

TRIM ID: CD/23/6143

25 July 2023

Mr Samuel Frederick Tresise

Nominee

CHG Hotels

157 Moray Street

South Melbourne VIC 3205

By email only: sam.tresise@chgaustralia.com

MElefanty@bsplawyers.com.au

Dear Mr Tresise

Disciplinary action pursuant to section 3.4.25 of the *Gambling Regulation Act 2003*

On 1 May 2023, the Victorian Gambling and Casino Control Commission (**the VGCCC**) issued a Notice to Show Cause (**the Notice**) to the CHG Hotels Pty Ltd (**CHG Hotels**), in accordance with section 3.4.25 of the *Gambling Regulation Act 2003* (**the Act**).

The Notice was issued in relation to the alleged breach of section 3.6.6C of the Act, which requires that gaming tax is payable by a venue operator within 7 days after the end of the calendar month to which the tax relates.

It is alleged that CHG Hotels failed to remit gaming tax as required by the Act in February 2023 in relation to gaming that took place at the Bell's Hotel, a venue owned by CHG Hotels.

It is also alleged that CHG Hotels failed to comply with sections 1.7 and 2.3 of the Accounting and Auditing Venue Requirements (**the AAVR**).

Response to the Notice

In accordance with the terms of the Notice, according to section 3.4.25(2) of the Act, CHG Hotels was provided with 28 days to respond to the alleged breaches.

I note that CHG Hotels did not respond to the Notice within 28 days. However, a response to the Notice was received by VGCCC on 9 June 2023 (**the Response**), 11 days after the 28-day notice period.

In the Response, CHG Hotels explained that:

- the non-compliance resulted from a sequence of events that is not part of ordinary business operations and, therefore, not likely to reoccur.
- the venue is undergoing significant renovation, costing approximately \$12 million.

- the separation of the nominee and his wife (Mr and Mrs Tresise) impacted the finance approval as it requires Mrs Tresise to co-sign or approve certain loans and drawings of funds. Due to the delay in signing documents by Mrs Tresise to facilitate the renovations, Mr Tresise decided to divert funds from the business cash flow of the venue to make progress payments to builders and contractors. However, the bank did not top up the funds on the tax collection day, 7 March 2023, which caused the tax payment failure.
- in March, there was an apparent surplus in the bank account which could have been used to pay the overdue gaming tax. However, the venue believed those funds were necessarily allocated to other essential operational expenses such as staff wages, utilities, suppliers and instalment activity statements.
- in regard to the maintenance of minimum banking requirements, the venue advised they had weekly meetings with an external bookkeeping & accounting firm called On-Tap Hospitality to provide estimated figures of the tax amount when approaching the end of the month so that the venue can retain the necessary funds in its account to satisfy the tax sweep. The venue believes this process is effective.

VGCCC's decision and reasons for the decision

I have considered this matter as well as the matters raised in the Response.

I have determined that a ground for taking disciplinary action against CHG Hotels exists pursuant to section 3.4.25(1)(d)(ii) of the Act.

This is because CHG Hotels:

- breached its gaming tax obligations under the Act in February 2023 by not paying gaming tax within 7 days after the end of the calendar month to which the tax relates (as required by section 3.6.6C of the Act); and
- failed to comply with the operational requirement (the AAVR) determined by the Commission under section 10.1.5C of the Act to meet the minimum banking requirement by diverting gaming revenue (in effect, contributing to the failed tax sweep).

In determining what disciplinary action to take, the key matters I have taken into account are as follows:

- CHG Hotels failed to comply with its obligations regarding the nominated gaming bank account as per section 10.5.1C of the Act by deciding to use funds in the nominated account to pay for operational expenses instead of taxation obligations. This appears to have been a deliberate decision undertaken by Mr Tresise.
- the venue has had compliance issues in the past (see attached schedule), including an identified issue relating to keeping and maintaining separate accounts.
- CHG Hotels failed to disclose the reasons for its failure to pay the required gaming tax in a timely manner, and only did so after the VGCCC issued the Notice and after legal representation was engaged.
- subsequent to the failure to pay gaming tax (although prior to the engagement of legal representation), CHG Hotels was not responsive to the VGCCC's communications, did not respond to the Notice in a timely manner, nor had it paid the outstanding gaming taxes by the due date of the Notice, being the 29 May 2023.
- outstanding tax was remitted but only on the 2 June 2023, 87 days after the legislative due date, being the 7 March 2023 (although I recognise penalty interest has accrued in accordance with the Act).

Having considered the matters above, I have also taken into account that the venue has generally cooperated with the VGCCC (particularly after the engagement of legal representatives) and has an ongoing engagement with On-Tap Hospitality to try to assist it comply with its tax obligations. There appears to be contrition on behalf of the venue and nominee about what occurred, as well as what appears to be an unusual situation impacting upon the matter (i.e., the separation between the nominee and his wife).

Decision

Having regard to all of the relevant circumstances of this matter and particularly the need to specifically deter the venue and generally deter others from defaulting on gambling taxation obligations, I have determined it is appropriate to take disciplinary action in relation to this matter as outlined below:

- 1) a letter of censure, and
- 2) a **\$30,000** fine pursuant to section 3.4.25 of the Act. However, **\$20,000** of this fine is suspended on condition that CHG Hotels:
 - i. pays the required penalty interest amount within the timeframe specified (as detailed below).
 - ii. pays the \$10,000 portion of the fine, not suspended, within 7 days of this letter.
 - iii. pays monthly gaming tax for this venue within 7 days after the end of each calendar month to which the tax relates, for one year, commencing July 2023 to July 2024 (including July as a taxable month).
 - iv. for the avoidance of doubt, should CHG Hotels fail to pay the requisite gaming tax as outlined above, for any month during the next 12 months, the suspended fine shall become immediately payable.
 - v. should the CHG Hotels comply with the above condition, the fine shall become spent and is not required to be paid.

In regard to the late payment of gaming tax CHG Hotels is required to pay **\$5,975.89** in penalty interest which is a charge of 20% per annum on the late payment of gaming tax pursuant to section 3.6.10(1) of the Act within 7 days of this letter.

Please direct deposit the above overdue amount into the following account:

Account Name: VGCCC Revenue Account

BSB: 033-222

Account Number: 111508

Please ensure you provide **V12100010PENC9622** as the payment description to ensure the payment can be correctly attributed to your venue.

I also remind you of your obligations contained within the VGCCC's AAVR in relation to the maintenance of a nominated gaming account and the processes to ensure that all future gaming venue tax obligations can be met. It is paramount that you understand these requirements and comply with them at all times.

A copy of this decision will be retained by the VGCCC and may be taken into consideration should further grounds for disciplinary action be established in the future.

Should you require further information, please contact Tracy Shen, Manager, Data Monitoring and Assurance via return email (tracy.shen@vgccc.vic.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jason Cremona', with a small dot at the end.

Jason Cremona

Director

Regulatory Services Division

Attachment: Historical Breaches – Bell's Hotel

Licence Number	Offence Status	Offence Code	Enforcement Type	Enforcement Status	Offence Date	ShortDescription
V12100010	Finalised	3.7.3(1)	Warning Letter	Issued	14/01/2020	Venue operator failed to keep and maintain separate records, as approved by the Commission, at an ADI in the State for use for all banking transactions in relation to the operator; and failed to provide the Commission with a written authority addressed to the ADI. A warning letter was issued as a result of this breach.
V12100010	Finalised	3.5.35A(1)	Warning Letter	Issued	10/02/2021	Venue operator failed to display, or cause to be displayed, outside every entrance to a gaming machine area of an approved venue a responsible gambling sign. A warning letter was issued as a result of this breach.
V12100010	Finalised	13(1)-(GR2015)	Warning Letter	Issued	10/02/2021	Venue operator failed to ensure a player information talker is displayed on the gaming machine in an approved venue so that it is clearly visible from the front of the machine. A warning letter was issued as a result of this breach.
V12100010	Finalised	3.4.1B	Warning Letter	Issued	9/07/2022	Venue operator must comply with a standard made by the Commission under section 10.1.5B in respect of the conduct of gaming; or an operational requirement determined by the Commission under section 10.1.5C. A warning letter was issued as a result of this breach. Supplementary Description Venue operator failed to maintain a CCTV system in regards to the correct auto-embedded time, date, and camera ID on all pictures with the CCTV system being 2 hours and 6 minutes out of time.
V12100010	Finalised	3.4.1B	Warning Letter	Issued	9/07/2022	A venue operator must comply with a standard made by the Commission under section 10.1.5B in respect of the conduct of gaming; or an operational requirement determined by the Commission under section 10.1.5C. A warning letter was issued as a result of this breach. Supplementary Description Venue operator failed to maintain a CCTV system that records continuously (defined as without interruption (i.e., not motion detection) – 24 hours a day, 7 days a week - of the gaming room.
V12100010	Finalised	3.4.1B	Warning Letter	Issued	9/07/2022	A venue operator must comply with a standard made by the Commission under section 10.1.5B in respect of the conduct of gaming; or an operational requirement determined by the Commission under section 10.1.5C. A warning letter was issued as a result of this breach. Supplementary Description CCTV system unable to retain images of the gaming room for a minimum of 28 days.
V12100010	Finalised	3.5.35A(1)	Warning Letter	Issued	9/07/2022	Venue operator failed to display, or cause to be displayed, outside every entrance to a gaming machine area of an approved venue a responsible gambling sign. A warning letter was issued as a result of this breach.