

**ROYAL COMMISSION INTO THE CASINO OPERATOR AND
LICENCE**

Mr Felstead's Written Submissions

A. Introduction

1. Mr Barry Felstead was employed by Crown Resorts Ltd (**Crown Resorts**) as Chief Executive Officer – Australian Resorts from 2013 to 31 December 2020. He was also, relevantly, a director of Crown Melbourne Ltd (**Crown Melbourne**) until his resignation on 1 January 2021. In these submissions, a reference to “**Crown**” is to Crown Resorts or any of its subsidiaries.
2. Mr Felstead was granted conditional leave to appear in these proceedings on 19 May 2021, such leave being limited to:
 - 2.1. examining any witness who has given evidence adversely affecting the interests of Mr Felstead; and
 - 2.2. making submissions about what findings, if any, should be made about the conduct of Mr Felstead.
3. These submissions respond to Counsel Assisting's written submissions¹ in relation to evidence adduced from Mr Timothy Bryant, an officer of the Victorian Commission for Gambling and Liquor Regulation (**VCGLR**), by his statement dated 15 April 2021² and in his oral evidence given 17 May 2021 (**Bryant Allegations**).
4. No adverse finding has been articulated or expressly proposed with respect to Mr Felstead.³ Rather, Mr Felstead has been provided with an opportunity to file submissions in relation to the matters raised in Mr Bryant's statement and evidence.⁴

¹ Closing Submissions of Counsel Assisting the Commission, July 2021, COM.0500.0001.0380.

² Exhibit RC0001a, Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002.

³ Cf the approach to the individuals and entities listed at Closing Submissions of Counsel Assisting the Commission, July 2021, COM.0500.0001.0380 at .0400 Ch 1 [6.7]-[6.8].

⁴ Closing Submissions of Counsel Assisting the Commission, July 2021, COM.0500.0001.0380 at .0432 Ch 4 [3.94].

5. The Bryant Allegations comprise serious allegations of dishonesty against Mr Felstead. The Bryant Allegations suggest Mr Felstead lied to or misled Mr Bryant, with the implication it was done deliberately, which, if proven to the criminal standard, amounts to an offence under the *Gambling Regulation Act 2003* (Vic) s 10.5.16.
6. Mr Felstead does not understand Counsel Assisting to have proposed any other matters as a basis for an adverse finding against Mr Felstead. These submissions address, in brief, the Bonus Jackpot Tax Issue and Crown's Malaysian Presence.

B. Preliminary Matters

7. Commensurate with this Commission's obligation to afford procedural fairness,⁵ Counsel Assisting says that, in relation to the matters on which a proposed adverse finding may be based, the relevant individuals have been aware of this potential through the preparation of witness statements and questions put at oral hearings.⁶
8. Further, in relation to findings of criminal or dishonest conduct, Counsel Assisting note the *Briginshaw* standard applies. That is, such matters must be proven to the reasonable satisfaction of the tribunal which is not produced by "inexact proofs, indefinite testimony or indirect inferences."⁷
9. At the outset, it is noted that:
 - 9.1. the Commission's Terms of Reference do not expressly, or by reference (for example, to the findings of the Inquiry under section 143 of the *Casino Control Act 1992* (NSW) before the Hon. Patricia Bergin SC (**the Bergin Inquiry**)), advert to the matters the subject of the Bryant Allegations;
 - 9.2. Mr Felstead was not invited to prepare a written statement in response to specific matters prior to the commencement of hearings by which he might be put on notice of the Bryant Allegations;

⁵ *Inquiries Act 2014* (Vic), ss 14 and 36.

⁶ Closing Submissions of Counsel Assisting the Commission, July 2021, COM.0500.0001.0380 at .0400 Ch 1 at [6.6].

⁷ Closing Submissions of Counsel Assisting the Commission, July 2021, COM.0500.0001.0380 at .0396 Ch 1 at [4.2]-[4.5] citing *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361-362.

- 9.3. Mr Felstead was not provided with a copy of Mr Bryant's statement or given notice of the potential for the Bryant Allegations to be made before Mr Bryant gave evidence on 17 May 2021;
- 9.4. Mr Felstead was not represented during Mr Bryant's oral evidence and was not afforded an opportunity to question Mr Bryant before Mr Bryant was excused;
- 9.5. on the evening of 17 May 2021, and after Mr Bryant's oral evidence, Mr Felstead applied for leave to appear, which leave was granted on a conditional basis on 19 May 2021;
- 9.6. Mr Felstead was not called to give evidence concerning the matters the subject of the Bryant Allegations, or at all;
- 9.7. none of the Bryant Allegations have been put to Mr Felstead for his response as a witness;
- 9.8. to the extent that any propositions have been put to Crown for its response, for example, the Statement of Propositions dated 22 December 2020,⁸ it ought not be assumed that Mr Felstead had any knowledge of these propositions or participation in any response by Crown in circumstances where Mr Felstead left the employment of Crown on 31 December 2020;
- 9.9. to the extent any adverse finding against Mr Felstead arises out of the evidence of Mr Richard Murphy, Mr Felstead notes that no portion of Mr Murphy's evidence has been made available to him; and
- 9.10. Mr Felstead has had varying degrees of access to the evidence of Ms Jan Williamson and Ms Michelle Fielding, on occasion being provided with portions of their private hearing transcript after those witnesses have been excused.

C. Mr Felstead's evidence

10. Mr Felstead has provided two statements to the Commission:

⁸ Exhibit RC0001a Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at .0044 [133].

- 10.1. a statement dated 15 July 2021⁹ addressing certain evidence in relation to the China Union Pay/Hotel Transactions Process and Bonus Jackpot Tax Issue; and
- 10.2. a statement dated 26 July 2021¹⁰ which responds to the matters raised in Mr Bryant's statement and oral evidence.
11. As at the date of these submissions, the second statement has not been admitted into evidence as an exhibit. The circumstances concerning the provision of this statement is set out in correspondence between Solicitors Assisting and Mr Felstead's solicitors dated 8 July 2021, 9 July 2021, 23 July 2021 and 26 July 2021.

D. Bryant Allegations

12. The Bryant Allegations concern an interview of Mr Felstead conducted by Mr Byrant and another inspector of the VCGLR on 28 March 2018 (**the VCGLR Interview**).
13. In the VCGLR Interview, Mr Felstead was asked about a number of matters, including with respect to:
- 13.1. a Reuters article dated 7 February 2015 in relation to a crackdown announced on foreign casino operators (**the February 2015 Announcement Allegation**); and
- 13.2. the questioning of a Crown staff member in China (identified in the Bergin Report, as "Mr BX") (**the BX Questioning Allegation**).
14. Mr Bryant's statement contains statements to the effect that Mr Felstead had not been "as forthright as possible"¹¹ and "did not display the level of candour" that Mr Bryant had expected of him.¹² Mr Bryant annexes a Memorandum dated 10 November 2020,¹³

⁹ Exhibit RC1259, Statement of Barry Felstead, 15 July 2021, FEL.0000.00005.0001.

¹⁰ Statement of Barry Felstead, 26 July 2021, FEL.0000.0005.0004.

¹¹ Exhibit RC0001a, Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at _0021 [62(b)].

¹² Exhibit RC0001a, Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at _0048 [138(d)].

¹³ Exhibit RC0001aaaa, Memorandum regarding misleading statements at VCGLR interviews regarding the detention of Crown employees in China, 10 November 2020, VCG.0001.0002.6071.

which states that Mr Felstead's evidence with respect to the BX Questioning Allegation, was "potentially misleading". No such conclusion is made with respect to Mr Felstead's evidence in relation to the February 2015 Announcement Allegation.¹⁴

15. Mr Bryant concedes that emails later produced by Crown, and not shown to Mr Felstead at the VCGLR Interview, may have assisted Mr Felstead to recall key events at that time.¹⁵

16. When giving evidence, Mr Bryant was pressed as to why he was "dressing up" the interview statements from Crown employees as "not being particularly fulsome at times"¹⁶. Mr Bryant responded:

"... I suppose I was giving Crown, when I am conducting the interviews, the benefit of the doubt at the time to give their position. I did not have access to a lot of the material at that stage. In hindsight, though, I certainly consider that they are – at times they lied to me at interview with what they were and were not aware of."

17. It is not immediately clear from this exchange who is doing the "lying" or about which issues, given that a number of Crown employees had been interviewed by Mr Bryant and with respect to a number of matters. Counsel Assisting subsequently referred Mr Bryant to his 10 November 2020 memorandum to confirm what Mr Bryant considered "misleading".¹⁷ As stated above, the 10 November 2020 memorandum refers to Mr Felstead's statements in relation to the BX Questioning Allegation, but not the February 2015 Allegation.¹⁸

18. Mr Bryant's conclusions as to Mr Felstead's dishonest state of mind are not, on any measure, a reliable basis upon which to make that finding. In circumstances where an allegation of dishonesty has not been explored with Mr Felstead, nor has it been put to

¹⁴ Exhibit RC0001a, Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at _0043 [128].

¹⁵ Exhibit RC0001a, Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at _0021 [62(b)].

¹⁶ 17.05.2021 T107:29-30 (Bryant).

¹⁷ 17.05.2021 T116:10-34 (Bryant).

¹⁸ Exhibit RC0001aaaa, Memorandum regarding misleading statements at VCGLR interviews regarding the detention of Crown employees in China, 10 November 2020, VCG.0001.0002.6071.

him, this Commission lacks the exact, definite or direct testimony upon which the Commission can reasonably be satisfied of those matters. Even assuming such findings were to be based on inference, such an inference is not reasonably open on the evidence when that evidence is properly examined.

E. February 2015 Announcement Allegation

19. In the VCGLR Interview, Mr Felstead was shown an article dated 7 February 2015.¹⁹

There is then the following exchange:²⁰

“Q68: What can you recall about that time, Barry, in relation to the – what we’d describe as a (indistinct) change in the landscaping – – – [scil. “landscape”]

“A: My recollection from the time, and this is in relation to what information’s come from talking to the customers and the like, was that there was certainly a – certainly a move from the Chinese government to restrict some of the activities of its citizens in terms of – and a lot of that – well certainly my understanding was based about Macau, which was evidenced in the drop off in business in Macau. And a lot of it was and this is once again information from customers and what you hear in the industry, a lot of it was a crackdown on government officials engaging in gambling, which was – always seemed a bit of a sore point for the Chinese government. That was certainly made loud and clear to us from customers who we would converse with and talk to, and there was certainly a large degree of trepidation about business in Macau for some of our customers, because a lot of the crackdowns were occurring around that. So that was probably the key thrust that I took from that period.

“Q69: Would articles like this be brought to your attention in your role?

“A: Yeah, you would see some articles. I mean I would get – I would receive a series of press clippings on a daily basis and sometimes you would receive 70

¹⁹ Exhibit RC0001y, VCGLR Transcript of Interview (Felstead), 28 March 2018, VCG.0002.0011.0003 at _0015 [Q66].

²⁰ Exhibit RC0001y, VCGLR Transcript of Interview (Felstead), 28 March 2018, VCG.0002.0011.0003 at _0015-_0016 [Q68]-[Q69].

or 80 clippings a day but you would certainly be aware of some of the more major things and like I said, the crackdown in Macau especially [. . .]”

20. In the following question, the crackdown in Macau is acknowledged by the questioner who states : “That certainly started to effect all of the Macau casinos . . .”.²¹ There is further discussion of the impact of the crackdown in Macau before the questioner brings the topic back to the particular article:²²

“Q71: Just in relation to this particular article, it seems to be a lot broader than that. I appreciate what you’re saying, but even the comments of the President at the time, has officially declared war on the global gambling industry, warning foreign casinos that Chinese citizens will be gambling much less in China, neighbouring companies [sic] and the US. So to me I read that as it’s a bit broader than just a focus on Macau. What do you say to that?”

“A: I think – look, I still maintain the focus is primarily in Macau. Now in terms of the actual individual article that you showed me, I hadn’t seen that particular one but look in terms of what was going on from a casino marketing perspective, major casinos were operating in China. From our perspective, advices that we took were that we had a series of guidelines we had to follow up there and if we complied with those that was obviously positive, that was a good thing to do, and so yeah, so probably from that perspective I certainly didn’t sense any – I didn’t sense any great trepidation in visiting China. As long as we followed the guidelines that were laid down.”

21. A further article at around that time is shown to Mr Felstead concerning China’s corruption crackdown its effect on Mr James Packer’s casino joint venture in Macau.²³ The questioner notes that the article suggests that there was an opportunity for Crown to increase its market share if Macau was “off limits” for some of the gamblers, to which Mr

²¹ Exhibit RC0001y, VCGLR Transcript of Interview (Felstead), 28 March 2018, VCG.0002.0011.0003 at _0016 [Q70].

²² Exhibit RC0001y, VCGLR Transcript of Interview (Felstead), 28 March 2018, VCG.0002.0011.0003 at _0017 [Q71].

²³ Exhibit RC0001y, VCGLR Transcript of Interview (Felstead), 28 March 2018, VCG.0002.0011.0003 at _0019-_0020 [Q76]-[Q79].

Felstead agreed. Mr Felstead indicates that the article confirms his view that the corruption crackdown was focused on casinos in Macau.

22. The following points may be made in relation to this exchange.
23. First, Mr Felstead was questioned about his recollection of the changing landscape of the Chinese Government's crackdown in early 2015. The question is wide and necessarily calls for an impressionistic response concerning the broad sweep of corruption reforms undertaken by the Chinese authorities at about that time. Mr Felstead's answers reflect his recollection of the "focus" and the "key thrust" of the corruption crackdown in 2015 as being in relation to Macau, which understanding is supported by the second article shown to him. There is nothing to suggest that Mr Felstead was not being forthright or candid about his recollection from that time.
24. Secondly, there is nothing misleading about the content of Mr Felstead's response. His recollection was that there was a primary or major focus for the crackdown concerning gambling in Macau. This is borne out by the following findings in the Bergin Inquiry report based upon the expert testimony of Mr Paul Bromberg, an expert in gaming regulatory compliance matters with a degree in Modern Chinese Studies:²⁴
- 24.1. first, that in 2012, President Xi Jinping initiated a crackdown on corruption in Mainland China; and
- 24.2. secondly, that the gaming sector became a key focus of the Chinese corruption crackdown when, in December 2014, President Xi Jinping visited Macau to highlight the far reach of the anti-corruption campaign, urging the government to diversify its economy to reduce dependence on casino revenue which resulted in the Macau government implementing a number of measures over the following years.
25. Why a single announcement in a press conference by a senior official should be acknowledged by Mr Felstead as representing a change in the main or primary focus of the whole of the Chinese Government's general anti-corruption campaign from that period is not immediately clear. This is a completely separate question as to what

²⁴ Exhibit RC0445, Bergin Inquiry Report Volume 1, 01 February 2021, COM.0005.0001.0001 at .0032 Ch 1.2 [47]-[48].

significance, or heightened level of risk, Crown ought to have afforded the February 2015 Announcement as a stand-alone announcement affecting its operations in China, and is not determined by adverse findings made by Commissioner Bergin that the February 2015 Announcement ought, nonetheless, to have been escalated through the Crown's risk management system.

26. Thirdly, Mr Felstead was not questioned about whether he, in fact, received the article presented to him. He was asked about whether articles, like the one he was shown, were sent to him. Mr Felstead agreed he received up to 70 or 80 press clippings a day of which he was usually aware of the major matters like the Macau crackdown. In the course of providing his answers, Mr Felstead volunteered that he had not received that particular article from 7 February 2015. At the time of giving this answer, it was not suggested to Mr Felstead that he might be mistaken about not receiving that particular press clipping. He was not invited to give further consideration to the matter before confirming his answer. There is no basis to infer from this exchange that Mr Felstead, in fact, gave considered thought to whether he recalled receiving the particular article amongst the 70 or 80 press clippings that he may have received on that particular day.
27. Fourthly, after the VCGLR Interview took place, two pieces of email correspondence dated 7 and 11 February 2015 were produced showing that the press clipping was forwarded to Mr Felstead. The email correspondence was not shown to Mr Felstead at the time of the VCGLR Interview by which he might refresh his memory. The existence of the email correspondence, of itself, does not suggest that Mr Felstead lied about receiving the press clipping when it ought reasonably be inferred that, after the elapse of over three years, he simply did not have an independent recollection of receiving it. There is no basis to assume that Mr Felstead would not have conceded receiving the email correspondence upon refreshing his memory from the documents which, it may reasonably be inferred, was what happened prior to Mr Felstead giving evidence at the Bergin Inquiry.
28. The basis upon which Mr Bryant says Mr Felstead gave misleading information at the VCGLR Interview is that:²⁵

²⁵ Exhibit RC0001a, Statement of Timothy Bryant, 15 April 2021, VCG.9999.0001.0002 at _0040 [117(b)]. Repeated at CA Submissions, Ch 4 [3.89(a)].

“Mr Felstead conceded at the NSW Inquiry that it was “common knowledge” among Crown senior management that at that time, the Chinese government crackdown on foreign casinos was quite a different dimension to the existing crackdown on corruption.”

29. This summary does not fairly represent Mr Felstead’s evidence at the Bergin Inquiry. The transcript of Mr Felstead’s evidence is not in evidence in this Commission. If findings are to be made concerning inconsistencies between it and the VCGLR Interview, it was incumbent on Counsel Assisting to tender the transcript.
30. Nonetheless, the transcript is publicly available and the following matters are noted.
31. First, Mr Felstead was extensively cross examined about those with whom he did and did not discuss the February 2015 Announcement. In his evidence, Mr Felstead is consistent in indicating that he did not have an independent recollection of discussing the matter with directors or senior management at Crown. He agreed that he did not recall discussing it with the board of Crown Melbourne or the board of Crown Resorts or Mr Rowen Craigie the CEO of Crown Resorts.²⁶ Mr Felstead said that he did not specifically recall discussing the matter with Mr Michael Johnston, a director of Crown Resorts, but that he “would certainly imagine that would have occurred”.²⁷
32. Secondly, Mr Felstead’s evidence concerning his understanding of the knowledge of other directors and senior managers of the February 2015 Announcement was based on his belief that it was brought to their attention through the receipt of press clippings just as he had received press clippings. Specifically, Mr Felstead said “this was common knowledge in the industry at the time . . . *that is, many people got these emails*”²⁸ (emphasis added) and “[m]any other people got this information as well”.²⁹ While Mr Felstead could not recall informing Mr Craigie of the crackdown, he said, “I would have, on that one, assumed that Mr Craigie would have got this information the same way I do

²⁶ 17.08.2020 T1170:29-37 (Felstead); 18.08.2020 T1197:42-45 (Felstead); 18.08.2020 T1200:40-45 (Felstead).

²⁷ 18.08.2020 T1201:24-28 (Felstead).

²⁸ 17.08.2020 T1169:35-36 (Felstead).

²⁹ 17.08.2020 T1169:44 (Felstead).

as well.”³⁰ and “I don’t recall advising Mr Craigie. But Mr Craigie was on the same email news list as myself as were others.”³¹

33. Thirdly, Mr Felstead’s evidence accords with the finding in the Bergin Inquiry that news of the crackdown was also captured in media monitoring services that were sent to a number of Crown’s executives and directors, including Mr Packer, Mr John Alexander, Mr Craigie and Mr Johnston.³²
34. Mr Felstead’s evidence that the February 2015 Announcement was “common knowledge” goes no further than Mr Felstead saying that directors and senior managers all received the same news alert service that he did. There is no evidence that Mr Felstead recalled any specific conversations concerning this subject with other directors and senior managers such that he ought to have recalled these matters during the VCGLR Interview. In its proper context, Mr Felstead’s evidence that the February 2015 Announcement was “common knowledge” is not a basis for inferring that Mr Felstead lied about his recollection at the VCGLR Interview concerning the February 2015 Announcement.
35. In short, Mr Felstead never said in his evidence to the Bergin Inquiry that it was common knowledge among senior management that the the Chinese Government crackdown on foreign casinos was “quite a different dimension” to the existing crackdown on corruption.
36. It is even doubtful he admitted having that knowledge himself. When asked whether he appreciated that the crackdown on foreign casinos was quite a different dimension to the existing crackdown on corruption, Mr Felstead responded:³³

“ . . . I would have seen these go hand in hand.”

³⁰ 17.08.2020 T1170:35-36 (Felstead).

³¹ 17.08.2020 T1171:13-14 (Felstead).

³² Exhibit RC0445, Bergin Inquiry Report Volume 1, 01 February 2021, COM.0005.0001.0001 at .0283 Ch 3.3 [175].

³³ 17.08.2020 T1165:3-8 (Felstead).

37. Mr Felstead was then asked whether he “appreciates”, that is, at the time of questioning, the difference between a crackdown on corruption and a crackdown on foreign casinos luring China’s gamblers overseas. Mr Felstead answered in the present tense “I certainly do”. And then proceeded to say that he was trying to make the point, albeit clumsily, that he thought that they were connected.³⁴ Mr Felstead did not say that he thought that “the Chinese Government crackdown on foreign casinos was quite a different dimension to the existing crackdown on corruption”. His evidence, in fact, suggests he had the opposite view in early 2015.

F. BX Questioning Allegation

38. In the VCGLR Interview, Mr Felstead was asked questions in relation to the questioning by Chinese authorities of a Crown employee in China who was identified in the Bergin Inquiry as “Mr BX”³⁵ (not to be confused with another Crown employee in China, “Mr JX”). Mr Felstead was asked whether he was aware, at the time, of a Crown staff member being detained and questioned in July 2015.³⁶ Mr Felstead answered that he was aware. When asked who had brought it to his attention, he answered that he did not recall but that it would have been either Mr Michael Chen (at the time, President – International Marketing at Crown Resorts) or Mr Jason O’Connor (at the time, Group Executive General Manager – VIP International at Crown Resorts).³⁷ The following exchange then takes place:³⁸

“Q131: Can you recall how that was relayed to you?”

“A: Look, I think it was – yeah, I think it was in relation to we’ve had a staff member who’s been – questioned and my understanding, it was in relation to a

³⁴ 17.08.2020 T1165:10-15 (Felstead).

³⁵ Exhibit RC0001y, VCGLR Transcript of Interview (Felstead), 28 March 2018, VCG.0002.0011.0003 at _0035 [Q146]-[Q149].

³⁶ Exhibit RC0001y, VCGLR Transcript of Interview (Felstead), 28 March 2018, VCG.0002.0011.0003 at _0031 [Q129]-[Q130]. The transcript says “July 2010”, but we assume the reference is meant to be to “July 2015”.

³⁷ Exhibit RC0001y, VCGLR Transcript of Interview (Felstead), 28 March 2018, VCG.0002.0011.0003 at _0031 [Q130].

³⁸ Exhibit RC0001y, VCGLR Transcript of Interview (Felstead), 28 March 2018, VCG.0002.0011.0003 at _0032 [Q131]-[Q132].

particular – it could have been in relation to a particular patron but I don't recall a lot of details about it but I definitely remember there was an incident where a staff member was questioned by a government agency, whether it was the police, I can't remember."

"Q132: Can you recall it being in the context of a patron?"

"A: That was my understanding."

39. Mr Felstead was asked if he recalled receiving any emails in relation to it, to which Mr Felstead responded that he did not recall getting emails on it, but that he was definitely aware of it.³⁹

40. Mr Felstead was then shown an email from Mr Chen to a "Randy who was at Mintz at the time" concerning the provision of a letter from Crown as to Mr BX's employment, to which Mr Felstead answered, "that certainly rings a bell" and "that certainly wouldn't be a great surprise to me."⁴⁰

41. Mr Felstead was shown a letter dated 9 July 2015 which Mr BX provided to the Chinese authorities stating that he was an employee of Crown. Later, Mr Felstead said:⁴¹

"...my understanding of the whole incident was it was in relation to a customer which probably would be no great surprise in terms of sometimes they may have spoken to a customer who may be a person of interest, unbeknown to them. . ."

42. The following exchange then took place:⁴²

³⁹ Exhibit RC0001y, VCGLR Transcript of Interview (Felstead), 28 March 2018, VCG.0002.0011.0003 at _0032 [Q133].

⁴⁰ Exhibit RC0001y, VCGLR Transcript of Interview (Felstead), 28 March 2018, VCG.0002.0011.0003 at _0032-_0033 [Q134]-[Q137].

⁴¹ Exhibit RC0001y, VCGLR Transcript of Interview (Felstead), 28 March 2018, VCG.0002.0011.0003 at _0034 [Q143].

⁴² Exhibit RC0001y, VCGLR Transcript of Interview (Felstead), 28 March 2018, VCG.0002.0011.0003 at _0036-_0037 [Q155]-[Q159].

“Q155: But Crown employees getting questioned by police you don’t think should have got escalated further up the chain from your position?”

“A: Crown employee interviewed by the police, no, I think the – I think the response was – I think the response was adequate.”

“Q156: And what was the response?”

“A: Well the response that we actually gave. So we were requested to do a letter of employment, which we did, and as I said before if the incident was mainly focused around an individual player, which I was led to believe it was, that to me was a – that to me was not a material risk for our employees in China.”

“Q157: Just in relation to all the correspondence I haven’t taken on board what you’re saying but there’s no indication in any of the documents we’ve got that it was about an individual player or anything.”

“A: No, and like I said, that’s what I was led to believe.”

“Q158: By Michael?”

“A: I can’t recall who it was. I’m assuming it would have been Michael. It would have been Michael or Jason, I’m not exactly sure who.”

“Q159: But one of those two?”

“A: Yeah.”

43. Further:⁴³

“Q160: . . . the reason that I understand that you believe – that you were led to believe that it might have been in relation to the Chinese government focusing on a particular player that had an association with one of your staff. Is that what you’re trying to say?”

⁴³ Exhibit RC0001y, VCGLR Transcript of Interview (Felstead), 28 March 2018, VCG.0002.0011.0003 at _0037-_0038 [Q160]-[Q161].

“A: No, what it is, our player – sorry, our staff will talk to customers. Now this customer, like I said I was led to believe he could have been a person of interest of the Chinese government and the – they could have been – for all we know they could have been following him and the response to the staff member could be what were you talking to the customer about?”

“Q161: Okay. So basically what you believe is that it was not the fact that they were looking at your activities in the sense of what your employee was doing. It was more the activities of the player and that just happened to be connected to one of your employees.

“A: That’s [sic] was my belief.”

44. Two points arise from this exchange. First, Mr Felstead is recalling no more than his belief or understanding at the time of the email exchange. Secondly, Mr Felstead repeatedly indicated that his belief or understanding was based upon what was conveyed to him by either Mr Chen or Mr O’Connor, he could not recall which.

45. An examination of Mr O’Connor’s transcript of interview indicates that he does not recall the questioning of the Crown employees, but that he was aware this issue was dealt with by Mr Chen.⁴⁴ Mr Chen recalls detail about the incident and is questioned across eight pages of the transcript of his interview.⁴⁵

46. In his interview, Mr Chen was shown the letter dated 9 July 2015 on Crown letterhead. The following exchange takes place:⁴⁶

“Q392: “What can you tell us about the circumstances of that letter?”

“A: [Mr BX] told us that the authorities wanted to confirm his employment and wanted him to provide evidence that he was – the company he worked for, that

⁴⁴ Exhibit RC0001w, VCGLR Transcript of Interview (O’Connor), 8 March 2018, VCG.0002.0011.0005 at _0074 [Q335].

⁴⁵ Exhibit RC0001z, VCGLR Transcript of Interview (Chen), 10 April 2018, VCG.0002.0011.0002 at _0080-0088 [Q384]-[Q422].

⁴⁶ Exhibit RC0001z, VCGLR Transcript of Interview (Chen), 10 April 2018, VCG.0002.0011.0002 at _0081-0082 [Q392]-[Q397].

he was telling the truth. So it was requested of Crown to provide that letter. I passed this request onto HR and to Legal and Legal and HR prepared the letter.”

[...]

“Q396: So can you recall discussing this directly with [Mr BX] at the time?

“A: I recall that I spoke to him, yeah, but I don’t recall the specific content,

“Q397: What can you remember?

“A: Getting the request from him for a letter, that’s about it.”

47. Mr Chen was asked whether he discussed the matter with Mr Felstead, to which he answered that he did not recall.⁴⁷

48. The context for the questioning is explored repeatedly with Mr Chen. The following is typical of the evidence Mr Chen gives:⁴⁸

“Q403: Can I just say I think it’s getting pretty specific when they’re asking for a letter of who you work for and they’re questioning you. They’ve obviously got an interest in what he’s doing at that time. Is that a fair statement?

“A: It is but again in the context of what we had been advised which is it’s not unusual for the PSB to go ask related parties, get information on related parties to people of interest and why they were interest [sic] in, they could have been interested in one of our customers. Again, our customers are all big movers and shakers and we knew, you know, in a corruption crackdown the rich are the target and so we had no idea whether – you know, we couldn’t know whether it was Crown related or not Crown related. . .”

⁴⁷ Exhibit RC0001z, VCGLR Transcript of Interview (Chen), 10 April 2018, VCG.0002.0011.0002 at _0082-0083 [Q401].

⁴⁸ Exhibit RC0001z, VCGLR Transcript of Interview (Chen), 10 April 2018, VCG.0002.0011.0002 at _0083-0084 [Q403].

49. Mr Chen gave evidence about Mr BX in the context of other evidence he had already given, earlier in his interview, as to Mr JX (about whom Mr Felstead was not asked). Mr Chen's evidence as to Mr JX was to the following effect:⁴⁹

“One of the things I should say is we did get advice that – from Randy [of Mintz] that [. . .] it is not unusual in China for people to get knocks on their door to ask questions about an ongoing investigation about something. It may be completely unrelated to your business, and because of the nature of the customers that we dealt with, they were all important people in China. There was businesses – you know, like we knew a lot of them with businesses under investigation or maybe of interest, people of interest.”

50. Further exchanges address the issue of the questioning of Mr BX,⁵⁰ the final of which is set out immediately below. Upon Mr Chen being shown the translation of the record of interview with police indicating that Mr BX had been asked about his employment with Crown, the following exchange occurred:⁵¹

“Q421: [after quoting from the record of interview] So just to clarify, to me this is pretty clear that it's about organising people to gamble in Australia.

“A: It could have been and this – I remember the discussion at the time, it could have been that there was a particular set of customers that he organised to go overseas and it was of interest to them. And they knew he would have had information about maybe how much he gambled and, you know, if it was a customer who was under a corruption investigation et cetera.

“Q422: I understand what you are saying. I suppose I don't want to labour it, I suppose the point I was just making is there's nothing of any documentation that indicates that.

⁴⁹ Exhibit RC0001z, VCGLR Transcript of Interview (Chen), 10 April 2018, VCG.0002.0011.0002 at _0078-_0079 [Q373].

⁵⁰ Exhibit RC0001z, VCGLR Transcript of Interview (Chen), 10 April 2018, VCG.0002.0011.0002 at _0080-_0088 [Q384]-[Q422].

⁵¹ Exhibit RC0001z, VCGLR Transcript of Interview (Chen), 10 April 2018, VCG.0002.0011.0002 at _0087-_0088 [Q421]-[Q422].

“A: Yeah, correct.”

51. The following points may be made about this evidence.
52. First, Mr Chen did not recall briefing Mr Felstead about these matters, but neither did he rule it out. It is apparent that out of Mr O’Connor and Mr Chen, it was likely Mr Chen who spoke to Mr Felstead.
53. Secondly, Mr Chen maintains, repeatedly, his understanding that the Chinese authorities may have questioned Mr BX about a customer who was a person of interest to the authorities. Upon refreshing his memory of the record of interview, Mr Chen says that he remembers the discussion at the time and that there was a particular set of customers Mr BX had organised and that he may have been asked about a customer under a corruption investigation. It is not suggested by Mr Bryant that Mr Chen has fabricated this evidence or sought to mislead the VCGLR with respect to it.
54. Thirdly, Mr Chen’s recollection and understanding accords with Mr Felstead’s understanding that the purpose of the questioning was related to the patron with whom the staff member had had dealings.
55. Fourthly, even assuming Mr Chen is wrong and that the police questioning was in relation to Crown’s activities and not a patron, that does not mean that Mr Felstead was dishonest about his understanding and belief at the time, based on what Mr Chen had told him.
56. Mr Felstead gave consistent evidence in the Bergin Inquiry, as to his understanding at the time of the staff were detained for questioning:⁵²

“Mr Bell: And are you saying that it didn’t occur to you that having two staff questioned by the police and the police asking for one of them to provide a letter confirming that he worked for Crown Resorts, coming only a matter of weeks after two – the staff of two Korean casinos had been arrested, was an obvious escalation of the risk?”

⁵² 18.08.2020 T1219:12-29 (Felstead).

“Mr Felstead: If I could be permitted to give a bit of clarity around that, that me be useful, if that’s all right with you, Mr Bell.

“Mr Bell: Of course.

“Mr Felstead: Yes. The first arrest, I wasn’t aware of at the time. I was aware of that when Mr O’Connor told me about the second person. So I was not aware of that. My understanding of the first particular arrest of our staff was in relation to a customer, in particular. This particular arrest I was aware of. The Koreans – my understanding of the Koreans, based on advice received, was that was a very, very different issue, because they were allegedly – I need to say the word “allegedly” – doing things which were against – against current guidelines of operating in China.” [emphasis added]

57. There is no basis to infer that Mr Felstead was misleading the VCGLR concerning his understanding or belief regarding the purpose and reason for the questioning of Mr BX in July 2015 based upon the evidence he gave in the Bergin Inquiry.

G. Conclusions on the Bryant Allegations

58. The evidence addressed above does not support a finding that Mr Felstead lied to or misled the VCGLR in his interview with them. An inference of that nature is not available on the evidence. Alternatively, if such an inference is available, for example with respect to Mr Felstead’s statement that he did not receive a copy of the 7 February 2015 article, that inference ought not be preferred to other inferences, for example, that Mr Felstead had simply forgotten the existence of email correspondence after the elapse of over three years.

59. In any case, any such inferences ought not be preferred in the face of evidence from Mr Felstead denying any attempt to mislead the VCGLR and providing a reasonable basis upon which this Commission ought to accept his denials.⁵³ Mr Felstead states that he received numerous emails from a number of direct reports on a wide range of Crown’s

⁵³ Statement of Barry Felstead, 26 July 2021, FEL.0000.0005.0004 at [4]-[6] and following.

operations and activities.⁵⁴ It is reasonable that he could not recall the detail of documents and email correspondence after the elapse of more than three years at the time that he gave the VCGLR Interview. To the extent Mr Felstead more readily concedes receiving documents in the Bergin Inquiry, it is because he had the benefit of refreshing his memory with respect to those documents before he gave that evidence.⁵⁵

60. The Bryant Allegations have not been proven to the requisite standard and this Commission cannot be satisfied that they have been made out on the evidence. No finding ought be made adverse to Mr Felstead on these matters.

H. The Bonus Jackpot Tax Issue

61. Mr Felstead is referred to in the context of documents or memoranda dated 4 June 2018, 5 June 2018, 6 June 2018, 13 December 2018, 12 December 2019, 12 September 2020 and 22 September 2020. No specific proposed finding is sought against Mr Felstead to the effect that he was, or ought to have been, aware of the inadequacy of the instructions provided to Mr Glen Ward of Minter Ellison, or that he had, or ought to have had, any reason not to follow the legal advice provided by Mr Ward.
62. Matters such as the information available to Mr Felstead, the reliance Mr Felstead placed on internal legal advice, actions Mr Felstead took, or the extent of Mr Felstead's engagement with the issue have not been explored in evidence with Mr Felstead. Absent exploration of these matters, there is a *lacuna* in the evidence upon which any adverse findings might be based.
63. Further, to the extent that the matters were addressed in the evidence of Ms Fielding, Mr Felstead was not privy to this portion of her evidence. Likewise, to the extent that legal advice from Mr Ward may have been addressed in the evidence of his partner at Minter Ellison, Mr Murphy, Mr Felstead has not been privy to this evidence. If any adverse finding is proposed against Mr Felstead based on matters arising from this evidence, Mr Felstead is not aware of these matters.

⁵⁴ Statement of Barry Felstead, 26 July 2021, FEL.0000.0005.0004 at [7]-[11].

⁵⁵ Statement of Barry Felstead, 26 July 2021, FEL.0000.0005.0004 at [35]-[44].

I. Crown's Malaysian Presence

64. Counsel Assisting propose a finding that Crown's Malaysian presence entailed "precisely the conduct identified in the legal advice as potentially an offence under Malaysian law",⁵⁶ and that "to focus on lowering risk, rather than complying with the law was unacceptable".⁵⁷
65. This portion of Counsel Assisting's submissions is extensively redacted. Relevant legal advice from Mr Murphy, as well as Mr Murphy's oral testimony have been the subject of a privilege claim and have not been provided to Mr Felstead. In circumstances where the matters upon which any adverse finding have not been brought to Mr Felstead's attention, it is assumed that the Commission does not intend to make an adverse finding against Mr Felstead in relation to these issues.

J. Proposed Finding

66. No adverse finding should be made against Mr Felstead by the Commission with respect to the Bryant Allegations, or at all.

2 August 2021

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⁵⁶ Closing Submissions of Counsel Assisting the Commission, July 2021, COM.0500.0001.0380 at .0573 Ch 9 [2.36].

⁵⁷ Closing Submissions of Counsel Assisting the Commission, July 2021, COM.0500.0001.0380 at .0574 Ch 9 [3.2].