

Our ref: RAJOHN\MCE\1000-099-084
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29 July 2021

BY EMAIL

John Fogarty
 Partner
 DLA Piper Australia
 P O Box 4301
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Dear Colleagues

Royal Commission into the Casino Operator and Licence –

We refer to your letter dated 28 July 2021 (9.50 am) requesting a response by 4.00 pm on 29 July 2021.

We make the following comments:

- (a) Your correspondence proceeds on the assumption that our clients remain associates of the casino operator within the meaning of section 4 of the *Casino Control Act 1991 (Vic)* (**CCA Vic**). We do not agree. While our clients were associates at the time of the China arrests discussed in the VCGLR's Final China Investigation Report dated 27 April 2021 (**Report**), they are no longer associates, because they do not exercise influence over the management or operation of the casino operator.
- (b) That position is consistent with the views reached by Counsel Assisting in the Commission. See transcript of Counsel Assisting's oral submissions at T4038.23-T4038.24 and the written submissions of Counsel Assisting, page 275 [3.2].
- (c) Accordingly, the VCGLR's powers in relation to 'associates' under section 28A of the CCA Vic do not apply to our clients, and in particular the VCGLR's power to give a written notice to an associate under section 28A(4A)(b) of the CCA Vic is not enlivened.
- (d) If your client maintains any different position, please identify to us the facts matters and circumstances which it says supports the contention that our clients are associates within the meaning of section 4 of the CCA Vic.
- (e) In any event, our clients are not in a position to provide a substantive response to the VCGLR's Final China Investigation Report within the very short timeframe proposed in your letter, noting that:
 - (i) the Report did not concern an investigation of CPH as an associate of the casino operator;

- (ii) our clients do not have a complete version of the Report. We received the Report via the Solicitors Assisting the Commission as a tendered document in the Commission after 17 May 2021. The version so received bears a number of redactions, including in respect of content which appears to relate to our clients. The Report has not otherwise been provided to our clients;
 - (iii) no person from our clients was interviewed in respect of that Report, nor were any submissions sought from our clients prior to finalisation of the Report; and
 - (iv) no opportunity has otherwise been given to our clients to respond to the Report; your letter of 28 July 2021 was the first communication our clients received from your client in respect of it.
- (f) If the VCGLR persists in its position that section 28A(4A) is available to it (which our clients do not accept), without derogating from that position, our clients would wish a reasonable opportunity to respond to that Report, having first received an unredacted copy of it.

As for the voluntary undertakings proposed by our client via our letter to you of 26 July 2021, all are expressed to operate in perpetuity other than undertaking 3, concerning the appointment of CPH nominees to the Crown board. Undertaking 3 is expressed to operate until October 2026. The period runs for five years which is a significant period. As noted in our 26 July 2021 letter, even after that period, CPH proposes to undertake not to seek the appointment of any CPH nominee as a Crown director without the approval of your client and of the relevant regulator in each State of Australia in which the Crown group has a gaming licence. The appropriateness and sufficiency of these proposed undertakings will be further addressed in our clients' written submissions to the Commission which will be provided to your client in accordance with the Commission's directions.

We look forward to receiving your client's response regarding the voluntary undertakings proposed by our client.

Please contact Rani John on [REDACTED] or Mark Elvy on [REDACTED] should you wish to discuss.

A copy of this letter will be sent to the Solicitors Assisting the Royal Commission into the Casino Operator and Licence.

Yours faithfully

[REDACTED]

Ashurst