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TRANSCRIPT OF PROCEEDINGS

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**COMMISSIONER: HON. RAY FINKELSTEIN AO QC**

**IN THE MATTER OF A ROYAL COMMISSION  
INTO THE CASINO OPERATOR AND LICENCE**

**MELBOURNE, VICTORIA**

**10.00 AM, MONDAY, 17 MAY 2021**

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Commission)**

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09:55 1 ASSOCIATE: The hearing of the Royal Commission is now in  
10:00 2 session.  
10:00 3  
10:00 4 COMMISSIONER: Be seated, please. We might do appearances  
10:00 5 this morning.  
10:00 6  
10:00 7 MR FINANZIO: If it pleases the Commission. I appear with  
10:00 8 Ms Neskovcin, Ms O'Sullivan and Mr Kozminsky.  
10:00 9  
10:00 10 COMMISSIONER: Good. As long as you remember. Mr  
10:01 11 Rozen?  
10:01 12  
10:01 13 MR ROZEN: Good morning. I appear with Mr Brereton for the  
10:01 14 Victoria Commission for Gambling and Liquor Regulation.  
10:01 15  
10:01 16 COMMISSIONER: Thank you, Mr Rozen. Mr Borsky?  
17  
18 MR BORSKY: Good morning. May it please the Commission. I  
19 appear with Dr Button, Mr Warner, Mr Loxley, Mr Barraclough,  
20 Mr Farhall, Mr Whitwell and Mr Annabell for Crown.  
21  
22 COMMISSIONER: You won't remember them all.  
23  
24 MR BORSKY: I do.  
25  
26 COMMISSIONER: All right, thank you, Mr Borsky. Mr  
27 Hutley?  
28  
29 MR HUTLEY: I appear with Ms Cameron for Consolidated  
30 Press Holdings. I'm not going to announce all the other people  
31 who may appear over the next 6 weeks, I will let them do that as  
32 and when they appear.  
33  
34 COMMISSIONER: Thanks, Mr Hutley. Mr Gray?  
35  
36 MR GRAY: Thank you, Commissioner. I appear with Ms Helen  
37 Tip, Ms Georgie Coleman and Mr Glyn Ayres for the State of  
38 Victoria except VCGLR, for whom Mr Rozen and Mr Brereton  
39 appear.  
40  
10:01 41 COMMISSIONER: Thanks, Mr Gray.  
10:01 42  
10:01 43 Before we begin, I want to say a few words. It is appropriate to  
10:02 44 record that the Commission commenced its hearings on 3 May  
10:02 45 2021. In all, nine people have given evidence so far. Each  
10:02 46 person gave their evidence on oath or affirmation. The hearings  
10:02 47 were held in private pursuant to section 24 of the Inquiries Act

10:02 1 and I made orders under section 26 restricting the publication of  
10:02 2 the evidence given at those private hearings, save for certain  
10:02 3 limited exceptions. There were several reasons why the hearings  
10:02 4 were held in private and non-publication orders were made. Of  
10:02 5 the people required to give evidence, five were patrons who  
10:02 6 regularly attended the casino, one was a family member of  
10:02 7 a person who attended the casino and one was a former host who  
10:03 8 worked at the casino. Apart from one person, each of these  
10:03 9 people did not want to give evidence in public. Indeed, they  
10:03 10 insisted unless the fact that they were giving evidence at all was  
10:03 11 kept secret, they didn't want to give evidence. There were  
10:03 12 different reasons provided by the people concerned. Some were  
10:03 13 frightened of the consequences they might suffer if it became  
10:03 14 known they were giving evidence against Crown, some were  
10:03 15 simply ashamed of what had happened to them and had even kept  
10:03 16 their circumstances secret from members of their families.

10:03 17  
10:03 18 In addition to honouring the wishes of the people concerned,  
10:03 19 based on what I've been told by Counsel Assisting, I was  
10:03 20 concerned that the people were compelled to give their evidence  
10:03 21 in public, even in the presence of Counsel for parties who had  
10:03 22 been given leave to appear, the evidence would not have been as  
10:03 23 forthright as it turned out to be. Although non-publication orders  
10:03 24 have been made, I propose in due course to vary those orders to  
10:04 25 enable a transcript of their evidence to be published, but edited to  
10:04 26 remove all portions that would enable the persons concerned to  
10:04 27 be identified. Most have already agreed to that course. Others  
10:04 28 are being followed up and it should be sorted out in the next day  
10:04 29 or so. There is one exception to the confidentiality that was  
10:04 30 sought. One person gave evidence was a Mr Ahmed Hasna. He  
10:04 31 has no objection to the transcript and video recording of his  
10:04 32 evidence being made public. Accordingly, I will revoke in full  
10:04 33 the non-publication orders made in respect of his evidence.

10:04 34  
10:04 35 Two other witnesses were called. They were senior members of  
10:04 36 Victoria Police. Their evidence was given in private hearings and  
10:04 37 non-publication orders were made for the following reasons: first,  
10:04 38 it was not intended for these witnesses to give any evidence that  
10:05 39 might adversely affect the interests of the Crown companies or  
10:05 40 PBL. Rather their evidence was of a background nature. Second,  
10:05 41 there was a concern that some of their evidence that they give  
10:05 42 might be subject to legitimate claims for public interest privilege  
10:05 43 if there was going to be some debate about this topic, the debate  
10:05 44 could be quite lengthy and would disrupt an otherwise orderly  
10:05 45 hearing process. Third, it was my expectation in any event that  
10:05 46 subject to any privilege claims the evidence of the police  
10:05 47 members would be made public to the parties who had been given

10:05 1 leave to appear. The lawyers who represent Victoria Police are  
10:05 2 examining transcript of the members evidence and I expect that  
10:05 3 there will be no or little objection to the evidence being made  
10:05 4 available as soon as possible. Indeed I expect that might be  
10:06 5 sorted out today. Accordingly, in due course, I will vary the  
10:06 6 non-publication orders to give effect to what I've just mentioned.

10:06 7

10:06 8 Thank you. Mr Finanzio?

10:06 9

10:06 10 MR FINANZIO: If it pleases the commission. The Terms of  
10:06 11 Reference invite this commission to look into the affairs of  
10:06 12 Crown Casino and to determine whether Crown Melbourne Ltd is  
10:06 13 suitable to hold a licence to operate a casino, whether Crown  
10:06 14 Melbourne Ltd's associates are suitable, and whether having  
10:06 15 regard to the creation and maintenance of public confidence and  
10:06 16 trust in the credibility, integrity and stability of casino operations  
10:06 17 it remains in the public interest for Crown Melbourne Ltd to  
10:06 18 remain the licensee of Crown Casino.

10:06 19

10:06 20 The suitability of a casino licensee is fundamental. Suitability is  
10:06 21 a precondition to the grant of a licence. The suitability of  
10:07 22 an existing casino licensee must be reviewed under Victorian law  
10:07 23 every five years. And any finding of unsuitability at any point in  
10:07 24 the life of the licence, whether in the course of the five yearly  
10:07 25 review or otherwise, could result in suspension or cancellation of  
10:07 26 the licence. What it means to be suitable or to be a suitable  
10:07 27 person to hold a casino licence is informed by the statute. Taken  
10:07 28 as a whole, the statutory requirements point to a person who at  
10:07 29 a minimum has a sound and stable financial background, where  
10:07 30 the licensee is a company, a company that is arranged in  
10:07 31 a satisfactory ownership, trust or corporate structure, is a person  
10:07 32 who is able to ensure the financial viability of the casino and who  
10:08 33 has sufficient experience in the management of the casino and  
10:08 34 who has sufficient business ability to establish and maintain  
10:08 35 a successful casino. Reflecting on those matters, it might be said  
10:08 36 that these are basic building blocks of any ordinary business  
10:08 37 enterprise. But to be a suitable person to hold a casino licence the  
10:08 38 Act imposes additional requirements. Each person, whether  
10:08 39 a company or individual concerned in the management,  
10:08 40 administration of the casino, must be of good repute, having  
10:08 41 regard to their character, honesty and integrity and a further  
10:08 42 requirement on a licensee is that it must also ensure that it does  
10:08 43 not have business associations with anyone who in the opinion of  
10:08 44 the regulator is not of good repute having regard to that other  
10:08 45 person's character, honesty and integrity or who has undesirable  
10:09 46 or unsatisfactory financial resources.

10:09 47

10:09 1 It also requires that the people concerned in the ownership and  
10:09 2 management of the operations of the casino are also suitable. The  
10:09 3 requirements of suitability are not abstract. They are necessary  
10:09 4 and central features of the very activity that the statute regulates.  
10:09 5 There can be only one casino in Melbourne. A casino licence to  
10:09 6 operate that casino is that the licensee is the recipient of a unique  
10:09 7 and significant privilege. The right to conduct a business at such  
10:09 8 a large scale deriving profit from an activity that is otherwise  
10:09 9 illegal everywhere else and to conduct a business which while it  
10:09 10 employs many people and generates significant tourism and  
10:10 11 entertainment and taxation revenue and other benefits, also has  
10:10 12 the capacity to visit harm on vulnerable members of the  
10:10 13 community, their families, friends and workplaces.

10:10 14  
10:10 15 Where the pursuit for profit for shareholders might be considered  
10:10 16 a primary motivation for many commercial organisations, the law  
10:10 17 puts casinos in a different category. The law demands that casino  
10:10 18 operators behave in a way which recognises that there are  
10:10 19 competing priorities and that they also have an important social  
10:10 20 responsibility in the management of the casino. It is almost trite  
10:10 21 to observe that casinos by their very nature are both particularly  
10:10 22 vulnerable to criminal influence and exploitation and capable of  
10:10 23 inflicting significant harm on members of the community who are  
10:10 24 prone to gamble beyond their means. The legislation regulating  
10:11 25 the casino properly demands that in exchange for the  
10:11 26 extraordinary privilege conferred on a licensee, the Victorian  
10:11 27 people are entitled to expect that the operation and management  
10:11 28 of the casino will be conducted by people, companies or  
10:11 29 individuals, of good character who will be honest and will act  
10:11 30 with integrity by people who will avoid business associations  
10:11 31 with others who have a reputation for bad character, dishonesty,  
10:11 32 or who lack integrity, be ever vigilant in seeking to ensure that  
10:11 33 the casino remains free from criminal influence or exploitation  
10:11 34 and who diligently and proactively seek to minimise the harm to  
10:11 35 people vulnerable to problems that flow from gambling by  
10:11 36 adopting effective systems and procedures and then implementing  
10:11 37 them.

10:12 38  
10:12 39 The legislative framework expects of the casino licensee a higher  
10:12 40 standard. If business practices technically comply with  
10:12 41 legislative reporting requirements, that those practices  
10:12 42 nonetheless facilitate the use of the casino for illicit purposes, the  
10:12 43 vigilant casino licensee is expected to be on guard, ever ready,  
10:12 44 willing and able to protect the reputation of the casino licensee,  
10:12 45 the loss of which is an existential threat to the operator itself. It is  
10:12 46 a feature of the legislative framework that the things that are  
10:12 47 important to the community are also important to the casino

10:12 1 licensee. The casino licensee is the repository of the community's  
10:12 2 trust, entrusted to administer carefully a business which has the  
10:12 3 capacity to produce benefits but also carries with it inherent risks.  
10:13 4

10:13 5 This inquiry is to determine whether Crown Melbourne continues  
10:13 6 to be so entrusted. At this point I want to say something,  
10:13 7 Commissioner, about the role of Counsel Assisting and the steps  
10:13 8 taken so far. The role of Counsel Assisting in all commissions of  
10:13 9 this kind is not to argue the case for any particular outcome. In  
10:13 10 the performance of our role we are required to discharge our  
10:13 11 duties in a fair and even-handed way. We are guided by and  
10:13 12 limited to what is relevant to the Letters Patent establishing this  
10:13 13 Royal Commission. Our job is to obtain and call probative  
10:13 14 evidence relevant to the Terms of Reference. It is to rigorously  
10:13 15 probe all of the evidence on all matters relevant to the terms in  
10:13 16 an attempt to assist the commission in its deliberations. For the  
10:14 17 avoidance of doubt, this includes calling probative evidence  
10:14 18 which might be both adverse to and of assistance to Crown. It is  
10:14 19 also our role to set out in broad terms the direction of the inquiry  
10:14 20 and say something of the evidence to be called and to be at rest.  
10:14 21 It is appropriate at this point to set out in broad terms the nature  
10:14 22 of the work that has been undertaken to date. On 22 February  
10:14 23 this commission was announced and its terms were published on  
10:14 24 that day and amended on 25 February. On 5 March Counsel  
10:14 25 Assisting were appointed and on 9 March Solicitors Assisting were  
10:14 26 appointed. On 24 March an initial public hearing was convened.  
10:14 27

10:14 28 Since 11 March 2021, 64 notices have been issued seeking  
10:14 29 information and documents from various parties. Since 30 March  
10:14 30 2021, 20 requests have been made for statements to be prepared,  
10:15 31 many of which will be the subject of the public hearings before  
10:15 32 this commission over the coming weeks on a range of topics.  
10:15 33 The commission undertook a process of inviting public  
10:15 34 submissions in response to which 46 written submissions were  
10:15 35 received as at 14 May, last Friday night, a total of 78,095  
10:15 36 documents have been produced over 84 tranches. There remain  
10:15 37 documents outstanding which will at some point be addressed in  
10:15 38 procedural directions, but we want to say something about  
10:15 39 document production briefly. Since 11 March 2021, the  
10:15 40 commission has extended the time for production of documents  
10:15 41 on a number of occasions where Crown's lawyers have sought  
10:15 42 an extension and provided a proper basis for an extension.  
10:16 43 Disconcertingly last Friday night, approximately 13,000  
10:16 44 documents were produced by Crown in response to some notices  
10:16 45 issued as long ago as March. It appears, at the moment, that the  
10:16 46 documents that were produced on Friday night were in categories  
10:16 47 that failed to be produced at different times between 25 March

10:16 1 and 18 April. Solicitors Assisting have begun the task of  
10:16 2 examining the documents and to what extent there remains still  
10:16 3 documents that were required for production. We'll come back to  
10:16 4 you about the state of production at some point in the coming  
10:16 5 days. As you've said, since 3 May 2021, the commission has  
10:16 6 conducted closed hearings pursuant to section 24 and you've  
10:16 7 outlined the basis for doing so and the course to be adopted.  
10:17 8 These forthcoming public hearings are intend as the principle  
10:17 9 vehicle by which to traverse the matters relevant to the Terms of  
10:17 10 Reference. We want to make some remarks about the nature and  
10:17 11 scope of those hearings.

10:17 12  
10:17 13 On any view, what was unearthed by the Bergin Inquiry  
10:17 14 demonstrated that Crown had fallen a long way short of the  
10:17 15 standard of suitability expected of a casino licensee. The Bergin  
10:17 16 Inquiry made findings sufficient for it to reach the conclusion that  
10:17 17 as at 1 February 2021, and based upon evidence that it had heard  
10:17 18 up to the end of October 2020, Crown Resorts was not a suitable  
10:17 19 associate of Crown Sydney and that as a result Crown Sydney  
10:18 20 itself was not a suitable licensee. A large part those findings  
10:18 21 were based upon the conduct of Crown Resorts as it related to the  
10:18 22 operation of the Melbourne casino. A central element in any  
10:18 23 assessment of the suitability of a person who is either a licensee  
10:18 24 or the associate of a licensee is a person of good repute, having  
10:18 25 regard --- is the person of good repute having regard to character,  
10:18 26 honesty and integrity. At the very least, the conclusions of the  
10:18 27 Bergin Inquiry are a stain on the reputation of the Crown group,  
10:18 28 sufficient to warrant a conclusion unchallenged here that Crown  
10:18 29 Resorts was not as at 1 February 2021 a suitable associate of the  
10:18 30 licensee in Sydney.

10:18 31  
10:18 32 It is important to say something about the importance of the  
10:19 33 Bergin Inquiry and the report in the work of this commission.  
10:19 34 First, the Bergin Inquiry was a review of the suitability of  
10:19 35 a casino licensee and its associates under NSW legislation.  
10:19 36 Second, the tests of suitability in both NSW and in Victoria are  
10:19 37 indistinguishably similar. Both being centrally concerned with  
10:19 38 the good repute of the licensee, its character, integrity and  
10:19 39 honesty and the suitability of its corporate structures and finances.  
10:19 40 Third, Crown Resorts, whose suitability was directly an issue in  
10:19 41 NSW, is an associate of both Crown Sydney and Crown  
10:19 42 Melbourne. Fourth, the evidence in relation to many of the  
10:19 43 matters relied upon to contend that corporate failures had  
10:19 44 occurred in Bergin was not in dispute before the Bergin Inquiry,  
10:19 45 as the report points out, neither Crown, the licensee, or CPH  
10:20 46 proffered any evidence that challenged the evidence that  
10:20 47 corporate failures had occurred that was led by Counsel Assisting

10:20 1 in the inquiry. Fifth, because of the corporate structure adopted  
10:20 2 by the Crown Group and its internal management arrangements,  
10:20 3 the activities of Crown Resorts which attracted so much attention  
10:20 4 and criticism were concerned with the operation of the  
10:20 5 Melbourne casino so that the separate legal entity of Crown  
10:20 6 Melbourne Ltd as licensee was either directly responsible for  
10:20 7 some past failings or under the influence of its associates and  
10:20 8 particular its parent company, Crown Resorts. Sixth and finally  
10:20 9 this commission's Terms of Reference expressly refer to the  
10:20 10 findings of the Bergin Inquiry and direct this commission to go  
10:20 11 about its task without incurring unnecessary cost or delay and  
10:20 12 without unnecessarily duplicating the work of other  
10:21 13 investigations, recommendations of inquiries or investigations  
10:21 14 into these or related matters, including but not limited to the  
10:21 15 Bergin Inquiry.

10:21 16  
10:21 17 We do not set out to reprove the basis upon which the Bergin  
10:21 18 Inquiry found Crown to be unsuitable. The Bergin Inquiry and  
10:21 19 the conclusions reached in that report are by themselves highly  
10:21 20 relevant to any consideration of the matters raised on this  
10:21 21 commission's Terms of Reference. They are a useful and  
10:21 22 important starting point as much for this commission as for  
10:21 23 Crown itself. The Bergin Report's conclusions have clearly  
10:21 24 informed the steps taken by Crown to address the failings which  
10:21 25 were identified in the Bergin Inquiry and in that respect at least,  
10:21 26 the Bergin Report represents a useful benchmark for any  
10:21 27 assessment of suitability now. That said, any assessment of  
10:22 28 suitability undertaken by this commission must be informed by all  
10:22 29 relevant information known at the time of this commission's  
10:22 30 assessment. It follows that part of our examination will  
10:22 31 necessarily focus on the following three things which emerge  
10:22 32 directly from a consideration of the Bergin Inquiry. First,  
10:22 33 whether what the Bergin Inquiry unearthed was representative of  
10:22 34 the true extent of the failings. Second, whether Crown's reform  
10:22 35 efforts are adequate to address all of the failings as presently  
10:22 36 understood and, third, whether Crown has the appropriate culture  
10:22 37 and the right people to be able to change. Put another way, if the  
10:22 38 situation in Melbourne was more serious than comprehended by  
10:22 39 Bergin, than that may affect whether Crown is a candidate for  
10:22 40 redemption at all, and if so, the size and nature of the task that it  
10:22 41 faces to redeem itself.

10:22 42  
10:23 43 This commission is being asked whether Crown at this point in  
10:23 44 time is suitable to remain the licensee. The answer to that  
10:23 45 question may turn on matters that were not known at the time of  
10:23 46 the Bergin Inquiry or things that have happened since. The  
10:23 47 conclusions reached by the Bergin Inquiry were themselves based



10:23 1 upon the NSW Terms of Reference and the evidence that was  
10:23 2 available at the time that its report was completed. The Bergin  
10:23 3 Report records its understanding that Crown had already begun, in  
10:23 4 November 2020, to take steps to address the matters raised during  
10:23 5 the course of the public hearings. The Bergin Inquiry didn't have  
10:23 6 the benefit of understanding in detail what those steps were, or  
10:23 7 whether they would completely address the concerns raised by the  
10:23 8 inquiry. But the report acknowledged the possibility that Crown  
10:23 9 might redeem itself by a program of reform. So the findings of  
10:24 10 the Bergin Inquiry, as grave as they are, must be viewed in their  
10:24 11 context, which includes the recognition by the author of the report  
10:24 12 that conversion for suitability is a possibility.  
10:24 13

10:24 14 Since the Bergin Report was published, indeed, since the  
10:24 15 conclusion of evidence in the Bergin Inquiry, there have been  
10:24 16 some developments. The Crown group of companies has taken  
10:24 17 steps to address a number of the failings identified in the Bergin  
10:24 18 Report, a number of board members of both Crown Resorts and  
10:24 19 Crown Melbourne have resigned, several new board members  
10:24 20 have been appointed. Some members of the senior management  
10:24 21 team have resigned or moved on. Crown has announced it will  
10:24 22 cease dealings with junket operators unless and until such time as  
10:24 23 junkets are licensed or approved by the state regulators. Crown  
10:24 24 has embarked upon what it describes variously as a program of  
10:25 25 governance, risk and operational improvements to address the  
10:25 26 vulnerabilities starkly laid bare in the Bergin Inquiry. No doubt  
10:25 27 these various steps taken by Crown, progressively since  
10:25 28 November 2020, have been as much directed to addressing  
10:25 29 matters that would inevitably arise in the context of this  
10:25 30 commission as they are directed to satisfying the NSW regulator  
10:25 31 that Crown can make itself suitable in order to open its new  
10:25 32 casino at Bangaroo.  
10:25 33

10:25 34 News reports have emerged intermittently since the appointment  
10:25 35 of this commission of some of those steps, with a number of  
10:25 36 reports late last week suggesting that, at least in the eyes of the  
10:25 37 NSW regulator, good progress is being made. Obviously enough  
10:25 38 you must form your own view about those matters in the context  
10:26 39 of the commission that you are presiding over.  
10:26 40

10:26 41 As recently at last week there was an announcement that Crown,  
10:26 42 like Star, will move towards cashless operations. As yet, this  
10:26 43 Royal Commission has not been formally advised by Crown of all  
10:26 44 of the matters about which we have read in the newspapers,  
10:26 45 which is unfortunate as no doubt some of these matters may have  
10:26 46 bearing on your deliberations. In due course these will all be  
10:26 47 matters that will need to be considered. Another change arising

10:26 1 from the Bergin Inquiry is to the relationship, at least for the time  
10:26 2 being, between on the one hand Consolidated Press Holdings and  
10:26 3 its principle owner, Mr James Packer, and on the other hand, the  
10:26 4 board of Crown Resorts. A central theme underpinning the  
10:26 5 Bergin Inquiry, its hearings and conclusions, was the negative  
10:26 6 influence brought to bear by Mr Packer on the affairs of the  
10:27 7 company and the operations of the casino by its major  
10:27 8 shareholder, CPH. Mr Packer no longer enjoys the special  
10:27 9 privilege of receiving sensitive information arising from his  
10:27 10 significant shareholding. He has now agreed, as we understand  
10:27 11 it, not to use the size of his shareholding to influence the  
10:27 12 composition of the board or its strategic direction for a period of  
10:27 13 time. Again these are matters about which we have read in the  
10:27 14 newspapers, but we have sought details of the arrangements, none  
10:27 15 yet have been provided. We anticipate that will change shortly.  
10:27 16

10:27 17 We want to say that this list of steps taken by Crown and its  
10:27 18 associates to date is not intended to be exhaustive. There are  
10:27 19 other steps which it has taken or proposes to take that will be  
10:28 20 explored in more detail. But the summary that has been outlined  
10:28 21 suffice as illustrative of Crown's desire to demonstrate to this  
10:28 22 commission and also, no doubt, the West Australian commission  
10:28 23 and the NSW regulator that the current leadership of Crown  
10:28 24 recognises the failings identified by the Bergin Inquiry. Those  
10:28 25 failings can be addressed and that Crown is committed to  
10:28 26 addressing them. And that because of these things Crown should  
10:28 27 be regarded by this commission as suitable to continue to be the  
10:28 28 licensee in Melbourne.  
10:28 29

10:28 30 While the Bergin Inquiry represents an appropriate starting point,  
10:28 31 this commission's terms of reference require it to go further. The  
10:28 32 Bergin Inquiry was not required to consider the breadth of the  
10:28 33 matters that arise on this commission's Terms of Reference, nor  
10:28 34 did its Terms of Reference commit it to explore too deeply the  
10:28 35 inner workings of the Melbourne casino over the last few years.  
10:29 36 This commission's Terms of Reference expressly require it to  
10:29 37 closely examine the affairs of Crown Melbourne. The Bergin  
10:29 38 Inquiry was required to examine specific allegations and the  
10:29 39 impact of those allegations upon Crown's suitability if proven.  
10:29 40 This commission's Terms of Reference require more in the nature  
10:29 41 of a holistic suitability review taking into account the findings of  
10:29 42 the Bergin Inquiry, but examining things that have not yet been  
10:29 43 scrutinised, both as to Crown's past, and its plans for the future.  
10:29 44 Irrespective of the process under way between Crown and the  
10:29 45 NSW regulator at the moment, it is for this commission to make  
10:29 46 its own assessment of steps being undertaken in light of what it  
10:29 47 might uncover as part of this inquiry.

10:29 1  
10:29 2 In substance, this commission is engaged in a predictive  
10:30 3 assessment of the suitability of Crown, based upon all that is  
10:30 4 known now, does this commission consider that Crown is  
10:30 5 a suitable licensee to run the Melbourne casino now and into the  
10:30 6 future? In undertaking that exercise, the commission is entitled to  
10:30 7 and should look to the past conduct of Crown in the execution of  
10:30 8 its responsibilities as licensee, at adverse findings made against  
10:30 9 Crown relevant to the discharge of its responsibilities as  
10:30 10 a licensee, to the way Crown, CPH and Mr Packer have  
10:30 11 responded to the conclusions of the Bergin Inquiry and to their  
10:30 12 respective conduct in attempting to redress those past failings.  
10:30 13 These matters bear upon a central element of the assessment, the  
10:30 14 character and reputation of Crown.  
10:30 15  
10:30 16 This commission's task is not just forward-looking, Crown's past  
10:30 17 behaviour is highly relevant as evidence which establishes a basis  
10:31 18 for saying that the behaviour has or has not improved or is likely  
10:31 19 to improve or that the circumstances have changed in such a way  
10:31 20 as to make it more likely that the licensee is or will be suitable.  
10:31 21  
10:31 22 The commission is also required to look at what Crown says  
10:31 23 about how it intends to operate the casino into the future in its  
10:31 24 attempts to address its past failings. This commission is required  
10:31 25 to consider whether the steps that have been taken or presently  
10:31 26 under way are adequate to address the past failings identified by  
10:31 27 Bergin. If not, what more is required before suitability can be  
10:31 28 obtained, if at all. And whether additional failings or matters of  
10:31 29 concern bear upon the threshold question of suitability and, if so,  
10:31 30 whether measures can be taken to address those failings, if at all.  
10:31 31 In broad terms, the evidence that will be called by Counsel  
10:31 32 Assisting will focus on the following matters of central  
10:32 33 importance: first, the conduct of Crown in its dealings with the  
10:32 34 regulator, the VCGLR, second, an examination of Crown's  
10:32 35 conduct in relation to aspects of its operations, in particular in  
10:32 36 relation to junkets and money laundering; third, an examination  
10:32 37 of the reforms said to be underway in relation to money  
10:32 38 laundering and their effectiveness; fourth, the effectiveness of the  
10:32 39 proposed governance, risk and cultural reforms; and, fifth, having  
10:32 40 regard to its past governance failings and the ineffective of  
10:32 41 Crown systems in relation to money laundering and junkets, it is  
10:32 42 necessary to examine whether and to what extent Crown has been  
10:32 43 and is properly discharging operations in relation to the  
10:32 44 responsible service of gaming, this being a central requirement of  
10:32 45 the Act, Crown's licence and its social responsibility as the  
10:33 46 licensee of the State's only casino.  
10:33 47

10:33 1 Finally, it is appropriate to examine those presently responsible  
10:33 2 for the future direction of Crown, the current and proposed  
10:33 3 directors, to explore with them whether they are and whether they  
10:33 4 think Crown has the right people in the right places to achieve the  
10:33 5 significant cultural and systemic changes necessary to be properly  
10:33 6 regarded as suitable. The programming of this evidence will  
10:33 7 occur over the coming weeks and notice of the sequence of the  
10:33 8 witnesses and the topics to be covered will be provided in due  
10:33 9 course. These hearings commence with an examination of  
10:33 10 aspects of Crown's relationship with the regulator viewed through  
10:33 11 the lens of two case studies.

10:33 12  
10:33 13 I now propose to open what the evidence will be over the coming  
10:34 14 couple of days. Over the next two days the commission will hear  
10:34 15 evidence from two witnesses, Mr Tim Bryant and Mr Cremona.  
10:34 16 The focus of their evidence is historical but no less relevant to the  
10:34 17 matters which are required to be considered. Both witnesses are  
10:34 18 current employees of the VCGLR, both have had responsibility  
10:34 19 for two significant pieces of work for the regulator in relatively  
10:34 20 recent times and as a result have been engaged in extensive  
10:34 21 interactions with Crown's representatives.

10:34 22  
10:34 23 The first witness will be Mr Bryant. The commission is well  
10:34 24 aware of the arrest and detention of Crown staff in China in 2016.  
10:34 25 This was the subject of serious media allegations in July and  
10:35 26 August 2019, which were in part a catalyst for the appointment of  
10:35 27 the Bergin Inquiry. Long before the revelations of the media  
10:35 28 allegations and in late 2017, the VCGLR commenced its own  
10:35 29 investigations into the events that took place in China. Those  
10:35 30 investigations commenced during the period of the Sixth Review  
10:35 31 of the Casino Operator's Licence. The commission will hear  
10:35 32 evidence about the way the investigations of the VCGLR  
10:35 33 commenced, the nature and extent of cooperation given by Crown  
10:35 34 for the regulator in the performance of the regulator's task. The  
10:35 35 VCGLR's investigation did not properly conclude until February  
10:35 36 this year. The investigation was being carried out over the same  
10:35 37 period as the Bergin Inquiry. The evidence of Mr Bryant reveals  
10:36 38 that Crown was not transparent, not forthcoming in its disclosure  
10:36 39 of evidence and obfuscated an unnecessarily protracted investigation  
10:36 40 of the Victorian regulator.

10:36 41  
10:36 42 The second witness will be Mr Cremona. The evidence of the  
10:36 43 second witness concerns the implementation of the Sixth Review.  
10:36 44 Under the Casino Control Act, every five years a review is  
10:36 45 conducted into the suitability of the licensee. That review, the  
10:36 46 Sixth Review, was completed in June 2018. It made a series of  
10:36 47 recommendations, 20 in total. Recommendation 17 required

10:36 1 Crown to conduct a review of its internal control systems as they  
10:36 2 related to junkets, and in particular to junket players. Under the  
10:36 3 terms of the relevant ICS, there was, according to the VCGLR,  
10:37 4 a regulatory gap which made it easier for individual members of  
10:37 5 the junket to remain anonymous. The existing ICS imposed  
10:37 6 obligations on junket operators and individual players but there  
10:37 7 were no obligations under the ICS that applied to junket players.  
10:37 8 The commission will hear evidence about the VCGLR's attempt  
10:37 9 to have Crown implement the recommendations to review the  
10:37 10 ICS based upon its concerns that the then applicable ICS  
10:37 11 facilitated anonymity and in that way money laundering by junket  
10:37 12 players. Again, the VCGLR's recommendation that Crown  
10:37 13 review the ICS was made in June 2018, well before the media  
10:37 14 allegations concerning money laundering through the casino in  
10:37 15 July 2019. The recommendation was supported by Crown when  
10:38 16 it responded to the Sixth Review. The recommendation required  
10:38 17 Crown to obtain external assistance in conducting the review and  
10:38 18 consult with AUSTRAC. The review task was meant to be  
10:38 19 completed by 1 July 2019. Crown's review occurred in June 2019  
10:38 20 in the last month before compliance was required to be achieved.  
10:38 21 The expert assistance was not engaged by Crown until June 2019.

10:38 22  
10:38 23 The evidence in the statement prepared by Mr Cremona  
10:38 24 chronicles the efforts of the VCGLR to press Crown into  
10:38 25 compliance over the course of the 12 months between the making  
10:38 26 of the recommendation and its completion. In the result, the  
10:38 27 VCGLR accepted that Crown had complied with the tasks set by  
10:38 28 the recommendation, though technically because Crown had gone  
10:38 29 through the motions conducting a review and engaging  
10:38 30 a consultant and talking to AUSTRAC, the evidence suggests that  
10:38 31 Crown's efforts to do so were perfunctory at best. In the end, the  
10:39 32 VCGLR conducted for itself, at its own expense, the reviews  
10:39 33 sought by recommendation 17 and concluded that the ICS should  
10:39 34 in fact be amended. At best the evidence showed that Crown  
10:39 35 took an overly technical approach to the wording of the  
10:39 36 recommendation which when viewed in context was sufficiently  
10:39 37 clear. At worst, the evidence might suggest Crown sought to  
10:39 38 avoid the proper consideration of a matter of significant  
10:39 39 importance, namely the anonymity of junket players, the purpose  
10:39 40 of which had been explained to its representatives by the  
10:39 41 regulator on a number of occasions.

10:39 42  
10:39 43 At the opening of these hearings on 24 March 2021 you observed,  
10:39 44 Commissioner, that a factor relevant to the suitability of a casino  
10:39 45 licensee is the manner in which it interacts with those who are  
10:39 46 required by law to look into their affairs. We lead this evidence  
10:40 47 because it is concerned with relatively recent interactions between

10:40 1 Crown and the regulator in relation to significant matters in the  
10:40 2 affairs of the casino.  
10:40 3  
10:40 4 If it pleases the commission, we would now go to the first  
10:40 5 witness, which is Mr Bryant, and my learned friend Ms  
10:40 6 Neskovicin will take that.  
10:40 7  
10:40 8 COMMISSIONER: Thank you, Mr Finanzio.  
10:40 9  
10:40 10  
10:40 11 **MR TIMOTHY MICHAEL BRYANT, SWORN**  
10:40 12  
10:40 13  
10:40 14 **EXAMINATION-IN-CHIEF BY MS NESKOVICIN**  
10:40 15  
10:40 16  
10:40 17 COMMISSIONER: You can sit down, Mr Bryant.  
10:41 18  
10:41 19 MS NESKOVICIN: Thank you, Commissioner. Mr Bryant,  
10:41 20 would you tell the Commissioner your full name, please?  
10:41 21  
10:41 22 A. Timothy Michael Bryant.  
10:41 23  
10:41 24 Q. What is your business address?  
10:41 25  
10:41 26 A. Elizabeth Street, Richmond.  
10:41 27  
10:41 28 Q. You are currently employed by the Victorian Commission  
10:41 29 for Gaming and Liquor Regulation as a team leader in the  
10:41 30 investigations and compliance division, is that correct?  
10:41 31  
10:41 32 A. Correct.  
10:41 33  
10:41 34 Q. You have prepared a statement in response to a request for  
10:41 35 statement and you are here under a notice to attend; is that  
10:41 36 correct?  
10:41 37  
10:41 38 A. Yes.  
10:41 39  
10:41 40 Q. Do you have your statement with you?  
10:41 41  
10:41 42 A. Yes.  
10:41 43  
10:41 44 Q. I understand you want to make some corrections to the  
10:41 45 statement which I will take you through now if you like. The first  
10:41 46 is in paragraph 60. I understand you want to change the second  
10:41 47 sentence so that it reads "draft sections about the China

10:42 1 investigation that was proposed to be included in the Sixth Casino  
10:42 2 Review Report".  
10:42 3  
10:42 4 A. Yes.  
10:42 5  
10:42 6 Q. Do you have a pen, Mr Bryant? I might get you to make  
10:42 7 those changes.  
10:42 8  
10:42 9 A. Thank you.  
10:42 10  
10:42 11 Q. Let me know if you want me to take you through them  
10:42 12 again. You have made those changes?  
10:42 13  
10:42 14 A. Yes.  
10:42 15  
10:42 16 Q. Thank you.  
10:42 17  
10:42 18 The next change was in paragraph 65(c). I understand you want  
10:42 19 to correct "interviews" which had two "s"s?  
10:42 20  
10:42 21 A. Yes.  
10:42 22  
10:42 23 Q. The next change is in paragraph 80. I understand you want  
10:42 24 to delete ---  
10:42 25  
10:42 26 A. Yes.  
10:42 27  
10:43 28 Q. --- 80(a), you want to delete "such" and then add the words  
10:43 29 "to redact documents or not provide documents on the grounds of  
10:43 30 legal professional privilege"?  
10:43 31  
10:43 32 A. Correct.  
10:43 33  
10:43 34 Q. You've made that change?  
10:43 35  
10:43 36 A. Yes.  
10:43 37  
10:43 38 Q. And paragraph 88(b), you want to replace "March 2019  
10:43 39 batch" with November 2017 material"?  
10:43 40  
10:43 41 A. Yes.  
10:43 42  
10:43 43 Q. Are there any further changes, Mr Bryant?  
10:43 44  
10:43 45 A. No.  
10:43 46  
10:43 47 Q. Subject to those changes, is your statement true and correct

10:43 1 to the best of your knowledge?  
10:43 2  
10:43 3 A. Yes.  
10:43 4  
10:43 5 MS NESKOVCIN: Commissioner, can I tender the statement and  
10:43 6 attachments.  
10:43 7  
10:43 8 COMMISSIONER: I don't think there is a date. I will describe it  
10:44 9 as the statement of Timothy Michael Bryant dated 15 April 2021  
10:44 10 will be exhibit number ---  
10:44 11  
10:44 12 ASSOCIATE: RC0001.  
10:44 13  
10:44 14  
10:44 15 **EXHIBIT #RC0001 - WITNESS STATEMENT OF TIMOTHY  
MICHAEL**  
10:44 16 **BRYANT DATED 15 APRIL 2021 WITH ATTACHMENTS**  
10:44 17  
10:44 18  
10:44 19 MS NESCOVVKIN: Mr Bryant, you have considerable  
10:44 20 experience as an investigator. I want to ask you about your  
10:44 21 experience in your employment with the VCGLR and its  
10:44 22 predecessors. You joined the Victorian Commission For  
10:44 23 Gambling Regulation in February 2009 as an inspector in the  
10:44 24 compliance and investigation branch; is that correct?  
10:44 25  
10:44 26 A. Yes.  
10:44 27  
10:44 28 Q. And in June 2009 you were employed by Responsible  
10:44 29 Alcohol Victoria as an inspector and acting team leader, is that  
10:44 30 correct?  
10:44 31  
10:44 32 A. Yes.  
10:44 33  
10:44 34 Q. In 2012 when the VCGLR was established you joined the  
10:44 35 VCGLR and held various roles since then in the compliance  
10:45 36 division; is that correct?  
10:45 37  
10:45 38 MR HUTLEY Excuse me, sorry to interrupt, Commissioner, we  
10:45 39 simply can't hear our learned friends. Obviously the acoustics of  
10:45 40 the room, but I have missed every word of her questions.  
10:45 41  
10:45 42 COMMISSIONER: You might have to speak closer to the mic.  
10:45 43  
10:45 44 MS NESKOVCIN: I will, but if there is any way to amplify the  
10:45 45 acoustics (inaudible).  
10:45 46  
10:45 47 COMMISSIONER: Say "testing, testing, 1, 2, 3.



10:45 1  
10:45 2 MS NESKOVICIN: Is that any better? I was asking  
10:45 3 Mr Bryant about his experience in the compliance division  
10:45 4 of the VCGLR.  
10:45 5  
10:45 6 Can you explain to the Commissioner what the role of the  
10:45 7 compliance division is?  
10:46 8  
10:46 9 A. The compliance division is responsible for education, but  
10:46 10 more importantly compliance in the liquor and gambling in  
10:46 11 Victoria, conducting routine inspections through to conducting  
10:46 12 investigations in relation of regulated entities.  
10:46 13  
10:46 14 Q. And you've held various roles as a team leader  
10:46 15 investigations in the compliance division. What --- can you  
10:46 16 elaborate on your role as a team leader and what that involves?  
10:46 17  
10:46 18 A. As a team leader in the investigation area it is to investigate  
10:46 19 and manage the more complex sensitive nature investigations that  
10:46 20 the VCGLR undertakes, which includes investigations in relation  
10:46 21 to the casino, licence premises, liquor licensed premises and in  
10:46 22 the gambling space as well.  
10:46 23  
10:46 24 Q. Thank you. You are aware, aren't you, that every five years  
10:46 25 the VCGLR undertakes a suitability review of the casino and the  
10:47 26 operator?  
10:47 27  
10:47 28 A. Yes, I am.  
10:47 29  
10:47 30 Q. And the most recent review was the Sixth Review for the  
10:47 31 period 1 July 2013 to 30 June 2018?  
10:47 32  
10:47 33 A. Yes, I'm aware of that.  
10:47 34  
10:47 35 Q. Mr Bryant, I understand in your statement you refer to  
10:47 36 a draft of the report. I don't think you've exhibited the final  
10:47 37 report.  
10:47 38  
10:47 39 A. I'm sorry, Commissioner, is this question in relation to the  
10:47 40 Sixth Review ---  
10:47 41  
10:47 42 Q. Yes, the Sixth Review Report.  
10:47 43  
10:47 44 A. I'm not --- I wasn't involved in the actual Sixth Casino  
10:47 45 Review as such, Commissioner.  
10:47 46  
10:47 47 Q. Thank you for clarifying that.

10:47 1  
10:47 2 I seek to tender that report, Commissioner. It is  
10:47 3 COM.0005.0001.0776.  
10:47 4  
10:48 5 ASSOCIATE: RC0002.  
10:48 6  
10:48 7  
10:48 8 **EXHIBIT #RC0002 - SIXTH REVIEW REPORT**  
10:48 9  
10:48 10  
10:48 11 MR BORSKY: Commissioner, with apologies for interrupting  
10:48 12 my learned friend. It appears the logistics are not yet in place for  
10:48 13 us on behalf of Crown or any of the other parties to have access  
10:48 14 to the hearing book and see the documents that my learned friend  
10:48 15 calls up by document ID. I think that has been raised earlier this  
10:48 16 morning. But if documents are going to be tendered, it is  
10:48 17 desirable that we get to see them, either before or at least  
10:48 18 contemporaneously with their tender.  
10:48 19  
10:48 20 COMMISSIONER: I will --- you might be able to help me. Do  
10:48 21 you know what the issue is? Give me a second.  
10:48 22  
10:48 23 I think it might work if you call for the documents to be put up on  
10:48 24 the screen, Ms Neskovicin.  
10:48 25  
10:49 26 Q. That's what I meant.  
10:49 27  
10:49 28 COMMISSIONER: Give us the number again.  
10:49 29  
10:49 30 Q. COM.0005.0001.0776. In future, I think the documents  
10:49 31 will be called up unless I say otherwise. Thank you, operator.  
10:49 32 Commissioner, that is the sixth review report. It has been  
10:49 33 tendered as RCC002.  
10:49 34  
10:49 35 Mr Bryant at the time of the sixth review report, there was  
10:49 36 an investigation under way by the VCGLR into the circumstances  
10:49 37 that led to the imprisonment of Crown employees and the  
10:49 38 People's Republic of China between October 2016 and October  
10:49 39 2017; is that correct?  
10:49 40  
10:49 41 A. Yes.  
10:49 42  
10:49 43 Q. And you refer to it in your report as the China arrests  
10:49 44 investigation and I will do the same if that is convenient?  
10:49 45  
10:49 46 A. Yes.  
10:49 47

10:49 1 Q. So, based on your involvement in that investigation, you are  
10:49 2 aware, aren't you, that, and this is just for context, firstly that in  
10:50 3 October 2016, 19 Crown employees were arrested in China.  
10:50 4  
10:50 5 A. Yes.  
10:50 6  
10:50 7 Q. And in June 2017, 16 of those employees were sentenced to  
10:50 8 terms of imprisonment for breaches of articles 303 and 25 of the  
10:50 9 Chinese criminal law; are you aware of that?  
10:50 10  
10:50 11 A. Yes.  
10:50 12  
10:50 13 Q. Now, you said you weren't involved in the sixth review  
10:50 14 report but you have read it, I take it?  
10:50 15  
10:50 16 A. Yes.  
10:50 17  
10:50 18 Q. And that report doesn't refer to or deal with the China  
10:50 19 arrests investigations, it simply refers to the existence of the  
10:50 20 investigation; is that correct?  
10:50 21  
10:50 22 A. Yes.  
10:50 23  
10:50 24 Q. You say in your report that you became involved in the  
10:50 25 China arrest investigation in November 2017, but, you are aware  
10:50 26 from your subsequent involvement that it commenced in July  
10:50 27 2017?  
10:50 28  
10:50 29 A. Yes.  
10:50 30  
10:50 31 Q. That was shortly after the detention of the employees in  
10:51 32 China?  
10:51 33  
10:51 34 A. Yes.  
10:51 35  
10:51 36 Q. Now, that investigation was unable to be finalised by June  
10:51 37 2018, which was the deadline for the Sixth Review Report because  
10:51 38 as I understand it from your statement there were various delays  
10:51 39 with the production of documents to the VCGLR; is that the  
10:51 40 case?  
10:51 41  
10:51 42 A. Yes.  
10:51 43  
10:51 44 Q. So, after the Sixth Review Report was delivered, which was  
10:51 45 the beginning of July 2018 that the investigation which you  
10:51 46 referred to as the China arrests investigation continued, did it not?  
10:51 47

10:51 1 A. Yes.

10:51 2

10:51 3 Q. Can I ask you to look at paragraph 19 of your statement,  
10:51 4 please, page 0005. There you outline the scope of the  
10:52 5 investigations to examine the circumstances surrounding the  
10:52 6 detentions, examine Crown's corporate governance relating to the  
10:52 7 circumstances that led to the detentions and collecting  
10:52 8 information that could be relevant to the suitability of the casino,  
10:52 9 especially employees who were convicted and continued to be  
10:52 10 employed by Crown.

10:52 11

10:52 12 Mr Bryant, did the scope of the investigation change over time or  
10:52 13 was it always as set out in paragraph 19 of your statement?

10:52 14

10:52 15 A. That was the scope. The predominant focus of the  
10:52 16 investigation was the circumstances surrounding the detentions  
10:52 17 and the corporate governance of Crown but obviously it was  
10:52 18 important to consider the suitability of the individuals.

10:52 19

10:52 20 Q. Thank you. Just continuing the sequence for the moment, I  
10:52 21 understand from your report that in May 2019, so that was just  
10:52 22 under two years since the report, the investigation commenced,  
10:53 23 a report was provided in draft to Crown about the China arrests  
10:53 24 investigation. You refer to that in paragraph 20 of your  
10:53 25 statement, do you recall mentioning that in your statement?

10:53 26

10:53 27 A. Yes.

10:53 28

10:53 29 Q. And then the next thing in the chronology, if you like, is  
10:53 30 that in late July 2019 a program was aired on 60 Minutes that  
10:53 31 brought to light some further information that caused the VCGLR  
10:53 32 to continue its investigation; is that correct?

10:53 33

10:53 34 A. Yes.

10:53 35

10:53 36 Q. And the next sequence of events is the appointment of the  
10:53 37 casino inquiry in NSW in August 2019 and then the VCGLR's  
10:53 38 investigation continued throughout the NSW inquiry; is that  
10:53 39 correct?

10:53 40

10:53 41 A. Yes.

10:53 42

10:54 43 Q. Ultimately, Mr Bryant, the investigation concluded this year  
10:54 44 with the provision of a report to the Minister for Consumer  
10:54 45 Affairs, Gaming and Liquor Regulation and the announcement of  
10:54 46 this inquiry; is that correct?

10:54 47

10:54 1 A. Yes.

10:54 2

10:54 3 Q. And you don't --- you refer to what is called the final China  
10:54 4 arrests report in your statement. It is a confidential exhibit.

10:54 5

10:54 6 There is a redacted version, Commissioner, which I seek to  
10:54 7 tender. It is VCG.0001.0001.0001.

10:54 8

10:54 9 ASSOCIATE: RC0003.

10:54 10

10:54 11

10:54 12 **EXHIBIT #RC0003 - FINAL CHINA ARRESTS REPORT**

10:54 13

10:54 14

10:54 15 MS NESKOVCIN: I take it you've read the report,  
10:54 16 Mr Bryant?

10:54 17

10:54 18 A. Yes.

10:54 19

10:54 20 Q. Your statement goes through or explains a number of  
10:54 21 delays you say the VCGLR encountered during the investigation  
10:54 22 and on my reading of the report similar matters are contained  
10:55 23 throughout the final China investigations report. Do you agree  
10:55 24 with that?

10:55 25

10:55 26 A. Yes, I do.

10:55 27

10:55 28 Q. Can you explain to the Commissioner the process by which  
10:55 29 the final report was prepared, the involvement of the working  
10:55 30 group and the steering committee? So just breaking that down, at  
10:55 31 some point in 2019 a working group was formed?

10:55 32

10:55 33 A. Correct.

10:55 34

10:55 35 Q. And that working group --- did it report into a steering  
10:55 36 committee or how did it function vis-a-vis the steering  
10:55 37 committee?

10:55 38

10:55 39 A. Yes, the working group reported into the steering  
10:55 40 committee. The working group was responsible for certain  
10:55 41 tranches of work to do with examining material that had  
10:55 42 previously been legal professional privilege. So to review  
10:55 43 material that had been provided to the commission, witness  
10:56 44 statements and LPP material that were provided as part of the  
10:56 45 Crown's class action that they released to us. So the working  
10:56 46 group analysed that material. The working group reviewed all the  
10:56 47 material, all the evidence that came before the Bergin Inquiry to

10:56 1 look for any material that our investigation might not have  
10:56 2 uncovered, to report on that through the steering committee as  
10:56 3 well. As well as providing all of the previous investigation  
10:56 4 material to go in the final report.

10:56 5

10:56 6 Q. So all of that material, you said it goes into the final report.  
10:56 7 How does that work? Isn't the final report a report of the  
10:56 8 Commissioners?

10:56 9

10:56 10 A. It is a report of the Commissioners. We had legal  
10:56 11 assistance to prepare the final report, but then drafts and how the  
10:56 12 final report was going to be prepared, the working group and the  
10:56 13 steering committee, firstly the working group would go through  
10:56 14 the format of how that final report was going to be set out and the  
10:57 15 material in it. Part of my role in the working group through my  
10:57 16 experience through the investigation was for want of a better  
10:57 17 phrase to fact check the material that we had uncovered through  
10:57 18 the course of the investigation, to then review as the report got  
10:57 19 prepared to input into the format of that final report and to  
10:57 20 comment and add to it.

10:57 21

10:57 22 Q. And in the process of the working group's work in relation  
10:57 23 to the investigation, various reports and memos are prepared. As  
10:57 24 we've seen in your statement, are they then provided to the  
10:57 25 Commissioners for their consideration in the drafting of the final  
10:57 26 report?

10:57 27

10:57 28 A. Yes, they were.

10:57 29

10:57 30 Q. Now, just by way of overview of what I would like to do  
10:57 31 with your evidence, or in the course of your evidence today,  
10:57 32 Mr Bryant, paragraph 138 of your statement, if you would please  
10:58 33 go to that. It sets out a number of matters which you describe as  
10:58 34 evidencing the extent of Crown's cooperation with the VCGLR  
10:58 35 over the course of the investigation. You see that?

10:58 36

10:58 37 A. Yes.

10:58 38

10:58 39 Q. And you've then described about six matters and the first  
10:58 40 was in paragraph (a), what you describe as a failure to provide  
10:58 41 a transparent act of the China arrests during a presentation to the  
10:58 42 VCGLR on 31 August 2017. That was the first matter you  
10:58 43 identified as evidencing the extent of Crown's cooperation; you  
10:58 44 see that?

10:58 45

10:58 46 A. Yes.

10:58 47

- 10:58 1 Q. The second matter you refer to is Crown not being  
10:58 2 forthcoming in its disclosure of information in relation to the, or  
10:59 3 relevant to the China arrests investigation?  
10:59 4
- 10:59 5 A. Yes.  
10:59 6
- 10:59 7 Q. The third is Crown's disclosure of information to the  
10:59 8 VCGLR which you say appeared to be significantly influenced by  
10:59 9 what occurred in the class action, that is a reference to the class  
10:59 10 action that was commenced against Crown in December 2017?  
10:59 11
- 10:59 12 A. Yes.  
10:59 13
- 10:59 14 Q. The next matter is what you describe as Crown executives  
10:59 15 and employees who were interviewed by the VCGLR not  
10:59 16 displaying the level of candour that you would expect. You see  
10:59 17 that?  
10:59 18
- 10:59 19 A. Yes.  
10:59 20
- 10:59 21 Q. And in sub-paragraph (e), disclosure of documents subject  
10:59 22 to legal professional privilege in the class action being produced  
10:59 23 to the VCGLR late in its investigation?  
10:59 24
- 10:59 25 A. Yes.  
10:59 26
- 10:59 27 Q. And the final matter was that in your view at the NSW  
10:59 28 inquiry there appeared to be a shift in Crown's position giving  
10:59 29 concessions it made in the NSW inquiry that had not been offered  
11:00 30 to the VCGLR. Mr Bryant, what I want to do is take you through  
11:00 31 each of those six matters. Not in every bit of detail in your  
11:00 32 statement, but that is just to give you an overview of where I  
11:00 33 would like to go, starting with the first matter. That was the  
11:00 34 presentation given to the VCGLR by Mr Preston, who was  
11:00 35 Crown's chief legal officer at the time; is that correct?  
11:00 36
- 11:00 37 A. Yes.  
11:00 38
- 11:00 39 Q. Just again to set the sequence of events, the detention of  
11:00 40 Crown's employees in China occurred in June or July 2017?  
11:00 41
- 11:00 42 A. A conviction.  
11:00 43
- 11:00 44 Q. Yes, a conviction, thank you. And Mr Preston's  
11:00 45 presentation was in August 2017?  
11:00 46
- 11:00 47 A. Yes, that's my understanding.

11:00 1  
11:01 2 Q. I understand you joined the investigation after this time.  
11:01 3 But at that time and subsequently, was it the practice for Crown  
11:01 4 to give presentations to the VCGLR?  
11:01 5  
11:01 6 A. In my experience I hadn't been involved in that side of the  
11:01 7 business, but I do understand that they do from time to time give  
11:01 8 presentations to the commission. Sometimes like a snapshot of  
11:01 9 what is going on. But, yes, I haven't been involved personally.  
11:01 10  
11:01 11 Q. Do you know who requested or suggested the presentation  
11:01 12 by Mr Preston in August 2017?  
11:01 13  
11:01 14 A. I don't know.  
11:01 15  
11:01 16 Q. And you say in your statement that in March 2019, so this  
11:01 17 is over 18 months since the presentation, certain documents were  
11:02 18 produced and information in those documents caused you to form  
11:02 19 the view that Crown had not been open with the VCGLR during  
11:02 20 the presentation.  
11:02 21  
11:02 22 A. Sorry, Commissioner, just to go back, it was one of the  
11:02 23 matters I corrected in my statement.  
11:02 24  
11:02 25 Q. Oh, yes, thank you.  
11:02 26  
11:02 27 A. So that material had been provided to VCGLR in  
11:02 28 November 2017.  
11:02 29  
11:02 30 Q. Thank you.  
11:02 31  
11:02 32 A. Upon review ---  
11:02 33  
11:02 34 Q. Sorry, I didn't mean to mislead you there. That is helpful.  
11:02 35 Thank you. So it was two or three months after the presentation,  
11:02 36 you came across documents which you considered suggested that  
11:02 37 the VCGLR had not been open or transparent in the presentation  
11:02 38 by Mr Preston?  
11:02 39  
11:02 40 A. I conducted a review of the presentation against the  
11:02 41 material we had I think around July 2018.  
11:02 42  
11:03 43 Q. I see.  
11:03 44  
11:03 45 A. And then identified some issues with the presentation.  
11:03 46  
11:03 47 Q. I see.



- 11:03 1  
11:03 2 A. At that stage.  
11:03 3  
11:03 4 Q. One of the issues that you identified was that you  
11:03 5 considered that at the time of the arrests, China had been aware of  
11:03 6 the risks that Chinese authorities were focus their attention on  
11:03 7 foreign casinos such as Crown?  
11:03 8  
11:03 9 A. Yes. It was quite evident from reviewing material early in  
11:03 10 the investigation, open source material that there was strong  
11:03 11 indicators that the Chinese Government had made announcements  
11:03 12 they were cracking down on overseas-based casinos in China.  
11:03 13  
11:03 14 Q. But you also formed the view that Crown was aware that  
11:03 15 that announcement applied to foreign casinos in China, not just  
11:03 16 a general corruption crackdown?  
11:03 17  
11:03 18 A. Yes.  
11:03 19  
11:03 20 Q. And you formed the view that that had not been disclosed  
11:03 21 to the VCGLR at the time of the presentation in August 2017?  
11:03 22  
11:04 23 A. Yes, at the time of the presentation, looking at the  
11:04 24 presentation, there was a key sentence I thought that Crown had  
11:04 25 been provided with advice from a risk management company  
11:04 26 called Mintz that said the Chinese Government were going to be  
11:04 27 cracking down on overseas-based casinos in China. The  
11:04 28 presentation wording was changed to the effect that the Chinese  
11:04 29 Government were focusing on gamblers or gambling, gambling  
11:04 30 was the word, sorry.  
11:04 31  
11:04 32 Q. Thank you, Mr Bryant. I want to take the Commissioner  
11:04 33 through the presentation and the Mintz advice that you just  
11:04 34 referred to, to see as if we can ask you to identify what you  
11:04 35 regarded as the difference between what was the subject of Mintz  
11:04 36 advice and what was the subject of the presentation. If the  
11:04 37 operator could please call up VCG.0001.0001.9002. Mr Bryant,  
11:05 38 this is the presentation that is referred to in your statement. I  
11:05 39 know you weren't there, but looking at the VCGLR's documents,  
11:05 40 do you know who else from Crown was present at this  
11:05 41 presentation?  
11:05 42  
11:05 43 A. No, I don't.  
11:05 44  
11:05 45 Q. So, Commissioner, you will note the heading "Presentation  
11:05 46 to the Victorian Commission for Gambling and Liquor  
11:05 47 Regulation August 2017". Operator, could you please go to the

11:05 1 second page. Mr Bryant, you will notice that the background  
 11:05 2 section just refers to the arrest and detention of the employees in  
 11:05 3 China in 2016 and 2017. Commissioner, I will just take you  
 11:05 4 through each of the pages so that you can get an understanding of  
 11:06 5 what was being presented. Operator, if you could go to the next  
 11:06 6 page. That is the reference to the articles of the Chinese criminal  
 11:06 7 law that was said to have been contravened. Over the page again,  
 11:06 8 please, operator. This page records the sentences, the timing and  
 11:06 9 so on. And then the next page, please, operator. Mr Bryant, this  
 11:06 10 is under the heading "how did this happen?" Crown had said in  
 11:06 11 the first dot point in this slide, or presentation that:

11:06 12

11:06 13 *In early 2015, Chinese state media quoted an official of*  
 11:06 14 *the Chinese government as saying that there was to be*  
 11:07 15 *a crackdown on corruption and illegal activities,*  
 11:07 16 *including gambling.*

11:07 17

11:07 18 And you just said a moment ago that you were able to  
 11:07 19 confirm that via a reference to open source; is that  
 11:07 20 correct?

11:07 21

11:07 22 A. Yes.

11:07 23

11:07 24 Q. For the Commissioner's benefit, the question of what was  
 11:07 25 the subject of the announcement on the crackdown was the  
 11:07 26 subject of interviews you conducted on behalf of the VCGLR of  
 11:07 27 Crown employees in early 2018?

11:07 28

11:07 29 A. Yes.

11:07 30

11:07 31 Q. We'll come to that in a moment.

11:07 32

11:07 33 The next dot point I ask the Commissioner to note:

11:07 34

11:07 35 *Crown had heard many rumours that illegal gambling*  
 11:07 36 *was occurring in China (amongst other criminal*  
 11:07 37 *activities) and understood the crackdown to be targeting*  
 11:07 38 *such gambling, rather than targeting the provision of*  
 11:07 39 *assistance to customers to arrange visits to foreign or*  
 11:07 40 *Macau casinos.*

11:07 41

11:08 42 Operator, could we go to the next slide. Mr Bryant, this  
 11:08 43 is the slide that refers to Mintz, who you mentioned  
 11:08 44 a moment ago. It says:

11:08 45

11:08 46 *In October 2015, Crown staff heard that the detained*  
 11:08 47 *Paradise and GKL staff had been formally arrested.*

11:08 1  
11:08 2 Did you understand that Paradise and GKL staff to relate  
11:08 3 to a South Korean casino?  
11:08 4  
11:08 5 A. Yes.  
11:08 6  
11:08 7 Q. It continues:  
11:08 8  
11:08 9 *Crown sought further (privileged) legal advice from*  
11:08 10 *Wilmer Hale .....*  
11:08 11  
11:08 12 That's a firm in Hong Kong, is it not?  
11:08 13  
11:08 14 A. Yes.  
11:08 15  
11:08 16 Q.  
11:08 17 ..... and also government relations/intelligence/risk  
11:08 18 *management advice from the Mintz Group (specifically,*  
11:08 19 *the MD for Asia, Randy Phillips, who spent 28 years with*  
11:09 20 *the VIA and was its chief representative in China).*  
11:09 21  
11:09 22 Then the slide or presentation seems to summarise the  
11:09 23 Mintz advice and it is the first hollow dot point that is  
11:09 24 important, isn't it, Mr Bryant, the matter we are  
11:09 25 discussing, which is:  
11:09 26  
11:09 27 *According to sources working in the Public Security*  
11:09 28 *Bureau (PSB) in China, most provincial levels of the PSB*  
11:09 29 *had intelligence units that routinely monitored people*  
11:09 30 *engaged in gambling.*  
11:09 31  
11:09 32 So that is the relevant aspect of this presentation that  
11:09 33 you considered was actually contrary to the Mintz advice  
11:09 34 that you came to view?  
11:09 35  
11:09 36 A. Yes, Commissioner.  
11:09 37  
11:09 38 Q. Mr Bryant, while we are on this document, I want to show  
11:09 39 you another page because we will come back to it later.  
11:09 40 Operator, if you could go to the next page so the Commissioner  
11:09 41 can see the hollow bullet points continue on that page,  
11:09 42 summarising the affect of the Mintz advice.  
11:09 43  
11:10 44 When the Commissioner is ready, to the next page, please,  
11:10 45 operator. The hollow points continue again. This is a further  
11:10 46 continuation of the summary of the Mintz advice. Thank you,  
11:10 47 operator. Next page. This is the end of the Mintz advice and I

11:11 1 want to take you to the next page, please, operator. You will  
11:11 2 note, Commissioner, reference in the third bullet point to Crown  
11:11 3 obtaining legal advice. And then over the page at page 12,  
11:11 4 Mr Bryant, you see in the second solid dot bullet point it says:

11:11 5

11:11 6 *Crown Crown staff were instructed to:*

11:11 7

11:11 8 *Not hand out promotional materials that referred to*  
11:11 9 *gaming facilities or terms of play (Crown did not produce*  
11:11 10 *such materials for distribution in China).....*

11:11 11

11:11 12 Did you see that?

11:11 13

11:11 14 A. Yes, I do.

11:11 15

11:12 16 Q. We'll come back to that shortly. As you said, you later  
11:12 17 came to see some advices that Mintz prepared. You saw those in  
11:12 18 2018 and I see from your statement that from time to time you  
11:12 19 prepared memoranda for the working group or for your team in  
11:12 20 relation to your review of the documents and what you considered  
11:12 21 was the substance of the Mintz advice and what was the subject  
11:12 22 of the presentation. Is that correct?

11:12 23

11:12 24 A. Yes.

11:12 25

11:12 26 Q. And from time to time as more documents were produced it  
11:12 27 seems to me that you updated those memos to continue to point  
11:12 28 out the difference between the presentation and other documents  
11:12 29 that came to life. Is that a fair summary?

11:12 30

11:12 31 A. Yes, I did that, and also just to reflect on the focus of the  
11:12 32 investigation about whether there is any more evidence that  
11:12 33 supported our original --- or my original proposition with what  
11:13 34 had occurred.

11:13 35

11:13 36 Q. What was your original proposition?

11:13 37

11:13 38 A. That there had been failings, significant failings in Crown's  
11:13 39 governance, risk management approach to what had occurred in  
11:13 40 China.

11:13 41

11:13 42 Q. I would like to go to some of the memoranda you prepared.  
11:13 43 They are helpful summaries of the course of the investigation.  
11:13 44 I will also take you to a couple of the underlying documents.

11:13 45

11:13 46 COMMISSIONER: Before you move on, I just want to clarify  
11:13 47 what is the status of these documents, this particular document

11:13 1 that we are looking at now and when we get to them, the file  
11:13 2 notes and memoranda that you are about to take Mr Bryant to.

11:14 3

11:14 4 I didn't indicate that the tender of Mr Bryant's statement included,  
11:14 5 I'm not sure whether you intended to include the various  
11:14 6 attachments to the statements. I have two folders of attachments  
11:14 7 to Mr Bryant's statement.

11:14 8

11:14 9 MS NESKOVCIN: I did intend that, Commissioner. Perhaps  
11:14 10 if we could recall that for the transcript, and it can be  
11:14 11 reflected, and the documents that I have been taking  
11:14 12 Mr Bryant to are all in his statement, and if I want to  
11:14 13 take him to a separate document, I will tender that. But  
11:14 14 otherwise, as I go through these documents, you can  
11:14 15 assume they are tendered as part of the original  
11:14 16 statement.

11:14 17

11:14 18 COMMISSIONER: All right. I think we should describe the  
11:14 19 original tender as Mr Bryant's statement together with the  
11:14 20 documents referred to in his statement. I think they are each  
11:14 21 numbered. At least I have them in tabular form.

11:14 22

11:15 23 MS NESKOVCIN: We might ---

11:15 24

11:15 25 COMMISSIONER: They've each got a separate number.

11:15 26

11:15 27 MS NESKOVCIN: We can prepare a list if that is necessary.

11:15 28

11:15 29 COMMISSIONER: I think we need that. At the moment, the  
11:15 30 statement will be both the statement and the attached documents.

11:15 31

11:15 32 MS NESKOVCIN: Thank you.

11:15 33

11:15 34 Operator, could you please call up BCG.0001.0002.6411.

11:15 35

11:15 36 Mr Bryant, this is a memorandum you prepared on 2 April 2019  
11:15 37 with your colleagues Lindsay Hilliard and Miriam Holmes. Do  
11:15 38 you see that?

11:15 39

11:15 40 A. Yes, I do.

11:15 41

11:15 42 Q. Were they part of the working group?

11:15 43

11:15 44 A. I don't think we were considered a formal working group at  
11:16 45 that stage but we were three people working on the investigation  
11:16 46 as such.

11:16 47

11:16 1 Q. Did they become the working group?  
11:16 2  
11:16 3 A. No, actually Lindsay Hilliard resigned and Miriam Holmes  
11:16 4 finished up her role, so we didn't commence the formal working  
11:16 5 group until after this.  
11:16 6  
11:16 7 Q. The memorandum is addressed to Adam Ockwell, the  
11:16 8 director of compliance. Is he the person to whom you report?  
11:16 9  
11:16 10 A. Yes, it is.  
11:16 11  
11:16 12 Q. Was he involved in the working group?  
11:16 13  
11:16 14 A. No, he was involved in the steering committee.  
11:16 15  
11:16 16 Q. Can you explain to the Commissioner the purpose of this  
11:16 17 memorandum?  
11:16 18  
11:16 19 A. It was a summary of where the investigation was at that  
11:16 20 particular time. If I could scroll through ---  
11:16 21  
11:16 22 Q. Yes, please. I wanted to ask you, for example, about the  
11:16 23 background section so the Commissioner can gain  
11:16 24 an understanding of, at this point in time, where things were at in  
11:16 25 terms of the progress of the investigation and production of  
11:16 26 documents. And, with respect, paragraph 4 seems to contain  
11:17 27 a nice summary, if I could perhaps go through that with you. It  
11:17 28 says:  
11:17 29  
11:17 30 *Since July 2017, the VCGLR has requested Crown to*  
11:17 31 *provide information and since January 2018 the VCGLR*  
11:17 32 *has formally required Crown to produce documents*  
11:17 33 *specifically referring to its statutory information*  
11:17 34 *gathering powers.*  
11:17 35  
11:17 36 Now, Mr Bryant, I understand that to be distinguishing  
11:17 37 between requests on the one hand that had occurred before  
11:17 38 January 2018 and what you describe as a formal process  
11:17 39 after January 2018. Can you explain to the Commissioner  
11:17 40 what you meant by the formal requirements to produce?  
11:17 41  
11:17 42 A. Yes, the investigation commenced with requests to Crown  
11:17 43 for email material. That was done in September and October  
11:18 44 2017. When I commenced my role in the investigation in  
11:18 45 December, I thought there was more material that was  
11:18 46 appropriate to obtain from Crown, and my experience was to use  
11:18 47 a section 26 notice, which was to formally request the

11:18 1 information of Crown under the Act to set time frames and legal  
11:18 2 requirements around the provision of that material.

11:18 3

11:18 4 Q. And that is what occurred from that point onwards, the  
11:18 5 formal section 26 notices; is that correct?

11:18 6

11:18 7 A. Yes.

11:18 8

11:18 9 COMMISSIONER: Is there a reason why you moved from  
11:18 10 informal requests for documents and information to formal  
11:18 11 requests?

11:18 12

11:18 13 A. Yes, Commissioner, I've always thought that is the  
11:18 14 appropriate way to go about an investigation of this ilk, to just  
11:18 15 hopefully set time frames as well for the provision of that  
11:18 16 information so it is legally obtained at the time. It is the  
11:19 17 appropriate tool to use to obtain the material.

11:19 18

11:19 19 MS NESKOVCIN: Mr Bryant, wasn't another reason that you  
11:19 20 had noticed when you came on to the matter that Crown hadn't  
11:19 21 complied with the informal requests?

11:19 22

11:19 23 A. Yes. When I reviewed the file, I noticed that the first  
11:19 24 request I think was in 5 October, and the subsequent one a few  
11:19 25 weeks after that, and yet it had taken I think about two months for  
11:19 26 Crown to provide the material that had been requested. And I  
11:19 27 thought that was a delay in that the material that had been asked  
11:19 28 for, some of it would obviously have been referenced in the  
11:19 29 presentation that Mr Preston had made in August at that stage.  
11:19 30 So I thought a lot of the material that had been requested would  
11:19 31 have been on hand as such with Crown, so I thought the formal  
11:19 32 demands were appropriate.

11:19 33

11:19 34 Q. Mr Bryant, didn't you regard the production as being  
11:19 35 unsatisfactory?

11:19 36

11:19 37 A. Yes. It was unsatisfactory in that I thought it was --- what  
11:20 38 had been provided seemed to me quite limited in what had been  
11:20 39 requested in the first instance.

11:20 40

11:20 41 Q. We're going to come to that in a little more detail next. For  
11:20 42 the moment I might go back to your note. You record that there  
11:20 43 in August 2018 and November 2018, the VCGLR wrote to  
11:20 44 Crown and required that all documents requested under the  
11:20 45 statutory notice be produced to VCGLR within a nominated time  
11:20 46 frame. According to your statement, that resulted in the products  
11:20 47 of about eight folders in December 2018?

11:20 1  
11:20 2 A. Yes.  
11:20 3  
11:20 4 Q. But then further notices were issued in early 2019, and one  
11:20 5 of the relevant batches that you are dealing with in this  
11:20 6 memorandum is the March 2019 batch; correct?  
11:20 7  
11:21 8 A. Correct.  
11:21 9  
11:21 10 Q. And, operator, if we can scroll down to look at paragraphs  
11:21 11 5 and 6 more clearly on the screen, what you noted, Mr Bryant,  
11:21 12 was that the March 2019 batch was responsive to statutory  
11:21 13 notices issued in February and August 2018; is that correct?  
11:21 14  
11:21 15 A. Correct.  
11:21 16  
11:21 17 Q. And that is your point, one of your points that you thought  
11:21 18 that the documents could have been produced earlier?  
11:21 19  
11:21 20 A. Correct.  
11:21 21  
11:21 22 Q. And you also note in paragraph 6 that the March 2019  
11:21 23 batch included what you described as "new substantive  
11:21 24 information that is relevant to the investigation".  
11:21 25  
11:21 26 A. Correct.  
11:21 27  
11:21 28 Q. Operator, can we please go to the next page of the  
11:21 29 document and then to the page after that, please. At the end of  
11:22 30 the page, Mr Bryant, paragraph 20, you can see the heading  
11:22 31 "Crown's engagement with the VCGLR ". I'll just give you  
11:22 32 a moment to read that and for the Commissioner to read it. It is  
11:22 33 summarising what you've described as "delay".  
11:22 34  
11:22 35 Mr Bryant, the matter of was a matter you were reporting on  
11:22 36 during the currency of the investigation; correct?  
11:22 37  
11:22 38 A. That's correct.  
11:22 39  
11:22 40 Q. Is that because you were concerned about the way Crown  
11:23 41 was engaging during the investigation of the VCGLR?  
11:23 42  
11:23 43 A. Yes.  
11:23 44  
11:23 45 Q. And you reported that to other people with whom you were  
11:23 46 working, at this time not the working group, but people to whom  
11:23 47 you reported at least?



11:23 1  
 11:23 2 A. Yes.  
 11:23 3  
 11:23 4 Q. And was that discussed internally?  
 11:23 5  
 11:23 6 A. Yes.  
 11:23 7  
 11:23 8 Q. And what was the sentiment of that discussion?  
 11:23 9  
 11:23 10 A. I prepared a memo in April 2018 that went to our legal  
 11:23 11 services area in relation to what I considered may have been  
 11:23 12 potential breach of section 26 notice in that I don't think Crown  
 11:23 13 had provided material that had been requested under a demand,  
 11:23 14 and I received legal advice in relation to that memorandum.  
 11:23 15  
 11:23 16 Q. I don't want you to refer to the legal advice. Please  
 11:23 17 continue.  
 11:23 18  
 11:23 19 A. I would state that the focus of the investigation was to  
 11:23 20 proceed on the main track of the investigation, which was what  
 11:23 21 had actually occurred in China and I was very mindful of not  
 11:24 22 getting side tracked on arguments or issues in relation to the  
 11:24 23 provision of information, notwithstanding how important that is  
 11:24 24 in the course of the investigation.  
 11:24 25  
 11:24 26 Q. Thank you. It was a matter noted by the regulator, is that  
 11:24 27 fair to say?  
 11:24 28  
 11:24 29 A. Yes.  
 11:24 30  
 11:24 31 Q. Over the page, please, operator.  
 11:24 32  
 11:24 33 The issue of redactions, I will come to in a moment, but if we  
 11:24 34 could please blow up paragraph 23, you say in this memorandum,  
 11:24 35 Mr Bryant, that:  
 11:24 36  
 11:24 37 *In August 2017 Crown gave a presentation to Executives*  
 11:24 38 *and officers of the VCGLR about the criminal detention of*  
 11:24 39 *staff in China [that is the presentation we've just been*  
 11:24 40 *looking at] the evidence gathered during the investigation*  
 11:24 41 *indicates that information given in the presentation to the*  
 11:24 42 *VCGLR was not accurate.*  
 11:24 43  
 11:24 44 And there you set out an extract from the presentation in  
 11:25 45 paragraph (a) and then under that you say:  
 11:25 46  
 11:25 47 *However, the Mintz Advice disclosed during the*

11:25 1 *investigation advised Crown that 'according to sources*  
11:25 2 *working in the Public Security Bureau (PSB) in China,*  
11:25 3 *most provincial levels of the PSB had intelligence units*  
11:25 4 *that routinely monitored people engaged in gambling.'*  
11:25 5

11:25 6 So you have highlighted in bold a section of the presentation and  
11:25 7 a section in the Mintz advice. Did you consider there to be  
11:25 8 a difference between those bolded statements?  
11:25 9

11:25 10 A. Yes.

11:25 11  
11:25 12 Q. And what did you consider to be the difference?  
11:25 13

11:25 14 A. I think it is a significant difference. I think we understand  
11:25 15 what gambling is, but the gambling business is much broader, and  
11:25 16 the gambling business is something that Crown was engaged in in  
11:25 17 China at the time.  
11:25 18

11:25 19 Q. Thank you, Mr Bryant. In a moment, I would like to take  
11:26 20 you to some further Mintz advice that you received later in the  
11:26 21 investigation that appeared to again contradict the presentation,  
11:26 22 but for the moment can I ask the Commissioner to note what then  
11:26 23 is recorded in the note in this document. It refers to again the  
11:26 24 presentation to VCGLR. It says:  
11:26 25

11:26 26 *This presentation to the VCGLR is consistent with the*  
11:26 27 *evidence given by Mr Felstead at interview that he*  
11:26 28 *recalled that the questioning of a Crown employee by*  
11:26 29 *Chinese police in July 2015 related to a customer, not*  
11:26 30 *about Crown's operations in China. However,*  
11:26 31 *documentary evidence produced on 18 March 2019 to the*  
11:26 32 *VCGLR indicates that Crown and Mr Felstead was*  
11:26 33 *advised that the questioning of the Crown employee*  
11:26 34 *related to allegations the employee was organising*  
11:26 35 *gambling tours, not about a customer.*  
11:26 36

11:27 37 So, Mr Bryant, in early 2018 you interviewed a number of Crown  
11:27 38 employees including Mr Felstead; is that correct?  
11:27 39

11:27 40 A. Yes.

11:27 41  
11:27 42 Q. And what you are referring to there is evidence given by  
11:27 43 Mr Felstead during the interview about the questioning of  
11:27 44 an employee by Chinese police in July 2015?  
11:27 45

11:27 46 A. Correct.  
11:27 47

- 11:27 1 Q. You refer to it in your statement as the July 2015 incident?  
11:27 2
- 11:27 3 A. Yes.  
11:27 4
- 11:27 5 Q. What you are pointing out is that contrary to Mr Felstead's  
11:27 6 evidence in the interview, you had later come across documents  
11:27 7 in the March 2019 batch that suggested that he had been advised  
11:27 8 that the questioning related to the employee and the allegations  
11:27 9 that the employee was organising gambling tours was not about  
11:28 10 a customer. Is that a fair summary?  
11:28 11
- 11:28 12 A. That is.  
11:28 13
- 11:28 14 Q. Is it fair to say that this memorandum was highlighting at  
11:28 15 least two respects in which you considered that Crown had misled  
11:28 16 the VCGLR at the presentation in August 2017?  
11:28 17
- 11:28 18 A. Yes.  
11:28 19
- 11:28 20 COMMISSIONER: Could you just explain what you thought  
11:28 21 was significant about the differences in what you had been told,  
11:28 22 or what the regulator had been told in the presentation and what  
11:28 23 you subsequently discovered? In other words, I appreciate your  
11:28 24 view that there were differences, but could you go through or  
11:28 25 explain the significance of the differences?  
11:28 26
- 11:28 27 A. Yes, Commissioner. Starting with the routinely-monitored  
11:29 28 people engaged in gambling, to put it into context, a common  
11:29 29 thread at two of the interviews I conducted from the Crown  
11:29 30 executives was that in early 2015, the crackdown wasn't in  
11:29 31 relation to overseas-based casinos attempting to lure gamblers.  
11:29 32 The crackdown was about corruption and gambling.  
11:29 33
- 11:29 34 COMMISSIONER: In China itself?  
11:29 35
- 11:29 36 A. In China itself. Now, open source material at the time, and  
11:29 37 material that Crown subsequently provided to us, clearly showed  
11:29 38 that the crackdown was broader and about overseas-based  
11:29 39 casinos. The Mintz advice said that as well. So for the wording  
11:29 40 to change from people engaging in gambling --- sorry, for the  
11:29 41 Mintz advice to be changed from routinely-monitored people who  
11:29 42 work in the gambling business, to narrow it down to people  
11:29 43 engaged in gambling, I thought was quite a significant change  
11:30 44 and quite important in the context of how Crown was trying to  
11:30 45 position what had occurred in China around that time.  
11:30 46
- 11:30 47 COMMISSIONER: Why was it important for your

11:30 1 investigation?  
11:30 2  
11:30 3 A. I suppose it showed the level of trying to get to the facts of  
11:30 4 what had occurred and what Crown were willing to admit had  
11:30 5 occurred over there to try and drill into, well, what is Crown's  
11:30 6 position on this? What risk management approach did they take  
11:30 7 at the time? If Crown weren't willing to admit that there had been  
11:30 8 a crackdown about overseas-based casinos in China, they couldn't  
11:30 9 take the risk mitigation steps that they perhaps needed to do at  
11:30 10 that time.  
11:30 11  
11:30 12 COMMISSIONER: I follow. Thank you.  
11:30 13  
11:30 14 MS NESKOVCIN: Thank you, Commissioner.  
11:30 15  
11:30 16 Mr Bryant, I want to show you a document which is not in your  
11:30 17 statement to see if you recall seeing this advice in the course of  
11:30 18 your investigation.  
11:30 19  
11:31 20 Operator, it is VCG.0002.0001.0012.  
11:31 21  
11:31 22 You see that it is an email from Michael Chen to Jason O'Connor.  
11:31 23 Michael Chen was the President, International Marketing for  
11:31 24 Crown based in Hong Kong; do you agree with that or does that  
11:31 25 sound familiar?  
11:31 26  
11:31 27 A. Yes, that's correct.  
11:31 28  
11:31 29 Q. And Mr O'Connor was based in Melbourne. I effect his  
11:31 30 title. He was the Executive General Manager of VIP gaming at  
11:31 31 Crown; is that correct?  
11:31 32  
11:31 33 A. Yes.  
11:31 34  
11:31 35 MS NESKOVCIN: And I should just mention, sorry,  
11:31 36 Commissioner, this memo --- this email has email addresses.  
11:32 37 I don't know if they are current, but they should be masked ---  
11:32 38  
11:32 39 COMMISSIONER: There should be no publication of personal  
11:32 40 email addresses. Maybe I can make a standing direction about  
11:32 41 that so that either personal addresses, personal phone numbers or  
11:32 42 personal email addresses not be published.  
11:32 43  
11:32 44 MS NESKOVCIN: Yes. Thank you.  
11:32 45  
11:32 46 Sorry, Mr Bryant, below that is --- it seems like Mr O'Connor was  
11:32 47 --- or Mr Chen was --- it seems that Mr Chen was forwarding

11:32 1 an email to Mr O'Connor and the email he is forwarding is the  
11:32 2 email below from Randy Phillips, the gentleman we read about  
11:32 3 from Mintz Group. You see that the email is on 25 March 2015.

11:32 4 It says:

11:32 5

11:32 6 *Hi, Michael.*

11:32 7

11:33 8 *I beefed up the areas requested per attached, and believe*  
11:33 9 *this covers the areas of your primarily interest.*

11:33 10

11:33 11 If we just go to the next page, which is 0002, and I will  
11:33 12 give you a moment to look at that, Mr Bryant, to see if  
11:33 13 you recall seeing the document. You might need to go to  
11:33 14 the next page to confirm that. Let me know when you are  
11:33 15 ready to do that.

11:33 16

11:33 17 A. I'm ready.

11:33 18

11:33 19 Q. Thank you, operator. You might need to go to the heading  
11:33 20 "Sources: Public Security Bureau (PSB)". For the transcript, this  
11:33 21 is page 0003.

11:33 22

11:34 23 Mr Bryant, do you recall seeing this document during the course  
11:34 24 of your investigation?

11:34 25

11:34 26 A. Yes, I do.

11:34 27

11:34 28 Q. Do you notice any similarities between this document and  
11:34 29 the Mintz advice or the presentation that we've just been  
11:34 30 discussing?

11:34 31

11:34 32 A. Yes, I do.

11:34 33

11:34 34 Q. Can you point out to the Commissioner what you regard as  
11:34 35 any similarities or differences?

11:34 36

11:34 37 A. The similarities --- the paragraph that starts "according to  
11:34 38 sources" is almost exactly the same as the one that was in the  
11:34 39 presentation to the VCGLR except for the presentation to the  
11:34 40 VCGLR talks about involved in gambling as opposed to who  
11:34 41 work in the gambling business. I think it also --- the presentation  
11:34 42 doesn't --- I'm not sure if it mentions the actual Chinese cities.  
11:35 43 There is a very slight difference in that as well.

11:35 44

11:35 45 Q. Thank you.

11:35 46

11:35 47 Can I also point out the sentence beginning:

11:35 1  
11:35 2 *In essence, we learned that the Guangdong PSB had*  
11:35 3 *recently received instructions from central PSB to step up*  
11:35 4 *monitoring of foreign gambling companies marketing*  
11:35 5 *activities throughout China.....*  
11:35 6  
11:35 7 Do you see that?  
11:35 8  
11:35 9 A. Yes, I do.  
11:35 10  
11:35 11 Q. Did you regard that as clear advice from Mintz that the PSB  
11:35 12 was targeting and monitoring foreign gambling companies?  
11:35 13  
11:35 14 A. Yes.  
11:35 15  
11:35 16 Q. And that was not what Crown had disclosed to the VCGLR  
11:35 17 in the presentation in August 2017; is that correct?  
11:35 18  
11:35 19 A. Correct.  
11:35 20  
11:35 21 Q. And it is evident, isn't it, that this document March 2015,  
11:35 22 having been forwarded to Mr O'Connor, was certainly available  
11:35 23 to Crown at the time of the presentation?  
11:35 24  
11:35 25 A. Yes.  
11:35 26  
11:35 27 COMMISSIONER: I think we should tender, go back to the first  
11:36 28 email to get the correct details of it. This document is an email  
11:36 29 from Mr Michael Chen to Mr Jason O'Connor, 26 March 2015  
11:36 30 with the attached note?  
11:36 31  
11:36 32 MS NESKOVICIN: Yes.  
11:36 33  
11:36 34 COMMISSIONER: That will be exhibit number.....  
11:36 35  
11:36 36 ASSOCIATE: RC0004.  
11:36 37  
11:36 38  
11:36 39 **EXHIBIT #RC0004 - EMAIL FROM MR MICHAEL CHEN TO**  
**MR JASON**  
11:36 40 **O'CONNOR DATED 26 MARCH 2015 WITH ATTACHED NOTE**  
11:36 41  
11:36 42  
11:36 43 MR BORSKY: Commissioner, if I may, again, with apologies to  
11:36 44 my learned friend, appreciate there are teething problems and this  
11:36 45 is in no way a criticism of our friends, as things stand, we and  
11:37 46 those instructing us have still not been granted access to the  
11:37 47 online hearing book. So documents such as this produced by the

11:37 1 VCGLR which bears a VCG code, we're simply scrambling to  
11:37 2 find it elsewhere in our discovery, rather than access to the  
11:37 3 system. I'm instructed that Law in Order are working on access.  
11:37 4 I ask that you issue a direction so that we are connected by  
11:37 5 lunchtime.  
11:37 6  
11:37 7 COMMISSIONER: I will see what I can do about that. Do you  
11:37 8 know what the issue is here?  
11:37 9  
11:37 10 MS NESKOVCIN: I'm not sure. I will have to answer that once  
11:37 11 I've --- perhaps when we have a break I will get some  
11:37 12 instructions. Can I say this, Commissioner. This is a document,  
11:37 13 the extract of what is referred to in Mr Bryant's statement. I was  
11:38 14 about to ask him to confirm when that was produced. So Crown  
11:38 15 and every party with leave to appear as had notice about the  
11:38 16 contents of this document. They weren't to know that I was  
11:38 17 specifically going to take Mr Bryant through it. But from time to  
11:38 18 time, Commissioner, Counsel Assisting will take a witness to  
11:38 19 a document that won't be in the online book. It will be in  
11:38 20 a private book released at the time a witness is giving evidence  
11:38 21 for forensic reasons, but we are very mindful of giving parties  
11:38 22 advance notice of documents where necessary and where  
11:38 23 appropriate.  
11:38 24  
11:38 25 But, as to this document, I really wanted to see with Mr Bryant  
11:38 26 first whether he could recall the document rather than taking him  
11:38 27 to the summary of it. For my learned friend's benefit, the  
11:38 28 document that I have just taken Mr Bryant to is referred to in the  
11:38 29 memorandum of 29 October 2020, which is at  
11:39 30 VCG.0001.0002.6074 at page 5.  
11:39 31  
11:39 32 MR BORSKY: Grateful to my friend. As I endeavoured to  
11:39 33 indicate, we have no difficulty with this particular document. We  
11:39 34 have laid our hands on it. We understand with respect from time  
11:39 35 to time it will be deemed necessary to refer to documents by way  
11:39 36 of surprise and not in the book. My submission is a simpler one,  
11:39 37 we would like access to the hearing book.  
11:39 38  
11:39 39 COMMISSIONER: I will see how that works.  
11:39 40  
11:39 41 MR BORSKY: It is no criticism of those to our right, it is  
11:39 42 a logistical problem. It needs to be addressed.  
11:39 43  
11:39 44 COMMISSIONER: I will take it as a criticism of the system.  
11:39 45  
11:39 46 MS NESKOVCIN: Commissioner, I'm instructed we received  
11:39 47 notice late last night of parties that wanted access to the book and

11:39 1 we are working on that.  
11:39 2  
11:39 3 COMMISSIONER: Okay.  
11:39 4  
11:39 5 MS NESKOVCIN: Commissioner, did you want to have a break  
11:39 6 at this point?  
11:39 7  
11:39 8 COMMISSIONER: Yes, we'll have a 10-minute break and I'll  
11:40 9 see what logistical things might happen, or mechanical things  
11:40 10 might be done to speed things up. I will stand down for 10  
11:40 11 minutes.  
11:40 12  
11:40 13 ASSOCIATE: Please stand.  
11:40 14  
11:40 15  
11:40 16 **ADJOURNED** [11:40A.M.]  
11:55 17  
11:55 18  
11:55 19 **RESUMED** [11:55A.M.]  
11:55 20  
11:55 21  
11:55 22 COMMISSIONER: Mr Borsky, I have made some inquiries of  
11:55 23 sorts. Don't assume that I understand all the technology, but  
11:55 24 everybody should be up and running with all the documents in  
11:55 25 about two hours time. It requires all the lawyers to be given login  
11:55 26 details and you have to login. It takes a bit of time to sort out.  
11:55 27 That is in the process of happening and being sorted out. I'm  
11:55 28 passing on information. I'm not vouching for the fact that should  
11:55 29 all be done by about 2 o'clock, but we'll see.  
11:55 30  
11:55 31 MR BORSKY: Thank you, we're grateful.  
11:55 32  
11:55 33 COMMISSIONER: Okay.  
11:55 34  
11:55 35 MS NESKOVCIN: Thank you, Commissioner.  
11:55 36  
11:55 37 Mr Bryant, before we leave this document, do you recall when  
11:55 38 this document was produced by Crown in the investigation?  
11:56 39  
11:56 40 A. I believe around November 2017.  
11:56 41  
11:56 42 Q. Can I take you to a document to see if I've misunderstood  
11:56 43 it. It is actually a privileged document. It is  
11:56 44 VCG.0001.0002.6074. I understand Mr Rozen wants to say  
11:56 45 something about this document, Commissioner.  
11:56 46  
11:56 47 MR ROZEN: It is this document and other documents that fit



11:56 1 into this category. Can I make the observation that we've made  
11:56 2 claims of legal professional privilege in relation to a number of  
11:56 3 documents. We have produced them because such a claim is no  
11:56 4 excuse and the Inquiries Act does deal with the continuing  
11:57 5 operation of the claim of legal professional privilege in the future  
11:57 6 in relation to any subsequent proceedings. We wish to make the  
11:57 7 point that we have taken a position of not objecting to such  
11:57 8 documents being displayed on the screen as part of the public  
11:57 9 nature of this hearing but we don't want anyone to think for  
11:57 10 a moment that that constitutes a waiver of our claim for legal  
11:57 11 professional privilege.

11:57 12  
11:57 13 COMMISSIONER: It might not be as simple as that. You don't  
11:57 14 lose the privilege of producing the document because the statute  
11:57 15 requires the production.

11:57 16  
11:57 17 MR ROZEN: Yes.

11:57 18  
11:57 19 COMMISSIONER: Either compulsory production or by the  
11:57 20 statute itself, the privilege isn't lost, even if you didn't have the  
11:57 21 statute saying compulsory production doesn't take away your  
11:57 22 privilege under Commonwealth principles.

11:57 23  
11:57 24 But if it becomes public because the commission publishes it,  
11:58 25 whilst you haven't lost the privilege by your conduct the privilege  
11:58 26 would inevitably be lost by, as it were, my conduct.

11:58 27  
11:58 28 MR ROZEN: Yes.

11:58 29  
11:58 30 COMMISSIONER: So I think really the question for --- the  
11:58 31 question that needs to be resolved is whether you want this  
11:58 32 document I guess the others to which you refer, to remain  
11:58 33 privileged forever, in which case they shouldn't be published at  
11:58 34 all, that doesn't mean the witness can't be asked questions about  
11:58 35 the document, but the document shouldn't be published or  
11:58 36 whether it is a formal statement by you saying you are not  
11:58 37 waiving the privilege, but if it enters the public domain, whatever  
11:58 38 the legal consequences are of that, which are as I've described  
11:58 39 them, you live with. You have to take a position. If you want the  
11:59 40 documents to remain privileged until you waive the privilege,  
11:59 41 rather than it happening against your will or against your wishes,  
11:59 42 say so and I won't publish these documents to the world at large.  
11:59 43 I assume that if they well, I don't know if they go to the parties,  
11:59 44 that is a publication relevant to lose the privilege, I'm not sure.

11:59 45  
11:59 46 MS NESKOVICIN: The documents have been provided to the  
11:59 47 parties on the basis that they remain confidential.

11:59 1  
11:59 2 COMMISSIONER: We'll do that.  
11:59 3  
11:59 4 MR ROZEN: The best course is adopt the most conservative  
11:59 5 approach and we'll consider the matter further in light of the  
11:59 6 observations you've made, sir, and it may be that we can narrow  
11:59 7 down key documents.  
11:59 8  
11:59 9 COMMISSIONER: Key documents. I think that will be the  
11:59 10 easiest thing to do.  
11:59 11  
11:59 12 MR ROZEN: We'll do that. Thank you.  
11:59 13  
11:59 14 MS NESKOVCIN: So to preserve the position, Commissioner,  
11:59 15 can I suggest that this document be shown only in the hearing  
12:00 16 room?  
12:00 17  
12:00 18 COMMISSIONER: Yes. Is that technically possible?  
12:00 19 Everybody says "yes".  
12:00 20  
12:00 21 MS NESKOVCIN: I'm told it is. The associate is nodding. I  
12:00 22 would ask the operator to show this document only in the hearing  
12:00 23 room.  
12:00 24  
12:00 25 COMMISSIONER: I think that is sufficient to protect Mr  
12:00 26 Rozen's position.  
12:00 27  
12:00 28 MR ROZEN: (Inaudible)  
12:00 29  
12:00 30 MS NESKOVCIN: Operator, go to page 0004. I won't read this  
12:00 31 document into the transcript, I want you to go to paragraph 10  
12:00 32 and familiarise yourself with it.  
12:00 33  
12:01 34 A. Yes.  
12:01 35  
12:01 36 Q. And, operator, could you go over the page to 0005 and now  
12:01 37 could you have a look and read to yourself, Mr Bryant, paragraph  
12:01 38 11.  
12:01 39  
12:01 40 A. Yes.  
12:01 41  
12:01 42 Q. Do you agree that paragraph 11 appears to be referring to  
12:01 43 the document that I just took you to, being the email from  
12:01 44 Mr Phillips to Mr Chen of 26 March 2015?  
12:01 45  
12:01 46 A. Yes.  
12:01 47

12:01 1 Q. And bearing in mind that this is a memorandum prepared  
12:01 2 by you in October 2020, I just wondered about the answer you  
12:01 3 gave a moment ago as to when this email was produced. You  
12:02 4 said it was November 2017. Is that correct?

12:02 5  
12:02 6 A. Yes, from what I recall it came out in that first batch of  
12:02 7 material that Crown provided in particular.

12:02 8  
12:02 9 Q. Thank you.

12:02 10  
12:02 11 Thank you, operator. You can take down that document. I just  
12:02 12 want to go back to the presentation that we were on earlier to set  
12:02 13 the context for the next couple of documents I want to go to.  
12:02 14 Operator, the presentation is VCG.0001.0001.9002. If you go to  
12:03 15 page 0012. You recall the second hollow dot point that I pointed  
12:03 16 out earlier this morning that reads:

12:03 17  
12:03 18 *Not hand out promotional materials that referred to*  
12:03 19 *gaming facilities or terms of play (Crown did not produce*  
12:03 20 *such materials for distribution in China).....*

12:03 21  
12:03 22 Do you see that?

12:03 23  
12:03 24 A. Yes.

12:03 25  
12:03 26 Q. In the course of the investigation I see from one of the  
12:03 27 memorandums that you prepared that you in fact received and  
12:03 28 reviewed certain promotional materials that Crown, it appears,  
12:03 29 had published for distribution in China. Is that a fair summary?

12:03 30  
12:03 31 A. Yes.

12:03 32  
12:03 33 Q. I will take you to what you said about that material. If we  
12:04 34 go back to VCG.0001.0002.6411, this is your memorandum of 2  
12:04 35 April 2019 to Mr Ockwell and if we go to page 0004, paragraph  
12:04 36 23B, if we could blow that up, please, operator. You were noting  
12:04 37 there, Mr Bryant, that the March 2019 batch included certain  
12:04 38 materials. You referred to the presentation in B and the part that I  
12:05 39 just took you to and then you note in your memorandum that the  
12:05 40 March 2019 batch included details of "a shipment of gambling  
12:05 41 promotional materials in boxes from Crown Casino to China that  
12:05 42 was held at China's customs office in Guangzhou. The shipment  
12:05 43 contained personalised invitations which stated that patrons  
12:05 44 required \$1 million front money to participate in a gambling  
12:05 45 event.

12:05 46 Mr Bryant, what was the basis on which you made the  
12:05 47 statement in sub-paragraph A?

12:05 1  
12:05 2 A. Sorry, the basis of the statement was that we were provided  
12:05 3 with material that clearly showed that Crown had produced both  
12:05 4 gambling and non-gambling material. I made the statement  
12:05 5 because Crown during the course of interviews I conducted with  
12:05 6 Crown witnesses were at pains to remind me they operated in  
12:06 7 a low-key manner in China, and that included not handing out  
12:06 8 gambling material. I was subsequently surprised when we were  
12:06 9 provided with material that clearly shows that gambling material  
12:06 10 had been produced and also specifically given to Crown staff in  
12:06 11 China to provide.  
12:06 12  
12:06 13 Q. You made a distinction then between gambling material  
12:06 14 and non-gambling material. Was that a distinction Crown also  
12:06 15 made?  
12:06 16  
12:06 17 A. Yes.  
12:06 18  
12:06 19 Q. And how would you distinguish gambling from  
12:06 20 non-gambling material?  
12:06 21  
12:06 22 A. The gambling material specifically referred to gambling  
12:06 23 events.  
12:06 24  
12:06 25 Q. Such as?  
12:06 26  
12:06 27 A. I think one was a baccarat tournament that involved  
12:06 28 a certain amount of buy in that the participants had to do.  
12:06 29 Another event, I think it was golden ball or something along  
12:06 30 those lines, which was clearly a gambling event. The  
12:07 31 non-gambling material referred to major sporting events that the  
12:07 32 participants might be able to attend.  
12:07 33  
12:07 34 Q. And what other events around Melbourne and things like  
12:07 35 that?  
12:07 36  
12:07 37 A. I think there was a Melbourne racing carnival. There were  
12:07 38 international events like not in Australia but I remember the  
12:07 39 Melbourne Grand Prix in particular --- the Melbourne racing  
12:07 40 carnival was one.  
12:07 41  
12:07 42 Q. Did you actually see the promotional materials in the boxes  
12:07 43 or are they still in the customs office?  
12:07 44  
12:07 45 A. The material I saw was material referred to in paragraph b  
12:07 46 there.  
12:07 47

12:07 1 Q. Could you please explain that?  
12:07 2  
12:07 3 A. So there was an email and it was divided into gambling ---  
12:07 4 there was a line between gambling or gaming and non-gambling  
12:07 5 material and it was broken down into various countries or in Asia  
12:08 6 where the material was going to for gambling and non-gambling.  
12:08 7 In brackets it specifically referred to 300 of the gambling material  
12:08 8 to go to China, to the China-based staff for pick-up at the Hong  
12:08 9 Kong office.  
12:08 10  
12:08 11 Q. So you said that there was a reference to a material going to  
12:08 12 other areas or locations in Asia; is that correct?  
12:08 13  
12:08 14 A. Yes.  
12:08 15  
12:08 16 Q. And what was to go to other locations and what were those  
12:08 17 locations?  
12:08 18  
12:08 19 A. I can't recall specifically. I was focusing on the material  
12:08 20 that was to go to China.  
12:08 21  
12:08 22 Q. Yes.  
12:08 23  
12:08 24 A. I think I recall it was Indonesia who was one country  
12:08 25 referred to. And the Philippines. But, as I said, I was focused on  
12:08 26 the material that was to go to China.  
12:08 27  
12:08 28 Q. Mr Bryant, you don't specifically identify the email in this  
12:08 29 document as far as I can see. Would you be in a position to  
12:08 30 identify the email after today and communicate that back to the  
12:08 31 commission through VCGLR's solicitors?  
12:08 32  
12:09 33 A. Yes, of course.  
12:09 34  
12:09 35 Q. Thank you.  
12:09 36  
12:09 37 COMMISSIONER: From your perspective, what was the  
12:09 38 importance or otherwise of the nature of the brochures that were  
12:09 39 being distributed or sent to China?  
12:09 40  
12:09 41 A. I thought ---  
12:09 42  
12:09 43 COMMISSIONER: As to whether they contained gambling or  
12:09 44 non-gambling information?  
12:09 45  
12:09 46 A. I thought it was very important in that Crown had  
12:09 47 positioned themselves as to protect their staff they were

12:09 1 operating --- they told us they were operating in a low-key  
12:09 2 manner in China and they were told not to distribute gambling  
12:09 3 material in China based on the Chinese laws. So I thought it was  
12:09 4 important in the risk management approach as well for one hand  
12:09 5 to be saying that, but on the other hand the material shows there  
12:09 6 was material that was gambling related that was provided to the  
12:09 7 staff in China to distribute. I thought it was a significant issue in  
12:10 8 that respect, Commissioner.

12:10 9

12:10 10 MS NESKOVCIN: So, Mr Bryant, why did you understand, or  
12:10 11 did Crown explain to you why it was important to operate in  
12:10 12 a low-key manner in China?

12:10 13

12:10 14 A. After the crackdown had been announced in 2015, Crown  
12:10 15 undertook to get legal advice and advice from Mintz about the  
12:10 16 risk or issues their staff were facing. I thought it was quite  
12:10 17 critical to the investigation and what had occurred that gambling  
12:10 18 material had been provided to the staff in China.

12:10 19

12:10 20 Q. But why was that critical in your view?

12:10 21

12:10 22 A. In my view because it puts the staff at risk and obviously,  
12:10 23 Crown at risk in that gambling material in China, there was  
12:10 24 an announcement by the Chinese Government cracking down on  
12:10 25 overseas-based casinos and on one hand Crown are saying they  
12:11 26 are taking all steps to protect staff by operating in a low-key  
12:11 27 manner, but it appears they weren't taking all the necessary steps.

12:11 28

12:11 29 Q. Was it part of the VCGLR's investigation to consider  
12:11 30 whether that conduct in distributing or handing out promotional  
12:11 31 material, or material promoting gambling was itself illegal in  
12:11 32 China?

12:11 33

12:11 34 A. No, it wasn't part of my investigation. It wasn't something  
12:11 35 specifically I was looking at.

12:11 36

12:11 37 Q. Thank you.

12:11 38

12:11 39 Operator, you can take down this document. Mr Bryant, I want to  
12:11 40 move to the second matter you identified in paragraph 138 of  
12:11 41 your statement evidencing Crown's approach to the VCGLR's  
12:11 42 investigation. I will remind you that you describe it as the level  
12:11 43 of candour of Crown executives. That is the one I wanted to go  
12:11 44 to next. So just by way of context, you said in paragraph 44 in  
12:12 45 your statement that in early 2018 you interviewed a number of  
12:12 46 Crown employees and executives for the purposes of the  
12:12 47 investigation?

12:12 1

12:12 2 A. Yes.

12:12 3

12:12 4 Q. And one of those individuals was Mr O'Connor, the general  
12:12 5 manager of VIP gaming?

12:12 6

12:12 7 A. Yes.

12:12 8

12:12 9 Q. And if we could please go to paragraph 46 of your  
12:12 10 statement. Page 14, operator, thank you. Mr Bryant you say:

12:12 11

12:12 12 *Prior to conducting the interviews, my expectation was*  
12:12 13 *that Crown would provide its full cooperation, and that*  
12:12 14 *the interviewees would offer complete answers and make*  
12:12 15 *concessions were appropriate. However, there were*  
12:13 16 *times during the interviews where it struck me as odd that*  
12:13 17 *the interviewees would not concede the obvious*  
12:13 18 *proposition that there had been a crackdown in China on*  
12:13 19 *overseas-based casinos trying to attract gamblers. For*  
12:13 20 *example, when I put a Reuters article headed 'China's*  
12:13 21 *president just declared war on global gaming (Reuters*  
12:13 22 *article) to Mr O'Connor and Mr Felstead in each of their*  
12:13 23 *interviews, they each told me they had not previously seen*  
12:13 24 *the particular article and otherwise responded as follows.*

25

26 And there you set out an extract of your interview with  
27 Mr O'Connor, where he is asked:

28

29 Q251. ....but you're aware that a crackdown occurred  
12:13 30 *about that time in China, a general anti-corruption*  
12:13 31 *crackdown?*

12:13 32 A. Yes. *A specific crackdown on the casino industry, no.*

12:13 33

12:13 34 *.... Can I stress, though, at the time it was understood to be*  
12:13 35 *a crackdown on corruption generally. I don't recall any*  
12:13 36 *discussions about crackdowns specifically on casinos or*  
12:13 37 *gambling operators.*

12:13 38

12:14 39 Now, if we move to paragraph 52 of your statement,  
12:14 40 operator, on page 16 --- sorry, that's not where I wanted  
12:14 41 to go. Paragraph 59 on page 19, please. Operator, I  
12:14 42 take it that the screen is now visible to people outside  
12:14 43 the hearing room? Thank you.

12:14 44

12:14 45 Mr Bryant you say that in June 2018 the VCGLR received  
12:14 46 five zip files from MinterEllison. And at paragraph 62  
12:15 47 you say in relation to your review of the 2018 material,

12:15 1 you see that?

12:15 2

12:15 3 A. Yes.

12:15 4

12:15 5 Q. Paragraph (b) on page 21, the effect of your statement is  
12:15 6 that upon the review of the June 2018 material, it became  
12:15 7 apparent to you that the material suggested that during the  
12:15 8 interviews Crown executives had not been as forthright as  
12:15 9 possible regarding recollection of key incidents, including the  
12:15 10 February 2015 crackdown and other casinos changing operations  
12:15 11 or withdrawing from China. The emails may have assisted them  
12:15 12 to recall key events at that time. Then you give some examples, I  
12:15 13 want take you to example 1 at paragraph 65, if we could go to  
12:15 14 that, please, operator. This example is an email Mr Chen sent to  
12:15 15 Mr O'Connor, copied to Mr Felstead on 7 February 2015 under  
12:15 16 the email subject heading "recorrected --- China to crack down on  
12:16 17 foreign casinos seeking Chinese gamblers": do you see that?

12:16 18

12:16 19 A. Yes.

12:16 20

12:16 21 Q. And that email attached the Reuters article that you put to  
12:16 22 Mr O'Connor and Mr Felstead in the interviews in early 2018; is  
12:16 23 that correct?

12:16 24

12:16 25 A. Yes.

12:16 26

12:16 27 Q. So, to your mind, that email established that Mr O'Connor  
12:16 28 and Mr Felstead were aware in at least February 2015 that the  
12:16 29 crackdown was broader than they suggested, it wasn't a general  
12:16 30 crackdown, it was indeed a crackdown on foreign casinos in  
12:16 31 China?

12:16 32

12:16 33 A. Correct.

12:16 34

12:16 35 Q. Now I take it you followed the evidence that was given in  
12:16 36 the NSW inquiry during the course of 2020?

12:16 37

12:17 38 A. I did.

12:17 39

12:17 40 Q. And did you later follow or review the transcript of  
12:17 41 Mr O'Connor's evidence in the Bergin Inquiry?

12:17 42

12:17 43 A. Yes, I did.

12:17 44

12:17 45 Q. Did you make any observations about Mr O'Connor's  
12:17 46 answers to the question about the crackdown in China and the  
12:17 47 similarity or differences between that evidence and what he



12:17 1 disclosed to you in his interview in 2018?  
12:17 2  
12:17 3 A. Yes, I did. The difference being that he conceded --- well,  
12:17 4 what I can see is he conceded at the ILGA inquiry that the  
12:17 5 crackdown was broader, there was a crackdown on  
12:17 6 overseas-based casinos.  
12:17 7  
12:17 8 Q. Indeed, he readily accepted that; would you agree?  
12:17 9  
12:17 10 A. Yes.  
12:17 11  
12:17 12 Q. Commissioner, I want to take you to that transcript. It is  
12:17 13 COM.0002.0023.0115. Of course this transcript is actually  
12:17 14 publicly available on the NSW inquiry website and we've given it  
12:17 15 a document ID for the purposes of this commission's hearing.  
12:17 16  
12:17 17 COMMISSIONER: Is this part of Mr Bryant's attachments or  
12:18 18 separate document?  
12:18 19  
12:18 20 MS NESKOVCIN: No. Perhaps we could tender this.  
12:18 21  
12:18 22 COMMISSIONER: This at the moment will not be visible or it  
12:18 23 is?  
12:18 24  
12:18 25 MR BORSKY: We can manage with this one.  
12:18 26  
12:18 27 COMMISSIONER: Alright. Thanks.  
12:18 28  
12:18 29 ASSOCIATE: RC0005.  
12:18 30  
12:18 31  
12:18 32 **EXHIBIT #RC0005 - TRANSCRIPT OF NSW INQUIRY**  
12:18 33  
12:18 34  
12:18 35 MS NESKOVCIN: Operator, could you please go to page 0191  
12:18 36 and line 20, Mr Bryant, can you see that there is a question from  
12:18 37 Mr Bell, counsel assisting:  
12:18 38  
12:18 39 MR BELL: Now, in early February 2015 did you become  
12:18 40 *aware of an announcement by the Chinese authorities that*  
12:18 41 *they were cracking down on foreign casinos recruiting*  
12:18 42 *Chinese citizens to gamble in other countries?*  
12:18 43  
12:18 44 MR O'CONNOR: *Yes, I was aware of that*  
12:18 45 *announcement.*  
12:18 46  
12:18 47 Mr Bell takes him to what is described as exhibit M.

12:19 1 Line 30:  
12:19 2  
12:19 3 MR BELL: So do you see these are some emails between  
12:19 4 *you, Mr Felstead and Mr Chen dated 7 February 2015.*  
12:19 5  
12:19 6 MR O'CONNOR: *Yes.*  
12:19 7  
12:19 8 MR BELL: *And if I could ask you to look at the second*  
12:19 9 *page, 0345 you've attached a link to an article from*  
12:19 10 *Reuters.*  
12:19 11  
12:19 12 You were following this at the time, were you, Mr Bryant?  
12:19 13  
12:19 14 A. Yes, I wasn't following it exactly at the time I reading the  
12:19 15 transcripts as soon as they were available.  
12:19 16  
12:19 17 Q. You understand the reference to the Reuters article to be the  
12:19 18 same article you referred to in paragraph 46 of your statement?  
12:19 19  
12:19 20 A. Yes.  
12:19 21  
12:19 22 Q. That you showed Mr O'Connor in your interview with him  
12:19 23 in 2018?  
12:19 24  
12:19 25 A. Yes.  
12:19 26  
12:19 27 Q. Operator, if we could go to page 0193, line 9, please,  
12:19 28 operator.  
12:19 29  
12:19 30 MR BELL: So you appreciated, I assume, that this  
12:20 31 *announcement by the Chinese authorities had the*  
12:20 32 *potential to create a risk to Crown's existing business*  
12:20 33 *operations in China?*  
12:20 34  
12:20 35 MR O'CONNOR: *Yes, I - I interpreted this to represent*  
12:20 36 *a risk to our business, that's right.*  
12:20 37  
12:20 38 MR BELL: *Yes. And it was a matter that you needed to*  
12:20 39 *treat seriously .....*  
12:20 40  
12:20 41 MR O'CONNOR: *Yes.*  
12:20 42  
12:20 43 And then at line 25 he is referring to the email that he  
12:20 44 in fact forwarded to Mr Felstead attaching the article;  
12:20 45 do you see that?  
12:20 46  
12:20 47 A. Yes.

12:20 1  
12:20 2 Q. So what was your reaction to this evidence that  
12:20 3 Mr O'Connor gave in the NSW inquiry?  
12:20 4  
12:20 5 A. Mr O'Connor was being very forthright in his answers at  
12:20 6 the ILGA inquiry and at my interview with Mr O'Connor he  
12:20 7 hadn't been as forthcoming. I was quite --- having said that, the  
12:21 8 interview I conducted with Mr O'Connor unfortunately I hadn't  
12:21 9 been provided with a lot of material from Crown at that time  
12:21 10 which would have clearly showed his level of understanding  
12:21 11 I think of the crackdown.  
12:21 12  
12:21 13 Q. Mr Bryant, you are being charitable. I want to suggest to  
12:21 14 you that this was an email that you had shown Mr O'Connor at  
12:21 15 the interview in 2018, wasn't it?  
12:21 16  
12:21 17 A. Yes, it was.  
12:21 18  
12:21 19 Q. And Mr O'Connor, through Crown, could have had access  
12:21 20 to all of the documents that you later came to see during the  
12:21 21 investigation; don't you agree?  
12:21 22  
12:21 23 A. Yes, I do.  
12:21 24  
12:21 25 Q. And you were annoyed, weren't you?  
12:21 26  
12:21 27 A. I was very frustrated with how the course of the  
12:21 28 investigation had played out based on Crown's level of  
12:21 29 cooperation through the interviews and the provision of the  
12:21 30 material.  
12:21 31  
12:21 32 Q. Because it took you longer to uncover the truth?  
12:21 33  
12:21 34 A. Yes. And my initial --- the initial draft report that I had  
12:22 35 prepared in relation to the investigation in June, Crown quite  
12:22 36 assertively refuted almost every conclusion we drew at that time  
12:22 37 based on the material we had in our possession.  
12:22 38  
12:22 39 COMMISSIONER: Can I just ask you to explain what your, at  
12:22 40 least tentative, conclusion is? I say "tentative" because it was not  
12:22 41 a final report?  
12:22 42  
12:22 43 A. It was overall that there was a clear failure in Crown's risk  
12:22 44 management processes and overall governance of what had  
12:22 45 occurred in China. The other conclusion was that ---  
12:22 46  
12:22 47 COMMISSIONER: Could you explain that in more detail,

12:22 1 exactly what you mean?  
12:22 2  
12:22 3 A. Yes. So from the risk management point of view Crown  
12:22 4 had on paper risk management policies and procedures.  
12:22 5 However, that hadn't been engaged with actually what had  
12:22 6 occurred in China. It was considered that Crown managed the  
12:22 7 risk on the ground as such and I consider that it was almost  
12:23 8 a single point of failure that Crown had relied on one particular  
12:23 9 executive in Hong Kong, based in Hong Kong, to provide or  
12:23 10 obtain the risk management advice and the legal advice at that  
12:23 11 stage as to what was happening in China.  
12:23 12  
12:23 13 So I considered that it hadn't been subject to proper checks and  
12:23 14 balances within the organisation when they were assessing the  
12:23 15 risk and what had occurred in China around that time.  
12:23 16  
12:23 17 COMMISSIONER: But don't these emails an the Reuters article  
12:23 18 suggest that they actually knew what the risk was?  
12:23 19  
12:23 20 A. They may have known what the risk was but then they  
12:23 21 didn't take steps then to properly mitigate that risk.  
12:23 22  
12:23 23 COMMISSIONER: I understand that. But --- all right. Thank  
12:23 24 you.  
12:23 25  
12:23 26 MS NESKOVCIN: Mr Bryant, Mr O'Connor is currently  
12:24 27 employed at Crown in a different role?  
12:24 28  
12:24 29 A. Yes.  
12:24 30  
12:24 31 Q. And he holds a casino special employee licence?  
12:24 32  
12:24 33 A. Yes.  
12:24 34  
12:24 35 Q. And to your knowledge has he applied or has Crown  
12:24 36 applied on his behalf to renew that licence?  
12:24 37  
12:24 38 A. Yes, I believe they have.  
12:24 39  
12:24 40 Q. And I don't want you to discuss internal deliberations or  
12:24 41 anything of that kind but is that application still pending?  
12:24 42  
12:24 43 A. Yes, it is, as far as I know.  
12:24 44  
12:24 45 COMMISSIONER: At the time, that is at the time when you read  
12:24 46 the Bergin transcript and saw or noticed discrepancy between  
12:24 47 what you had been told by Mr O'Connor and what appeared in the

12:24 1 presentation and what you were now learning, did you actually  
12:24 2 take that up with Mr O'Connor or Mr Felstead or even Mr Preston  
12:24 3 who made the presentation to say "what is going on here?"

12:25 4  
12:25 5 A. At one stage, Commissioner, it --- as conducting the  
12:25 6 investigation, whether or not to reinterview Mr O'Connor or  
12:25 7 Mr Felstead to put these facts or matters to him. I think our  
12:25 8 considered opinion was that we would --- we have provided  
12:25 9 Crown with draft reports where we were quite forthright in what  
12:25 10 we were saying and to progress the matter we wouldn't  
12:25 11 reinterview Mr O'Connor or Mr Felstead on that basis. They had  
12:25 12 their opportunity at our interviews to explain what had occurred  
12:25 13 and their position so we progressed with the investigation as  
12:25 14 opposed to reinterviewing. Obviously their responses and what  
12:25 15 has transpired since is something the commission is quite  
12:25 16 interested in and is something that will be a further matter the  
12:25 17 commission is still considering as far as their suitability.

12:25 18  
12:26 19 MS NESKOVICIN: Thank you, Mr Bryant.

12:26 20  
12:26 21 I want to ask you now about Mr Felstead's interview. You recall  
12:26 22 a little while ago we were discussing what you describe as the  
12:26 23 2015 incident.

12:26 24  
12:26 25 A. Yes.

12:26 26  
12:26 27 Q. That was an incident that you put to Mr Felstead in the  
12:26 28 interview, whether or not he could recall a staff member in China  
12:26 29 being questioned by police in mid-2015?

12:26 30  
12:26 31 A. Yes.

12:26 32  
12:26 33 Q. And being asked to provide a letter from his employer,  
12:26 34 Crown?

12:26 35  
12:26 36 A. Yes.

12:26 37  
12:26 38 Q. And Mr Felstead's answer in the interview was, firstly that  
12:26 39 he recalled the questioning related to a customer?

12:26 40  
12:26 41 A. Yes.

12:26 42  
12:26 43 Q. And, secondly, when asked about the letter he simply  
12:26 44 replied that it rings a bell?

12:26 45  
12:26 46 A. Yes.

12:26 47

12:26 1 Q. Do you recall that?

12:26 2

12:26 3 Now, if we could just go back to your witness statement, please,

12:26 4 at paragraph 52 so I can assist you with the sequence of events.

12:27 5 That is on page 16. That is a summary of the interview. And you

12:27 6 mention that after the March 2019 batch of materials was

12:27 7 produced and you looked at that you noticed an inconsistency

12:27 8 between the answers that Mr Felstead had given in the interview

12:27 9 and documents that you had seen which suggested that he must

12:27 10 have been aware that the questioning related to allegations that

12:27 11 the employee was organising gambling tours and was not about

12:27 12 --- the interview with police was not about a customer of Crown?

12:27 13

12:28 14 A. Yes, that's correct.

12:28 15

12:28 16 Q. And you recall forming those views based on your review

12:28 17 of the March 2019 material?

12:28 18

12:28 19 A. Yes. There was material in relation to that incident that

12:28 20 was provided over a number of occasions. And I'm sure March

12:28 21 2019 was one of those occasions.

12:28 22

12:28 23 Q. And I won't take the Commissioner to it, but I remind the

12:28 24 Commissioner and my learned friends that that was the subject of

12:28 25 the note in the April 2019 memo, it referred to Mr Preston's

12:28 26 presentation and then it had a note and then it referred to the

12:28 27 promotional material. That was April 2019 by which time you

12:28 28 had seen all this material from Mr Preston, Mr Bryant.

12:28 29

12:28 30 Now I want to take you to some underlying documents that

12:28 31 I believe you must have seen to form that view. I just want to see

12:28 32 if my impression is correct and if you can recall seeing these

12:28 33 documents. They have not been provided to my learned friends

12:29 34 but I believe these or versions of them should have been available

12:29 35 to them because they were produced by Crown or the VCGLR.

12:29 36 The first document is CRL.638.001.0129. Mr Bryant, I will

12:29 37 identify this for the transcript. It is an email dated 10 July 2015

12:29 38 from Mr O'Connor to Mr Felstead and you will see if you look

12:29 39 through the chain it starts with emails between Mr Chen,

12:29 40 Mr O'Connor, Jan Williamson, who you understand is legal

12:29 41 counsel at Crown Casino?

12:29 42

12:29 43 A. Yes.

12:29 44

12:29 45 Q. And ultimately the email is forwarded to Mr Felstead. This

12:29 46 email says:

12:29 47

12:30 1 *Hi, Baz [assuming that is Barry]*  
12:30 2  
12:30 3 *FYI.*  
12:30 4  
12:30 5 *We had another employee questioned by the Chinese*  
12:30 6 *police yesterday.*  
12:30 7  
12:30 8 *He seems to have been accused of organising gambling*  
12:30 9 *operations or something. He explained that he works for*  
12:30 10 *a hotel resort company and helps with visas and travel*  
12:30 11 *arrangements et cetera. They asked for a letter from his*  
12:30 12 *employer verifying this.*  
12:30 13  
12:30 14 Mr Bryant, after your interview with Mr Felstead, in the  
12:30 15 course of the investigation, do you recall seeing this  
12:30 16 email?  
12:30 17  
12:30 18 A. Yes.  
12:30 19  
12:30 20 Q. Did this email cause you to consider what Mr Felstead said  
12:30 21 in interview was not frank?  
12:30 22  
12:30 23 A. Yes, correct.  
12:30 24  
12:30 25 Q. Because it clearly identifies, doesn't it, that he had been  
12:30 26 aware at the time that an employee in China had been accused of  
12:30 27 organising gambling operations. You understand that the  
12:31 28 organising of gambling operations in China to be illegal at the  
12:31 29 time?  
12:31 30  
12:31 31 A. Yes.  
12:31 32  
12:31 33 Q. And even now?  
12:31 34  
12:31 35 A. Yes.  
12:31 36  
12:31 37 Q. And you might be charitable to Mr Felstead and say that  
12:31 38 you didn't have this document to show him in the interview, but I  
12:31 39 want to suggest to you that this is a matter that Mr Felstead  
12:31 40 should have remembered, he should have remembered a staff  
12:31 41 member being detained for questioning in China; would you  
12:31 42 agree?  
12:31 43  
12:31 44 A. Yes, 100 per cent. I thought it was when on reflection  
12:31 45 Mr Felstead's interview where he maintained or said I think it was  
12:31 46 about a gambler, because in any of the material that was  
12:31 47 subsequently provided there was no evidence at all that it

12:31 1 involved a Chinese gambler. The material was always in relation  
12:31 2 to Crown's activities in China.  
12:31 3  
12:31 4 Q. And it was a very serious matter?  
12:31 5  
12:31 6 A. This was I thought one of the more pivotal incidents. Even  
12:31 7 when I interviewed Mr Craigie, he pointed out at the time, as  
12:32 8 a Crown executive, he wasn't aware of this, it wasn't escalated to  
12:32 9 him. He said that news articles were one thing but your own staff  
12:32 10 getting questioned is another matter entirely.  
12:32 11  
12:32 12 Q. And were you satisfied that it had not been raised with  
12:32 13 Mr Craigie, is that the case?  
12:32 14  
12:32 15 A. Based on the documentary evidence, I had nothing to  
12:32 16 indicate that it did go to Mr Craigie.  
12:32 17  
12:32 18 Q. Once again, did you observe or later inform yourself of the  
12:32 19 evidence that Mr Felstead gave on this subject matter in the NSW  
12:32 20 inquiry?  
12:32 21  
12:32 22 A. I did.  
12:32 23  
12:32 24 Q. And he very readily, frankly conceded that he was aware of  
12:32 25 this issue in ---  
12:32 26  
12:32 27 A. Yes, he did.  
12:32 28  
12:32 29 Q. --- 2015?  
12:32 30  
12:32 31 A. Yes.  
12:32 32  
12:32 33 Q. Did that surprise you?  
12:32 34  
12:32 35 A. Yes.  
12:32 36  
12:32 37 COMMISSIONER: Is "surprise "the right word?  
12:32 38  
12:32 39 A. Surprised and disappointed how Crown had responded at  
12:32 40 our interview. Yes.  
12:32 41  
12:32 42 COMMISSIONER: Do you want to tender the email?  
12:32 43  
12:33 44 MS NESKOVICIN: Yes, please.  
12:33 45  
12:33 46 COMMISSIONER: Just the one email or is it an email chain?  
12:33 47



12:33 1 MS NESKOVCIN: Sorry, operator, could you go down another  
12:33 2 page? It is just the one page, I think.

12:33 3

12:33 4 COMMISSIONER: I see.

12:33 5

12:33 6 ASSOCIATE: RC0006.

7

8

9 **EXHIBIT #RC0006 - EMAIL CHAIN WITH THE**  
10 **SUBJECT LETTER FOR WUHAN POLICE DATED 10**  
11 **JULY 2015**

12

13

12:33 14 MS NESKOVCIN: In relation to the letter that we just discussed,  
12:33 15 the Chinese police had asked the Crown employee to provide  
12:33 16 a letter from the employer. I wanted to ask you to identify or see  
12:33 17 if you recall seeing this document during the investigation. It is  
12:33 18 VCG.0001.0002.6070. Operator, could you scroll to pages 2 and  
12:33 19 3 to Mr Bryant can familiarise himself with the document.

12:34 20

12:34 21 COMMISSIONER: Just to be clear about this, this is a question,  
12:34 22 but the document that is up on the screen has certain things  
12:34 23 blanked out. Can I assume that they are email addresses or phone  
12:34 24 numbers or something of that nature?

12:34 25

12:34 26 MS NESKOVCIN: And addresses. Street addresses.

12:34 27

12:34 28 COMMISSIONER: And addresses. Thank you.

12:34 29

12:34 30 MS NESKOVCIN: Mr Bryant, do you recall seeing this email  
12:34 31 chain?

12:34 32

12:34 33 A. Yes.

12:34 34

12:34 35 Q. This is an email chain that essentially emanates from  
12:34 36 WilmerHale the solicitors in Hong Kong. Operator, could we go  
12:34 37 back to page 2. It is forwarded by Michael Chen to Jan  
12:34 38 Williamson and Jason O'Connor. Do you see that?

12:34 39

12:34 40 A. Yes.

12:34 41

12:34 42 Q. Ultimately it is forwarded to Mr Felstead and  
12:34 43 Ms Williamson asks if Tim Spearman can sign the letter on  
12:35 44 behalf of Crown Resorts Pte Ltd which I think might be a Hong  
12:35 45 Kong company?

12:35 46

12:35 47 A. Yes, though I think it was a Singaporean registered

- 12:35 1 company but based in Hong Kong.  
12:35 2  
12:35 3 Q. And Mr Felstead says, "fine by me". So this is an email that  
12:35 4 you identified as the letter that you had asked him about?  
12:35 5  
12:35 6 A. Yes.  
12:35 7  
12:35 8 Q. And it indicated to you that he had been aware of the  
12:35 9 request for a letter?  
12:35 10  
12:35 11 A. Yes.  
12:35 12  
12:35 13 Q. And the response that Crown gave in the letter was  
12:35 14 controversial, wasn't it?  
12:35 15  
12:35 16 A. Yes.  
12:35 17  
12:35 18 Q. Would you explain to the Commissioner why that was the  
12:35 19 case?  
12:35 20  
12:35 21 A. It was written in such a way that it was quite a generic  
12:35 22 description of what Crown's activities were, or the staff's  
12:35 23 activities were, that he was employed by Crown Resort.  
12:35 24  
12:35 25 Q. Sorry, could we go to page 2 of this so you can see what the  
12:35 26 proposed letter looked like. In the middle of the page it says  
12:35 27 "Crown Letterhead [Date]" that was a draft of the letter prepared  
12:36 28 by WilmerHale Solicitors; is that correct?  
12:36 29  
12:36 30 A. Yes.  
12:36 31  
12:36 32 Q. And Kenneth was a practitioner at WilmerHale,  
12:36 33 Commissioner.  
12:36 34  
12:36 35 COMMISSIONER: I can see that.  
12:36 36  
12:36 37 MS NESKOVICIN: Mr Bryant, the letter was controversial  
12:36 38 because in the final response there was no mention that Crown  
12:36 39 Resorts operates a casino.  
12:36 40  
12:36 41 A. Correct.  
12:36 42  
12:36 43 Q. And no opportunity for the Chinese police without further  
12:36 44 investigation to make a connection between Crown Resorts and  
12:36 45 gambling?  
12:36 46  
12:36 47 A. Correct.

12:36 1  
12:36 2 COMMISSIONER: But they would have used this as evidence  
12:36 3 of employment. So if they knew what Crown Resorts did in  
12:36 4 Australia, this would give them the direct evidence of the person  
12:36 5 who they were looking at having to be an employee of that  
12:36 6 organisation?  
12:36 7  
12:36 8 A. Commissioner, may I ---  
12:36 9  
12:36 10 MS NESKOVCIN: Please.  
12:36 11  
12:36 12 COMMISSIONER: Yes, sure.  
12:36 13  
12:36 14 A. Early on Mintz advice had been that this letter could be  
12:36 15 considered as part of an "evidentiary pile" was the word they used  
12:37 16 when they were advising Crown about the risk or the ---  
12:37 17  
12:37 18 COMMISSIONER: Of writing this letter at all?  
12:37 19  
12:37 20 A. Of providing the letter. They said that it is appropriate to  
12:37 21 provide a letter to the Chinese authorities, but be mindful it could  
12:37 22 be used as part of an evidentiary pile.  
12:37 23  
12:37 24 COMMISSIONER: That seems obvious.  
12:37 25  
12:37 26 A. Yes.  
12:37 27  
12:37 28 MS NESKOVCIN: I tender that document, Commissioner.  
12:37 29  
12:37 30 COMMISSIONER: The whole email chain?  
12:37 31  
12:37 32 MS NESKOVCIN: Yes.  
12:37 33  
12:37 34 COMMISSIONER: If I go back to the first page so I can see the  
12:37 35 date. It is an email chain commencing with one from Mr Felstead  
12:37 36 to Ms Williamson, 10 July 2015.  
12:37 37  
12:37 38 ASSOCIATE: RC0007.  
39  
40  
41 **EXHIBIT #RC0007 - EMAIL CHAIN FROM MR**  
42 **FELSTEAD TO MS WILLIOMSON DATED 10 JULY 2015**  
43  
44  
12:37 45 MS NESKOVCIN: Thank you, Mr Bryant. We've just  
12:37 46 discussed the inconsistency between Mr Felstead's answers  
12:38 47 in interview to you and the evidence he gave in the NSW

12:38 1 inquiry. After that evidence, I take it that the VCGLR  
12:38 2 didn't seek to re-examine Mr Felstead?  
12:38 3  
12:38 4 A. No.  
12:38 5  
12:38 6 Q. Did Crown or Mr Felstead write to the VCGLR to explain  
12:38 7 the perceived inconsistencies in his evidence?  
12:38 8  
12:38 9 A. No.  
12:38 10  
12:38 11 Q. And these were matters that you noted in memoranda  
12:38 12 during the course of the investigation to either the working group  
12:38 13 or your superiors?  
12:38 14  
12:38 15 A. Yes.  
12:38 16  
12:38 17 COMMISSIONER: I asked you about whether you had taken up  
12:38 18 the potential inconsistent statements with Mr O'Connor and you  
12:38 19 said "no". Is the same true with Mr Felstead, you didn't bother  
12:38 20 getting in touch with him saying, "this is what the document has  
12:38 21 shown and this is what you said and they are different, could you  
12:39 22 explain the difference?"  
12:39 23  
12:39 24 A. No, we didn't, Commissioner.  
12:39 25  
12:39 26 MS NESKOVICIN: During the investigation Crown had solicitors  
12:39 27 acting for it. Is that the case; MinterEllison?  
12:39 28  
12:39 29 A. Yes.  
12:39 30  
12:39 31 Q. And, in fact, MinterEllison were the primary contact on  
12:39 32 behalf of Crown for most of the investigation; is that fair?  
12:39 33  
12:39 34 A. Yes.  
12:39 35  
12:39 36 Q. And you didn't hear from MinterEllison either to explain  
12:39 37 these inconsistencies?  
12:39 38  
12:39 39 A. No.  
12:39 40  
12:39 41 Q. Thank you, Mr Bryant. I will now move to another matter  
12:39 42 in your statement if I might. If you could go to paragraph 138,  
12:39 43 please. Operator, could you call up the statement. Page 47,  
12:39 44 please. Mr Bryant, in paragraph (b), this is another matter that  
12:40 45 you identify as evidence in Crown's approach to the investigation.  
12:40 46 You say that:  
12:40 47

12:40 1 ..... *Crown was not forthcoming in its disclosure of*  
12:40 2 *information relevant to the China Arrests Investigation.*  
12:40 3 *Crown's responses to sm26 notices issued by the VCGLR*  
12:40 4 *were often delayed or incomplete.*  
12:40 5

12:40 6 I want to clarify, when you talk about them not being  
12:40 7 "forthcoming", are you meaning to elaborate on that by  
12:40 8 referring to the delay and incomplete nature of  
12:40 9 responses?  
12:40 10

12:40 11 A. Yes.  
12:40 12

12:40 13 Q. And when you refer to "incomplete", are you referring to  
12:40 14 the piecemeal nature in which they responded or something else?  
12:40 15

12:40 16 A. More the piecemeal. The material in relation to that letter  
12:40 17 was spread out over I think three or four responses from Crown.  
12:40 18 And also the first batch of material that was provided in early  
12:41 19 June 2018 was quite critical evidence in relation to this  
12:41 20 investigation, which was provided after we had prepared our first  
12:41 21 draft investigation report. So it just seemed to be every time we  
12:41 22 were close to completing reports in relation to the investigation,  
12:41 23 subsequent material would be provided.  
12:41 24

12:41 25 Q. And you mention in your statement issues of redactions of  
12:41 26 documents. Is that another matter that you intend to cover by the  
12:41 27 description of not being forthcoming?  
12:41 28

12:41 29 A. Yes.  
12:41 30

12:41 31 Q. I will ask you about the redactions separately.  
12:41 32

12:41 33 COMMISSIONER: Can I interrupt, I want to clarify one thing.  
12:41 34 When you say you were getting responses that were "delayed or  
12:41 35 incomplete", just to confirm, these were responses to the formal  
12:41 36 notices for production of documents that had been sent out, not  
12:42 37 informal requests?  
12:42 38

12:42 39 A. Yes, Commissioner.  
12:42 40

12:42 41 COMMISSIONER: Yes.  
12:42 42

12:42 43 MS NESKOVICIN: You wrote about this --- in memos we've seen  
12:42 44 this morning or today you've written from time to time about  
12:42 45 delays and the fragmented way in which Crown responded to  
12:42 46 these section 26 notices. So I assume that you made other people  
12:42 47 in working group and your superiors aware of your concerns in

12:42 1 that regard?

12:42 2

12:42 3 A. Yes.

12:42 4

12:42 5 Q. Certainly it is a matter noted in the final China Report. I  
12:42 6 just wanted to clarify whether those memoranda and other  
12:42 7 materials were provided to the Commissioners for the purposes of  
12:42 8 the final China Report?

12:42 9

12:42 10 A. Yes, they were.

12:42 11

12:42 12 Q. And did you also discuss these matters with the  
12:42 13 Commissioners?

12:42 14

12:42 15 A. Not myself directly. I was involved in a briefing to the  
12:43 16 Commissioners at one stage in relation to the investigation and I  
12:43 17 did raise that at that stage as well.

12:43 18

12:43 19 Q. You felt you had an opportunity to make clear to the  
12:43 20 Commissioners your frustration in this process?

12:43 21

12:43 22 A. Yes.

12:43 23

12:43 24 Q. Did you also explain to the Commissioners the impact that  
12:43 25 you believed that had on the investigation?

12:43 26

12:43 27 A. Yes.

12:43 28

12:43 29 Q. And, just briefly, what did you regard as the impact?

12:43 30

12:43 31 A. The impact was the time it takes to complete the  
12:43 32 investigation, Commissioner. Obviously we are trying to prepare  
12:43 33 and provide this report and investigation in as timely manner as  
12:43 34 possible. So to not have the complete or as completed picture as  
12:43 35 we could get from the material, we can't conclude the  
12:43 36 investigation in fairness to the process and Crown and the  
12:43 37 VCGLR.

12:43 38

12:43 39 Q. I assume if you are working on one extensive investigation  
12:43 40 you can't be working on others?

12:43 41

12:43 42 A. Correct.

12:43 43

12:43 44 Q. I just wanted to --- there is a lot of detail in your statement  
12:43 45 about the issue of production. I don't want to go to all of the  
12:44 46 detail. I just wanted to give the Commissioner a bird's eye view  
12:44 47 if we can. So I will try and take you through it, but you tell me if

12:44 1 my understanding of anything is incorrect.  
12:44 2  
12:44 3 As you said earlier, initially requests were made for documents.  
12:44 4 These were email requests in October 2017?  
12:44 5  
12:44 6 A. (Nods head).  
12:44 7  
12:44 8 Q. Is that correct?  
12:44 9  
12:44 10 A. Yes.  
12:44 11  
12:44 12 Q. You became involved in November 2017?  
12:44 13  
12:44 14 A. Yes.  
12:44 15  
12:44 16 Q. And by the end of 2017 no documents had been produced?  
12:44 17  
12:44 18 A. Correct.  
12:44 19  
12:44 20 Q. And you decided that it was appropriate to adopt the formal  
12:44 21 approach and issue section 26 notices?  
12:44 22  
12:44 23 A. Yes.  
12:44 24  
12:44 25 Q. And you said that you wanted to put in place some  
12:44 26 deadlines?  
12:44 27  
12:44 28 A. Yes.  
12:44 29  
12:44 30 Q. And some rigour?  
12:44 31  
12:44 32 A. Yes.  
12:44 33  
12:44 34 Q. And signal --- I suggest to you signal to Crown that these  
12:44 35 documents had to be produced?  
12:44 36  
12:44 37 A. Yes.  
12:44 38  
12:45 39 Q. As I see your --- read your statement, the first section 26  
12:45 40 notices were issued in January and February 2018.  
12:45 41  
12:45 42 A. Yes.  
12:45 43  
12:45 44 Q. And section 26 notices continued to be issued throughout  
12:45 45 the investigation up until November 2020?  
12:45 46  
12:45 47 A. Correct.

12:45 1  
12:45 2 Q. For various reasons.  
12:45 3  
12:45 4 A. Yes.  
12:45 5  
12:45 6 Q. And I don't mean to suggest that the notices in November  
12:45 7 2020 were issued on account of delays, they were for additional  
12:45 8 documents that had been produced in the NSW inquiry and  
12:45 9 I think some of them might have also been subject to a claim for  
12:45 10 legal professional privilege prior to that?  
12:45 11  
12:45 12 A. Yes.  
12:45 13  
12:45 14 Q. You said earlier that you decided to take the step of issuing  
12:45 15 a section 26 notice for rigour and to set deadlines and so on.  
12:46 16 I will come back to that. Sorry, I will finish the sequence.  
12:46 17  
12:46 18 Without trying to be comprehensive, I just wanted to give the  
12:46 19 Commissioner an impression of when these documents came  
12:46 20 through and I've just made a rough list based on your statement  
12:46 21 and you can tell me if this is correct or incorrect and if you want  
12:46 22 to add anything. The first documents came in in January 2018?  
12:46 23  
12:46 24 A. Yes.  
12:46 25  
12:46 26 Q. Further documents in February 2018?  
12:46 27  
12:46 28 A. Sorry, just to go back. The first material was provided  
12:46 29 I think in late November, not under demand.  
12:46 30  
12:46 31 Q. I see. Thank you. I'm sorry I didn't pick that up. Further  
12:46 32 documents were produced in May and June 2018?  
12:46 33  
12:46 34 A. Yes.  
12:46 35  
12:46 36 Q. And that is when you started to notice, or at least by that  
12:46 37 date you started to notice inconsistencies between say the  
12:46 38 presentation or the interviews and what was subsequently being  
12:46 39 produced by Crown?  
12:47 40  
12:47 41 A. Yes.  
12:47 42  
12:47 43 Q. Now, in September 2018, four volumes of documents were  
12:47 44 produced?  
12:47 45  
12:47 46 A. Yes.  
12:47 47



- 12:47 1 Q. Was that a significant amount in the course of the  
12:47 2 investigation?  
12:47 3
- 12:47 4 A. Yes.  
12:47 5
- 12:47 6 Q. Sorry, I don't have any idea of what sort of volume?  
12:47 7
- 12:47 8 A. We got some voluminous material at one stage and I think  
12:47 9 it was nine lever arches of material.  
12:47 10
- 12:47 11 Q. Were they the folders you received in December 2018?  
12:47 12
- 12:47 13 A. I think that was December 2018.  
12:47 14
- 12:47 15 Q. Can you give the Commissioner some idea of the overall  
12:47 16 volume?  
12:47 17
- 12:47 18 A. Of the total amount of material that Crown provided us?  
12:47 19 Oh, it would be 15 to 20 lever arches of material in total.  
12:47 20
- 12:47 21 Q. During the course of 2019 and into 2020 further documents  
12:47 22 also were produced?  
12:47 23
- 12:47 24 A. Yes.  
12:47 25
- 12:47 26 Q. You said in your statement that Crown's disclosure seemed  
12:48 27 to be influenced by what was happening in the class action.  
12:48 28
- 12:48 29 A. Yes.  
12:48 30
- 12:48 31 Q. Can you explain to the Commissioner what you meant by  
12:48 32 that statement?  
12:48 33
- 12:48 34 A. Crown in correspondence to us, Commissioner, had often  
12:48 35 said they found new material that was relevant to a section 26  
12:48 36 notice on the basis that they discovered the material when they  
12:48 37 were trying to find material for their class action. So, therefore,  
12:48 38 they are providing it to the VCGLR after they had discovered it  
12:48 39 for the class action.  
12:48 40
- 12:48 41 Q. Did that give you the impression that searches were not  
12:48 42 being made for documents in response to the section 26 notice  
12:48 43 but if they came up they would be provided --- if they came up or  
12:48 44 came to Crown's attention and were responsive to the section 26  
12:48 45 notice you would then get them?  
12:48 46
- 12:48 47 A. Yes, the searches certainly didn't appear to be as thorough

12:48 1 for the material we requested under the section 26 notices as  
12:48 2 opposed to for the class action where they wrote to us at once  
12:49 3 stage and said that they were preparing backup tapes for the  
12:49 4 purposes of the class action and subsequent to that they found  
12:49 5 material that they thought was responsive to one of our notices so  
12:49 6 here is the material. It seemed like we were at the back end of the  
12:49 7 priority list as far as the production of material at times.

12:49 8

12:49 9 Q. I remind you that the backup tapes and the restoration of the  
12:49 10 backup tapes came to the VCGLR's attention in February 2018?

12:49 11

12:49 12 A. That's when it first was referenced.

12:49 13

12:49 14 Q. I see. And that was the first time we, you, or the VCGLR  
12:49 15 came aware that that step hadn't been taken?

12:49 16

12:49 17 A. Yes.

12:49 18

12:49 19 Q. Would you ordinarily regard that as an appropriate step in  
12:49 20 response to a section 26 notice?

12:49 21

12:49 22 A. My experience with section 26 notices is limited up until  
12:49 23 this stage, really, dealing with Crown. I would have just thought  
12:49 24 as the regulator, regulating an entity such as Crown, that they  
12:49 25 would have put as much weight on responding to our notices as  
12:50 26 a class action.

12:50 27

12:50 28 Q. You understood, didn't you, that a section 26 notice is the  
12:50 29 notice by which the commission exercises its compulsory powers  
12:50 30 of production?

12:50 31

12:50 32 A. Yes.

12:50 33

12:50 34 Q. And you understand what the consequence of not  
12:50 35 complying with a section 26 notice is?

12:50 36

12:50 37 A. I came to understand that. I requested legal advice in  
12:50 38 relation to that and what it entails.

12:50 39

12:50 40 Q. I don't want you to tell me what the legal is, or was, but you  
12:50 41 came to understand that failure to comply with a section 26 notice  
12:50 42 is potentially punishable by way of contempt?

12:50 43

12:50 44 A. Yes.

12:50 45

12:50 46 Q. And you mentioned earlier today a reference to getting  
12:50 47 some advice about some failure to produce some documents and

12:50 1 potentially a breach of section 26?

12:50 2

12:50 3 A. Yes.

12:50 4

12:50 5 Q. Was that in relation to the failure to produce certain

12:50 6 presentations or VIP presentations?

12:50 7

12:50 8 A. Yes, it was.

12:50 9

12:50 10 Q. And you wanted to, I think, and you tell me if I'm wrong,

12:51 11 you wanted the Commission to take steps against Crown for

12:51 12 failing to produce documents pursuant to a section 26 notice?

12:51 13

12:51 14 A. I thought it was appropriate for the Commission to consider

12:51 15 what had occurred and whether or not it was appropriate to

12:51 16 follow that through at the time.

12:51 17

12:51 18 Q. Ultimately you decided not to follow it through because

12:51 19 you didn't want the distraction in relation to the section 26

12:51 20 proceedings; is that correct?

12:51 21

12:51 22 A. That's the main reason. Also that the specific material

12:51 23 referred to in that memo had been provided. So, yes, I didn't

12:51 24 want to get drawn into a cul-de-sac of focusing on that when the

12:51 25 main issue was progressing with the investigation.

12:51 26

12:51 27 Q. To your knowledge has the Commission ever taken steps to

12:51 28 certify a breach of section 26 under section 27 and submit that to

12:51 29 the Supreme Court for potential contempt proceedings?

12:51 30

12:51 31 A. I'm not aware of that.

12:51 32

12:51 33 Q. It is certainly a serious matter and I suggest to you the

12:52 34 Commission would take a matter like that seriously?

12:52 35

12:52 36 A. Oh, very.

12:52 37

12:52 38 Q. And it didn't consider doing that in the course of this

12:52 39 investigation?

12:52 40

12:52 41 A. Not that I'm aware of.

12:52 42

12:52 43 Q. Do you regard that as a potential failing of the

12:52 44 Commission?

12:52 45

12:52 46 A. I think now where the stage the investigation is at, it is

12:52 47 something the Commission would be considering as part of our

12:52 1 final reports and outcomes.  
12:52 2  
12:52 3 Q. Thank you.  
12:52 4  
12:52 5 COMMISSIONER: Can I just go back to the beginning of the  
12:52 6 investigation just so I get a feel for how it comes about. I take it  
12:52 7 by the time you issue your statutory notices, does the notices itself  
12:52 8 identify the subject matter of the investigation, or does the  
12:52 9 recipient of the notice just infer that from the type of documents  
12:53 10 that you are seeking to have produced?  
12:53 11  
12:53 12 A. I think I'd always spell out exactly what the nature of the  
12:53 13 request is for, Commissioner.  
12:53 14  
12:53 15 COMMISSIONER: I was trying to make sure that in the  
12:53 16 investigation --- make sure, find out ---  
12:53 17  
12:53 18 A. Yes.  
12:53 19  
12:53 20 COMMISSIONER: --- whether it was always clear to Crown  
12:53 21 precisely what it was that you were investigating?  
12:53 22  
12:53 23 A. Yes, Commissioner. Well, I would like to now have a look  
12:53 24 at my initial notices but that is always the intention of the notice  
12:53 25 to make sure it is quite well understood by whoever is receiving it  
12:53 26 that what the matter is about.  
12:53 27  
12:53 28 COMMISSIONER: Is one of the notices an attachment to your  
12:53 29 statement, Mr Bryant, and I will have a look?  
12:53 30  
12:53 31 MS NESKOVICIN: You are looking at Mr Bryant and Mr Bryant  
12:53 32 is looking at me. I believe so. Bare with me, Commissioner.  
12:54 33 Mr Geoffrey has just assisted me. Unfortunately the notice isn't  
34 attached to the --- Commissioner, can we come back to you about  
35 that.  
36  
37 COMMISSIONER: Sure.  
38  
39 MS NESKOVICIN: The answer might be --- we will do that after  
12:54 40 lunch.  
12:54 41  
12:54 42 COMMISSIONER: Sure.  
12:54 43  
12:54 44 MS NESKOVICIN: The Commission might also be assisted if I  
12:54 45 take Mr Bryant to this document. It is an attachment to  
12:54 46 Mr Bryant's statement enclosing an early draft of the China  
12:54 47 Report. The letter --- I will take you to the letter so you can see

12:54 1 what was sent in the report. The letter is VCG.0001.0002.3333.  
12:55 2 Mr Bryant, this is a letter from the Commission to the chairman  
12:55 3 of Crown at the time on 8 June 2018. This is around the time of  
12:55 4 the Sixth Review but at this time the VCGLR provided what is  
12:55 5 described in this letter as a Compliance Division China Report  
12:55 6 which is a draft of the China Investigations Report at that stage of  
12:55 7 the investigation; is that correct?  
12:55 8  
12:55 9 A. Yes.  
12:55 10  
12:55 11 Q. And I will just take you to the attachment  
12:56 12 VCG.0001.0002.3334. The Commissioner had a question about  
12:56 13 whether or not the section 26 notices made Crown aware of the  
12:56 14 nature of the investigation. We'll come back to a section 26  
12:56 15 notice later but certainly throughout the investigation Crown were  
12:56 16 well aware of the nature of the VCGLR's investigation; weren't  
12:56 17 they?  
12:56 18  
12:56 19 A. I would have thought so. I was just thinking even  
12:56 20 referencing the interviews we conducted with the Crown  
12:56 21 executives, obviously explaining exactly what the purpose of the  
12:56 22 interview is in correspondence and at the outset of the interviews.  
12:56 23  
12:56 24 COMMISSIONER: So I will see that if I look at the transcripts  
12:56 25 of those interviews?  
12:56 26  
12:56 27 A. Yes.  
12:56 28  
12:56 29 COMMISSIONER: (Nods head).  
12:56 30  
12:57 31 MS NESKOVICIN: And in this report, Mr Bryant, this is a report  
12:57 32 about the China investigation at this stage. Other events occurred  
12:57 33 and the investigation continued and the report in its final form  
12:57 34 changed. But, if we could please go to page 20, in this section of  
12:57 35 the report the Commission dealt with Crown's provision of  
12:57 36 material and cooperation with VCGLR. I suggest to you that  
12:57 37 looking at this sequence of events it should have been apparent  
12:57 38 that this was describing production of documents pursuant to  
12:57 39 section 26 notices for the purposes of this investigation?  
12:57 40  
12:57 41 A. Yes.  
12:57 42  
12:57 43 Q. While we are on this document, if we could go to page 21,  
12:57 44 please. See under the heading, "Incomplete search for  
12:58 45 documents", you say:  
12:58 46  
12:58 47 *The VCGLR has issued a wide variety of request for*

12:58 1 *documents during the investigation.*

12:58 2

12:58 3 You mention in the second paragraph:

12:58 4

12:58 5 *On 29 May 2018, Crown advised the VCGLR that*

12:58 6 *'primarily for the purpose of discovery of documents in*

12:58 7 *their class action' they have restored..... Tapes.....*

12:58 8

12:58 9 And then in the next paragraph you say:

12:58 10

12:58 11 *The above matters suggest that Crown did not undertake*

12:58 12 *a thorough and diligent search for documents matching*

12:58 13 *the terms of the VCGLR's notices until the discovery*

12:58 14 *process required by the Federal Court. Crown ought to*

12:58 15 *have conducted a thorough and diligent search for*

12:58 16 *documents earlier. This exactly is ongoing and will*

12:58 17 *require a further detailed report however it is considered*

12:58 18 *prudent to bring to the attention of the Commission at this*

12:58 19 *stage.*

12:58 20

12:58 21 You are not only bringing this to the attention of the

12:58 22 Commission through this draft report but you are also

12:58 23 bringing to Crown's attention your frustrations with the

12:58 24 delays; do you agree?

12:58 25

12:59 26 A. Yes.

12:59 27

12:59 28 Q. Did you notice any change to Crown's approach to

12:59 29 documents for production after they were provided with this

12:59 30 report?

12:59 31

12:59 32 A. No.

12:59 33

12:59 34 Q. There is one other document I wanted to take Mr Bryant to

12:59 35 on this topic if I might, Commissioner.

12:59 36

12:59 37 It appears from your statement that in January 2019, Mr Bryant,

12:59 38 the VCGLR wrote to Crown or to MinterEllison on their behalf

12:59 39 and invited them to put on a statement about the process that it

12:59 40 took in responding to section 26 notices. I will take you to that

12:59 41 document if I might. It is referred to in a footnote of your

12:59 42 statement. This one might not --- yes, it is produced. It is

13:00 43 VCG.0001.0002.3363. Mr Bryant, this letter deals with a number

13:00 44 of matters. You see it is addressed to Mr Murphy of

13:00 45 MinterEllison on 22 January. I ask the operator to go to the final

13:01 46 paragraph on page 2. You see in the second last paragraph on the

13:01 47 page you refer to recent statutory notices?

13:01 1  
13:01 2 A. Yes.  
13:01 3  
13:01 4 Q. And then in the final paragraph you say:  
13:01 5  
13:01 6 *I it is open to Crown, if it wishes, to provide a statement*  
13:01 7 *as to how its representatives conducted searches to*  
13:01 8 *comply with s26 notices and to identify any other*  
13:01 9 *documents that Crown consider may be relevant.*  
13:01 10  
13:01 11 A. Yes.  
13:01 12  
13:01 13 Q. Did Crown ever --- or did Crown or MinterEllison on its  
13:01 14 behalf ever produce such a statement or provide any explanation  
13:01 15 or justification for its approach to complying with section 26  
13:01 16 notices?  
13:01 17  
13:01 18 A. No.  
13:01 19  
13:01 20 COMMISSIONER: Convenient time. Back at 2 or 2.15. Do we  
13:01 21 have a vote?  
13:01 22  
13:01 23 MR BORSKY: If it helps, subject to discussions with counsel,  
13:02 24 we (inaudible) in terms of timing.  
13:02 25  
13:02 26 MS NESKOVCIN: I will certainly finish this witness  
13:02 27 mid-afternoon I would say.  
13:02 28  
13:02 29 COMMISSIONER: 2.15 then.  
13:02 30  
13:02 31 ASSOCIATE: Please stand.  
13:02 32  
13:02 33  
13:02 34 **ADJOURNED** [1:02P.M.]  
14:14 35  
14:14 36  
14:14 37 **RESUMED** [2:14P.M.]  
14:14 38  
14:14 39  
14:14 40 MS NESKOVCIN: The following notice is attached to Mr  
14:14 41 Bryant's statement, it's the first notice that was sent,  
14:15 42 VCG.0001.0002.3307. Commissioner, you will note the  
14:15 43 introductory paragraph. The second paragraph contextualises the  
14:15 44 investigation. The third paragraph refers to section 26.  
14:15 45  
14:15 46 COMMISSIONER: Yes, understand.  
14:15 47

14:15 1 MS NESKOVCIN: And so subsequent notices might not have  
14:15 2 had that background, as in the investigation, but this is the first  
14:15 3 notice that did.

14:15 4  
14:15 5 COMMISSIONER: Thanks.

14:15 6  
14:15 7 MS NESKOVCIN: Mr Bryant, one of the matters that I raised  
14:15 8 with you this morning was the redactions which you also  
14:15 9 indicated was an issue with incomplete disclosure by Crown. I  
14:15 10 understand what you identified in your statement were, leaving  
14:15 11 aside redactions for legal professional privilege, there were other  
14:16 12 redactions that were made to documents produced by Crown on  
14:16 13 the basis of relevance or that they weren't relevant to the China  
14:16 14 Arrests Investigation and, second, confidentiality. Are they the  
14:16 15 two grounds other than legal privilege on which documents were  
14:16 16 redacted?

14:16 17  
14:16 18 A. Yes.

14:16 19  
14:16 20 Q. And was it usual in your experience, or did you not have  
14:16 21 any experience prior to this, for Crown to redact documents in  
14:16 22 such a way?

14:16 23  
14:16 24 A. Correct. I didn't have any experience.

14:16 25  
14:16 26 COMMISSIONER: Not one way or the other?

14:16 27  
14:16 28 A. Sorry, Commissioner?

14:16 29  
14:16 30 COMMISSIONER: No experience one way or the other or no  
14:16 31 experience at all?

14:16 32  
14:16 33 A. One way or the other.

14:16 34  
14:16 35 MS NESKOVCIN: And did you form a view about the  
14:16 36 appropriateness or otherwise of Crown's redactions?

14:16 37  
14:16 38 A. Yes, I did. I considered redacting material on Crown  
14:16 39 deciding what was relevant and what wasn't, I wasn't sure  
14:16 40 whether that was quite appropriate, and also on the basis of  
14:17 41 commercial-in-confidence material as well. They are providing it  
14:17 42 to the regulator who will obviously take all steps to maintain the  
14:17 43 integrity of any material that we are provided with, whether or not  
14:17 44 it is commercial-in-confidence or not.

14:17 45  
14:17 46 Q. What you are identifying there is if a commercial document  
14:17 47 is produced to the regulator, the regulator can protect it ---



- 14:17 1  
14:17 2 A. Yes.  
14:17 3  
14:17 4 Q. --- confidentiality.  
14:17 5  
14:17 6 A. Yes.  
14:17 7  
14:17 8 Q. Did you or the VCGLR turn your mind at all to the  
14:17 9 appropriateness of Crown redacting documents produced to the  
14:17 10 regulator who has compulsory powers of production?  
14:17 11  
14:17 12 A. Yes, I believe there was correspondence written in relation  
14:17 13 to that aspect at some stage of the investigation.  
14:17 14  
14:17 15 Q. Leaving aside relevance or confidentiality, was it the  
14:17 16 regulator's view that documents had to be produced?  
14:17 17  
14:17 18 A. Yes.  
14:17 19  
14:17 20 Q. And having regard to paragraph 80 of your statement, it  
14:17 21 appears that after 23 August 2018 subsequent redactions were not  
14:18 22 made other than on account of legal professional privilege; is that  
14:18 23 correct?  
14:18 24  
14:18 25 A. Correct.  
14:18 26  
14:18 27 Q. So we are only talking about redactions prior to that time?  
14:18 28  
14:18 29 A. Yes.  
14:18 30  
14:18 31 Q. So if I could just summarise in relation to the production of  
14:18 32 documents issue; your concerns were the delay, the fragmented  
14:18 33 way in which documents were produced, that the production was  
14:18 34 dictated more by what was happening in the class action and that  
14:18 35 Crown was taking a more robust approach to its discovery  
14:18 36 obligations than it was to complying with section 26 notices?  
14:18 37  
14:18 38 A. Yes.  
14:18 39  
14:18 40 Q. Is there anything else you want to add to that?  
14:18 41  
14:18 42 A. No, Commissioner.  
14:18 43  
14:18 44 Q. And you said earlier that you felt that that frustrated the  
14:19 45 Commission's attempts to finalise its investigation?  
14:19 46  
14:19 47 A. Yes.

14:19 1  
14:19 2 Q. Now, I want to take you to the final report that was  
14:19 3 delivered in February this year. I know it's not your report but I  
14:19 4 wanted to see if you agree with part of it based on your  
14:19 5 experience in the investigation. The document ID is RC003,  
14:19 6 VCG.0001.0001.0001. Operator, if you could please go to I think  
14:20 7 it might be page 119. It is internal page 119 but because of the  
14:20 8 index that might be a bit out. Oh, no, that's it. Thank you.  
14:20 9 Actually, could we go back one page, please. This is just for  
14:20 10 context. You see paragraph 731, the Commissioners write:

14:20 11

14:20 12 *Furthermore, the variations and belligerence in Crown's*  
14:20 13 *position over time have meant that this investigation has*  
14:20 14 *been far more protracted and complicated than it needed*  
14:20 15 *to be, particularly having regard to the follow matters.*

14:20 16

14:20 17 And the matter I wanted to take you to is in paragraph  
14:21 18 741:

14:21 19

14:21 20 *One example of the belligerence was the way the*  
14:21 21 *Commission was left to rely on its compulsory*  
14:21 22 *evidence-gathering powers to gather documentary*  
14:21 23 *evidence to get a proper understanding of what occurred*  
14:21 24 *in China. Another consequence of this belligerence was*  
14:21 25 *the Commission was forced to seek information from third*  
14:21 26 *parties .....*

14:21 27

14:21 28 I'll just give you a moment to read the rest of that paragraph,  
14:21 29 Mr Bryant. Was that consistent with your experience in the  
14:21 30 investigation?

14:21 31

14:21 32 A. Yes.

14:21 33

14:21 34 Q. Would you agree in describing Crown's behaviour as  
14:21 35 "belligerent"?

14:21 36

14:21 37 A. "Belligerent" is a word I probably wouldn't use myself as  
14:21 38 much. At times I thought Crown were quite --- almost aggressive  
14:22 39 in asserting their position in relation to this matter. Not so much  
14:22 40 war-like as very defensive at times. As I said, aggressively  
14:22 41 asserting their position contrary to what I thought was the facts of  
14:22 42 the investigation, what had proven to be the case.

14:22 43

14:22 44 Q. And was that aggression or defensiveness up to a certain  
14:22 45 point in time or was it continually throughout the investigation?  
14:22 46 In particular, did the NSW inquiry have any bearing on that  
14:22 47 behaviour?

14:22 1

14:22 2 A. Certainly the NSW inquiry appeared to me to show Crown  
14:22 3 to be far more cooperative with how they responded at  
14:22 4 interviews. Crown also at one stage I think shifted their position  
14:22 5 in relation to agreeing that their risk management procedures  
14:22 6 hadn't been appropriately applied at one stage after we provided  
14:23 7 them with what I would say was our second report in July. There  
14:23 8 was a shift in their position then. It was the first time they were  
14:23 9 acknowledging that there might have been a failing in their risk  
14:23 10 management.

14:23 11

14:23 12 Q. Can I interrupt you. In July of which year?

14:23 13

14:23 14 A. July 2019.

14:23 15

14:23 16 Q. Sorry, I interrupted you. Was that all you wanted to  
14:23 17 mention?

14:23 18

14:23 19 A. Yes.

14:23 20

14:23 21 Q. Paragraph 742, Mr Bryant says:

14:23 22

14:23 23 *One consequence of the extent to which the Commission*  
14:23 24 *was required to rely upon its compulsory powers during*  
14:23 25 *this investigation was that there were several instances*  
14:23 26 *when the Commission was inundated with an enormous*  
14:23 27 *volume of documents and left to sift through those*  
14:23 28 *documents with little or no guidance or assistance from*  
14:23 29 *Crown.*

14:23 30

14:23 31 Do you agree with that?

14:23 32

14:23 33 A. I agree with that. In the context of the investigation, it  
14:23 34 wasn't particularly onerous. I had come from a background of  
14:23 35 doing fraud investigations where another way we would execute  
14:23 36 search warrants and search through the material ourselves. So it  
14:24 37 wasn't as --- wasn't that critical to the progression of the  
14:24 38 investigation.

14:24 39

14:24 40 Q. Thank you. 743:

14:24 41

14:24 42 *Furthermore, this production of documents continued, on*  
14:24 43 *a drip-feed basis, particularly after the shareholder class*  
14:24 44 *action was commenced, and it would seem that Crown*  
14:24 45 *may have conducted more thorough document searches in*  
14:24 46 *the context of its discovery obligations to those which it*  
14:24 47 *had previously conducted in purported compliance with*

14:24 1           *the Commission's directions for the production of*  
14:24 2           *documents.*  
14:24 3  
14:24 4       I will let you read the final sentence to yourself, thank  
14:24 5       you.  
14:24 6  
14:24 7       A. Yes I think ---  
14:24 8  
14:24 9       Q. Do you agree with that?  
14:24 10  
14:24 11      A. Yes, I do.  
14:24 12  
14:24 13      Q. And then finally, 744:  
14:24 14  
14:24 15           *It is particularly concerning to the Commission that this*  
14:24 16           *would seem to suggest that the document searches*  
14:24 17           *conducted by Crown in response to the Commission*  
14:24 18           *exercising its compulsory powers were less thorough and*  
14:24 19           *diligent than those undertaken for the purpose of the class*  
14:25 20           *action litigation.*  
14:25 21  
14:25 22      Do you agree with that, Mr Bryant?  
14:25 23  
14:25 24      A. Yes, I do.  
14:25 25  
14:25 26      COMMISSIONER: Are you leaving that report?  
14:25 27  
14:25 28      MS NESKOVCIN: Yes, I am.  
14:25 29  
14:25 30      COMMISSIONER: Before you do, Mr Bryant did you have  
14:25 31      input into the drafting of this document?  
14:25 32  
14:25 33      A. Input, Commissioner, in that I provided materials that go  
14:25 34      into the draft of the document and I was involved in close reads  
14:25 35      of drafts of the report.  
14:25 36  
14:25 37      COMMISSIONER: And the final version, which I have got, you  
14:25 38      had looked at that quite carefully before it was published?  
14:25 39  
14:25 40      A. Yes.  
14:25 41  
14:25 42      COMMISSIONER: And you didn't disagree with any of it?  
14:25 43  
14:25 44      A. No, not the thrust or the findings of it, Commissioner. As I  
14:25 45      said, the use of a particular word "belligerent" ---  
14:25 46  
14:25 47      COMMISSIONER: Why you are backing away from the use of

14:26 1 a particular word. I want a sense of that.  
14:26 2  
14:26 3 A. Okay. I suppose it is not in my usual vocabulary to use that  
14:26 4 word, that's all.  
14:26 5  
14:26 6 COMMISSIONER: You don't like the use of the word  
14:26 7 "belligerent"?  
14:26 8  
14:26 9 A. It's not a matter of like the use of it, I just think the word I  
14:26 10 would have perhaps aggressively asserted a position all the way  
14:26 11 through the investigation, delay tactics, that sort of thing.  
14:26 12 "Belligerence" is not something I would use in my vocabulary.  
14:26 13  
14:26 14 COMMISSIONER: Right.  
14:26 15  
14:26 16 MS NESKOVCIN: Thank you, Mr Bryant. Just going back to  
14:26 17 paragraph 138 of your statement if we might, please, operator.  
14:27 18  
14:27 19 COMMISSIONER: Before I leave the topic, or before you leave  
14:27 20 the topic, I can't remember the exact words you used earlier in  
14:27 21 your evidence this morning, but you made some observation  
14:27 22 about the attitude Crown took when you provided them, or when  
14:27 23 the regulator provided them with a draft China Report. You may  
14:27 24 have used the word "aggressive" or something like that, or they  
14:27 25 pushed back strongly. I will have to check precisely how you  
14:27 26 describe it, but can you tell me what, from your perspective, their  
14:27 27 reaction was to the draft report? I assume you mean there are  
14:27 28 portions of the draft report with which they disagreed. Can you  
14:27 29 identify the main bits with which they disagreed and what  
14:27 30 comments they made about them?  
14:27 31  
14:27 32 A. Commissioner, I think they disagreed with the thrust ---  
14:28 33  
14:28 34 COMMISSIONER: Everything?  
14:28 35  
14:28 36 A. Everything, yes, the thrust of the report. There is particular  
14:28 37 ways I would describe things or my conclusion with say that  
14:28 38 Crown had a single point of failure, or relied on assessing risks  
14:28 39 on the ground, which they refuted that strongly. They repeated  
14:28 40 that they considered that they had a strong and robust risk  
14:28 41 management framework that was appropriate. They pin-pointed  
14:28 42 any particular example I used of referencing how Crown were  
14:28 43 aware of the crackdown in China that occurred in February 2015.  
14:28 44 Yeah, so ---  
14:28 45  
14:28 46 COMMISSIONER: Just explain that. When they pin-pointed it,  
14:28 47 did they disagree with your description of their knowledge?

14:28 1  
14:28 2 A. Yes.  
14:28 3  
14:28 4 COMMISSIONER: In what respects?  
14:29 5  
14:29 6 A. That as the investigator I had shown a hindsight bias to  
14:29 7 looking back at events, that I really should have been considering  
14:29 8 the totality of all the material and all the news articles when I was  
14:29 9 focusing on say one particular article, being the Reuters article  
14:29 10 saying that there had been a crackdown in China in relation to  
14:29 11 overseas companies at the time.  
14:29 12  
14:29 13 COMMISSIONER: In this challenge to you of the tentative  
14:29 14 conclusions that you reached in the draft report, was anything  
14:29 15 said to you which subsequently turned out to be untrue?  
14:29 16  
14:29 17 A. Sorry, Commissioner, could you rephrase the question  
14:29 18 again.  
14:29 19  
14:29 20 COMMISSIONER: Yes. In the course of Crown indicating to  
14:29 21 you they disagreed with large sections of your interim report ---  
14:29 22  
14:29 23 A. Yes.  
14:29 24  
14:29 25 COMMISSIONER: --- because of that happening, did any  
14:30 26 Crown person say or write something to you which was untrue?  
14:30 27  
14:30 28 A. Not that I recall, Commissioner.  
14:30 29  
14:30 30 MS NESKOVCIN: Commissioner, paragraph 74 of Mr Bryant's  
14:30 31 statement extracts a number of responses that were provided by  
14:30 32 Crown to that draft report at the time. That was more around the  
14:30 33 procedural fairness point. And you will note at the bottom of  
14:31 34 paragraph 73 Crown said that it strenuously disputes the findings  
14:31 35 in the proposed report. Paragraph 75 is referring to the hindsight  
14:31 36 point that Mr Bryant just referred to.  
14:31 37  
14:31 38 COMMISSIONER: I see.  
14:31 39  
14:31 40 MS NESKOVCIN: The other point, Mr Bryant, isn't it that this  
14:31 41 defensive response at the time changed somewhat after  
14:32 42 concessions were made in the NSW inquiry?  
14:32 43  
14:32 44 A. Yes.  
14:32 45  
14:32 46 Q. And, Commissioner, the reference that you are after is at  
14:32 47 transcript 73 where Mr Bryant described the response to the

14:32 1 initial report as quite --- this is the transcript, page 73, line 40.

14:32 2

14:32 3

14:32 4 Yes. And my initial draft --- the initial draft report that I  
14:32 5 *had prepared in relation to the investigation in June,*  
14:32 6 *Crown quite assertively refuted almost every conclusion*  
14:32 7 *we drew at that time based on the material we had in our*  
14:32 8 *possession.*

14:32 9

14:32 10 Operator, if we could go to paragraph 138 of the document, and  
14:32 11 sub-paragraph (e), which is on the final page. This is the second  
14:33 12 last matter I want to raise with you, Mr Bryant. That concerns  
14:33 13 this feature of Crown's behaviour which you said evidenced its  
14:33 14 approach to the investigation. It was the disclosure of documents  
14:33 15 subject to the legal professional privilege in the class action  
14:33 16 approximately 2.5 years after the VCGLR commenced its  
14:33 17 investigation and you say that those documents evidenced that  
14:33 18 Crown had more awareness about the nature of the crackdown in  
14:33 19 China and the potential risk to its employees than it represented to  
14:33 20 the VCGLR during the China Arrests Investigation.

14:33 21

14:33 22 Mr Bryant, that's how you became aware, for example, that  
14:33 23 Mr Felstead and Mr O'Connor had a greater understanding about  
14:33 24 the extent of the crackdown in China in 2015?

14:33 25

14:33 26 A. Yes, that was part of it. Yes.

14:33 27

14:33 28 Q. And what else was disclosed to you through the production  
14:34 29 of legal professional privilege documents that made it apparent to  
14:34 30 you that first of all Crown had greater awareness of risks and  
14:34 31 other matters than it had disclosed to the VCGLR?

14:34 32

14:34 33 A. It showed that Crown had sought legal advice in relation to  
14:34 34 China as far back as 2011 or 2012. The LPP material that came  
14:34 35 out of the class action and the statements also showed  
14:34 36 a knowledge of executives at Crown knowing particular matters.  
14:34 37 I think Mr Johnston raising in his statement, that was released to  
14:34 38 us as part of the LPP batch of material, showing that he had  
14:34 39 raised the issue of the Korean's arrest at the Crown Resorts board  
14:34 40 level, which was something we weren't aware of prior to that as  
14:34 41 well.

14:34 42

14:34 43 Q. And certainly I think you say in your statement that there  
14:35 44 were --- there was disclosed in this batch of documents, 2.5 years  
14:35 45 after the investigation commenced, the relevant Mintz advices in  
14:35 46 2015?

14:35 47

- 14:35 1 A. Yes ---  
14:35 2
- 14:35 3 Q. I beg your pardon, that may not be right. I said Mintz,  
14:35 4 I think I meant WilmerHale.  
14:35 5
- 14:35 6 A. WilmerHale advices, yes.  
14:35 7
- 14:35 8 Q. Can you explain to the Commissioner what was the subject  
14:35 9 matter of those advices in 2015?  
14:35 10
- 14:35 11 A. Some of the subject matter was in relation to the Benny  
14:35 12 Xiong letter that from early in the investigation we had been  
14:35 13 trying to establish the whole background and history as to how  
14:35 14 that letter had come about and some of the subsequent material  
14:35 15 was in relation to that.  
14:35 16
- 14:35 17 Q. What about advice in relation to the legality or otherwise of  
14:35 18 Crown's operations in China in 2015?  
14:35 19
- 14:35 20 A. Yes, there was advice in relation to that. There was advice  
14:35 21 as to how Crown went about obtaining their legal advice, which  
14:36 22 was obviously of interest to the investigation in what Crown had  
14:36 23 asked for in legal advice, what was in writing, what hadn't.  
14:36 24
- 14:36 25 Q. Wasn't there attention during the investigation, Mr Bryant,  
14:36 26 between Crown relying on these advices and not giving them,  
14:36 27 pursuant to their right to claim privilege, not giving them to the  
14:36 28 regulator?  
14:36 29
- 14:36 30 A. Yes. A key part of the investigation was that Crown had  
14:36 31 relied on legal advice in relation to the Chinese law and it  
14:36 32 interpreted that in a particular way.  
14:36 33
- 14:36 34 Q. And you couldn't test that?  
14:36 35
- 14:36 36 A. Yes. It was very difficult to understand it. Crown's  
14:36 37 position was quite narrow. Part of my --- part of the investigation  
14:36 38 showed that the Chinese authorities, based on their media  
14:36 39 releases, had quite a broad interpretation of that particular law,  
14:36 40 which Crown were aware of.  
14:36 41
- 14:37 42 Q. So, to confirm, when you later did see these documents that  
14:37 43 were earlier subject to a claim for privilege, were you able to test  
14:37 44 Crown's reliance on the legal advices and whether or not --- what  
14:37 45 were the circumstances in which they obtained that advice and  
14:37 46 continued operating in 2015?  
14:37 47



14:37 1 A. No, we weren't able to test it. If we had have been  
14:37 2 provided with that material earlier in the peace, we could have  
14:37 3 put it to Crown as part of our interview procedures at the start of  
14:37 4 investigation.

14:37 5  
14:37 6 Q. I suppose what I meant by "testing", in addition to putting  
14:37 7 to it Crown executives was to look at it and assess the scope  
14:37 8 and nature of the advice and whether or not it was reasonable or  
14:37 9 not.

14:37 10  
14:37 11 A. Of course, yes.

14:37 12  
14:37 13 Q. As I understand, part of the advice was that it was obtained  
14:37 14 in very limited or narrow circumstances. It didn't procedural  
14:37 15 extent the extent of Crown's operations in China?

14:37 16  
14:37 17 A. Correct. There didn't appear to be a briefing paper that  
14:38 18 went to WilmerHale saying, "this is exactly what we do and  
14:38 19 perform in China" to then seek and then rely on that advice.

14:38 20  
14:38 21 Q. And did it take into account the Chinese authorities'  
14:38 22 interpretation of their own laws?

14:38 23  
14:38 24 A. No, not that I could see.

14:38 25  
14:38 26 Q. But, to state the obvious again, you weren't able to look at  
14:38 27 that and consider that until much later in the investigation?

14:38 28  
14:38 29 A. Correct.

14:38 30  
14:38 31 Q. And the waiver, or the disclosure of these documents, was  
14:38 32 in the context of witness statements being filed in the class action  
14:38 33 in the Federal Court in late 2019; isn't that right?

14:38 34  
14:38 35 A. Correct.

14:38 36  
14:38 37 Q. So what occurred in late 2019 Crown filed its witness  
14:38 38 statements and informed the VCGLR that it would be waiving  
14:38 39 privilege over a number of legal advices?

14:38 40  
14:38 41 A. Correct.

14:38 42  
14:38 43 Q. And it was pursuant to that waiver that you obtained access  
14:38 44 to the legal advices and other documents?

14:38 45  
14:39 46 A. Yes.

14:39 47

14:39 1 Q. And did you get the impression when Crown did that that it  
14:39 2 was doing it for its own advantage or because it perceived there  
14:39 3 was some benefit from doing so?  
14:39 4

14:39 5 A. My reading of Crown's letter to us was that it was  
14:39 6 coincidental, that they were now providing it to us --- that they  
14:39 7 had to provide it as part of the class action.  
14:39 8

14:39 9 Q. So it was becoming public anyway so you could see it?  
14:39 10

14:39 11 A. That's, yeah, the interpretation of it.  
14:39 12

14:39 13 Q. Did you get the impression that Crown thought the  
14:39 14 documents it was giving you were beneficial to it, in its case or in  
14:39 15 the context of explaining circumstances to the regulator in the  
14:39 16 investigation?  
14:39 17

14:39 18 A. I'm not sure to be honest.  
14:39 19

14:39 20 Q. What I'm really getting at is do you think they did this to  
14:39 21 advance their own commercial interests? If you don't have a view  
14:40 22 about that, say so.  
14:40 23

14:40 24 A. I'm not sure, no.  
14:40 25

14:40 26 Q. Thank you.  
14:40 27

14:40 28 At a later point it also became apparent that Crown had in fact  
14:40 29 produced documents to the NSW inquiry that were privileged.  
14:40 30 Presumably the legislation is similar to --- I withdraw that. You  
14:40 31 recall that during the course of the NSW inquiry, Crown had  
14:40 32 produced documents that were otherwise privileged to the NSW  
14:40 33 inquiry?  
14:40 34

14:40 35 A. Yes.  
14:40 36

14:40 37 Q. And it appeared that it had done so pursuant to perhaps  
14:40 38 an arrangement where those documents were produced but  
14:40 39 otherwise kept confidential and used by the Commission for its  
14:40 40 investigation?  
14:40 41

14:40 42 A. Yes.  
14:40 43

14:40 44 Q. Can we please go back to paragraph --- to the final China  
14:40 45 investigations report again, please, operator.  
14:41 46 VCG.0001.0001.0001. Could we please go to page 104. You see  
14:41 47 paragraph 638, Mr Bryant, the Commissioners wrote:

- 14:41 1  
14:41 2 *Consequently, for most of its investigation, the*  
14:41 3 *Commission has had a very limited understanding of the*  
14:41 4 *events that surrounded the questioning of Crown's staff by*  
14:41 5 *Chinese police in July 2015.*  
14:41 6  
14:41 7 *That however changed in early December 2020, when*  
14:42 8 *Crown produce to the Commission a copy of the written*  
14:42 9 *submissions that had been made by Counsel Assisting the*  
14:42 10 *NSW Inquiry.*  
14:42 11  
14:42 12 *The Commission has carefully considered those written*  
14:42 13 *submissions and ..... [and] it seems Crown may have been:*  
14:42 14  
14:42 15 *a. required to produce privileged documents to the NSW*  
14:42 16 *Inquiry; and/or.*  
14:42 17  
14:42 18 *b. waived privilege in respect of certain documents at the*  
14:42 19 *NSW Inquiry; and/or.*  
14:42 20  
14:42 21 *c. agreed a protocol with the NSW Inquiry in respect of*  
14:42 22 *any documents that remain the subject of a claim of legal*  
14:42 23 *professional privilege;.*  
14:42 24  
14:42 25 *a combination of any of all of these factors seems to have*  
14:42 26 *resulted in the NSW Inquiry being provided with*  
14:42 27 *additional information by Crown to that which had been*  
14:42 28 *provided to the Commission by Crown.*  
14:42 29  
14:43 30 Mr Bryant, in the course of the investigation, did Crown  
14:43 31 approach the VCGLR to ask the VCGLR to agree a similar  
14:43 32 arrangement whereby privileged documents could be  
14:43 33 produced but kept confidential?  
14:43 34  
14:43 35 A. No.  
14:43 36  
14:43 37 Q. Did VCGLR ask for such an arrangement to be agreed by  
14:43 38 Crown?  
14:43 39  
14:43 40 A. No.  
14:43 41  
14:43 42 Q. Had it done so, you agree it would have assisted with the  
14:43 43 conduct of the investigation?  
14:43 44  
14:43 45 A. Yes.  
14:43 46  
14:43 47 Q. And the final matter, back at paragraph 138 of your

14:43 1 statement, please, Mr Bryant, two pages over, thank you,  
14:44 2 operator. Here you notice, or you note, Mr Bryant, what you  
14:44 3 describe as a shift in Crown's position during the NSW Inquiry,  
14:44 4 which you say was apparent from concessions it made that were  
14:44 5 not offered to VCGLR at any VCGLR prior to NSW Inquiry.  
14:44 6 And you mentioned earlier a concession regarding Crown's risk  
14:44 7 management. So initially Crown had insisted that it had a robust  
14:44 8 or maybe not robust, but it had an adequate risk management  
14:44 9 framework; do you recall that?

14:44 10

14:44 11 A. Yes.

14:44 12

14:44 13 Q. That was at the beginning of the investigation and  
14:44 14 throughout 2018?

14:44 15

14:44 16 A. Yes.

14:44 17

14:44 18 Q. And then you noticed a slight shift in their position. You  
14:44 19 mentioned it just a moment ago.

14:44 20

14:45 21 A. July 19.

14:45 22

14:45 23 Q. Yes, July 19. Thank you. That was just a softening of its  
14:45 24 position; would you agree with that?

14:45 25

14:45 26 A. Yes.

14:45 27

14:45 28 Q. But then by the time of the NSW Inquiry, they had in fact  
14:45 29 conceded that there were failings in the risk management  
14:45 30 framework?

14:45 31

14:45 32 A. Yes.

14:45 33

14:45 34 Q. That is a very different position to the one it had taken with  
14:45 35 the VCGLR during the course of its investigations?

14:45 36

14:45 37 A. Yes.

14:45 38

14:45 39 Q. Ultimately, Crown made similar concessions to the  
14:45 40 VCGLR?

14:45 41

14:45 42 A. Yes.

14:45 43

14:45 44 Q. Albeit late in the piece?

14:45 45

14:45 46 A. Yes.

14:45 47

14:45 1 Q. And your point, Mr Bryant, is that had Crown taken that  
14:45 2 approach at the outset it would not have been necessary to  
14:45 3 undertake the protracted and reasonably intensive investigation  
14:45 4 that the China Arrests Investigation became; is that correct?

14:45 5  
14:45 6 A. Yes.

14:45 7  
14:46 8 Q. Mr Bryant, I've asked you a number of questions about  
14:46 9 various aspects of your statement. I haven't asked you about  
14:46 10 every detail in it. You presumably have a sense of the things that  
14:46 11 I wanted to ask you about regarding the matters in paragraph 138  
14:46 12 in particular. Was there anything else that you wanted to point  
14:46 13 out to the Commissioner on the topic of the extent of Crown's  
14:46 14 cooperation with the VCGLR in the course of the China Arrests  
14:46 15 Investigation?

14:46 16  
14:46 17 A. Yes, I think, Commissioner, Crown's approach to the initial  
14:46 18 part of the investigation when I first was involved was  
14:46 19 positioning themselves in such a way as to put themselves up as  
14:46 20 the risk indicators --- like there were three or four key incidents  
14:46 21 that occurred that Crown did not want to accept or acknowledge  
14:46 22 were key risk indicators or incidents. So, in having to do the  
14:47 23 investigation, I felt that every step we had to very thoroughly and  
14:47 24 diligently work through to try and prove to the extent that was  
14:47 25 appropriate to prove in this sort of investigation. Based on the  
14:47 26 overall issue being Crown's corporate governance and the subset  
14:47 27 of that being risk management. That's why I felt the investigation  
14:47 28 was particularly protracted because of that defensive position.  
14:47 29 And also, obviously, the provision of materials from interviews  
14:47 30 not being particularly fulsome at times and the provision of  
14:47 31 material on a staggered basis made it very difficult to finalise the  
14:47 32 investigation.

14:47 33  
14:47 34 Q. How did you find Crown to deal with on a person-to-person  
14:47 35 basis, or did you not really get an opportunity to make that  
14:47 36 assessment because everything was done through the lawyers?

14:47 37  
14:47 38 A. Everything was done through the lawyers and through  
14:47 39 demands or formal interviews. So it was done obviously  
14:48 40 predominantly in writing, in correspondence and at the  
14:48 41 interviews.

14:48 42  
14:48 43 Q. Based on your observation, has that changed today?

14:48 44  
14:48 45 A. Well, I haven't been involved in like day-to-day  
14:48 46 investigation work with Crown in relation to this matter. I've  
14:48 47 only been aware of and been involved in like propositions that the

14:48 1 VCGLR has put to Crown that Crown now accepts, being those  
14:48 2 key risk incidents that occurred. Crown acknowledges those as  
14:48 3 key incidents that they should have been aware of and dealt with  
14:48 4 at the time. So the concessions in relation to the failures of risk  
14:48 5 management and governance.

14:48 6  
14:48 7 Q. Commissioner, that's all I had for Mr Bryant, but I'm not  
14:48 8 sure if any other parties seek leave to cross-examine. I  
14:48 9 understand Mr Rozen wants to put at least one matter. Can I  
14:48 10 make submissions about the order. I'm not sure if,  
14:48 11 Commissioner, you have a view about this, but I would submit  
14:49 12 that Mr Rozen should go after all other parties who seek leave to  
14:49 13 cross-examine.

14:49 14  
14:49 15 COMMISSIONER: He will probably want to do that in any  
14:49 16 event.

14:49 17  
14:49 18 MR ROZEN: Indeed, I do.

14:49 19  
14:49 20 COMMISSIONER: Anyone else any questions?

14:49 21  
14:49 22 MR BORSKY: No, Commissioner.

14:49 23  
14:49 24 MR HUTLEY: No thank you, Commissioner.

14:49 25  
14:49 26 COMMISSIONER: I do.

14:49 27  
14:49 28 When you use the expression just a moment ago that you weren't  
14:49 29 provided with you said "not completely fulsome information",  
14:49 30 include under the umbrella of something that is not "completely  
14:49 31 fulsome" false information or misleading information or both?

14:49 32  
14:49 33 A. Yes, Commissioner.

14:49 34  
14:49 35 COMMISSIONER: Why do you dress it up as saying it is not  
14:50 36 particularly fulsome?

14:50 37  
14:50 38 A. I'm not sure, Commissioner. I suppose I was giving  
14:50 39 Crown, when I'm conducting the interviews, the benefit of the  
14:50 40 doubt at the time to give their position. I didn't have access to  
14:50 41 a lot of the material at that stage. In hindsight, though, I certainly  
14:50 42 consider that they are --- at times they lied to me at interview with  
14:50 43 what they were and were not aware of.

14:50 44  
14:50 45 COMMISSIONER: And by referring to "in hindsight", you mean  
14:50 46 now that you have all the documents available to you that you  
14:50 47 didn't have available to you earlier?

14:50 1  
14:50 2 A. Correct.  
14:50 3  
14:50 4 COMMISSIONER: Shifting to one other thing that I was  
14:50 5 interested in, how many of the Chinese employees who were  
14:50 6 arrested did you interview?  
14:50 7  
14:50 8 A. I interviewed one at the VCGLR's office. I obtained  
14:51 9 a witness statement off another gentleman. It wasn't what I  
14:51 10 consider a record of interview or an interview of the same type  
14:51 11 but I spoke to him and obtained a statement off him. I spoke to  
14:51 12 another Crown employee over the phone.  
14:51 13  
14:51 14 COMMISSIONER: What efforts did you make to speak to all of  
14:51 15 the, I think there were 16 or 19, I can't remember anymore,  
14:51 16 employees who were arrested and convicted and imprisoned, I  
14:51 17 think, in China?  
14:51 18  
14:51 19 A. We emailed all of them and obtained their most recent  
14:51 20 address that we knew of ---  
14:51 21  
14:51 22 COMMISSIONER: From whom?  
14:51 23  
14:51 24 A. From Crown and obtained their most recent contact email  
14:51 25 and address and contacted them that way. We only had  
14:51 26 a response from one of them.  
14:51 27  
14:51 28 COMMISSIONER: Did you ask Crown to have its employees  
14:51 29 cooperate with your investigation?  
14:51 30  
14:51 31 A. Yes, we did.  
14:51 32  
14:51 33 COMMISSIONER: And what was the response to that.  
14:52 34  
14:52 35 A. Crown provided the employees that were still employed by  
14:52 36 them. But the rest of the employees as far as I know all left  
14:52 37 Crown, or were in China. Sorry, Commissioner, I'm not sure  
14:52 38 whether Crown contacted them and told them to cooperate with  
14:52 39 us or not.  
14:52 40  
14:52 41 COMMISSIONER: Did you ask Crown to do that?  
14:52 42  
14:52 43 A. I can't recall, Commissioner. I can't recall.  
14:52 44  
14:52 45 COMMISSIONER: It would be an odd thing to do not to ask  
14:52 46 Crown to do that?  
14:52 47

14:52 1 A. I think, Commissioner, from what I recall, Crown at one  
14:52 2 stage wanted to be involved in each interview we --- if we were  
14:52 3 successful in getting in touch with their former employees, which  
14:52 4 we didn't proceed with. We wanted to just speak to them  
14:52 5 ourselves but I can't recall whether we asked their employees to  
14:52 6 give us full cooperation. I just can't recall.

14:52 7  
14:52 8 COMMISSIONER: Thank you. Mr Rozen?

14:53 9  
14:53 10 MR ROZEN: I do seek leave to cross-examine Mr Bryant.  
14:53 11 Would you like me to go through each of the three matters? They  
14:53 12 will be quite brief.

14:53 13  
14:53 14 COMMISSIONER: No, just go ahead. If I don't like the  
14:53 15 question, I will stop you.

14:53 16  
14:53 17 MR ROZEN: I am surprised to hear that.

14:53 18  
14:53 19 COMMISSIONER: No you are not.

14:53 20  
14:53 21

14:53 22 **EXAMINATION BY MR ROZEN**

14:53 23  
14:53 24

14:53 25 MR ROZEN: You were asked some questions earlier by counsel  
14:53 26 assisting about the gambling promotional material; do you recall  
14:53 27 that be discussed?

14:53 28  
14:53 29 A. Yes.

14:53 30  
14:53 31 Q. In your evidence you explained that in documents produced  
14:53 32 in March 2019 it was revealed to you that there was gambling  
14:53 33 promotional material, I think it was in Guangzhou. Do you recall  
14:53 34 that evidence?

14:53 35  
14:53 36 A. Yes.

14:53 37  
14:53 38 Q. The Commissioner asked you about the import of that  
14:53 39 revelation and why that was significant to you. I want to ask you  
14:54 40 about some answers given to you by Mr O'Connor in the  
14:54 41 interview you conducted with him as part of your investigation on  
14:54 42 this topic. The transcript is attached to Mr Bryant's statement. It  
14:54 43 is VCG.0002.0011.0005. If that could please be brought up,  
14:54 44 operator. While that is coming up, Mr O'Connor was interviewed  
14:54 45 by you on 8 March 2018; is that right, Mr Bryant?

14:54 46  
14:54 47 A. Yes.



14:54 1

14:54 2 Q. And he held the position of Executive General Manager of  
14:54 3 VIP gaming at Crown Resources [sic] certainly at that time; is  
14:54 4 that right?

14:54 5

14:54 6 A. Yes.

14:54 7

14:54 8 Q. If we could please go, operator to page underscore 0080  
14:55 9 question 359 at the bottom of the page, please. You asked  
14:55 10 Mr O'Connor.

14:55 11

14:55 12 Q359. Some of the measures that Mintz advised to take,  
14:55 13 *in relation to like what mobile phones to use and not*  
14:55 14 *carry gambling material when in mainland China, would*  
14:55 15 *indicate to me that --- not trying to hide activities, but*  
14:55 16 *certainly trying to minimise what people are actually*  
14:55 17 *engaged to do in China. Is that a fair comment?*

14:55 18

14:55 19 That is the question you asked Mr O'Connor.

14:55 20

14:55 21 A. Yes.

14:55 22

14:55 23 Q. I won't read out the entire answer, but you will see in the  
14:55 24 first few lines that Mr O'Connor says to you:

14:55 25

14:55 26 *..... it's long been a practice of not being overt about the*  
14:55 27 *fact that we work for a casino. That meant not promoting*  
14:55 28 *gambling in the mainland.*

14:55 29

14:55 30 Skipping down to the end of his answer about seven lines  
14:55 31 or so from the bottom, he says:

14:55 32

14:56 33 *So Mintz suggesting that we be careful about what*  
14:56 34 *marketing material that we give, well, we don't need*  
14:56 35 *Mintz to tell us that. That's long been our focus.*

14:56 36

14:56 37 You see that answer, Mr Bryant?

14:56 38

14:56 39 A. Yes.

14:56 40

14:56 41 Q. And if I could ask you about one other answer  
14:56 42 Mr O'Connor gave, on page underscore 0097. It is question 407,  
14:56 43 six lines down that page. You asked Mr O'Connor:

14:56 44

14:56 45 *Q407. So prior to your arrest and detention, what was*  
14:56 46 *your knowledge of the Chinese laws relating to the duties*  
14:56 47 *you were performing?*

14:56 1  
14:56 2           A. *Well, they --- again, largely based on the law as*  
14:56 3           *explained by Michael Chen after he received advice from*  
14:56 4           *his local lawyers, and he described to me in general terms*  
14:56 5           *here, and of course I'm paraphrasing, but my*  
14:56 6           *understanding at the time was that it was illegal to*  
14:57 7           *promote gambling. By promote gamble, I understand that*  
14:57 8           *to mean advertise very obviously gambling.*  
14:57 9  
14:57 10       If I pause there and ask you based on those answers and  
14:57 11       the revelation about gambling material that I asked you  
14:57 12       about a moment ago, what was the significance of those  
14:57 13       two things, the awareness that the promotion of gambling  
14:57 14       was illegal and the presence of material promoting  
14:57 15       gambling; what was the significance of that in your  
14:57 16       investigation?  
14:57 17  
14:57 18       A. It's that Crown are putting themselves and their staff at risk  
14:57 19       by overtly promoting gambling in China. The provision of  
14:57 20       material that shows that is gambling material in China puts  
14:57 21       themselves and their staff at risk. As part of the investigation I  
14:57 22       had to step through exactly what Crown were doing in China at  
14:57 23       the time and whether or not that was a potential breach of the  
14:57 24       Chinese law.  
14:57 25  
14:57 26       Q. Yes.  
14:57 27  
14:57 28       A. So it was quite significant to just try and unpack exactly ---  
14:58 29       like Crown at interview appeared to be presenting a position all  
14:58 30       they were doing were marketing hotels and resorts and activities.  
14:58 31       Not the fact that they were there to try to entice Chinese gamblers  
14:58 32       to try and come to Australia.  
14:58 33  
14:58 34       Q. Something I want to ask you about in relation to something  
14:58 35       you said a couple of times today in answers to questions asked to  
14:58 36       you by counsel assisting. There was a "single point of failure"  
14:58 37       I think was the expression you used in Crown's risk management  
14:58 38       approach. What is the single point of failure you are talking  
14:58 39       about?  
14:58 40  
14:58 41       A. Single point of failure without pointing to an individual was  
14:58 42       the reliance of assessing the risk on the ground as such in China  
14:58 43       or from Hong Kong, that the risk management process in this  
14:58 44       instance relied upon a very, very small group of individuals  
14:58 45       within Crown's VIP international business which on the ground  
14:59 46       was headed by Michael Chen. Michael Chen was responsible for  
14:59 47       obtaining the Mintz advice and the legal advice. So obviously the

14:59 1 danger with that is it's not subject to then corporate checks and  
14:59 2 balances and governance if it is being handled by an area that is  
14:59 3 responsible predominantly for business to raise, to entice Chinese  
14:59 4 gamblers to come to Australia. That's their main thing. As  
14:59 5 Mr Chen pointed out, he was there to drive sales. That was his  
14:59 6 predominant focus.

14:59 7  
14:59 8 Q. Understand. I'm interested in contrasting the single point of  
14:59 9 failure with implicit in that is that there was a better approach to  
14:59 10 risk management that you consider ought to have been adopted.  
14:59 11 What was that better approach?

14:59 12  
14:59 13 A. To engage the risk management structures. So escalate  
14:59 14 matters that needed escalating to the appropriate levels. For  
14:59 15 example, the questioning of their own staff in July 2015 was  
15:00 16 clearly a matter that should have been escalated further. I  
15:00 17 imagine in any large cooperation, especially with the risk that is  
15:00 18 bought upon it. The escalation to the appropriate risk  
15:00 19 management structures to consider these aspects, whether or not  
15:00 20 that is at board level and/or risk management board level ---

15:00 21

15:00 22 Q. Yes.

15:00 23

15:00 24 A. --- as opposed to the individuals who are on the coal face  
15:00 25 actually doing the work at the time in the field.

15:00 26

15:00 27 Q. Mr Bryant, are you familiar with the notion of the three  
15:00 28 lines of defence approach to risk management?

15:00 29

15:00 30 A. I have heard of it. I'm not 100 per cent familiar with it all  
15:00 31 to be honest.

15:00 32

15:00 33 Q. All right. I won't pursue that. Excuse me.

15:00 34

15:01 35 Without taking up time now, this relates to the last question you  
15:01 36 were asking, Mr Bryant, if I could just draw your attention to  
15:01 37 paragraphs 55 to 59 of the final China investigation report  
15:01 38 VCG.0001.0001.0001 at 0019. Now that it's been brought up,  
15:01 39 this is on the question of Crown's assistance to you in relation to  
15:01 40 contacting the China-based employees, Mr Bryant. Do you  
15:01 41 recall ---

15:01 42

15:01 43 A. Yes.

15:01 44

15:01 45 Q. --- that the Commissioner asked you about that. Perhaps  
15:02 46 you could take a moment to read that.

15:02 47

- 15:02 1 A. Thank you.
- 15:02 2
- 15:02 3 Q. If there is anything you want to add to it, please do.
- 15:03 4
- 15:03 5 A. Yes.
- 15:03 6
- 15:03 7 Q. Is there anything you would like to add. It is probably
- 15:03 8 self-explanatory. You indicated earlier, as I understood it, that as
- 15:03 9 part of that correspondence, Crown requested to be present at any
- 15:03 10 such interviews.
- 15:03 11
- 15:03 12 A. Yes.
- 15:03 13
- 15:03 14 Q. Through its lawyers?
- 15:03 15
- 15:03 16 A. Yes.
- 15:03 17
- 15:03 18 Q. Did that influence your approach to that matter?
- 15:03 19
- 15:03 20 A. No.
- 15:03 21
- 15:03 22 Q. The final matter concerns paragraph 138 of your statement.
- 15:03 23 If that could please be brought up, exhibit RC0001,
- 15:03 24 VCG.9999.0001.0002 at page 46. Middle of the page. You've
- 15:03 25 already been asked by counsel assisting regarding paragraph (a)
- 15:03 26 to (f). In the second sentence, the third line, do you see that?
- 15:04 27
- 15:04 28 A. Yes.
- 15:04 29
- 15:04 30 Q.
- 15:04 31 My view is that the Crown failed to provide the VCGLR
- 15:04 32 *with the level of cooperation that I would expect of*
- 15:04 33 *a regulated entity that has the privilege of being the*
- 15:04 34 *operator of the only casino in Victoria.*
- 15:04 35
- 15:04 36 What is the level of cooperation that you expect of
- 15:04 37 Crown? Or what was the level of cooperation you expect
- 15:04 38 in an investigation like this?
- 15:04 39
- 15:04 40 A. I would expect a very high level of cooperation. The
- 15:04 41 legislation is framed that we can use formal notices to request
- 15:04 42 information. So we obviously rely on Crown to respond to those
- 15:04 43 notices, including the provision of information at interviews. If
- 15:04 44 I can, Commissioner, from my previous experience as
- 15:04 45 an investigator conducting criminal investigations, an interview is
- 15:04 46 offered to a suspect who can refuse to answer questions. In this
- 15:05 47 instance, we have a legislation that allows us that Crown are

15:05 1 expected to cooperate and answer our questions. Likewise with  
15:05 2 the provision of material. We use a section 26 notice as the tool  
15:05 3 for Crown to provide us with the material. We don't execute  
15:05 4 search warrants as such on Crown to obtain material. We expect  
15:05 5 them to provide it to us when we ask for it. That's the level of  
15:05 6 cooperation I expected was of a regulated entity to provide full  
15:05 7 cooperation with our requests.

15:05 8

15:05 9 COMMISSIONER: Does that mean, for example, providing you  
15:05 10 with full and frank information about the subject matter of your  
15:05 11 investigation?

15:05 12

15:05 13 A. Yes, from the outset, Commissioner.

15:05 14

15:05 15 COMMISSIONER: And cooperating in all respects to make sure  
15:05 16 that you can conduct the investigation properly and efficiently?

15:05 17

15:05 18 A. Yes, Commissioner.

15:05 19

15:05 20 COMMISSIONER: And it is fair to say, is it from what you said  
15:06 21 that Crown failed in each of those instances?

15:06 22

15:06 23 A. Yes, Commissioner.

15:06 24

15:06 25 MR ROZEN: Thank you.

15:06 26

15:06 27 MS NESKOVICIN: Commissioner, I had a question arising out  
15:06 28 of your questions to Mr Bryant, but I wasn't quick enough to find  
15:06 29 the reference. Might I go back?

15:06 30

15:06 31 COMMISSIONER: (Nods head).

15:06 32

15:06 33

15:06 34 **FURTHER EXAMINATION BY MS NESKOVICIN**

15:06 35

15:06 36

15:06 37 MS NESKOVICIN: Thank you. For the transcript, page 110,  
15:06 38 109, you asked about --- you asked her about disclosure or  
15:06 39 forthcoming and you described it as not completely fulsome  
15:06 40 information under the umbrella of something that is not  
15:06 41 completely fulsome you've included false information or  
15:06 42 misleading information or both and Mr Bryant said "I suppose  
15:07 43 I was giving Crown when conducting the interviews the benefit  
15:07 44 of the doubt."

15:07 45

15:07 46 Mr Bryant, when you were doing the investigation, you did  
15:07 47 identify respects in which you regarded the information provided

15:07 1 as misleading?

15:07 2

15:07 3 A. Yes, I did.

15:07 4

15:07 5 Q. And you identified them under that tag of misleading

15:07 6 information, didn't you?

15:07 7

15:07 8 A. Yes.

15:07 9

15:07 10 Q. For the Commissioner's assistance, I will ask you to look at

15:07 11 this document. It is a document only for the hearing room. It is

15:07 12 a privileged document. So it is VCG.0001.0002.6071.

15:07 13

15:07 14 COMMISSIONER: Is that a new document?

15:07 15

15:07 16 MS NESKOVCIN: It is part of Mr Bryant's witness statement. It

15:08 17 is a memorandum you prepared in November 2020. Under

15:08 18 "background", you describe misleading statement 1 is about

15:08 19 Chinese Government crackdown and not about trying to lure

15:08 20 Chinese gamblers to their casino. So that was a statement made

15:08 21 by Crown and you regarded that as misleading?

15:08 22

15:08 23 A. Yes.

15:08 24

15:08 25 Q. And you regard the VCGLR as misled?

15:08 26

15:08 27 A. Yes.

15:08 28

15:08 29 Q. And secondly, on page 003, you identified a second

15:08 30 misleading statement about the questioning of Crown employees

15:08 31 being about a gambler and not Crown Casino's operations in

15:08 32 China.

15:08 33

15:08 34 A. Yes.

15:08 35

15:08 36 Q. When you came to prepare your statement, I suggest you

15:08 37 just softened the language?

15:08 38

15:08 39 A. Yes.

15:08 40

15:08 41 Q. Thank you, Mr Bryant. The only other matter for the

15:08 42 Commissioner's assistance is in relation to paragraphs 102 to 107

15:09 43 of Mr Bryant's statement actually dealing with the question about

15:09 44 questioning Crown employees over the China risks.

15:09 45

15:09 46 COMMISSIONER: Thank you.

15:09 47

15:09 1 MS NESKOVCIN: Nothing further for Mr Bryant.  
15:09 2  
15:09 3 COMMISSIONER: Thank you for attending. There is no reason  
15:09 4 why Mr Bryant can't be excused?  
15:09 5  
15:09 6 MS NESKOVCIN: No reason. Thank you, Mr Bryant.  
15:09 7  
15:09 8  
15:09 9 **THE WITNESS WITHDREW**  
15:09 10  
15:09 11  
15:09 12 Commissioner, that is the only evidence for today. The next  
15:09 13 witness is Mr Cremona from the VCGLR. He will be called at 10  
15:09 14 am tomorrow morning.  
15:09 15  
15:09 16 COMMISSIONER: All right.  
15:09 17  
15:09 18 Before we talk about him --- I will deal with him. Are there any  
15:09 19 issues about any documents that Mr Cremona is going to refer to  
15:09 20 or might have referred to him that might be confidential or secret  
15:09 21 or that have to be kept away from the rest of the world?  
15:09 22  
15:10 23 I'm told Mr Borsky that you might have some part of  
15:10 24 Mr Cremona's statement or documents that you don't want  
15:10 25 published? I will check about that. It might be the subject of  
15:10 26 correspondence between solicitors. We can deal with that first  
15:10 27 thing in the morning?  
15:10 28  
15:10 29 MR BOSKY: Yes, of course. I can inform the Commission that  
15:10 30 those instructing me are working studiously to redact the personal  
15:10 31 details, email addresses of the universe of documents which we  
15:10 32 may take Mr Cremona in cross-examination. I have had  
15:10 33 a discussion with Mr (Inaudible) and Mr Rozen will have them  
15:11 34 momentarily. There will be plenty of notice to witnesses and our  
15:11 35 friends. We expect to be up to two hours in cross-examination of  
15:11 36 Mr Cremona.  
15:11 37  
15:11 38 COMMISSIONER: Anything we can do to help the mechanical  
15:11 39 parts ---  
15:11 40  
15:11 41 MR BOSKY: We will do that overnight.  
15:11 42  
15:11 43 COMMISSIONER: Mr Rozen, I was going to chase you about  
15:11 44 the transcript of the evidence of the two --- no, not you. Mr Gray,  
15:11 45 you have separate interests. This is the indivisible state that is  
15:11 46 about to be divided. What is happening with the transcript?  
15:11 47

15:11 1 MR GREY: We are working on those. The point is there is  
15:11 2 an authorisation process for those transcripts but at the time our  
15:12 3 understanding based on what had been said in the Commission  
15:12 4 was that those transcripts would be provided to named  
15:12 5 representatives of Crown and an indication was given there was  
15:12 6 no PII claims in respect to the transcript for the purposes of  
15:12 7 provision to named representatives of the Crown. Indeed, those  
15:12 8 Crown representatives can be provided to the Crown  
15:12 9 representatives right now.

15:12 10  
15:12 11 COMMISSIONER: As at now?

15:12 12  
15:12 13 MR GREY: It was then an iteration of the request expanding the  
15:12 14 request to an indication that there wouldn't be any claims if the  
15:12 15 purpose of dissemination was broader, that is to named  
15:12 16 representatives of the parties with leave. Now that requires the  
15:12 17 relevant agencies, the Victorian police, to go through another  
15:12 18 authorisation process. While I don't anticipate another outcome,  
15:12 19 that process has to happen. It hasn't happened yet, it isn't  
15:12 20 complete yet. It is happening. I'm not able to tell you when it  
15:13 21 will be completed.

15:13 22  
15:13 23 COMMISSIONER: But soon.

15:13 24  
15:13 25 MR GRAY: But soon. But if it helps, those transcripts can be  
15:13 26 provided to the named representatives of Crown right now.

15:13 27  
15:13 28 COMMISSIONER: That works if I know who the named  
15:13 29 representatives are. I don't think I have names, hence the  
15:13 30 description named representatives. The way the orders will be  
15:13 31 made, will be to the following named representatives of Crown.  
15:13 32 Somebody has to give me the names.

15:13 33  
15:13 34 MR GRAY: I don't have those.

15:13 35  
15:13 36 COMMISSIONER: Are you indifferent to who those people are?  
15:13 37 I don't mean personally. Is Victoria Police indifferent to who  
15:13 38 those named people are? I just need to name them so I have got  
15:13 39 a sensible order.

15:13 40  
15:13 41 MR GRAY: I believe we are indifferent to which particular  
15:13 42 lawyers they are, Commissioner, yes, as long as there is  
15:13 43 a reasonable number of people who are bound by the  
15:14 44 confidentiality regime.

15:14 45  
15:14 46 COMMISSIONER: Yes, but I don't know whether --- I will find  
15:14 47 out in a minute. You assume that the named people are lawyers.



15:14 1 I don't make that assumption. You might be wrong, you might be  
15:14 2 wrong.

15:14 3

15:14 4 MR GRAY: There might be a proper officer who has to give  
15:14 5 instructions. We understand that.

15:14 6

15:14 7 COMMISSIONER: That's what I mean, okay.

15:14 8

15:14 9 MR GRAY: Unless there is anything further, Commissioner?

15:14 10

15:14 11 COMMISSIONER: Can I suggest talk to Mr Borsky about it, at  
15:14 12 some stage if you want the order, which I'm prepared to make,  
15:14 13 you have to give me the individuals who will be the beneficiaries  
15:14 14 of the order and I will make the order and then you will get the  
15:14 15 transcript.

15:14 16

15:14 17 MR GRAY: Thank you.

15:14 18

15:14 19 COMMISSIONER: I will myself track down what is happening  
15:14 20 with the transcripts of the other witnesses who you won't know  
15:14 21 the names of bar one and see how that is going but that should  
15:14 22 happen pretty soon as well.

15:14 23

15:14 24 All right.

15:15 25

15:15 26 MS NESKOVCIN: Thank you, Commissioner.

15:15 27

15:15 28 COMMISSIONER: Adjourned until 10 o'clock tomorrow  
15:15 29 morning.

15:15 30

31

32 **HEARING ADJOURNED AT 3.15 PM UNTIL TUESDAY,**  
33 **17 MAY 2021 AT 10.00 AM**

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