resorts prior to the arrests that occurred in October 2016.

CROWN'S APPROACH TO THE INVESTIGATION

727. The next matter that the Commission considers it appropriate to raise in the context of what happened during the Commission's investigation of this matter is that of the way Crown has approached this investigation.
728. In that regard, as the sole holder of a casino licence in Victoria, Crown (via Crown Melbourne) enjoys a position of privilege to the extent that it is only by reason of the existence of the casino licence that Crown can derive a commercial benefit from gambling operations in the State of Victoria.
729. In the Commission's opinion, Crown's response to the Commission's investigation of this matter has failed to have due regard to its position of privilege.
730. In particular, the Commission is concerned that, rather than adopting a collaborative approach whereby Crown might have actively assisted the Commission to understand the matters that are the subject of this report (whilst at the same time protecting any proper privileges it may have sought to maintain, such as claims of legal professional privilege), Crown's approach has been both changeable and, at times, unnecessarily belligerent.
731. Furthermore, the variations and belligerence in Crown's position over time have meant that this investigation has been far more protracted and complicated than it needed to be, particularly having regard to the following matters.
732. First, in the period shortly after the arrests, Crown's former Chief Legal Officer, Joshua Preston, attended the Commission and gave a presentation about the circumstances of the arrests in China. That presentation failed to mention many of the matters that have since become known and/or been acknowledged by Crown. The Commission is concerned about the extent to which Mr Preston's presentation may have been designed to create an impression which has since been revealed as inaccurate.
733. For example, the presentation included information that suggested that Crown's risk management structures had in fact been engaged in considering the risk that Crown's staff in China might be detained by reason of their employment. In particular, it included a PowerPoint slide in the following terms:
- "In the implementation of the relevant Risk Management Plan, the risk of breaching the law in China and, specifically, Article 303 [being the particular criminal law of which Crown's employees were convicted of breaching] was recognised and, in accordance with the plan, Crown sought appropriate advice to mitigate the risk, and acted in accordance with that advice."*
734. The Commission is very concerned about the obvious contradiction that exists between this statement on the one hand and the significant concessions that Crown has since made, particularly those that

were made to the Commission on 22 January 2021, about the complete failure to engage its risk management frameworks in respect of China.

735. Furthermore, the Commission is also concerned to the extent that, contrary to this statement, the Commission has found no evidence that a potential breach of Article 303 was in fact recognised by the risk management plan.
736. As well as these concerns, the Commission is also concerned that this presentation included a very detailed recitation of Crown's risk management plan and the way it operated, all of which was predicated on the risk management plan having been engaged in respect of Crown's operations in China, including particularly that it was predicated on the risk management plan having specifically considered the issue of whether Crown's operations in China were in breach of the criminal law that Crown's staff were ultimately convicted of breaching.
737. The presentation did not mention, what Crown now asserts, namely that the risks associated with China were managed "*on the ground*".
738. Furthermore, at no time prior to the concessions that were made for the purpose of the Commission's investigation on 22 January 2021 did Crown take any steps to clarify or correct the statements that Mr Preston had made to the Commission during this presentation.
739. In any event, not long after Mr Preston's presentation, Crown's approach to the Commission's investigation changed. Whilst that change in approach may have resulted from the shareholder class action that had or, at that time, would be commenced in respect of similar facts to those that are considered in this report, this change of approach represented what, in effect, became the second phase of the Commission's investigation.
740. During this second phase of the Commission's investigation, there was a shift away from the purported overt attempts at helpfulness constituted by matters such as Mr Preston's initial presentation and instead a shift towards an approach of belligerence.
741. One example of that belligerence was the way the Commission was left to rely upon its compulsory evidence-gathering powers to gather documentary evidence with a view to obtaining a proper understanding of what had occurred in China. Another consequence of this belligerence was that the Commission was forced to seek information from third parties including other casino operators, casino regulators and government agencies, such as the Commonwealth Department of Foreign Affairs and Trade, with a view to understanding the events that had occurred in China. This information was also supplemented with any open-source information that was available such as ASX announcements, annual reports and media searches.
742. One consequence of the extent to which the Commission was required to rely upon its compulsory powers during this investigation was that there were several instances when the Commission was inundated with an enormous volume of documents and left to sift through those documents with little or no guidance or assistance from Crown.
743. Furthermore, this production of documents continued, on a drip-feed basis, particularly after the shareholder class action was commenced, and it would seem that Crown may have conducted more

thorough document searches in the context of its discovery obligations to those which it had previously conducted in purported compliance with the Commission's directions for the production of documents. This resulted in several instances of additional documents being identified through the class action discovery process being produced to the Commission very late in the Commission's investigation.

744. It is particularly concerning to the Commission that this would seem to suggest that the document searches conducted by Crown in response to the Commission exercising its compulsory powers were less thorough and diligent than those undertaken for the purpose of the class action litigation.
745. Nevertheless, doing the best it could through the exercise of its compulsory powers, the Commission then set about conducting interviews with those Crown employees who were most relevant to the matters, as they had been described in Mr Preston's presentation.
746. Regrettably, the Commission now knows that those interviews were conducted based on an incomplete documentary record. In particular:
- a. after these interviews were conducted, Crown continued producing information to the Commission, including, for example, information that was produced on 18 March 2019, in response to notices to produce that had been issued in February and August 2018 and in respect of which the dates for compliance had long since passed;
 - b. at the time these interviews were conducted, Crown continued to claim legal professional privilege in respect of the various advices that Mr Chen had obtained from both Mr Zhou at WilmerHale and from Crown's internal lawyers, particularly Ms Williamson. Furthermore, notwithstanding that it seems that in the context of the NSW Inquiry Crown may have been required to produce privileged material to the NSW Inquiry and/or agreed a protocol with that inquiry that has been designed to preserve valid claims of privilege whilst at the same time assisting that inquiry, the Commission notes that no such proposal for the development of a protocol between Crown and the Commission was ever made by Crown;
 - c. since the interviews were conducted, Crown has continued to produce documents to the Commission on the basis that whilst those documents are relevant to document requests that had previously been made by the Commission, those documents were not identified until Crown commenced the discovery process in the shareholder class action.
747. In any event, based on what it now knows was an incomplete documentary record, the Commission conducted witness interviews and duly produced the draft report which it provided to Crown for comment in or about May 2019.
748. Not long after that however, very serious allegations were made in the media about Crown's operations in China. These allegations caused the Commission to re-consider the content of its draft report and this reconsideration marked what was in effect the beginning of the third phase of the Commission's investigation.
749. Among other things, this third phase of the Commission's investigation included the Commission:
- a. specifically considering each of the matters that had been alleged in the media;

- b. making direct attempts to contact each of Crown's former employees in China, including the former employee who had featured in much of the media coverage in which the allegations had been made;
- c. probing Crown's claims for legal professional privilege so that the Commission could make an informed decision about whether it was necessary or appropriate for those claims to be challenged.

750. In March 2020, not long after the Commission had sought to probe Crown's claims of legal professional privilege, Crown advised the Commission that it had waived certain claims of legal professional privilege for the purpose of the shareholder class action to which it was a defendant and insofar as it had done so, some, but not all, of the legal advice that had been produced prior to the arrests in China would be produced to the Commission.

751. As Crown put it in its response to certain propositions that were put to it by the Commission in December 2020:

"The timing of the waiver was solely attributable to the timing of the filing of the witness statements in the class action in December 2019. It was the filing of those statements by Crown, pursuant to a filing deadline ordered by the Federal Court by orders first made on 30 November 2018, by which the waiver of privilege was effected. It had nothing to do with the timing of the [Commission's] draft report. Crown nevertheless of course accepts that the Federal Court filing deadline and the provision of the advice to the [Commission] occurred after the date on which Crown was provided with a copy of the [Commission's] draft report"²⁴⁵.

752. Furthermore, the Commission notes that, by that production, Crown also avoided responding to the various questions that the Commission had asked which were specifically designed to allow the Commission to make an informed assessment of the legitimacy of the claims of legal professional privilege that Crown had made.

753. In any event, this waiver of privilege represented the commencement of the fourth phase of the Commission's investigation, to the extent that it again required the Commission to revisit the draft report that it had prepared and provided to Crown for comment in May 2019.

754. Shortly after the waiver of privilege however, yet another development occurred in the evolution of the Commission's investigation, constituted by new information that started to become available to the NSW Inquiry which had not been made known during the Commission's investigation. Among other things, this new information included the extent to which it now appeared that:

- a. contrary to Mr Preston's presentation, the risk management framework was not, in fact, engaged in respect of China;

²⁴⁵ Crown's response to the Commission's propositions received 22 January 2021, page 22, paragraph 19.

- b. knowledge of the matters relevant to China was not, in fact, limited to the executive level who managed matters “*on the ground*”, and that Crown directors were also aware of important matters and therefore would be required to give evidence at the NSW Inquiry;
- c. contrary to the approach that Crown had taken to the issue of legal professional privilege when dealing with the Commission (and notwithstanding the limited waiver that had occurred shortly before), it appeared that, perhaps in the context of Crown being required to produce legally privileged documents to the NSW Inquiry, a protocol had been developed between the NSW Inquiry and Crown that would see the NSW Inquiry obtain access to information that had not been produced to the Commission on the basis that they were legally privileged. Later the Commission would learn that this access would include the NSW Inquiry being given access to legal advice that was prepared by Ms Williamson following the questioning of Crown staff in China by Chinese police in July 2015. This is advice that, although it seems it was provided to the NSW Inquiry, has never been provided to the Commission;
- d. documents in the form of emails were being produced to the NSW Inquiry that established director-level knowledge of important matters relating to China at the time they occurred. To take but one example, this included several emails that identified the intimate involvement of Mr Johnston in important matters.

In respect of the emails which establish Mr Johnston’s involvement, the Commission notes that:

- it has no record of these emails having been produced to the Commission prior to the commencement of the NSW Inquiry;
- to the extent that some, but not all, of the emails relating to the involvement of Mr Johnston were produced to the Commission after they were produced to the NSW Inquiry, it seems that Crown may have considered those emails within the ambit of the various notices to produce documents that the Commission had issued to Crown, prior to the commencement of the NSW Inquiry;
- Crown has given the Commission no explanation as to why these important documents were not produced to the Commission earlier in the Commission’s investigation.

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756. As well as that, in the days immediately before Christmas 2020, being a time that was very late in the NSW Inquiry, Crown made several significant concessions to the NSW Inquiry that it had not previously made to the Commission. The making of those concessions represented yet a further step in the evolution of the Commission’s investigation of this matter and resulted in the commencement of what has in effect become the fifth phase of the Commission’s investigation.

757. During this fifth phase, the Commission has taken several steps, including inviting Crown to make the same concessions that had been made for the purpose of the NSW Inquiry for the purpose of the

Commission's investigation and also asking Crown to agree to several additional propositions, based on the Commission's assessment of the evidence:

- a. over which claims of legal professional privilege were waived;
- b. that was otherwise produced very late in the Commission's investigation; and
- c. that was given to the NSW Inquiry.

758. Whilst Crown advised the Commission on 22 January 2021 that it was prepared to make the same concessions as it had made about a month earlier in NSW, Crown has continued to resist agreeing to many of the propositions that were proposed by the Commission, including the proposition that the totality of the matters relevant to China demonstrate failures of risk management, corporate governance, ethics and culture.
759. Notwithstanding that ongoing resistance to the Commission's propositions however, Crown's confirmation that it was prepared to make the same concessions as it had made in NSW for the purpose of the Commission's investigation has relieved the Commission of the need to make further use of its compulsory powers for the purpose of eliciting those concessions, specifically for the purpose of the Commission's investigation. The Commission considers that to be at least one small step towards the collaborative approach to regulation that the Commission expects from a corporate group that enjoys the privilege of being the sole holder of a casino licence in Victoria, via Crown Melbourne.
760. Preparation of this report then represents the sixth phase of the Commission's investigation of this matter.
761. That preparation commenced immediately following 22 January 2021, when Crown confirmed that it would make the same concessions for the purpose of the Commission's investigation as it had made in NSW approximately one month earlier.
762. There is little doubt that if Crown had co-operated fully with the Commission in this investigation in a manner that is appropriate for the sole holder of a casino licence in the State of Victoria, this investigation might have been significantly expedited.

CROWN'S WORK TO ADDRESS ITS ACCEPTED FAILINGS

763. The Commission notes that at paragraph 191 of its written submissions to the NSW Inquiry, Crown has summarised what it calls the "*remedial steps*" that were taken in the aftermath of the arrests in China.
764. Furthermore, the Commission also notes that, on 10 February 2021, Crown formally advised that it had taken the decision to cease all overseas operations.
765. As well as that, the Commission notes that Crown has also made substantial operational and leadership changes, including that:
- a. the following directors have left, or have indicated their intention to leave, the business:
 - Mr Felstead;

- Mr Craigie;
- Mr Packer;
- Mr Rankin;
- Mr Alexander;
- Mr Dixon;
- Ms Danziger;
- Mr Brazil;
- Professor Horvath;
- Mr Jalland;
- Mr Johnston;
- Mr Barton; and
- Mr Demetriou;

b. the following executives and/or lawyers have left the business:

- Mr Chen; and
- Ms Tegoni.

766. Meanwhile, specifically in respect of its risk management structures, Crown has also made several changes through the implementation of what it calls a *"three lines of defence"* model which Crown says, although it was not formally introduced until June 2019 (almost three years after the arrests), commenced in June 2018 (almost two years after the arrests), when the executive who is now responsible for Crown's risk management structures, Ms Anne Siegers:

"...commenced a review of the structure and resourcing of the Risk and Audit team, and subsequently separated those two functions;

undertook a review of the existing risk framework and tools; and

*caused the creation of the Crown Melbourne Enterprise Risk and Compliance Committee in June 2018."*²⁴⁶

767. Crown says that it does not consider it to be a *"fair"* characterisation to say that the changes that it has or will continue make to its risk management frameworks suggest that those frameworks are *"incomplete"*. However, Crown says that it:

*"...continues to seek to satisfy itself that its risk management framework is sound [and] is consistent with good corporate governance principles"*²⁴⁷.

²⁴⁶ Crown's response to the Commission's propositions received on 22 January 2021, page 28, paragraph 24(a).

²⁴⁷ Crown's response to the Commission's propositions received on 22 January 2021, page 30, paragraph 24(f).

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