

RULING

Background

1. On 13 September 2021 I was appointed by the Independent Liquor and Gaming Authority of NSW (**Authority**) pursuant to sections 143(1) and 143A of the *Casino Control Act 1992* (NSW) (**Act**) to conduct a review into the continuing suitability of The Star Pty Ltd (**The Star**) to be concerned in or associated with the management and operation of the Star Casino in Sydney (**Review**). Terms of Reference for the Review were published on 13 September 2021 and updated on 14 December 2021 (**Terms of Reference**).
2. My Instrument of Appointment dated 13 September 2021 specified that I have the powers, authorities, protections and immunities conferred on a commissioner by Divisions 1 and 2 of the *Royal Commissions Act 1923* (NSW) (**RC Act**). This meant that section 17(1) of the RC Act applies to all persons producing documents to the Review in response to a summons issued by me pursuant to section 8 of the RC Act. Section 17(1) provides that a witness summoned to attend or appearing before the Review is not excused from answering any question or producing any document or other thing on the ground that the answer or production make criminate or tend to criminate the witness, or on the ground of privilege, or on the ground of a duty of secrecy or other restriction on disclosure, or any other ground.
3. Section 143(1) of the Act contemplates the holding of inquiries in public or in private. On 19 October 2021 the Authority announced that public hearings of the Review would be held on certain matters, including The Star's maintenance and administration of systems to counter money laundering and infiltration by organised crime.

4. On 30 September 2021 I published a Document Management Policy (**Policy**) for the management of documents produced to the Review. The Policy was provided to The Star. The Policy included the following provisions:
 6. The Review will proceed on the assumption that documents produced to it can be disclosed publicly. That assumption will apply unless the provider of documents notifies otherwise.
 7. Providers of documents must identify the documents or parts of documents (if any) which they claim should not be disclosed publicly on the basis of privilege or confidentiality or any other basis. Considered reasons must be given in support of each such claim.
 8. The Review expects providers of documents to adopt a measured and sensible approach when claiming that documents or parts of documents should not be disclosed publicly. Mr Bell SC will consider all such claims. If you consider that such a claim has not been made out, he will notify the relevant provider of those documents of his decision.
5. The Policy was updated on 17 December 2021 to deal with documents produced electronically but no changes were made to the relevant provisions of the Policy set out above.
6. Since October 2021 The Star and its ultimate holding company, Star Entertainment Group Ltd (**Star Entertainment**), have produced documents to the Review in answer to summonses issued by me. Whilst the Star and Star Entertainment identified documents which were claimed to be privileged or confidential, no reasons were given in support of those claims.
7. By letter dated 25 November 2021 the solicitors assisting the Review requested The Star to produce a number of witness statements. The letter asked The Star to note that:

Any claim for confidentiality should be made at the time that the statements are provided and the documents or parts of documents in respect of which confidentiality is claimed should be identified in blue shade. Reasons should be provided for each claim of confidentiality.
8. Between 4 and 8 February 2022, The Star provided 14 witness statements in response to that request, each of which had a number of attached documents. A supplementary witness statement was provided on 4 March 2022. However, notwithstanding the terms of the 25 November 2021 letter, The Star did not identify any respect in which any of the statements or any of the attachments to those statements were claimed to be confidential.

9. On 17 February 2021 it was announced that public hearings of the Review would commence on 17 March 2021. On 17 February 2021 I published Procedural Guidelines relating to the public hearings of the Review (**Guidelines**). The Guidelines were provided to The Star. The Guidelines contained the following provisions:
- 19. Where a claim for confidentiality is sought to be made in respect of any part of a witness statement or annexure or attachment thereto the extent of the claim should be indicated to those assisting the Review by blue shading. The basis for any confidentiality claim should be precisely stated at the time that the witness statements and their annexures or attachments are provided to those assisting the Review.
 - ...
 - 54. Relevant parts of the Review's online Hearing Book (**Hearing Book**) will be accessible to Participants. ...
 - ...
 - 58. Those assisting the Review will provide access to the Hearing Book as soon as feasible prior to the commencement of the relevant hearing. Those assisting the Review will have regard to any claims for confidentiality the bases for which have been precisely stated at the time of production of documents and which have been accepted by Mr Bell SC. All claims for confidentiality over a document or part thereof not already accepted by Mr Bell SC should be notified to the Review within two (2) business days of receiving access to the Hearing Book, and within one (1) business day of receiving a supplement to the Hearing Book. Where a claim for confidentiality is made the precise basis for the claim should be stated in writing and the claiming party should identify the documents or parts of documents claimed to be confidential with blue shading.
10. On 1 March 2022 the solicitors assisting the Review wrote to the solicitors for The Star noting that The Star had not notified any confidentiality claims in relation to The Star's witness statements or their attachments. The Star was invited to inform the solicitors assisting the Review by 8 March 2022 of any confidentiality claim made by The Star in respect of both the witness statements and the documents referred to in the statements. The solicitors assisting the Review pointed out that a reasoned basis should be provided for each confidentiality claim.
11. The Hearing Book was provided to The Star on the evening of 7 March 2022. The Hearing Book contained the witness statements and their attachments in Part A and in Part B contained a chronological set of documents to be deployed in the public hearings, including documents produced by The Star in answer to summonses.

12. On 9 March 2022 The Star applied for a non-publication direction pursuant to section 143B of the Act in relation to 773 documents which were contained in Part A of the Hearing Book. On 11 March 2022 The Star applied for a non-publication direction pursuant to section 143B of the Act in relation to a further 1,482 documents contained in Part B of the Hearing Book. I will refer to all of the documents in respect of which non- publication orders are sought by The Star as the **Relevant Documents**. The Star has provided to the Review:
- (a) written submissions in support of its applications;
 - (b) Excel spreadsheets which identify the Relevant Documents, as well as the bases on which the non-publication directions are sought in respect of each; and
 - (c) copies of Relevant Documents shaded in blue, yellow or orange, to identify the text in respect of which The Star seeks a non-publication direction for part of a document only.
13. As the public hearings of the Review are commencing next Thursday, 17 March 2022, it is now necessary to rule on these applications in circumstances of extreme urgency.

The Relevant Provision

14. Section 143B(2) of the Act provides that a non-publication direction is not to be given unless I am satisfied that the direction is necessary in the public interest or that there are other exceptional circumstances that require the direction to be given. In relation to the first limb of that test, the High Court noted in a similar context that “‘necessary’ is a strong word” and it is “insufficient that the making or continuation of an order ... appears ... to be convenient, reasonable or sensible, or to serve some notion of the public interest, still less that, as the result of some ‘balancing exercise’, the order appears to have one or more of those characteristics”.¹

Submissions

15. The Star submits that part of the relevant legislative context is section 17 of the *Gaming and Liquor Administration Act 2007* (NSW) (**GALA Act**). That section prohibits the

¹ *Hogan v Australian Crime Commission* (2010) 240 CLR 651 at 664 [30], [31] per French CJ, Gummow, Hayne, Heydon and Kiefel JJ.

making of a record or divulging of information acquired in the exercise of functions under the gaming and liquor legislation (which includes the Act) “except in the exercise of functions under the gaming and liquor legislation”. The Star also makes reference to the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**). The Star notes that section 14 of and Schedule 1 to the GIPA Act have the effect of providing that there is an overriding public interest against disclosure of information to which section 17 of the GALA Act applies. The Star points out that the GIPA Act also sets out a list of other public interest considerations to be taken into account by a decision-maker under that Act as public interest considerations against disclosure.

16. The Star submits that Parliament’s assessment of the public interest in the secrecy of various categories of information under the GIPA Act ought to guide the Review in determining whether it is necessary in the public interest to make a non-publication direction under section 143B of the Act.
17. The Star submits that there are three broad classes of considerations which justify non-publication orders in respect of the Relevant Documents: the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**AML/CTF Act**) and an exemption under the AML/CTF Act provided to The Star to permit it provide certain information to the Review (**Exemption**); legal professional privilege; and public interest considerations.
18. The Star points out that the Exemption contains specific conditions, including at section 8 as follows:
 - (5) Star must use best endeavours to obtain an order under section 143B of the [Act] that any AUSTRAC information provided to the Independent Liquor and Gaming Authority of New South Wales’ Review of the Star Pty Ltd by Star, will not be published.
 - ...
 - (7) Star must redact, or remove all reference to, and text of, suspicious matter reports contained within the AUSTRAC information prior to its disclosure to the Independent Liquor and Gaming Authority of New South Wales’ Review of the Star Pty Ltd.

19. The Star submits that documents provided pursuant to the Exemption should be the subject of a non-publication direction.²
20. The Star submits that documents attracting legal professional privilege should be the subject of a non-publication direction to the extent that the privilege might apply to them.³ Extensive submissions focussed on the proper bases for claims for legal professional privilege.
21. The Star submits that there are five categories of “public interest considerations” in favour of a non-publication direction for documents which fall into those categories.⁴ These categories are:
 - (A) public disclosure could reasonably be expected to prejudice effectiveness of a lawful method for preventing, detecting, investigating or dealing with a contravention or possible contravention of law;
 - (B) public disclosure would disclose information concerning the system of internal controls and administrative and accounting procedures for a casino;
 - (C) public disclosure could reasonably be expected to reveal an individual’s personal information;
 - (D) public disclosure could reasonably be expected to prejudice a person’s legitimate business, commercial, professional or financial interests; and
 - (E) public disclosure could reasonably be expected to diminish the competitive, commercial value of the information.

Consideration

22. The test set out in section 143B(2) of the Act must be addressed by reference to the context of this Review. Here, as paragraph 1 of the Terms of Reference makes clear, the context is a review of the suitability of The Star as casino operator, and each close associate of it, to continue to be concerned in or associated with the management and

² Submissions, 9 March 2022, paras 11-14, 44-46.

³ Submissions, 9 March 2022, paras 17-30.

⁴ Submissions, 9 March 2022, paras 31-43.

operation of The Star casino. These questions of suitability are matters of very significant public interest in New South Wales. The Terms of Reference indicate that this Review must pay regard to the primary objects of the Act which are set out in section 4A, namely:

- (a) ensuring that the management and operation of a casino remain free from criminal influence or exploitation;
 - (b) ensuring the gaming and a casino is conducted honestly; and
 - (c) containing and controlling the potential of a casino to cause harm to the public interest and to individuals and families.
23. The fact that the broadest powers under the RC Act have been accorded to this Review is also a recognition of the significant public interest in the work of the Review. These considerations are emphasised by the fact that the public hearings of the Review are considering serious issues relating to money laundering and infiltration by organised crime.
24. In my opinion, Section 17 of the GALA Act has no application to the relevant considerations identified in section 143B(2) of the Act which govern this application. Section 17 of the GALA Act relevantly prohibits the making of a record or divulging of information acquired in the exercise of functions under the Act, “except in the exercise” of those functions.⁵ Here, I am exercising functions under the Act and thus the exception in s 17 of the *Gaming and Liquor Administration Act* applies. I do not draw any assistance from s 17, nor from the treatment given to that section under the GIPA Act. Nor do I consider that the provisions of the GIPA Act relating to the disclosure of “government information” as defined in that Act are of assistance in resolving this application.
25. I turn to consider the three bases on which The Star contends that non-publication orders should be made. In the time available before the commencement of the public hearings it is not possible for me to consider each of the 2,255 documents individually to which the applications relate. I propose to consider the principles relevant to the

⁵ Submissions, 9 March 2022, paras 8-10.

bases for non-publication identified by The Star and make rulings in relation to them. This will permit the solicitors assisting the Review and the solicitors for The Star, acting co-operatively in the limited time available before the public hearings commence, to identify and appropriately mark up the documents or parts of documents in accordance with those rulings. In the circumstances I propose to make rulings which apply subject to any further direction by me, so as to permit The Star, should it think fit to do so, to make further application in relation to any particular documents or categories of information which it wishes to submit should be the subject of further consideration by me.

26. I accept the submission that documents produced to the Review as a result of the Exemption should be the subject of a non-publication direction.
27. For present purposes I will assume, without deciding, that legal professional privilege applies to each of the documents or parts of documents claimed by The Star. However, whilst legal professional privilege indicates that a communication occurred in a confidential setting, I do not accept the submission that legal professional privilege in and of itself is a basis for a non-publication direction under section 143B(2) of the Act to the extent that the privilege applies. The context of the Review which I have identified indicates that the Review has been conferred powers to investigate, among other things, money laundering and infiltration by organised crime in The Star casino in order to protect the public interest. In my opinion, the public interest is best served by illuminating, rather than obscuring, that investigation. The fact that a document is privileged does not, in and of itself, determine whether it is necessary in the public interest to direct non-publication or otherwise indicate that exceptional circumstances exist warranting non-publication.
28. In respect of what are submitted to be public interest considerations, categories A and B can be dealt with together. They are, respectively:
 - (a) documents where public disclosure “could reasonably be expected to prejudice effectiveness of a lawful method for preventing, detecting, investigating or dealing with a contravention or possible contravention of law”; and

- (b) documents where public disclosure “would disclose information concerning the system of internal controls and administrative and accounting procedures for a casino”.
29. The Star is concerned about potential malicious actors exploiting inadequacies in its systems. I accept in principle that this is a legitimate concern warranting non-disclosure. The difficulty is that “considered reasons”⁶ have not been provided to explain why the disclosure of particular documents could reasonably be expected to prejudice the effectiveness of methods for preventing or dealing with contraventions of the law or, e.g., why historical controls or procedures are of sufficient importance that a direction for non-disclosure is necessary in the public interest. In this regard I will direct non-publication of all information which:
- (a) constitutes The Star’s current internal controls and standard operating procedures, or parts of documents that record such information;
 - (b) records communications between The Star and the NSW Police and any other law enforcement agency (excluding AUSTRAC) about patrons; or
 - (c) records the identity of whistle-blowers or patrons who have been excluded by law enforcement agencies or who have self-excluded.
30. Category C is documents where public disclosure “could reasonably be expected to reveal an individual’s personal information”. I accept the submission in respect of this category. I will direct that individuals’ personal information recorded in documents comprising their home address, telephone number, signature, date of birth, passport number, driver’s licence number, bank account details, and credit or debit card details not be published.
31. Categories D and E can be dealt with together. They are, respectively:
- (a) documents where public disclosure “could reasonably be expected to prejudice a person’s legitimate business, commercial, professional or financial interests”; and

⁶ See the Review’s “Policy – Document Management”, 30 September 2021, para 7; and “Policy – Document Management”, 17 December 2021, para 8.

(b) documents where “public disclosure could reasonably be expected to diminish the competitive, commercial value of the information”.

32. These categories require more precision in their identification. It is recognised that “the law may protect from disclosure trade secrets and personal or commercial information, the value of which, as an asset, would be seriously compromised by disclosure”.⁷ As for commercial sensitivity, it is a “substantial hurdle” for material to be the subject of a suppression or non-publication order on that basis⁸ – one occasion where that hurdle was held to have been cleared in the Federal Court was evidence of “what might conveniently be described in general terms as details of [a party’s] business model and contractual arrangements with its suppliers”.⁹ Even then, it is necessary to identify commercially confidential information with precision: in one case the NSW Supreme Court had “taken the opportunity to review the affidavit with counsel paragraph by paragraph”¹⁰ and in another, individual terms of a contract were considered with “boilerplate” terms rejected as confidential.¹¹ I will direct non-publication of documents recording The Star’s commercial information the value of which, as an asset, it can be inferred from the face of the document would be seriously compromised by disclosure.

33. Accordingly pursuant to s 143B(1) of the Act, I make the following direction in respect of the Relevant Documents:

Subject to any further direction by me, I direct that the following information produced by The Star to the Review is not to be published other than to the Review and the persons assisting it:

(a) suspicious matter reports and other “AUSTRAC information” under the AML/CTF Act;

⁷ *Wright Prospecting Pty Ltd v Hamersley Iron Pty Ltd [No. 3]* [2013] NSWSC 1069 at [44] per Hammerschlag J.

⁸ *Poole v Australian Pacific Touring Pty Ltd* (2019) 139 ACSR 264 at 266 [7] per Bromwich J.

⁹ *Poole v Australian Pacific Touring Pty Ltd* (2019) 139 ACSR 264 at 267 [11] per Bromwich J.

¹⁰ *Onefone Australia Pty Ltd v One.Tel Ltd* [2009] NSWSC 821 at [2] per Barrett J..

¹¹ See *Wright Prospecting Pty Ltd v Hamersley Iron Pty Ltd [No. 3]* [2013] NSWSC 1069 at [53]-[65] per Hammerschlag J.

- (b) documents which constitute The Star's current internal controls and standard operating procedures or parts of documents that record such information;
- (c) those parts of documents which record communications between The Star and the NSW Police and any other law enforcement agency (excluding AUSTRAC) about patrons;
- (d) those parts of documents which record the identity of whistle-blowers or patrons who have been excluded by law enforcement agencies or who have self-excluded;
- (e) individuals' personal information comprising their home address, telephone number, signature, date of birth, passport number, driver's licence number, bank account details, and credit or debit card details; and
- (f) commercial information of The Star the value of which, as an asset, it can be inferred from the face of the document would be seriously compromised by disclosure.

34. Whilst I have no express power to direct this, I would expect the solicitors assisting the Review and the solicitors for The Star to co-operate to ensure that the Hearing Book is urgently updated to implement this ruling so that the public hearings of the Review can proceed efficiently on 17 March 2022.

Dated: 11 March 2022

ADAM BELL