

16 February 2024

Matthew Elefanty  
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Dear Mr Elefanty

**Re: Disciplinary Action against Myndit Pty Ltd (Myndit)**

I refer to the disciplinary proceedings against Myndit for the matters set out in the show cause notice issued to Myndit on 2 November 2023 (**Notice**).

For the reasons set out in the attached decision and reasons, the Victorian Gambling and Casino Control Commission (**VGCCC**) has decided to take disciplinary action against Myndit under section 3.4.25(4) of the *Gambling Regulation Act 2003* (**the Act**).

The VGCCC has decided to impose a fine of \$80,000 against Myndit in this matter. Payment of the total fine amount of \$80,000 must be made to the VGCCC within 28 days of the date of the decision, or such later time as agreed by the VGCCC.

The VGCCC has decided to require Mr Peter James Houghton (the sole director and the nominee of Myndit) to give a written undertaking to the VGCCC under section 10.4A.9 of the Act. The VGCCC will write to you separately about this matter.

If you have any queries, please contact me on (03) 9297 8607 or by email at [glorija.kuzman@vgccc.vic.gov.au](mailto:glorija.kuzman@vgccc.vic.gov.au).

Yours sincerely



**Glorija Kuzman**  
Director Gambling Division

Encl.

# Decision and reasons for decision

## Introduction

1. This disciplinary action against Myndit Pty Ltd (**Myndit**) concerns two separate incidents (occurring over approximately 13 months) relating to the payment of gambling winnings in a manner inconsistent with *Gambling Regulations Act 2003* (Vic) (**the Act**) and the Accounting and Auditing Venue Requirements (**AAVR**). In summary, the two incidents relate to the failure to comply with the prescribed AAVR operational requirements in relation to cheque payments.
2. The AAVR prescribed operational requirements are critical to the integrity of gambling systems and promote the purposes and objectives of the relevant legislation.<sup>1</sup> The requirements for payment by cheques is to limit access to cash at the gambling venue and to require players to decide outside the gaming environment, whether to gamble further winnings. These requirements are part of measures that serve to ensure that the management of gaming equipment is free from criminal influence.
3. The Victorian Gambling and Casino Control Commission (**VGCCC**) considers that there are grounds to take disciplinary action against Myndit under section 3.4.25 of the Act, having issued a notice to show cause on 2 November 2023 under section 3.4.25(2) of the Act (**Notice**).
4. Myndit is the holder of a gaming venue operator's licence V9210149 (**Licence**), at the premises known as the Rye Hotel (**venue**), situated at 2415 Point Nepean Road, Rye. The Licence allows the operation of thirty (30) electronic gaming machines (**EGM**). Mr Peter James Houghton is the sole director and the nominee of Myndit.

## Summary

5. For the reasons that follow, the VGCCC is satisfied that there are grounds for disciplinary action and has determined to fine Myndit \$80,000.<sup>2</sup>
6. The VGCCC considers that Mr Houghton has engaged in conduct that is unacceptable for the reasons set out below. Accordingly, the VGCCC will also require Mr Houghton to give a written undertaking under section 10.4A.9 of the Act. The effect of the undertaking will be that My Houghton will cease to be the nominee of Myndit, and he will sell the Rye Hotel business to an unrelated venue operator. My Houghton has also confirmed he will depart the gambling industry following the sale of shares in a second venue operator. Further, the undertaking ensures that he will not obtain any new financial interest in, or be employed by, any gambling industry participant related to EGMs, without prior notification to the VGCCC.

## Grounds for disciplinary action as stated in the Notice

7. The VGCCC has published the AAVR which comprise of operational requirements for the purposes of section 10.1.5C of the Act. Relevant extract of section 2 of the AAVR include:

*'A 'large win register' must be maintained to allow for identification and monitoring of all significant/large gaming machine wins as well as all payments made via cheque or EFTPOS (regardless of the amount). The register must enable the identification and verification of the large win details and also the patron to which the payout was made.'*

<sup>1</sup> Section 3.1.1 of the Act and section 8A of the *Victorian Gambling and Casino Control Commission Act 2011*.

<sup>2</sup> Section 3.4.25(4) of the Act.

8. Section 3.4.1B of the Act requires that a venue operator must comply with any such operational requirements set out in the AAVR. Contravention is grounds for disciplinary action under section 3.4.25(1) of the Act.
9. The grounds for disciplinary action set out in the Notice are not restated in full in these reasons. In summary, the grounds for disciplinary action are that:
  - (a) Section 3.4.25(1)(d)(ii) of the Act – that Myndit has contravened a provision of the Act (being a provision a contravention of which does not constitute an offence) (**Ground 1**).
  - (b) Section 3.4.25(1)(g) of the Act – that Myndit is not, or is no longer, a suitable person to conduct the activities authorised by the Licence, having regard to the matters set out in section 3.4.11(2), in particular:
    - (i) That Myndit, and its associate and nominee Peter Houghton, is not of good repute, having regard to character, honesty and integrity (s3.4.11(2)(a)); and/or
    - (ii) That the director, Mr Houghton, is not a suitable person to act in that capacity (s3.4.11(2)(d)) (**Ground 2**).

*Ground 2 – Decision not to make a determination on whether Myndit and/or Mr Houghton are not suitable persons*

10. In respect of Ground 2, the VGCCC does not intend to make a determination on the suitability of Myndit and or Mr Houghton as suitable persons. This because the VGCCC has been notified that Myndit has entered into an agreement to sell its business and assets to another venue operator. Following completion of that sale, Myndit and Mr Houghton's intention is that they will depart from the gaming industry voluntarily and will not operate any gambling venues.
11. Mr Houghton is also an approved associate of the venue operator of the Cross Keys Hotel. He is one of four (4) directors each who hold a 25% interest. Further, Mr Houghton's intention is also to sell these shares consistent with his intention to depart from the gaming industry. The shareholders have signed a memorandum of understanding that sets out the steps they have committed to undertake to finalise this sale.
12. In relation to Mr Houghton, the VGCCC has required an undertaking that he no longer be the nominee of Myndit, and that he takes necessary steps to ensure the sale of the Rye Hotel business. The undertaking also requires My Houghton to have no future involvement in the gambling industry without prior written approval of the VGCCC.

**Factual background of breaches**

*February 2022 incident*

13. The VGCCC received an anonymous complaint, alleging that on 16 February 2022, the venue had "...paid more than \$2,000 in cash, not cheque, then made a cheque out to another staff member's wife to cover incident...". The payment would be a breach of section 3.5.33(1) of the Act, as more than \$2,000 in winnings was paid out in cash to a patron, rather than by cheque.<sup>3</sup>
14. The VGCCC investigated this allegation and identified the events referred to below in paragraphs 15 to 22.

<sup>3</sup> Section 3.5.33(2) of the Act provides that where a patron has \$2,000 or more of accumulated credits, a venue operator must pay out those credits to the patron by cheque on request. Section 3.5.33(1) provides that a payment may only be made in accordance with this section of the Act. A breach of this provision attracts a penalty of 60 penalty units.

15. On 16 February 2022 at around 9:40pm, Ms Brigit Temme, an employee of Myndit, paid \$2,039 in cash to an unidentified male patron for prize winnings won on EGM floor position 13.<sup>4</sup> The venue's CCTV footage confirms that Ms Temme counted \$2,039 in cash and then paid out the sum to an unidentified male patron in cash.<sup>5</sup> That patron subsequently left the venue.
16. It was later discovered by Andrew Papettas (Duty Manager) and Daniel McLoughlin (General Manager) that Ms Temme had made the payment in cash.<sup>6</sup>
17. Mr Houghton (sole director and the nominee of Myndit) was aware of the incident. He was present in the venue on that night.
18. Mr Houghton had discussions with Mr Papettas and another employee during which he told them to "fix it", Mr Papettas said words to the effect that "he would get the money" and that his wife, Ms Papettas, would be involved in the scheme to "fix the matter".<sup>7</sup>
19. Around midnight on 16 February 2022, Mr Houghton signed a blank cheque provided to him by Mr Papettas that he was aware pertained to the incident.<sup>8</sup>
20. On 17 February 2022 at or around 1:25am, Mr Papettas made the cheque out to Ms Papettas in the sum of \$2,039 and co-signed the cheque.<sup>9</sup>
21. Mr Papettas also made a corresponding entry of the cheque made out to Ms Papettas in the large win register for 16 February 2022. Ms Papettas was not at the venue on this day.
22. The voucher report generated from Intralot Gaming Services Pty Ltd (IGS) correlates that there was only one transaction of \$2,039 paid at around 9:40pm.<sup>10</sup>

#### *March 2023 incident*

23. On 16 March 2023 at or around 12:27am, Patron A accumulated winnings on EGM floor position 6 at the venue of \$3,914.80. Patron A spoke to Mr Dowling (Assistant Manager) and Mr Dowling advised Patron A that he could not issue a cheque without appropriate identification. Patron A was provided with a book pay slip as evidence of his winnings and was instructed to return to the venue with his identification and the book pay slip to be issued a cheque for his winnings.<sup>11</sup>
24. On 17 March 2023 at or around 10:00pm, Patron A returned to the premises accompanied by a second person. Patron A and the second person spoke with Mr Edouard Camus (Assistant Manager). Patron A presented his book pay slip with his name on it and requested that Mr Camus issue the cheque in the name of the second person. Mr Camus did not inform Patron A that the cheque had to be made out to him as the winner of the amount in the book pay slip and could not be made out to the second person. Rather he proceeded to complete the necessary internal paperwork to issue the cheque to the second person.<sup>12</sup>

<sup>4</sup> Book payment voucher no. 0662019 dated 16 February 2022.

<sup>5</sup> CCTV footage date stamped 16 February-2022 at 9:39 pm.

<sup>6</sup> Letter from BSP Lawyers dated 7 March 2023, at paragraph D.

<sup>7</sup> Letter from BSP Lawyers dated 14 February 2023, at paragraph 4.

<sup>8</sup> Transcript of Record of Interview (ROI) conducted with Peter Houghton and VGCCC, dated 27 January 2023, see questions 223 to 226 and 227 to 230. Letter from BSP Lawyer dated 7 March 2023, paragraph G.

<sup>9</sup> Bendigo Bank cheque no. 005408 dated 16 February 2022.

<sup>10</sup> IGS Voucher Report, EGM Description: SFL [13 - 3334025749 -157362] at page 6.

<sup>11</sup> Book payment voucher no. 0662856 dated 16 March 2023.

<sup>12</sup> Letter from BSP Lawyers dated 26 April 2023, at paragraph 4.

25. On 17 March 2023 at or around 10:15pm, Mr Camus brought the cheque to Mr Dowling to be co-signed. Mr Dowling signed the cheque without reviewing the book pay slip meaning he was not aware that the cheque was being paid to a different person to that named on the book pay slip.<sup>13</sup> The CCTV footage at the venue confirms that the individual to whom the cheque was paid to was not the same individual who was playing the EGM 6 at the time of the win on 16 March 2023.<sup>14</sup>
26. The payment was recorded in the register as made out to Patron A for accumulated winning on EGM 6 on 16 March 2023. However, a cheque was issued to a different patron name on 17 March 2023.
27. On 20 March 2023 the cheque was cashed, and those funds were deducted from the venue's gaming prizes account.
28. On 3 April 2023, while undertaking an internal audit of the payments for March 2023, the anomaly was detected. Myndit self-reported the matter to the VGCCC on 26 April 2023.

### Contraventions

#### *Ground 1 – Myndit has contravened a provision of the Act*

29. Based on the matters set out below, the VGCCC is satisfied that Myndit failed to maintain a register in compliance with section 2 of the AAVR as follows:
  - (a) February 2022 incident – the entry in the large win register did not record the correct details as to the reason for payment, and the payee details to allow for the identification and verification of the patron to which the payment was made, therefore in breach of subsection 3.4.1B(1) of the Act; and
  - (b) March 2023 incident – the entry in the large win register did not enable the identification and verification of the details of the payment and patron to which the payout was made, therefore in breach of subsection 3.4.1B(1) of the Act.

### Appropriateness of a fine

30. Section 3.4.25(1) provides that the disciplinary action that the VGCCC may take is any of the following:
  - (a) *the cancellation or suspension of the venue operator's licence;*
  - (b) *the variation of the conditions of the venue operator's licence;*
  - (c) *the issuing of a letter of censure to the venue operator;*
  - (d) *the imposition of a fine not exceeding an amount that is 5000 times the value of a penalty unit fixed by the Treasurer under section 5(3) of the **Monetary Units Act 2004** on the venue operator;*
31. The VGCCC has taken account of Myndit's submissions dated 14 February 2023, 7 March 2023, 26 April 2023, 30 November 2023 and 18 January 2024 including the remedial steps described in those submissions.
32. In the exercise of its discretion in section 3.4.25(4) of the Act, the VGCCC has determined that the appropriate disciplinary action is to impose a fine of \$80,000 for Ground 1.

<sup>13</sup> Letter from BSP Lawyers dated 26 April 2023, at paragraph 7.

<sup>14</sup> CCTV footage date stamped 17 March 2023 at 10:15 pm.

33. Myndit submitted that should the VGCCC be minded to take disciplinary action, a letter of censure and/or a monetary fine will be appropriate as it has appropriately mitigated the risks associated with the February 2022 and March 2023 incidents.<sup>15</sup>
34. The VGCCC does not consider that a letter of censure would be a sufficient and proportionate sanction, having regard to the following:
- (a) the objective seriousness of this matter: As stated above, the February 2022 and March 2023 incidents relate to contraventions of provisions that are critical to the integrity of gambling systems and promote the purpose and objective of the Act. Maintaining accurate and reliable record keeping is an integral part of ensuring compliance with the Act.
  - (b) the February 2022 incident is conduct that relates to the involvement of a nominee and senior officers of the Myndit in the creation of a false document; and
  - (c) there is a need in this matter for both general and specific deterrence. In particular, there is a need to ensure that the price of such contraventions is sufficiently high to deter Myndit as well as other venue operators from engaging in similar conduct.<sup>16</sup>

#### Single fine for both contraventions for Ground 1

35. The VGCCC has determined, that although there are two separate contraventions of the Act, in respect of this matter, it will proceed under section 3.4.25(1) of the Act to issue a single fine for both contraventions.

#### Setting the fine

36. The VGCCC has set out its approach to setting a fine when taking disciplinary action in other determinations, but it does intend to restate its approach here.<sup>17</sup>
37. The VGCCC provides its reasons for concluding that a fine of \$80,000 is an appropriate penalty in all the circumstances of this case.
38. *First*, the maximum penalty is 5,000 times the value of a penalty unit.<sup>18</sup> At the time of the conduct that gave rise to this decision, the value of a penalty unit for the February 2022 incident was \$181.74, meaning that the maximum fine that the VGCCC can impose is \$908,700. The value of a penalty unit for the March 2023 incident was \$184.92, therefore the maximum fine that the VGCCC can impose is \$924,600.
39. A fine of \$80,000 is less than 9% of the maximum fine that can be awarded. The quantum of fine in this case can be appropriately classified as being in the low range of penalty available. The VGCCC considers that a fine at this level is at the appropriate range and is proportionate to the February 2022 and March 2023 incidents. However, a fine at the lower range should not be misunderstood to suggest that the contraventions giving rise to the grounds for disciplinary action were not serious.

<sup>15</sup> Letter from BSP Lawyers dated 7 March and 30 November 2023.

<sup>16</sup> *Australian Securities and Investments Commission v Westpac Banking Corporation* [2019] FCA 2147, [255] (Wigney J); *Pattinson*, [17] (Kiefel CJ, Gageler, Keane, Gordon, Steward and Gleeson JJ).

<sup>17</sup> See the VGCCC's reasons for decision in disciplinary action taken against the casino operator for the 'China Union Pay' process ([https://www.vgccc.vic.gov.au/sites/default/files/vgccc\\_decision\\_-\\_china\\_union\\_pay\\_0.pdf](https://www.vgccc.vic.gov.au/sites/default/files/vgccc_decision_-_china_union_pay_0.pdf)) and Responsible Service of Gambling failings ([https://www.vgccc.vic.gov.au/sites/default/files/reasons\\_for\\_decision\\_rsg\\_da.pdf](https://www.vgccc.vic.gov.au/sites/default/files/reasons_for_decision_rsg_da.pdf)).

<sup>18</sup> Section 3.4.25(1)(d) of the Act.

40. *Second*, the VGCCC has taken into account the size of Myndit when considering the appropriate level of penalty. In particular, the fine of \$80,000 factors that Myndit operates only one gaming venue with 30 EGMs.
41. *Third*, in setting the fine for this matter, general and specific deterrence are important factors that weigh heavily on the VGCCC. The need for deterrence is particularly high given the February 2022 incident, that involved conduct of the nominee and senior staff members of Myndit. There is a need to deter breaches by other venue operators involving similar AAVR requirements.
42. *Fourth*, the VGCCC has considered in detail the submissions made by Myndit and the remedial steps taken following the February 2022 and March 2023 incidents. All of these are appropriate mitigating factors that have weighed in favour of a fine in the lower range of the maximum penalty.
43. *Fifth*, there are significant aggravating factors in relation to the February 2022 incident. As stated above, the February 2022 incident involved, senior staff members of Myndit. Mr Houghton played a key role in the February 2022 incident. As a sole director and nominee of Myndit, Mr Houghton owed a fiduciary duty to act in the best interest of the company.
44. Myndit accepted that the cheque prepared and signed by Mr Houghton and Mr Papettas depicts "a false transaction record that did not occur".<sup>19</sup> However, Myndit rejects the VGCCC's assertion that Mr Houghton "colluded to make a false or inaccurate entry" in the large win register.
45. It was also of particular concern to the VGCCC that the direction to "fix" the February 2022 incident by Mr Houghton, did not result in any steps taken to properly mitigate the contravention.
46. The VGCCC finds that deliberate steps were taken by senior staff members of Myndit (i.e. Mr Papettas and Mr Houghton) to create false records. The VGCCC also finds that this was done for the purposes of concealing a contravention of the Act.
47. Furthermore, Myndit failed to self-report the February 2022 incident. If it were not for the anonymous complaint, this incident may not have come to light.
48. The VGCCC accepts that Myndit, self-reported the March 2023 incident. However, this self-report did not occur immediately but approximately 5 weeks after the March 2023 incident.
49. *Sixth*, Myndit is not entitled to the leniency that would generally be accorded for a first contravention of the Act. This is because the Victorian Commission for Gambling and Liquor Regulation (VCGLR) previously issued a warning notice to Myndit for a breach of section 3.5.33(1) of the Act on 28 April 2018, for a similar type of contravention. In that case, a customer at the venue was paid out \$2000 in cash for a total accumulated credit of \$2000.<sup>20</sup> This information was reported to the VCGLR via an anonymous source as opposed to a self-report by Myndit.

### Licence Conditions

50. Myndit has offered a set of conditions to be imposed on its Licence. These include conditions aimed to improve its systems and processes, to ensure future compliance with the Act.

<sup>19</sup> BSP Lawyers letter dated 7 March 2023.

<sup>20</sup> WAR-4925

51. As there is an imminent sale of Myndit, there is limited utility in accepting short lived conditions that will not endure post the completion of the sale of Myndit. The VGCCC will continue to monitor Myndit compliance with the Act pending the completion of the sale.
52. If the sale of Myndit were to be delayed, it is open to the VGCCC to impose appropriate conditions on the Licence if there is a likelihood it will continue in operation for any substantial period of time.