

MinterEllison

7 August 2019

BY EMAIL

Mr Scott May
Director, Legal Services & General Counsel
Victorian Commission for Gambling and Liquor Regulation
49 Elizabeth Street
RICHMOND VIC 3121

Dear Scott

Crown China Investigation

We refer to our previous correspondence in relation to this subject.

As you are aware, there is a class action extant against Crown relating to the detention of the Crown group staff in China in 2016. In that action:

- (a) on 26 April 2018, the Federal Court made orders requiring Crown to make discovery of, among other things, any judgment produced by the Baoshan District Court in connection with the prosecution and conviction of the detained employees (**2018 Orders**); and
- (b) on 25 July 2019, the Federal Court made orders requiring Crown to produce copies of all documents discovered by Crown in the Class Action (to the extent they are not subject to a claim for privilege) (**2019 Orders**).

Copies of the Orders are **enclosed**.

The draft document provided under cover of your letter dated 29 May 2019 (referred to as the **Submission** in our letter to you of 26 June 2019) annexed a redacted copy of the verdict of the Baoshan District People's Court of Shanghai (2017) Shanghai 0113 Criminal Preliminary Document No. 985 (**Redacted Verdict**).

We believe that:

- (a) the Redacted Verdict falls within the 2018 Orders, and is required to be produced to the Applicant in the class action under the 2019 Orders; and
- (b) Crown's obligation to produce the Redacted Verdict pursuant to the 2019 Orders displaces the operation of section 10.1.34 of the *Gambling Regulation Act 2003 (Act)*, which would otherwise prohibit and preclude Crown from disclosing the Redacted Verdict to the Applicant or any other person.

In this regard, we refer you to the analogous case of *State of Victoria v Intralot Australia Pty Ltd* [2015] VSCA 358, in which the Court of Appeal found that section 10.1.30 of the Act did not preclude production for inspection of discovered documents which contained protected information. Given the similarity between the terms of section 10.1.30 and 10.1.34 of the Act, the Court of Appeal's comments in *Intralot* should be applied by analogy to section 10.1.34. Consequentially, in producing the Redacted Verdict (or any unredacted copy of the verdict that may be supplied to Crown by the VCGLR) to the Applicant and Court pursuant to the 2019 Orders, Crown would not contravene section 10.1.34 of the Act.

If you disagree with our views in this regard, we would welcome the opportunity to discuss the above matters with you.



It is possible that one or more of the convicted persons who were the subject of the verdict may give evidence at the trial of the class action. The Redacted Verdict has been redacted so as to prevent particular individuals being identified, to protect their personal information, but it is possible that the redactions may impact the ability of the Applicant and Court to understand the relevance of the verdict to particular witnesses.

Accordingly, it would be helpful if the VCGLR could provide Crown with an unredacted copy of the verdict for the sole purpose of Crown making discovery of it in the class action. The verdict would be discovered and produced on the basis that:

- (a) it is confidential, among other things, because it contains personal information of Crown's former employees; and
- (b) it is subject to the implied *Harman* undertaking. The effect of this undertaking will be to preclude the Applicant and the Applicant's lawyers from using the verdict (or information derived from it) for any purpose other than the class action, without first obtaining leave of the Court.

For the sake of completeness, we note that Crown's discovery obligations in respect of the Redacted Verdict do not extend to the Submission. Crown acknowledges that the Submission remains subject to the prohibition on disclosure contained in section 10.1.34 of the *Gambling Regulation Act 2003* and must not be shared with any third party.

If you have any queries in relation to this correspondence, please do not hesitate to contact us or Josh Preston of Crown. We would otherwise be grateful if you could confirm that you will supply an unredacted copy of the verdict to us at your earliest convenience.

Yours faithfully
MinterEllison



Richard Murphy
Partner

Partner: Richard Murphy



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