Direct Line:
Direct Fax:
E-mail:
[redacted]

22 January 2021

By email

Ross Kennedy
Chair
Victorian Commission for Gambling and Liquor Regulation
Level 3, 12 Shelley St
RICHMOND VIC 3121

Dear Mr Kennedy,

VCGLR China Investigation | Propositions

I refer to your letter dated 22 December 2020 addressed to both Mr Demetriou as Chairman of the Crown Melbourne Limited Board and to me.

We are grateful to the Commission for allowing Crown some additional time to present its Statement of Propositions Regarding China.

As previously advised, the approach we have taken to responding to your request is to lean heavily of the work undertaken during the ILGA Inquiry in compiling our Statement of Propositions which are enclosed with this letter.

Crown would welcome the opportunity to discuss the Statement of Propositions and the proposed next steps in the VCGLR's investigation once the Commission has had the opportunity to consider the enclosed statement.

Yours sincerely,

Helen Coonan
Chairman, Crown Resorts Limited

Crown Resorts Limited
ABN 39 125 709 953
Crown Towers
8 Whiteman Street Southbank 3006
Victoria Australia
Tel: +613 9292 8888
Fax +613 9292 8808

VCGLR PROPOSITIONS REGARDING CHINA
CROWN'S RESPONSE

On 22 December 2020, the VCGLR wrote to Crown inviting Crown to concede a series of propositions set out in 25 numbered paragraphs in Annexure A to the VCGLR's letter (**VCGLR propositions**).

Crown responds[1] to the VCGLR propositions below using the same paragraph numbering used in Annexure A to the VCGLR's letter.[2]

1. As to paragraph 1 of Annexure A:

   (a) All concessions made by Crown in its written submissions on the China arrests to the NSW Casino Inquiry (**Crown's submissions**) are conceded for the purposes of the VCGLR's investigation. This includes the concessions made in B1 and B2 of Crown's submissions.

   (b) Annexure A to Crown's submissions is a list of mostly uncontroversial factual matters that are not concessions as such. Crown does not dispute any of the matters in Annexure A to Crown's submissions.

2. Paragraph 2 of Annexure A to the VCGLR's letter invites Crown to concede a list of propositions that were characterised by counsel assisting in their Statement of Issues on China as "not in issue". By way of context, the Statement of Issues was circulated by counsel assisting in advance of their oral and written submissions and was treated by Crown as overtaken by those submissions. For that reason, in its submissions to the NSW Casino Inquiry, Crown responded only to those matters in the Statement of Issues that were subsequently pressed in counsel assisting's oral and written submissions. Prior to the circulation of the Statement of Issues, Crown was not asked whether it agreed that the propositions characterised as "not in issue" in fact answered that description. Those propositions span 18 paragraphs, and many of those 18 paragraphs contain multiple propositions, and many of them are erroneous or problematic. To the extent that Crown agrees that some are "not in issue", those particular matters are expressly identified in its written submissions to the NSW

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1 Crown notes that this response is on behalf of the company and does not necessarily reflect the position of individual directors or officers (or former directors or officers) of Crown or its subsidiaries.

2 That is, the paragraph numbering in Annexure A beginning under the heading "Propositions that Crown is invited to concede".

Casino Inquiry. However, to assist VCGLR, the following paragraphs address the particular paragraphs of the Statement of Issues and Crown's response to them:

(a) Crown accepts paragraphs 1–4 of the Statement of Issues, save that, in relation to paragraph 2, it was Mr Craigie who had ultimate responsibility for the VIP International business.

(b) As to paragraph 5 of the Statement of Issues, this proposition is vague, and therefore capable of being understood in different ways. It refers to the "potential" for arbitrary action. "Potential" is a flexible word. It can refer to a mere possibility, but it is also capable of extending to a material risk. Further, paragraph 5 does not explain what is meant by "arbitrary action". It is not clear whether it is a reference to arrest and conviction for purported gambling crimes in circumstances where no such crimes had in fact been committed, or a reference to something else. For these reasons, it is difficult for Crown simply to accept or reject the proposition at paragraph 5 of the Statement of Issues.

Insofar as "arbitrary action" and "inconsistent application of the law" refer to arrest and conviction for crimes that had in fact not been committed, no member of Crown management understood there to be a material risk of that happening to Crown staff, and it was certainly not "widely understood" by management that there was a material risk of that happening.

On the contrary, Mr O'Connor's clear evidence to the NSW Casino Inquiry was that he made the mistake, prior to his arrest, of looking at China through the eyes of a westerner. He said 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 strict letter of the law doesn't necessarily mean that that's the way it will be applied in China.[3]

At the time, Mr O'Connor did not perceive there to be a material risk that a person could be convicted of a gambling crime without that crime actually being committed. Similarly, Mr Felstead, by his numerous trips to mainland China, including with his wife, demonstrated by his actions that he did not

[3] Transcript of the NSW Casino Inquiry at page 2060, lines 32–36.

perceive there to be a material risk of conviction for a crime that had not in fact been committed. Mr Chen, in his role as President of International Marketing, likewise travelled to mainland China regularly.

Mr Chen, Mr O'Connor, and Mr Felstead were aware that it was possible that staff might on occasion be questioned by Chinese authorities about their or their customers' activities (and a protocol was developed by WilmerHale to deal with that possibility: see paragraph 2(f) below). Mr Chen had been told by WilmerHale that Chinese authorities may question anyone who had some association with a person of interest, no matter how casual the relationship may have been.[4] Questioning was also a possibility because the activity of organising PRC citizens to go abroad to gamble was subject to restrictions: the number of PRC citizens organised at one time could not exceed nine and a kickback or referral fee could not be obtained from the organising. But there is nothing that establishes that Crown management ever perceived there to be a material risk that staff would be subject to arrest and conviction in respect of crimes they had not committed – this being the essence of arbitrary action. In particular, if Mr Chen thought that arrests and convictions occurred in China irrespective of what the law permitted, it would not have made sense for him to have commissioned (as he did) repeated advice from WilmerHale on what Chinese law permitted.

Crown emphasises that present-day perceptions of China, and of the risks of doing business in China, are very different from perceptions five or more years ago. In recent times, the potential for the Chinese authorities to act arbitrarily and outside the law has become more readily apparent. Five or more years ago, China was seen by many, not just in the gaming industry but in numerous other industries, as representing the future of business.

(c) Crown accepts paragraph 6 of the Statement of Issues (including that Crown's Board and senior management did not believe that its employees in China were breaching Chinese criminal law) save for the reference to "two precise questions". As explained in Crown's submissions at paragraph 96, the notion of "precise questions" assumes scope for differing interpretations of Article 303 of the PRC Criminal law. However, in 2005, the Supreme

[4] Witness statement of Michael Chen in the Federal Court class action at [36].

People's Court removed scope for differing interpretations. It clarified by two official pronouncements that 10 or more PRC citizens needed to be organised "at one time/on a single occasion" and it said that a kickback or referral fee needed to be obtained from that organising. The advice that Crown received from WilmerHale reflected these official pronouncements. Crown cannot be fairly criticised for, in effect, adopting the interpretation given to Article 303 by the Supreme People's Court. The full detail of Crown's position on these matters is at paragraphs 95 to 106 of Crown's submissions.

(d) As to paragraph 7:

i. Crown accepts that the first sentence of paragraph 7 is literally true. However, the sentence implies that Chinese law required Crown to hold a licence or authorisation before conducting the activities it conducted in China. There was no clear evidence to that effect before the NSW Casino Inquiry, as demonstrated by the fact that counsel assisting eschewed any reliance on propositions about what Chinese business law in fact required. Mr Bell SC said in his reply submissions: "we have not submitted that Crown Resorts as a matter of Chinese business law required a business licence".[5]

ii. As to the second sentence of paragraph 7:

1. Crown does not accept that it interpreted advice to mean that it could not establish an office in China. Crown management understood that Crown *could* establish a representative office in China, but that the office would likely have to be confined to the marketing of non-gaming operations, such as the marketing of Crown's hotels and resorts. Put another way, Crown management understood that Chinese authorities were unlikely to authorise a representative office that encouraged or assisted potential gaming patrons to come to Crown's Australian resorts.. No representative office marketing gaming operations was ever established, although, as noted below, a small Guangzhou apartment was used by one administrative

[5] Transcript of the NSW Casino Inquiry at page 5733, lines 12–13.

staff member for visa application purposes and to store visa application materials.

2. Crown accepts that management believed that Crown could conduct its activities in China without a licence – those activities consisting of meeting with existing or prospective VIP patrons individually or in small groups (for example, over a meal) to encourage them to travel to Australia to gamble at Crown's casinos, and activities ancillary to those meetings (such as assisting patrons with the completion of visa applications). As noted above, there was no clear evidence before the NSW Casino Inquiry to the effect that management's belief in that regard was erroneous, and nor did counsel assisting submit that it was.

(e) As to paragraph 8:

i. Crown accepts that a residential apartment in Guangzhou was used by an administrative staff member for the internal purpose of processing visa applications and to store materials and equipment used in assisting patrons to complete their visa applications. It does not accept the description of that apartment as an "unofficial office". That description suggests the apartment was used for external representative purposes or that there was some attempt to disguise the apartment from the Chinese authorities, of which there is no evidence.

ii. Crown does not accept the proposition that the Guangzhou apartment was "widely known to senior management of Crown Resorts". As referred to in counsel assisting's submissions at paragraph 177, the evidence to the NSW Casino Inquiry was that neither Mr Felstead nor Mr Craigie was aware of it. Mr Kunaratnam was not aware of it. Mr O'Connor and Mr Chen, on the other hand, were aware of it.

iii. Crown does not accept that the use of the Guangzhou apartment was an instance of Crown acting contrary to its own understanding of Chinese business law, and therefore an instance of conduct that was unethical and contrary to the highest standards of integrity. The matter

is dealt with in detail in Crown's submissions at paragraphs 124 to 130; in essence, however, there was no clear evidence before the NSW Casino Inquiry that at the time any member of management believed the existence of the Guangzhou apartment was in breach of Chinese business law. Nor was there any clear evidence before the NSW Casino Inquiry that the existence of the Guangzhou apartment was in fact in breach of Chinese business law (as noted, counsel assisting ultimately did not seek any finding as to the content of Chinese business law).

iv. Finally, insofar as counsel assisting submitted that management disregarded an instruction not to open an office, as referred to in Crown's submissions at paragraph 129, it is not clear that the instruction said to have been disregarded was directed to such premises as the Guangzhou apartment.

(f) Crown does not accept paragraph 9. 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.

Crown accepts that, on 26 March 2013, Michael Chen sent an email to Mr Felstead, copied to Mr O'Connor, in which Mr Chen said, amongst other things, that staff were in fear of "getting tapped on the shoulder". It appears that this was a reference to staff being questioned by Chinese authorities. However, as explained in Crown's submissions at paragraphs 165 to 167, the overarching message conveyed by Mr Chen's email was that the problem identified – staff concern about "getting tapped on the shoulder" – had been addressed through: (a) "definitive advice that the activities we undertake in China do NOT violate any criminal laws" (i.e., expert advice from WilmerHale); and (b) "the attached protocol to follow in the event such a knock on the door arrives", being the "Reception Procedures" document that Mr Chen attached to his email (which WilmerHale prepared). 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 – "what we are doing", as Mr Chen put it – not to alert Mr Felstead to an unremedied or irremediable problem.

(g) As to paragraph 10, Crown accepts that the VIP Working Group was established in 2013. Crown accepts that, in addition to VIP International executives, it appears that certain representatives of CPH (Mr Kady and Mr Bennett) attended some meetings of the VIP Working Group. Crown also accepts that the role of the VIP working group can be described as providing input on matters relating to the VIP International business.

Insofar as the reference to "Mr Packer's approval" is intended to signify the proposition that the VIP Working Group was a CPH group or somehow orchestrated by Mr Packer in a CPH capacity, Crown rejects such propositions (as explained in Crown's submissions at paragraphs 172 to 175).

Further, Crown does not accept the proposition that, in addition to attending the VIP Working Group, Mr Johnston had regular meetings, usually weekly, with the senior executives of VIP International. There was no evidence to that effect before the NSW Casino Inquiry and the transcript references given by counsel assisting in support of that proposition do not bear it out.[6] Instead, Mr O'Connor's evidence was that Mr Johnston "occasionally" or "sometimes" attended semi-regular VIP International meetings with Chen, O'Connor, Ratnam, and Felstead.[7] Indeed, counsel assisting conceded in their reply submissions that paragraph 65 of their written submissions in chief, which asserted that Mr Johnston was involved in weekly meetings with VIP International executives, was erroneous and needed to be corrected to reflect Mr O'Connor's evidence.[8]

(h) As to paragraph 11, which is expressed at a high level of generality, Crown accepts that the corruption crackdown was seen as likely to redirect VIP business from Macau to Australia, and in that sense was recognised as an opportunity to grow international VIP patronage of Crown's Australian casinos. Crown also accepts that business planning provided for an increase in the contribution of the VIP International business to group profitability.

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6 Counsel assisting cite the transcript of the NSW Casino Inquiry at page 1453, line 45 to page 1454, line 23; and page 1872, lines 1–2.

7 Jason O'Connor's witness statement in the Federal Court class action at [18]; transcript at page 1872, lines 12–13.

8 Transcript of the New South Wales Casino Inquiry at page 5712, lines 16–24.

(i) Crown accepts that each of the events in paragraph 12 of the Statement of Issues was an important development in the operating environment in China that ought to have been reported to the Board risk committees and to the wider Board. As to the proposition that each event increased the risk to the "safety" of staff, which Crown understands to mean increased the risk that staff would be arrested and detained for gambling crimes, that was not the advice that Crown management received when, after each of those events, Crown management sought advice from the China experts, WilmerHale and Mintz Group (see paragraphs 85 and 131–151 of Crown's submissions).

In relation to 12(c) of the statement of issues, in respect of which paragraph 2 of the VCGLR propositions asks some additional matters, Crown accepts that two other China-based Crown employees were also questioned by Chinese police prior to the detentions that occurred in October 2016, namely: (a) Herbert Jia, who was taken to a police station for questioning by Chinese police in September 2014 and reported that he had been questioned about his contact with a particular patron; and (b) Mr JX, who was briefly visited by police in about July 2015 and asked if he was running a gambling business at his home (which he was not). The Chinese authorities did not ask Mr JX what he actually did, or he if worked for Crown. There is no evidence that anyone other than Mr Chen was aware of this visit, and Mr O'Connor has given evidence to the NSW Casino Inquiry that he was not aware of it.[9]

(j) Crown does not accept paragraph 13 of the Statement of Issues. It appears to assume consciousness of illegal activity, a proposition inconsistent with counsel assisting's acceptance that Crown did not knowingly break the law, and implies that Crown sought to disguise or conceal its activities from Chinese authorities, a proposition that is not supported by the evidence and that Crown rejects for the reasons given in Crown's submissions at paragraphs 152 to 163. The response of VIP International executives to the matters referred to in paragraph 12 of the Statement of Issues was instead to obtain, on each occasion, the advice of the China experts, WilmerHale and Mintz Group (see paragraph 85 of Crown's submissions).

[9] Transcript of the NSW Casino Inquiry page 2028, line 9 to 17 and 2032, line 38 to page 2033, line 13.

(k) With respect to paragraph 14, Crown accepts that Michael Chen sent an email to staff on 9 February 2015 in which, amongst other things, he referred to applying for "HKG/Singapore work permits" for staff who did not currently hold a foreign passport. There was no evidence that anything ever came of the proposal, which indicates he thought better of it. Crown accepts that the proposal is an instance of very poor judgement. However, Crown notes that Mr Chen did not give evidence as to why he floated, but did not pursue, the proposal. Crown dealt with the matter at paragraph 160 of its submissions.

(l) Crown accepts paragraph 15.

(m) As to paragraph 16, Crown accepts that certain members of Crown management were aware of the events described in paragraph 12 of the Statement of Issues and that these events were not communicated by Crown management to the Board of Crown Melbourne, the Board of Crown Resorts, or the risk committees of those companies.

(n) As to paragraph 17, Crown accepts that, on or about 13 and 14 October 2016, 18 employees of a subsidiary of Crown Resorts were detained by Chinese authorities and one employee was questioned and released on bail, and that, in about June 2017, those 19 employees were charged with breaching Article 303 of the PRC Criminal Law.

(o) Crown does not accept paragraph 18. As explained in Crown's submissions, it is not accurate to say that Crown has conducted no review of the facts, matters, and circumstances pertaining to the China arrests. Through the Federal Court class action and regular reports to the Board about the issues it raised, this VCGLR investigation, and the NSW Casino Inquiry, Crown has examined the facts, matters, and circumstances pertaining to the China arrests, and it has done so in detail.

3. The proposition at paragraph 3 of Annexure A to the VCGLR's letter appears to assume the existence of a review, which is said to have been described in paragraphs 177–190 of Crown's submissions, and then asserts that at no time has the existence or outcome of that review been disclosed to the VCGLR. Paragraphs 177–190 of Crown's submissions in fact make the point that, in responding to the Federal Court class action, to the VCGLR's investigation, and to the NSW Casino Inquiry, Crown

has necessarily investigated, in detail, the facts and matters pertaining to the China arrests. Paragraphs 177–190 of Crown's submissions do not describe any review that has not been disclosed to the VCGLR.

4. Paragraph 4 of Annexure A to the VCGLR's letter is very broadly expressed. While Crown accepts the specific failings identified in its submissions, it cannot accept a rolled-up proposition of the breadth of that which appears in paragraph 4.

5. As to paragraph 5, Crown does not accept the proposition that most of the executives who were involved in the events pertaining to Crown staff being arrested, convicted, and sentenced in China remain executives of Crown today. None of Mr Craigie, Mr Felstead, Mr Chen, and Mr Gomez remain executives of Crown. Mr O'Connor still works for Crown, but in a very different role from his previous role (Director of Innovation and Strategy, with no responsibility at all with respect to strategy for VIP International[10]). Further, Michael Neilson, Debra Tegoni, and Drew Stuart, who held senior legal and compliance roles at Crown Resorts and Crown Melbourne during the relevant events, are no longer employed by Crown.

6. As to paragraph 6, the precise period to which it is referring is somewhat unclear. Crown understands it is referring to those directors who held office as at the time that the China arrests occurred. Crown does not accept the proposition that most of those directors remain directors of Crown today. None of Mr Rankin, Mr Alexander, Mr Craigie, Ms Danziger, Mr Dixon, and Mr Brazil remain directors of Crown Resorts. Further, Professor Horvath signalled at the 2020 Annual General Meeting of Crown Resorts his intention to stand down as a director of Crown Resorts and Crown Melbourne subject to appropriate arrangements being made to handover his Board and Board committee responsibilities, consistent with regulatory obligations.

7. Paragraph 7 of Annexure A to the VCGLR's letter contains a series of propositions. Each proposition concerns "detention", by which Crown understands the VCGLR to mean being held against one's will, as distinct from voluntary questioning. Crown responds to each proposition using the same subparagraph numbering as in Annexure A.

   (a) Crown does not accept the proposition that it was understood by Crown management that detention, including arbitrary detention, was "common" in

[10] Transcript of the NSW Casino Inquiry at page 1881, lines 23–42.

China. If Crown management had understood detention, including arbitrary detention, to be "common", they would not have travelled to China on numerous occasions.

The email sent by Mr Chen on 26 March 2013, which was discussed at paragraph 2(f) above, stated that "politically motivated detentions are common in China". That email went on to refer to the detention of "persons of interest" and to "high value targets". Read in context, it is sufficiently clear that Mr Chen had in mind the possible detention of Chinese VIP patrons as part of the corruption crackdown. His email did not say that detention *generally* was common in China; it did not say that *anyone* was liable to be detained, whether or not a "person of interest" or "high value target".

What Mr Chen's email said was that "politically motivated" detention was common. Politically motivated detention, while abhorrent, was not directed at random targets, but at specific persons perceived to be threats to the Chinese regime. In the context of Mr Chen's email, it was directed at those being targeted as part of the corruption crackdown.

Importantly, Mr Chen's email did not convey that it was common for the staff of foreign companies to be detained in China, and it certainly did not convey that it was common for such staff to be detained arbitrarily or suggest that Crown's staff were at risk of arbitrary detention.

The chapeau to paragraph 7 of Annexure A to the VCGLR's letter notes that Crown's submissions repeatedly refer to arrest and conviction "for gambling crimes", and appears to indicate that some significance should be attached to this terminology. The reason that Crown's submissions refer to arrest and conviction for "gambling crimes" is that the activities of Crown staff in China concerned gambling, and the allegations against Crown were that it knowingly committed gambling crimes or disregarded the risk that it or its employees would be charged and convicted for doing so. Its activities consisted of meeting with existing or prospective VIP patrons individually or in small groups to encourage them to travel to Australia to gamble, and activities ancillary to those meetings (such as assisting with the completion of the visa applications of patrons). It is not clear for what other activities, unrelated to gambling, it is suggested that management understood Crown

staff were liable to be detained. Crown management certainly did not think that staff were liable to be subject to "politically motivated" detention. And nor did Crown knowingly commit gambling crimes, or knowingly disregard the risk that it or its employees would be convicted for doing so.

To be clear, Crown management never understood that it was common in China for persons who were engaged in the activities in which Crown staff were engaged to be detained (noting that Crown management understood those activities to be lawful based on external legal advice). Nor did Crown management understand that it was common in China for persons, not being "high value" political targets, to be detained in respect of other lawful activities.

(b) As to the proposition that Crown management understood that a risk that Crown staff might be detained existed, Crown management understood that a risk that Crown staff might be detained existed in the sense that detention was something that was conceivably possible, as it is in any jurisdiction. However, Crown management, while aware that questioning of staff was possible, particularly in relation to the activities of their customers, never understood that staff were at *material* risk of being subject to detention in respect of Crown's activities: the advice that Crown management received from the China experts, WilmerHale and Mintz Group, was not to that effect, and advice was sought from these China experts when it was prudent to do so.

(c) As to the proposition that Crown management understood that the risk that staff might be detained was "increased" by reason of Crown staff being directly or indirectly involved with Chinese gamblers and gambling activity, this proposition appears to assume that management understood there to be some baseline risk of detention for simply being present in China, and that this baseline risk of detention was increased by the gambling-related activities of Crown staff. That was not Crown management's understanding.

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. Questioning of staff was a possibility if their customers' activities came to the attention of Chinese authorities. It was also

a possibility because there were legal limits upon the organisation of PRC citizens to gamble abroad (on the number of PRC citizens that could be organised at any one time where a kickback or referral fee was received for that organising). But Crown management never understood that there was a material risk that Chinese authorities, having questioned staff, would proceed to detain staff for an extended period, prosecute, and succeed in convicting them for gambling crimes, despite their actions conforming to the terms of the law as officially interpreted.

(d) Crown does not accept the proposition that Crown management understood that the risk that staff might be detained in China made it necessary to take the steps described in paragraph 7(d)(i)–(v). First, as already noted, Crown management never understood that there was a material risk that Crown staff would be detained for an extended period. Secondly:

i. as to paragraph 7(d)(i)–(ii), the protocol provided to staff was directed to the possibility of questioning of staff by Chinese authorities ("visits by officials"), not to the detention of staff;

ii. as to paragraph 7(iii) and (v), advice from WilmerHale and Mintz Group was not obtained because of some particular understanding on the part of management as to a detention risk; rather, it was obtained because it was a prudent thing for Crown management to do in a foreign jurisdiction;

iii. as to paragraph 7(d)(iv), it is an overstatement, and not a fair characterisation of what occurred, to say that Crown management understood that it was necessary to obtain external legal advice about "whether Crown's business operations in China could (or should) be formally registered or licensed by Chinese authorities". In the first place, the context in which the advice was given concerned the question whether Crown should open a formal representative office in China, not the status of Crown's existing mode of operating. Secondly, the formulation suggests that management focused their minds on those questions as they applied to Crown's existing mode of operation and then sought out advice directed to that context. It is clear, however, that management were concerned with the criminal

law, not "business law". Indeed, this was commented upon by the Commissioner. The Commissioner said:

> … the business licence issue, I've seen those advices from Mr Zhou and others, and it doesn't seem that that was really given a great deal of thought. I think they were more concerned that – it seemed they were more concerned that they were not breaching the criminal law. And each time – I think it's been put each time a step was taken Mr Chen, as his dictatorial approach to business was, took advice, and he didn't focus on the licence arrangements. He focused on whether they were going to be breaching the criminal law and then telling the staff that they were safe. So I do understand your submissions in relation to the different structures, but I don't think Crown, for one moment, were focused on it until you get to the memorandum in mid-'19 when the Board is told that they didn't have a licence.[11]

(e) As to paragraph 7(e), Crown refers to its response at paragraph 2(f) above. Further, while the evidence supports the proposition that management had on occasion been made aware of concerns raised by Crown's staff in China about visits from the Chinese authorities (and as a result Crown obtained external advice to address the concerns raised), 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.

8. Paragraph 8 contains two propositions.

(a) As to paragraph 8(a), as identified above, Crown does not accept that management had the understanding ascribed to them in paragraph 7(a)–(e) (defined as the "contextual risk factors"), which include an alleged understanding that detention, including arbitrary detention, was common.

However, Crown does accept that, had Crown management understood that detention, including arbitrary detention, was common in China, and had Crown management understood that a material risk existed that Crown staff would be detained, or that staff had expressed concerns to that effect, those

[11] Transcript of the NSW Casino Inquiry at page 5732, line 46 to page 5733, line 9.

are undoubtedly matters that would have needed to be exposed to wider consideration through the risk-management structures and by the full Board.

(b) As to paragraph 8(b), Crown accepts, as a matter of principle, that, without potential risks being exposed to assessment through Board-level risk-management structures, Crown's ability to properly assess those risks, including to properly assess their relevance to Crown's operations, is likely to be impeded.

9. Crown accepts that four of the directors of Crown in the period between 2010 and October 2016 who gave evidence to the NSW Casino Inquiry (namely, Professor Horvath, Mr Brazil, Mr Mitchell, and Mr Demetriou) gave evidence that they were not aware, prior to the arrests, that Crown employed staff in mainland China.

10. Crown accepts paragraph 10 with the benefit of hindsight, and subject to rejecting the terminology of "conceded risk events", which itself is based on the terminology of "contextual risk factors" – as to which, Crown refers to its responses in paragraphs 7 and 8 above. However, as was emphasised in Crown's submissions at paragraphs 131 to 151, at the time, there were factors taken into account by management that tended against classifying the relevant events as obvious escalations in risk. By way of example, it appeared to management at the time, based on the advice they received from WilmerHale and Mintz Group, that the South Korean arrests were "an isolated case" attributable to particular activities in which Crown did *not* engage (see paragraph 142 of Crown's submissions).

11. Crown accepts that Mr Rankin sent an email to Mr Craigie and Mr Barton on 24 June 2015 in which he referred to the South Korean arrests and said that Crown "should be on high alert for this type of regulatory action in China" and that "the training of new in country sales staff should be reviewed and be extensive". The email did not say that staff training needed to be "extensively reviewed" (compare the proposition in paragraph 11). Crown also notes and refers to Mr Felstead's response to that email. Further, Crown notes that Mr Rankin did not give evidence to the NSW Casino Inquiry. Finally, as already noted, Crown does not accept the terminology of "conceded risk events", and refers to its response to the propositions given that label in paragraph 8 above.

12. With respect to paragraph 12(a), Mr Packer gave evidence that soon after the South Korean arrests:

> … Mr Rankin and I spoke about it and I believe that we agreed simultaneously that the company needed to be on high alert and I tasked him with going back and doing a due diligence of our operations in China with Rowen, to make sure that we were okay.[12]

Crown notes, however, that, to the extent that paragraph 12(a) seeks to link this evidence of Mr Packer to the email sent by Mr Rankin addressed in paragraph 11 above, neither Mr Packer nor Mr Johnston received Mr Rankin's email.

Crown accepts that Mr Packer agreed that, with respect to Mr Packer's discussion with Mr Rankin to which the quote above refers, Mr Packer did not have a discussion about informing the Board of that work stream, and that he, Mr Rankin, and Mr Craigie "were guilty of that".[13] That is, the "three of us" to whom Mr Packer referred did *not* include Mr Johnston (contrary to the reference to Mr Johnston in paragraph 12(a) of the VCGLR document). There was no other evidence given by Mr Packer with respect to Mr Johnston's awareness of what Mr Rankin said to Mr Packer. Further, Mr Johnston gave evidence that he was not aware of what Mr Rankin had said in his email to Mr Craigie and Mr Barton.[14]

Crown accepts paragraph 12(b).

13. Paragraph 13 contains a number of propositions:

(a) As to paragraph 13(a):

i. As mentioned at paragraph 7 above, Crown does not accept that Crown management had the understanding ascribed to them in paragraph 7 (defined as the "contextual risk factors"), which includes an alleged understanding that detention, including arbitrary detention, was common in China, or that Crown's China staff were concerned that they themselves would be detained. To be clear, Crown management never understood that Crown staff were at material risk of being detained, or that the China staff had expressed such a concern.

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[12] Transcript of the NSW Casino Inquiry at page 3621, line 16–28.
[13] Transcript of the NSW Casino Inquiry at page 3755, line 42 to page 3756, line 3.
[14] Transcript of the NSW Casino Inquiry at page 2695, lines 7–12.

ii. As to the Crown management's awareness of what are described in Annexure A to the VCGLR's letter as the "conceded risk escalation events", which Crown understands to be the events in paragraph 73 of Crown's submissions, Crown accepts that Mr Felstead, Mr O'Connor, and Mr Chen were aware of those events, with the exception that there is no evidence that anyone other than Mr Chen was aware of the questioning of Mr JX (and Mr O'Connor's evidence was that he was not aware of it[15]). As to Mr Craigie, he was not aware of the questioning of Mr BX or Mr JX, or the sending of the letter in respect of Mr BX.

(b) As to paragraph 13(b), Crown accepts that executives attempted to manage risks in China by obtaining the advice of the external China experts, WilmerHale and Mintz Group, and accepts that the advice from WilmerHale included the development of a protocol dealing with what staff should do if questioned or visited by authorities (the protocol did not deal with detention), and provided the protocol and/or training to Crown's China-based staff about these matters.

(c) As to paragraph 13(c), the matters at paragraph 4 to 10 of Annexure A to Crown's submissions are facts that Crown has never disputed.

Paragraphs 4 to 8 of Annexure A to Crown's submissions are essentially concerned with the proposition that a company's risk appetite is a matter for the Board. Crown of course accepts that proposition and Crown conceded in its submissions that the attempt by executives to manage risk "on the ground", without engaging the risk-management structures, and therefore not bringing events to the attention of the Board, had the effect that the risk appetite of Crown with respect to China was not set by the Board, as it should have been (see paragraphs 59 and 69 of Crown's submissions).

Paragraphs 9 and 10 of Annexure A to Crown's submissions refer to the fact that there were codes of conduct in place at the relevant time and that the code of conduct for employees referred to acting legally, ethically, and with the highest standards of integrity and professionalism. It is not apparent how

[15] Transcript of the NSW Casino Inquiry at page 2028, lines 9–17 and page 2032, line 38 to page 2033, line 13.

the obtaining of advice from WilmerHale and Mintz Group and the development and provision of the protocol (defined in the VCGLR's document as the "executive attempts at risk management") could be said to involve a failure to consider those obligations in the codes of conduct. In particular, the obtaining of legal advice demonstrates a clear cognisance of the obligation to act legally.

14. Paragraph 14 contains a series of propositions:

(a) As to paragraph 14(a), Crown does not accept the proposition that the risk-management structures that Crown had in place prior to the arrests in October 2016 relied almost exclusively on executive-level staff to identify and classify risks. First, Mr Stuart's evidence in the Federal Court class action, which was not challenged by counsel assisting in the NSW Casino Inquiry, was that the first step that Mr Stuart would take in carrying out Crown Melbourne's annual risk assessment was to meet with executive general managers, general managers, and senior staff in interactive, workshop-style meetings. General managers and senior staff are not executive-level staff. Secondly, the proposition at paragraph 14(a) seems to assume that the risk awareness of executive-level staff was incapable of being informed by the staff working below them. In fact, reporting lines provided a mechanism by which a risk or concern identified by staff below the executive level could be escalated to that level. 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.

(b) Paragraph 14(b) does not appear to be materially different from paragraph 14(a). In response to paragraph 14(b), Crown repeats two points. First, reporting lines provided a mechanism by which risks identified below the executive level could be escalated to that level. Secondly, while executives were aware of certain important developments in China, they did not expose those developments to wider assessment through the risk-management structures – either through drawing them to the attention of Mr Stuart or to the attention of the Crown Melbourne Audit Committee or the Crown Resorts Risk Management Committee. That 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.

(c) As to paragraph 14(c), Crown accepts that the events in paragraph 73 of Crown's submissions, were not drawn to the attention of, and therefore not considered by, the Board or Board committees. Crown also accepts that the advice from WilmerHale and Mintz Group, and the protocol developed by WilmerHale, were not considered by the Board or Board committees.

As to the two propositions in paragraph 8 of the VCGLR document, which form part of the "conceded risk escalation events" (terminology Crown does not accept), Crown: (a) refers to what it has said about those two propositions in paragraph 8 above; and (b) says that those two propositions are statements of principle and were not "events" to be drawn to the attention of the Board or Board committees.

15. As to the "contextual risk factors", which Crown understands to refer to the series of matters set out in paragraph 7 said to have been understood by Crown management, Crown does not accept that Crown management had the understanding ascribed to them in that paragraph (for the reasons given in paragraph 7 above).Paragraph 15 contains two propositions:

(a) As to paragraph 15(a), Crown accepts that Mr Chen, Mr O'Connor, Mr Felstead and Mr Craigie were incentivised by reference to the performance of the whole VIP International business, including profits from Crown's business performance in China. Crown also accepts that at least two of those executives, Mr Felstead and Mr O'Connor, participated in the risk-identification process coordinated by Mr Stuart, and that Mr Craigie was a member of Crown's Risk Management Committee and attended by invitation the Crown Melbourne Audit Committee. But Crown notes that there were other executives, such as Ms Tegoni and Mr Neilson, who participated in the risk-identification process and who were not incentivised by reference to business performance in China. Further, Crown would not accept any suggestion that executives, who will typically have a portion of their remuneration linked to performance, should be excluded from the risk-identification process. Executives are important sources of knowledge of risks to Crown's businesses (and indeed any business).

(b) As to paragraph 15(b), Crown accepts that, on 7 February 2015, Mr O'Connor sent an email to Mr Howard Aldridge of Crown Aspinalls in which Mr O'Connor referred to being "concerned with the international business near terms prospects", referred to the challenge of "convincing our masters that they need to temper their expectations", and said that "conservative expectations won't be well received". Crown accepts that Mr O'Connor explained in his evidence to the NSW Casino Inquiry that he was referring to the expectations of business volumes and profits compared with the capacity to deliver on those expectations – to "something of a disconnect between the business volumes and profits that our business unit was able to deliver relative to what was expected". However, Crown notes that the setting of ambitious targets is common in business and not something that of itself can be fairly criticised.

16. Crown does not accept the proposition at paragraph 16. There was a failure to engage the risk-management structures in relation to China. Important developments in the operating environment were not drawn to the attention of either the Crown Melbourne Audit Committee or the Crown Resorts Risk Management Committee. However, that does not disclose any substantial defect in those risk-management structures.

Paragraph 16 implies that, because certain risks were not assessed through the risk-management structures, those structures were substantially defective. That does not follow. All risk-management structures require that persons with knowledge of risks engage those structures. The failure to engage the risk-management structures that occurred with respect to 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. There was no evidence to the NSW Casino to the effect that, had the important operating developments identified in the submissions been drawn to the attention of Mr Stuart, the Crown Melbourne Audit Committee, or the Crown Resorts Risk Management Committee, they would not have been appropriately evaluated.

17. Crown does not accept the proposition at paragraph 17. The CEO meetings and the VIP Working Group were meetings, not reporting lines. Crown made this point at

paragraph 175 of its submissions. Further, those meetings were not specifically concerned with Crown's operations in China but covered a range of other topics.

18. As to paragraph 18, Crown accepts that Mr Chen, who obtained the WilmerHale advice on behalf of Crown, was not a lawyer. The core 19 February 2013 advice was passed on to Crown's internal lawyers the day after Mr Chen received it (see paragraph 75 of Crown's submissions). Crown accepts that it appears that the balance of the external advice Mr Chen received at later dates was not passed on to, and therefore not considered by, Crown's internal or Australian external lawyers prior to the China detentions.

19. As to paragraph 19, Crown did not purport to waive legal professional privilege. Crown *did* waive privilege in the Federal Court class action when it deployed legal advice it received in filing its lay evidence in defence of that class action. The Federal Court has determined the scope of that waiver: *Zantran Pty Ltd v Crown Resorts Ltd (No 2)* [2020] FCA 1024. 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 VCGLR's draft report. Crown nevertheless of course accepts that the Federal Court filing deadline and the provision of the advice to the VCGLR occurred after the date on which Crown was provided with a copy of the VCGLR's draft report.

20. As to paragraph 20, as already noted, it is true that Crown did not hold a licence and that the Board was not provided any advice on this issue, but there was no clear evidence before the NSW Casino Inquiry that Crown was required as a matter of law to hold a licence. Nor did the evidence show what licence, if any, could have been obtained by Crown. Counsel assisting did not seek any findings as to the content of Chinese business law.

21. Crown's response to paragraph 21 is as follows:

    (a) As to paragraph 21(a), as already noted, it is true that Mr Chen was not a lawyer. It is clear that Mr Chen's concern, in seeking advice from WilmerHale, was with the criminal law (see the Commissioner's remarks quoted at paragraph 7(d)(iii) above), and Wilmer Hale's remarks concerning

"business license" in providing the criminal law advice were only incidental to that advice.

(b) As to paragraph 21(b), Crown maintains legal professional privilege over the 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 production pursuant to that summons.

22. As to paragraph 22:

(a) Crown accepts that:

i. copies of advice obtained by Mr Chen to confirm compliance with the criminal law, constituted by emails from Kenneth Zhou of WilmerHale, aspects of which counsel assisting characterise as "business law advice" (**WilmerHale emails**), were not made available to the Board prior to the arrests in October 2016; and

ii. copies of the WilmerHale emails were not put before Crown's risk-management committees prior to the arrests in October 2016.

(b) Crown does not now assert privilege over the Wilmer Hale emails. It waived privilege over the WilmerHale emails when it filed its evidence in defence of the Federal Court class action, and where the WilmerHale emails were referred to in Crown's submissions they were not the subject of redaction. Crown has provided the VCGLR with copies of the WilmerHale emails.

(c) Crown does maintain privilege over the handwritten notes made by Ms Williamson in 2011, and these notes have not been provided to the VCGLR. Crown redacted the submissions provided to VCGLR accordingly.

23. Crown does not accept that, subject only to the matters set out in paragraph 23 of the VCGLR's document, all of the matters submitted by counsel assisting at paragraphs 140–185 of their written submissions are accurate. More particularly:

(a) Paragraphs 140 to 163 of counsel assisting's written submissions are organised under the heading "The business law advice and its interpretation". As to these paragraphs:

i. Crown's response to the general propositions in paragraphs 140 and 141 of counsel assisting's written submissions, including the implication that Crown sought out "business law advice", have already been dealt with above at paragraphs 2(d)(i), 7(d)(iii), and 21 above.

ii. Paragraphs 142 to 145 deal with the handwritten notes made by Ms Williamson in 2011 over which Crown maintains privilege. For that reason, counsel assisting did not address the matters in these paragraphs in their oral submissions. Paragraphs 143 to 145 of counsel assisting's written submissions were inadvertently not redacted when those submissions were produced to the VCGLR. This is in contrast with the redaction of corresponding discussion in Crown's submissions. Given the disclosure of these paragraphs was inadvertent, Crown does not consider that it constitutes a waiver of legal professional privilege.[16] For that reason, Crown requests that the VCGLR delete all copies of counsel assisting's written submissions in which paragraphs 143 to 145 are redacted. Crown will supply a new copy with those paragraphs redacted.

iii. Paragraphs 146 to 153 of counsel assisting's written submissions concern an email from WilmerHale to Mr Chen of 19 February 2013 and related matters. This same email is earlier discussed by counsel assisting in their written submissions under the heading "The criminal law advice and its interpretation". Consistently with the discussion of the email in that section of counsel assisting's written submissions, it is evident that the 19 February 2013 advice was focused on Article 303 of the PRC Criminal Law.

1. As to paragraph 146, in which counsel assisting partially quote one passage in the 19 February 2013 advice, the proper

[16] See *Expense Reduction Analysts Group Pty Ltd v Armstrong Strategic Management and Marketing Pty Ltd* (2013) 250 CLR 303.

interpretation of that passage was addressed at paragraphs 117 to 118 of Crown's submissions, to which Crown refers. As Crown there observed, the quotation at paragraph 146 of counsel assisting's written submissions omits the first part of the passage, which is important. It reads: "With respect to the potential liability on institutions". Read in full, the passage quoted at paragraph 146 was dealing with what was required of entities registered in China (or "institutions", as they were described in the part of the passage not quoted by counsel assisting). Crown had not at the time registered, and did not proceed to register, any entity in China.

2. As to paragraphs 147 to 149, Crown generally accepts those paragraphs, subject to noting that the questioning of Mr O'Connor and Ms Tegoni proceeded (consistently with the way the matter is dealt with in the written submissions) without due regard to the opening words of the passage quoted at paragraph 146. Crown's general acceptance of those paragraphs is also subject to relying on the full effect of the whole of Mr O'Connor's and Ms Tegoni's evidence.

3. As to paragraph 150, Crown does not accept that paragraph for the reasons just given in relation to the proper interpretation of the passage quoted at paragraph 146.

4. As to paragraphs 151 and 152, Crown accepts these paragraphs.

5. As to paragraph 153, Crown accepts that, at the time of the 19 February 2013 advice, WilmerHale did not know whether Crown had registered an entity in China (see paragraph 120 of Crown's submissions). However, by 19 August 2014, WilmerHale was aware of this, and merely said that "it may be advisable" to set up a formal business operation, which was far from advice that it was necessary to do so (see paragraphs 120 to 122 of Crown's submissions). The context in which

that particular remark was made is discussed immediately below.

iv. Paragraphs 154 to 155 address remarks made in the course of email exchanges in August 2014 between Mr Chen and WilmerHale that arose because an employee had been paid using the erroneous descriptor "VIP Funding", which apparently triggered a query from her bank. She should have been paid using the descriptor "services/consulting fees", which reflected the nature of the payment.

1. Paragraph 154 is accurate. Counsel assisting initially misinterpreted these email exchanges as disclosing an instance of alleged deception of Chinese authorities, but they did not pursue that proposition following Mr Craigie's evidence, which showed their interpretation to be erroneous.[17]

2. To the extent that it was suggested in paragraph 155 that Crown "ignored" WilmerHale's advice that a business registration "should" be set up, this is refuted. This was addressed at paragraphs 120 to 122 of Crown's submissions, to which Crown refers. As noted, the August 2014 email said that it "may be advisable" to set up some formal business registrations, such as a representative office in China, but there was no suggestion in that email that such a step was essential to comply with the law and, after August 2014, WilmerHale continued to advise that Crown could lawfully engage with customers subject to compliance with the advice about Article 303.

v. Paragraphs 156 to 160 address evidence concerning a passage from advice obtained by Mr Chen by emails sent on 9 and 10 February 2015. Those same emails are earlier discussed by counsel assisting in their written submissions under the heading "The criminal law advice and its interpretation". It is evident that Mr Chen's concern was whether WilmerHale's earlier advice as to Article 303 of the PRC Criminal Law remained unchanged.

[17] Transcript of the NSW Casino Inquiry at page 1476, line 36 to 39; page 1582, line 27 to page 34.

1. Crown accepts as accurate the quotations of the emails set out at paragraphs 156 and 160, and the summary of the evidence referred to in paragraphs 158 to 159.

2. As to paragraph 157, Crown does not accept that it is "clear" from the email quoted at paragraph 156 that WilmerHale "assumed that Crown Resorts did have a licence to conduct a representative office". As Mr Craigie said in his evidence, the email is capable of being read in a number of ways, and it appears that aspects of the email may have been generic advice.[18] For example, the email uses the expression "rep offices/employees", which does not indicate advice directed exclusively to an entity with a representative office or licence. Further, Crown does not accept the proposition that WilmerHale assumed "the advice they had given … had been followed". As already noted, Crown does not accept the proposition that, in August 2014, WilmerHale advised Crown that it needed to set up a business registration.

3. As to paragraphs 161 to 163, Crown accepts the summary of the evidence referred to in those paragraphs, subject to the following. Paragraph 163 is inaccurate to the extent that it suggests that Mr Felstead was aware of any requirement to hold a licence to conduct the activities Crown was conducting. As noted in Crown's submissions at paragraph 127, Mr Felstead gave evidence that he was not aware of any requirement to hold a licence. In addition, the reference in paragraph 163 to Mr Felstead's evidence about "forbidding the establishment of an office", was a reference to his comment, quoted in paragraph 160 of counsel assisting's submissions, that "having them operate as non gaming offices doesn't seem overly practical to me" (this is dealt with in Crown's submissions at paragraph 129). Finally, the final sentence of paragraph 161, and the final two sentences of

[18] Transcript of the NSW Casino Inquiry at page 1487, lines 4–5 and 17–18.

paragraph 162, appear to assume that it was possible, and that it was required, to hold a licence to market gaming activities to Chinese nationals, even where that marketing activity fell within what was permitted by Article 303. Again, there was no clear evidence to that effect before the NSW Casino Inquiry. Further, as referred to in paragraph 84 of Crown's submissions to which Crown refers, it is by no means clear, and there is no evidence to suggest, that all of Crown's competitors in China had a licence to operate there (and, if they did, that their licences extended beyond the marketing of hotel/resort facilities to the marketing of gaming activities).

(b) Paragraphs 164 to 185 deal with the Guangzhou apartment. Subject to the matters addressed at paragraph 2(e) above, to which Crown refers, Crown accepts that the factual matters referred to at paragraphs 164 to 185 are accurate.

24. Paragraph 24 contains a number of propositions:

(a) Crown does not accept paragraph 24(a). The creation of the position of Group General Manager, Risk and Audit, a position that previously did not exist, occurred in December 2017. One of the "first tasks" that Ms Siegers undertook in June 2018 after being appointed to that role in December 2017 was to implement changes to the structure and content of the Risk Management Committee papers.[19] The "three lines of defence" model was formally introduced in June 2019, with the approval by the Board of the first Risk Management Strategy document. However, the practical implementation of the three lines model commenced in January 2018, when Ms Siegers:

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

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

iii. caused the creation of the Crown Melbourne Enterprise Risk and Compliance Committee in June 2018.

[19] Transcript of the NSW Casino Inquiry at page 2485 to 2486 (11 September 2020).

(b) The maintenance of departmental risk registers was an aspect of the risk-management process in place under Mr Stuart which was introduced in 2005.[20] Accordingly, it is not correct to say that the matters identified in paragraph 189 of Crown's submissions did not occur until February and June 2020.

(c) In June 2018, the first review of the format of the Risk Management Committee papers started including a summary section at the front of the paper that highlights a large range of relevant events. The agendas also started including a standard line item that opens discussions from all participating committee members on 'emerging risks', which affords everyone the ability to mention items that are not captured in the written papers. This agenda item was introduced in the Risk Management Committee and Enterprise Risk and Compliance Committees in November 2018.

(d) As to paragraph 24(b), Crown refutes the proposition about alleged reliance on senior executives to identify risks. Crown refers to paragraph 14 above, and paragraph 189(c) of Crown's submissions, the latter of which refers to the three lines of defence model, which requires each business unit to review and updated its risk profile. It is a fundamental principle of the three lines of defence model that the business (including its senior executives) is responsible for the identification and management of risks, as well as relevant communication and escalation.

(e) As to paragraph 24(c), Crown again refers to paragraph 14 and adds that:

i. As to paragraph 24(c)(i), reporting lines are a mechanism, used in virtually all businesses, by which the concerns of junior staff can be escalated to executive level staff and above. There is no process at Crown by which senior executives either "endorse" or "do not endorse" the concerns of junior staff.

ii. As to paragraph 24(c)(ii), it is not accurate. As a general matter, the proposition implies that there are repercussions for junior staff who seek to elevate risks, whether through Crown's risk-management structures or Crown's whistle-blower policy, to the upper levels of

[20] See the discussions of departmental risk registers in Mr. Stuart's Federal Court statement.

Crown. That is not the case. In relation to the whistle-blower policy specifically, to the extent that junior staff wish to use that mechanism (as distinct from reporting lines) to raise a concern, it is not accurate to say that the policy contains no protections for junior staff. On the contrary, consistently with Part 9.4AAA of the *Corporations Act* 2001 (Cth), section 6 of the Crown Resorts Limited Whistleblower Policy dated December 2019, which applies to Crown Melbourne and other related bodies corporate pursuant to section 1, sets out protections available to employees and other persons meeting the definition of "Eligible Whistleblower".

(f) As to paragraph 24(d), Crown's submission at paragraph 190 of its submissions was to the effect that Crown is continually seeking to improve its risk-management frameworks. It is not a fair characterisation of that submission to say that Crown's risk-management frameworks are "incomplete". That Crown continues to seek to satisfy itself that its risk management framework is sound is consistent with good corporate governance principles.

25. Crown does not accept that the steps taken by Crown since the China arrests do not include any review and/or remediation of Crown's governance, ethics, or culture by reference to the events that occurred in China.

As to review, as already pointed out, and as explained in Crown's submissions, the Federal Court class action, the VCGLR investigation, and the NSW Casino Inquiry have required Crown to review, in detail, what occurred in China. The proposition that there has been no review of the events in China is not accurate. Particularly is that so given a public inquiry has recently concluded in which considerable time was devoted to examining the China arrests. The examination of the events in China that has occurred through these three streams of inquiry has identified certain failings. Those failings have been acknowledged.

As to remedial steps, Crown refers to paragraph 191 of its submissions and adds, as already pointed out, that:

(a) the senior management of the VIP International business is completely different from what it was at the time of the China arrests: Mr Felstead and

Mr Chen no longer work for Crown, and Mr O'Connor works in a very different role in which he has no involvement at all with the strategy of the VIP International business;

(b) Michael Neilson, the General Counsel of Crown Resorts at the time, Debra Tegoni, the Executive General Manager, Legal and Regulatory Services at Crown Melbourne at the time, and Drew Stuart, the General Manager, Risk & Assurance at Crown Melbourne at the time, all no longer work for Crown;

(c) the managing director at the time, Mr Craigie, no longer works for Crown;

(d) the chairman at the time, Mr Rankin, no longer works for Crown;

(e) six directors have departed (see paragraph 6 above);

(f) a seventh director, Professor Horvath, has signalled his intention to depart presently (see paragraph 6 above).

22 January 2021