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Rani John/Mark Elvy  
 Ashurst

**Your reference**

**Our reference**

JWF/JWF/433107/1  
 AUM/1224304509.1

30 July 2021

**By Email :** [REDACTED]

Dear Ms John and Mr Elvy

**PROPOSED UNDERTAKING TO THE VICTORIAN COMMISSION FOR  
 GAMBLING AND LIQUOR REGULATION**

We refer to your letter dated 29 July 2021.

The VCGLR remains of the view that Consolidated Press Holdings Pty Ltd (**CPH**) is an associate of the casino operator within the meaning of section 4 of the *Casino Control Act (Vic)* 1991 (**CC Act**). The VCGLR holds this view because:

- CPH holds a “relevant financial interest” in the casino operator within the meaning of section 4(2) of the CC Act;
- by virtue of that “relevant financial interest”, CPH “is able or will be able to exercise significant influence over or with respect to the management or operation” of the casino operator;
- CPH has previously exercised significant influence over the management and operations of the casino operator;
- as noted in our letter dated 28 July 2021, the manner in which CPH has exercised its influence over the casino operator amounts to conduct that, in the VCGLR’s opinion, is unacceptable for a person who is concerned in or associated with the ownership, management or operation of the business of the casino operator; and
- in view of the above, the VCGLR does not consider the email provided to the Independent Liquor and Gaming Authority of NSW (who regulates the proposed operator of the Sydney Casino, but not the current operator of the Melbourne Casino) on 18 February 2021 to be sufficient such that it could render CPH from being incapable of exercising significant influence over the operator of the Melbourne Casino, now and/or in the future.

We are otherwise instructed to respond to your letter as follows:

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1. The VCGLR does not accept the assertion that the written submissions of Counsel Assisting support a conclusion that CPH is not an associate of the casino operator within the meaning of the CC Act. Indeed, on the contrary, Senior Counsel Assisting's oral submissions expressly referred to the need to address the extant risk of CPH exerting its influence on the casino operator in the future:<sup>1</sup>

*At present, the evidence appears to be that the CPH shareholding is not exercising influence. That is appropriate, as far as it goes. The real issue, though, is to ensure that it does not happen again, whether by CPH or really any other shareholder or interest. The events of the recent past demonstrate that where a majority shareholder is in a position to exert influence over the board and senior executives, it can have terrible consequences for a casino licensee. The situation that arose for Crown Melbourne under Mr Packer's influence needs to be addressed so that it is not repeated in the future, whether or not Crown Melbourne retains the licence.*

2. In respect of the VCGLR's China Report and the extent to which the matters described in that document constitute the basis upon which the VCGLR has formed the relevant opinion for the purpose of the written notice that it will shortly issue to your client, requiring it to give a written undertaking, we note that:
  - a. the redactions applied to the China Investigation Report that has been available to your client since May 2021 relate to ongoing or proposed future law enforcement activities. They do not relate to the matters to which the VCGLR has had regard in forming the opinion that CPH has engaged in conduct that is unacceptable for a person who is concerned in or associated with the ownership, management or operation of the business of the casino operator. As such, it is both inappropriate and unnecessary to provide your client with an unredacted version of the China Investigation Report; and
  - b. your letter confirms that your clients have had access to the China Investigation Report since 17 May 2021. In these circumstances (and further noting the extent to which the China Investigation Report has been both tendered and referred to in oral evidence at the Royal Commission, at which your client has been represented at each hearing day), the VCGLR considers that CPH has had ample opportunity to consider the matters described in that report, insofar as they relate to CPH and its officers.
3. The VCGLR is not presently minded to accept informal undertakings from CPH on a voluntary basis in circumstances where:
  - a. section 28A(4A)(b) of the CC Act provides the appropriate mechanism by which the VCGLR can require CPH to give undertakings and, if necessary, take action to enforce any breach or failure to provide them;
  - b. there is no reason why the mechanism that has been prescribed by the parliament should not be applied in these circumstances, particularly having regard to the extent to which your client has acknowledged, by its proffering of a proposed informal

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<sup>1</sup> T4038:23-33



undertaking, that action must be taken so as to mitigate the risks associated with your client's ongoing relationship with the operator of the Melbourne Casino; and


- c. any enforcement of non-compliance with the informal type of undertaking that has been proposed by your client would, in the opinion of the VCGLR, be inadequate.

Please note that the VCGLR will now proceed to both issue a formal notice to your client requiring the giving of an undertaking pursuant to section 28A(4A)(b) of the CC Act and also provide it with the form of the undertaking that it requires to be given.

Unless we hear from you otherwise, we will assume that you are content to accept service of that notice and form of undertaking on behalf of your client.

Finally, please also note that the VCGLR also intends to take steps to tender this and the various other documents that have now been created in respect of these matters and may also make such submissions on the topic as it may consider necessary.

Yours faithfully

  
**JOHN FOGARTY**  
Partner  
DLA PIPER AUSTRALIA  
