

MinterEllison

9 October 2020

Mr Adam Ockwell
Director, Compliance

Mr Scott May
Director Legal Services & General Counsel

Victorian Commission for Gambling and Liquor Regulation
Level 3, 12 Shelley Street
RICHMOND VIC 3121

Dear Messrs Ockwell and May

Notice issued under section 26 of the Casino Control Act 1991 (Vic) dated 1 October 2020 (Notice)

We refer to the Notice, Mr Scott May's telephone conversation with Mr Joshua Preston on 8 October 2020 and our teleconference of the same date.

Please find enclosed the documents required to be produced in response to the Notice.

Particulars of Crown's position in respect of each categories of the Notice is set out in the Annexure.

Categories (g) and (r) of the Notice

We note the request for further information regarding the production or otherwise of the records identified in respect of categories (g) and (r) of the Notice.

The documents requested under categories (g) and (r) of the Notice were not produced in response to the notice issued on 23 March 2019 because they were then subject to a claim for legal professional privilege.

In December 2019, witness statements were filed on behalf of Crown in the Federal Court matter *Zantran Pty Limited v Crown Resorts Limited (Class Action)*. Certain advices issued by Wilmer Hale were referred to in the witness statements.

There was then a dispute in the Class Action about the extent to which privilege had been waived by Crown over documents referred to in the witness statements or related to matters referred to in the statements. For this purpose, Crown undertook a process of reviewing documents from its discovery in respect of which privilege might have been waived, liaising with the Applicant in relation to those documents and having the Court determine remaining contested claims for privilege.

This process was complex and time consuming. The final stage was a two day interlocutory hearing before Justice O'Callaghan on 22 May 2020 and 17 June 2020. Judgment was delivered by his Honour on 21 July 2020¹. Crown was successful in all but two of the privilege claims it sought to maintain.

As a result, Crown now has a limited set of documents in addition to those now produced in categories (g) and (r) of the Notice, in which privilege has been waived and which may be of interest to the VCGLR. In the circumstances, Crown suggests that the VCGLR consider issuing a further notice under s 26 of the *Casino Control Act 1991 (Vic)* for production of 'all records in respect of which Crown waived privilege in December 2019 in *Zantran Pty Limited v Crown Resorts Limited* (Federal Court of Australia matter no. 1317 of 2017).'

If the VCGLR is amenable to this suggestion, we expect that production could occur within 5 business days of the receipt of such a notice.

¹ *Zantran Pty Ltd v Crown Resorts Limited (No 2)* [2020] FCA 1024



Category (s) of the Notice

As discussed, production of all witness statements of Crown witnesses' does not include statements of Messrs Michael Johnston, Guy Jalland and James Packer. They are separately represented in the New South Wales Casino Inquiry by the lawyers acting for Consolidated Press Holdings Pty Limited (CPH).

We propose to liaise with the lawyers acting for CPH to assist with the suggested framing of a further s 26 notice to capture the statements of their witnesses to the extent that they relate to their Crown roles. We will revert to you next week in relation to this.

As also discussed, there are many documents referred to in the statements of Crown witnesses. If the VCGLR requires production of some of all of them, we ask that a further s 26 notice be issued for that purpose allowing say 5 to 10 business days for production, depending on the number required. They will need to be reviewed for privilege and potential application of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and other relevant legislation relating to privacy and secrecy provisions.

Privileged material

The production set contains documents which have been redacted on the basis of extant claims of legal professional privilege. Documents which are wholly subject to such privilege claims have not been produced.

For completeness, we note that documents subject (in whole or part) to a claim for legal professional privilege:

- (a) were created for the dominant purpose of giving or obtaining legal advice (or refer, in whole or part, to such advice); and
- (b) Crown has not waived, and does not intend to waive, the privilege arising in these communications.

Exploitation risks

A number of the materials contain highly sensitive material regarding internal procedures and controls in relation to money laundering, junket operations, monitoring, security and administrative controls within Crown's casino operations. The documents set out procedures and controls that have been developed by Crown with the objective of ensuring Crown remains free from criminal influence and exploitation and conducts business in accordance with its AML/CTF obligations.

If this information becomes publicly available it will increase the risk that the relevant procedures and controls could be circumvented and that its casinos and operations could be rendered vulnerable to exploitation. Publication of these documents would provide those wishing to exploit the casino's operations with valuable information in relation to how the controls and procedures operate, particularly those procedures and controls designed to identify mitigate and manage money laundering risks.

Crown respectfully requests that information in the documents be regarded with due sensitivity, and that Crown be consulted prior to any publication of these documents (or information contained therein).

If you would like to discuss any aspect of this, please contact the undersigned.

Yours faithfully
MinterEllison



Richard Murphy
Partner

Contact: Robert Meade [REDACTED]

Partner: Richard Murphy T: [REDACTED]

OUR REF: RDM RAM 1266288

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Annexure | Documents responsive to Notice

Notice category	Responsive document	Privilege position	Other comments
(a)	CRL.605.016.4176	Not privileged	N/A
(b)	INQ.950.002.0133	Not privileged	N/A
(c)	CRL.625.001.0007	Not privileged	N/A
(d)	CRL.624.001.0014	Not privileged	N/A
(e)	N/A	N/A	CRL.624.001.0015 is a page reference within the document identified as CRL.624.001.0014, which is produced in response to paragraph (d) of the Notice.
(f)	CRL.522.001.0332	Not privileged	N/A
(g)	CRL.636.001.1747	Not privileged	N/A
(h)	CRL.522.001.2864	Not privileged	N/A
(i)	CRL.634.001.0039	Privileged	This document was created by the Chief Legal Officer – Australian Resorts of Crown Resorts for the dominant purpose of providing legal advice to Crown. Crown maintains its claim for privilege in respect of this document, and accordingly is not produced.
(j)	CRL.625.001.0060	Privileged	This document is an email from Mr Michael Chen (formerly President – International Marketing) to Mr Jason O'Connor (then Group Executive General Manager – VIP International) and discloses the substance and nature of confidential and privileged legal advice from external legal counsel. Crown maintains its claim for privilege in respect of this document, and accordingly is not produced. Whilst the Notice referred to CRL.605.001.0060, we understand that this reference is actually intended to be CRL.625.001.0060. If this is incorrect, please let us know.
(k)	INQ.950.002.0160	Privileged	This correspondence was prepared for the dominant purpose of litigation involving Crown Resorts Limited, which is not waived. Accordingly, this document is not produced.
(l)	INQ.950.002.0223	Not privileged	N/A
(m)	INQ.950.002.0224	Position reserved	This document has not been made available to Crown. A copy has been requested, and will be made available to the VCGLR once a copy is obtained.
(n)	INQ.950.002.0227	Position reserved	This document has not been made available to Crown. A copy has been requested, and will be made available to the VCGLR once a copy is obtained.
(o)	INQ.950.002.0160	Privileged	This is duplicated from category (k) above, and Crown repeats its position in respect of this document.
(p)	INQ.950.002.0222	Privileged	This correspondence was prepared for the dominant purpose of litigation involving Crown Resorts Limited, which is not waived. Accordingly, this document is not produced.
(q)	CRL.625.001.0079	Not privileged	Whilst the Notice referred to CRL.605.001.0079, we understand that this reference is actually intended to be CRL.625.001.0079. If this is incorrect, please let us know.
(r)	CRL.638.001.0655	Not privileged	N/A
(s)	CRL.577.001.0001	Not privileged	N/A
	CRL.577.002.0001	Not privileged	N/A
	CRL.577.002.0017	Not privileged	N/A
	CRL.581.001.0019	Not privileged	N/A
	CRL.581.001.0021	Not privileged	N/A

CRL.581.001.0023	Not privileged	N/A
CRL.581.001.0025	Not privileged	N/A
CRL.581.001.0027	Not privileged	N/A
CRL.581.001.0030	Not privileged	N/A
CRL.581.001.0032	Not privileged	N/A
CRL.581.001.0040	Not privileged	N/A
CRL.581.001.0042	Not privileged	N/A
CRL.581.001.0056	Not privileged	N/A
CRL.664.001.0001	Not privileged	N/A
CRL.666.001.0001	Not privileged	N/A
CRL.666.001.0004	Not privileged	N/A
CRL.693.001.0001	Not privileged	N/A
CRL.693.001.0010	Not privileged	N/A
CRL.693.001.0019	Not privileged	N/A
CRL.693.001.0025	Not privileged	N/A
CRL.693.001.0035	Not privileged	N/A
CRL.693.001.0085	Not privileged	N/A
CRL.694.001.0001	Not privileged	N/A
CRL.696.001.0078	Privileged (part)	Particular information contained in this document refers to privileged legal advice provided by external legal counsel in respect of media allegations made by Nine and Fairfax during July 2019.
CRL.697.001.0033	Not privileged	N/A
CRL.698.001.0001	Privileged (part)	Particular information contained in this document refers to privileged legal advice provided by external legal counsel in respect of media allegations made by Nine and Fairfax during July 2019.
CRL.582.001.0001	Not privileged.	N/A
CRL.582.001.0007	Not privileged	N/A
INQ.950.002.0232	Not privileged.	N/A
CRL.714.001.0001	Not privileged.	N/A
CRL.586.003.2329	Not privileged	N/A