

Decision and reasons for decision

In the matter of two disciplinary actions against Australian Leisure and Hospitality Group Pty Ltd (**ALH**) under section 3.4.25 of the *Gambling Regulation Act 2003* (Vic) for contravening sections 3.4.25(1)(d)(i) and 3.4.25(1)(d)(ii).

Commission: Andrew Scott, Acting Chair
Ron Ben-David, Deputy Chair
Claire Miller, Commissioner
Chris O'Neill, Commissioner

Date of decision and reasons: 20 December 2023

Decision: For the reasons attached to this decision, the Victorian Gambling and Casino Control Commission has decided to take two disciplinary actions against Australian Leisure and Hospitality Group Pty Ltd under section 3.4.25 of the *Gambling Regulation Act 2003* and impose:

- i. a fine of \$420,000 for contravening sections 3.4.25(1)(d)(i) and 3.4.25(1)(d)(ii) at six separate ALH venues, namely First and Last Hotel, Croxton Park Hotel, Albion Charles Hotel, Berwick Inn Taverner, The Millers Inn Hotel, Village Green Hotel, as well as contravening section 3.4.25(1)(d)(ii) at one ALH venue, namely Elsterwick Hotel; and
- ii. a fine of \$60,000 for contravening sections 3.4.25(1)(d)(i) and 3.4.25(1)(d)(ii) at one ALH venue, namely Boundary Taverner.

Signed:



Andrew Scott

Acting Chair

Contents

Decision and reasons for decision	1
Introduction	3
Summary	3
Background	3
Grounds for disciplinary action	4
Contraventions	4
Elsternwick Hotel	5
First and Last Hotel	5
Croxton Park Hotel	6
Albion Charles Hotel	6
Berwick Inn Taverner	6
The Millers Inn Hotel	7
Village Green Hotel	7
Boundary Taverner	7
Repeated breaches	8
Interpretation of repeated breaches with respect to the Liquor Licence Rule at the Elsternwick Hotel	8
Multiple contraventions across six separate ALH venues	8
Appropriateness of a fine	9
Imposing two separate fines in this case	10
Setting the two separate fines in this case	10

Introduction

1. The disciplinary actions arise out of Australian Leisure and Hospitality Group Pty Ltd's (**ALH**) failure to ensure that its electronic gaming machines (**EGMs**) operated within its nominated trading hours and adhere to the mandatory shutdown period requirements imposed by the *Gambling Regulation Act 2003* (**Act**).
2. The Victorian Gambling and Casino Control Commission (**Commission**) considers that there are grounds to take two disciplinary actions against ALH under section 3.4.25 of the Act, having issued two separate notices to show cause on 19 June 2023 (**First Notice**) and on 5 October 2023 (**Second Notice**) under section 3.4.25(2) of the Act.¹
3. The First Notice relates to contraventions detected at seven separate venues operated by ALH, namely First and Last Hotel, Croxton Park Hotel, Albion Charles Hotel, Berwick Inn Taverner, The Millers Inn Hotel, Village Green Hotel, and the Elsternwick Hotel.
4. On 24 July 2023, ALH responded to the First Notice and made written submissions to the Commission explaining why disciplinary action is not warranted (**July Submissions**).²
5. On 21 September 2023, the Commission sent a letter to ALH clarifying various aspects of the First Notice (**Clarification**). On 28 September 2023, ALH sent to the Commission supplementary submissions in response to the Clarification letter (**Supplementary Submissions**).
6. The Second Notice relates to contraventions detected at an eighth venue operated by ALH, namely Boundary Taverner.
7. On 2 November 2023, ALH responded to the Second Notice and made written submissions to the Commission explaining why disciplinary action is not warranted (**November Submissions**). The submissions filed by ALH states that the November Submissions should be read in conjunction with the July Submissions and the Supplementary Submissions.
8. The Commission has considered the July Submission, Supplementary Submissions and November Submissions, as required by section 3.4.25(3) of the Act.
9. The Commission has determined to provide one set of reasons for decision, taking into account the interrelationship between the legal and factual elements of the contraventions that arose from ALH's conduct at all eight venues as outlined in the First and Second Notice, as well as the overlap of submissions made by ALH in this case.

Summary

10. For the reasons that follow, the Commission is satisfied that the appropriate disciplinary actions to be imposed on ALH under section 3.4.25(4) of the Act:
 - a. for the First Notice is a fine of \$420,000 for contraventions that occurred between 15 February 2023 and 21 April 2023, at seven separate ALH venues, namely First and Last Hotel, Croxton Park Hotel, Albion Charles Hotel, Berwick Inn Taverner, The Millers Inn Hotel, Village Green Hotel, and the Elsternwick Hotel; and
 - b. for the Second Notice is a fine of \$60,000 for contraventions that occurred on 25 May 2023, at an eighth separate ALH venue, namely Boundary Taverner.

Background

11. ALH holds a venue operator licence V98095066 (**Gaming Licence**). It is the venue operator of 76 venues in Victoria pursuant to the Gaming Licence. ALH is a venue operator for the purposes of section 3.4.25(2) of the Act.
12. The Act sets out requirements mandating ALH to operate its gaming room within specified hours and adhere to mandatory shutdown periods.
13. The Commission considers that the Mandatory shutdown periods and nominated trading hours requirements plays an important role in advancing the legislative purpose of Chapter 3 of the Act, including in fostering

¹The Commission may serve on a venue operator a notice in writing giving the venue operator an opportunity to show cause within 28 days why disciplinary action should not be taken on grounds for disciplinary action specified in the notice.

² On 12 July 2023, ALH sought an extension to respond and a further 7 days was granted by the Commission.

responsible gambling in order to minimise harm caused by problem gambling, and to accommodate those who gamble without harming themselves or others.³

14. In summary, these requirements are safety measures that are designed to safeguard patrons and especially vulnerable individuals from excessive gambling. The policing and enforcement of these safety requirements are part of the measures taken by the Commission to minimise gambling harm, and address problem gambling effectively.

Grounds for disciplinary action

15. The Commission issued the First Notice and the Second Notice against ALH which contained grounds for disciplinary action. The grounds for the First Notice relates to conduct that occurred at seven separate ALH venues. The grounds in relation to the Second Notice relates to conduct that occurred at one venue, namely Boundary Taverner.
16. In summary, the Commission alleged the following Contraventions:
- a. Section 3.4.25(1)(b) of the Act – the prescribed rule made by the Commission under section 3.5.23 of the Act,⁴ requires that a venue operator may offer gaming to a person only during the period or periods when a licence granted under the *Liquor Control Reform Act 1998* (**Liquor Licence Rules**) is in operation. This contravention is only alleged against the Elsternwick Hotel.
 - b. Section 3.4.25(1)(d)(i) of the Act – it is a condition of every approval or premises that there must be a continuous 4 hour break from gaming after every 20 hours of gaming, and that there must not be more than 20 hours of gaming each day under section 3.3.9 of the Act (**Mandatory Shutdown Period Requirement**). A breach of this provision is a contravention of the venue operator’s licence.
 - c. Section 3.4.25(1)(d)(ii) of the Act – it is a requirement of a venue operator to comply with the Accounting and Auditing Venue Requirements (**AAVR**) under section 3.4.1B of the Act.⁵ A venue operator must adhere to their gaming room’s hours of operation under subsection 4.4 of the AAVR⁶ (**Nominated Gaming Hours**). A breach of this requirement is a contravention of a provision of the Act.

Contraventions

17. On the basis of the matters set out in the paragraphs below, the Commission is satisfied that ALH by its conduct between 15 February 2023 and 25 May 2023:
- a. failed to comply with the Mandatory Shutdown Period Requirement on one occasion at each of the following venues, and thereby engaged in seven separate contraventions of its venue operator’s licence within the meaning of section 3.4.25(1)(d)(i) of the Act, at the following venues:
 - (i) First and Last Hotel, Croxton Park Hotel, Albion Charles Hotel, Berwick Inn Taverner, The Millers Inn Hotel, Village Green Hotel and Boundary Taverner;
 - b. failed to ensure that gaming did not occur outside the Nominated Gaming Hours on one occasion at each of the following venues, and thereby engaged in eight separate contraventions of the AAVR⁷ and giving rise to breach of a provision of the Act within the meaning of section 3.4.25(1)(d)(ii) of the Act, at the following venues:
 - (i) Elsternwick Hotel, First and Last Hotel, Croxton Park Hotel, Albion Charles Hotel, Berwick Inn Taverner, The Millers Inn Hotel, Village Green Hotel and Boundary Taverner.

(together **Contraventions**).
18. Overall, the Commission finds that Contraventions occurred at the eight venues operated by ALH. With respect to the Elsternwick Hotel, the Commission finds that this venue contravened only the Nominated Gaming Hours.

³ Section 3.1.1 of the Act and section 8A of the *Victorian Gambling and Casino Control Commission Act 2011*.

⁴ The Liquor Licence Rules were published in the *Government Gazette* (No. S33) on Wednesday, 21 February 2007.

⁵ At all times relevant to this decision, the AAVR included operational requirements determined by the Commission under section 10.1.5C of the Act. Version 4.6 of the AAVR was in effect until December 2022. Version 4.7 of the AAVR took effect from 10 March 2023 and continues in effect.

⁶ At all relevant times, clause 4.4 of the AAVR provided that, *inter alia*: *To allow for adequate monitoring of a venues (sic.) gaming room hours of operation, a venue operator must: specify their gaming room’s hours of operation via facilities made available by the Monitoring Licensee’s monitoring system, ensure that any changes to the gaming room’s hours of operation only be activated after the details of those changes have been successfully submitted via facilities made available by the Monitoring Licensee’s monitoring system, and ensure no gaming occurs outside of the nominated gaming*

⁷ This is a requirement under section 3.4.1B of the Act that venue operator adhere to operational requirements determined by the Commission under section 10.1.5C of the Act.

With respect to the other seven venues, the Commission finds that these venues contravened both the Mandatory Shutdown Period Requirement and the Nominated Gaming Hours. The Commission sets out further details in relation to each of the eight venues below, including facts giving rise to each separate contravention, which in turn have given rise to the grounds for disciplinary action against ALH.

19. There were numerous other instances at ALH venues during the period covered by this disciplinary proceeding where gaming occurred in breach of the Nominated Gaming Hours and Mandatory Shutdown Period, but which were so slight as to fall below the Commission's then materiality threshold.⁸ Accordingly, the Commission has not relied upon them in this disciplinary action and has only proceeded on breaches that exceeded that threshold.

Elsternwick Hotel

20. ALH is the venue operator for the purposes of the Act of premises known as the Elsternwick Hotel at 259 Brighton Road, Elsternwick. It is the venue operator of that premises pursuant to the Gaming Licence.
21. In February 2023, a liquor licence had been granted for that venue under the *Liquor Control Reform Act 1998* (Vic) (**Liquor Licence**). The period or periods that the Liquor Licence authorised the consumption of liquor on those premises in February 2023 for the purposes of Part 2 of the Liquor Licence Rules were from 7 am to midnight on each of Monday to Thursday, from 7 am to 1 am on Friday and Saturday, and from 10 am to midnight on Sunday.
22. In February 2023, the nominated gaming hours specified by ALH for the operation of the gaming room at the Elsternwick Hotel for the purposes of clause 4.4 of the AAVR were 8 am to midnight on each of Monday to Thursday, 8 am Friday to 1 am Saturday, 9 am Saturday to 1 am Sunday, and 10 am to midnight on Sunday (**Elsternwick Hotel Nominated Gaming Hours**).
23. The Commission's Data, Monitoring and Assurance Team (**DMA**) detected activity on five electronic gaming machines (**EGMs**) at the Elsternwick Hotel after midnight on Wednesday, 15 February 2023 (such that it occurred in the early hours of Thursday, 16 February 2023). The DMA detected total net turnover on those five EGMs of \$857.56.
24. In its July Submissions, ALH states that at midnight on 15 February 2023, four patrons "*continued to use EGMs after the prescribed closing time and three separate patrons were allowed into the venue's gaming area after the prescribed closing time and played EGMs. These patrons left the gaming area at staggered times until 12:42 am.*"
25. The Commission is satisfied that ALH offered gaming to people, and gaming occurred, at the Elsternwick Hotel between midnight on Wednesday, 15 February 2023, and 12:42 am on Thursday, 16 February 2023.

First and Last Hotel

26. ALH is the venue operator for the purposes of the Act of premises known as the First & Last Hotel at 1141 Sydney Road, Fawkner. It is the venue operator of that premises pursuant to the Gaming Licence.
27. In March 2023, the hours nominated by ALH for the First & Last Hotel for the purposes of clause 4.4 of the AAVR were 9 am to 5 am on each of Monday to Sunday (**First & Last Nominated Gaming Hours**).
28. The DMA detected activity on one EGM at the First & Last Hotel after 5 am and before 9 am on Saturday, 11 March 2023. The DMA detected total net turnover of \$230.
29. In its July Submissions, ALH states that at 5:00 am on 11 March 2023, seven patrons continued to use EGMs at the First & Last Hotel until venue staff commenced escorting the patrons out of the gaming area. ALH says that the last patron left the gaming area at or around 5:06 am. The Commission concludes that gaming commenced at the First & Last Hotel no later than 9:00 am on 10 March 2023, and is satisfied that it continued until 5:06 am on 11 March 2023 (ie. for a period of more than 20 hours). After that time, gaming was not offered to patrons between 5:06 am and 9:00 am on 11 March 2023 (ie. a continuous break of less than 4 hours).
30. The Commission is satisfied that gaming occurred at the First & Last Hotel after 5:00 am and before 9:00 am on Saturday, 11 March 2023.

⁸ The current threshold applied by the Commission is to not take enforcement steps unless there is a total net EGM turnover of at least \$100 from EGM play beyond the Nominated Gaming Hours. This threshold is applicable to all gaming venues in Victoria.

Croxton Park Hotel

31. ALH is the venue operator for the purposes of the Act of premises known as the Croxton Park Hotel, at 607 High Street, Thornbury. It is the venue operator of that premises pursuant to the Gaming Licence.
32. In March 2023, the hours nominated by ALH for the Croxton Park Hotel for the purposes of clause 4.4 of the AAVR were 10 am to 6 am on each of Monday to Sunday (**Croxton Park Nominated Gaming Hours**).
33. The DMA detected activity on two EGMs at the Croxton Park Hotel after 6:00 am but before 10:00 am on Monday, 6 March 2023. The DMA detected total net turnover of \$404.
34. In its July Submissions, ALH states that at 6:00 am on 6 March 2023 (being the venue's closing time), three patrons continued to use two EGMs until around 6:08 am when staff escorted the patrons out of the venue's gaming area. ALH accepts that net turnover from EGMs in the approximately eight minutes that patrons continued to use the two EGMs after the Croxton Park Nominated Gaming Hours was \$404.
35. The Commission concludes that gaming commenced at the Croxton Park Hotel no later than 10:00 am on Sunday, 5 March 2023, and is satisfied that it continued until approximately 6:08 am on 6 March 2023 (ie. for a period of more than 20 hours). After that time, gaming was not offered to patrons between 6:08 am and 10:00 am on 6 March 2023 (ie. a continuous break of less than 4 hours).
36. The Commission is satisfied that gaming occurred at the Croxton Park Hotel after 6:00 am and before 10:00 am on Monday, 6 March 2023.

Albion Charles Hotel

37. ALH is the venue operator for the purposes of the Act of premises known as the Albion Charles Hotel, at 2 Charles Street, Northcote. It is the venue operator of that premises pursuant to the Licence.
38. In March 2023, the hours nominated by ALH for the Albion Charles Hotel for the purposes of clause 4.4 of the AAVR were 12:00 pm to 8:00 am on each of Monday to Sunday (**Albion Charles Nominated Gaming Hours**).
39. Monitoring of gaming hours by the DMA detected activity on one EGM at the Albion Charles Hotel after 8:00 am but before 12:00 pm on Sunday, 26 March 2023. The DMA detected a total net turnover from that EGM of \$805.
40. In its July Submissions, ALH states that at 8:00 am on 26 March 2023 (being the Albion Charles Hotel's closing time), a patron remained in the gaming room and "subsequently" used one EGM until approximately 9:04 am on 26 March 2023. At that time, an assistant manager who had arrived at the venue to start their shift cashed out the relevant machine and escorted the patron from the venue.
41. The Commission concludes that gaming commenced at the Albion Charles Hotel no later than 12:00 pm on Saturday, 25 March 2023, and is satisfied that it continued until approximately 9:04 am on Sunday 26 March 2023 (ie. for a period of more than 20 hours). After that time, gaming was not offered to patrons between 9:04 am and 12:00 pm on 26 March 2023 (ie. a continuous break of less than 4 hours).
42. The Commission is satisfied that gaming occurred at the Albion Charles Hotel after 8:00 am and before 12:00 pm on Sunday, 26 March 2023.

Berwick Inn Taverner

43. ALH is the venue operator for the purposes of the Act of premises known as the Berwick Inn Taverner, at 1 High Street, Berwick. It is the venue operator of that premises pursuant to the Gaming Licence.
44. In April 2023, the hours nominated by ALH for the Berwick Inn Taverner for the purposes of clause 4.4 of the AAVR were 8 am to 4 am on each of Monday to Sunday (**Berwick Inn Nominated Gaming Hours**).
45. On Sunday, 16 April 2023, DMA detected activity on three EGMs at the Berwick Inn Taverner after 4:00 am but before 8:00 am. The DMA detected total net turnover of \$546.51.
46. In its July Submissions, ALH states that at 4:00 am on 16 April 2023 (being the venue's closing time), the venue's gaming area was not cleared by venue staff until 4:09 am, resulting in gameplay after the Berwick Inn Nominated Gaming Hours. The net turnover "of the use of EGMs was \$546.41 in this period."
47. The Commission concludes that gaming commenced at the Berwick Inn Taverner no later than 8:00 am on Saturday, 15 April 2023, and is satisfied that it continued until approximately 4:09 am on 16 April 2023 (ie. for a period of more than 20 hours). After that time, gaming was not offered to patrons between 4:09 am and 8:00 am on 16 April 2023 (ie. a continuous break of less than 4 hours).

48. The Commission is satisfied that gaming occurred at the Berwick Inn Taverner after 4:00 am and before 8:00 am on Sunday, 16 April 2023.

The Millers Inn Hotel

49. ALH is the venue operator for the purposes of the Act of premises known as The Millers Inn Hotel, at 204 Millers Road, Altona North. It is the venue operator of that premises pursuant to the Gaming Licence.
50. In April 2023, the hours nominated by ALH for the Millers Inn Hotel for the purposes of clause 4.4 of the AAVR were 9:00 am to 5:00 am on each of Monday to Sunday (**Millers Inn Nominated Gaming Hours**).
51. Monitoring of gaming hours by the DMA detected activity on one EGM at the Millers Inn Hotel after 5:00 am but before 9:00 am on Thursday, 20 April 2023. The DMA detected a total net turnover from that EGM of \$1,261.98.
52. In its July Submissions, ALH states that on 20 April 2023, a casual employee of ALH entered the venue's gaming area and played an EGM for approximately one hour after the prescribed closing time with money taken from the Keno drawer and gaming safe. The July Submissions state that the "net turnover of the use of EGMs was \$546.51 in this period." By a subsequent letter dated 9 October 2023, ALH confirmed that the net turnover at Millers Inn was \$1,261.98, and that the figure of \$546.51 had been included in the July Submissions in error.
53. The Commission concludes that gaming commenced at the Miller Inn Hotel no later than 9:00 am on Wednesday, 19 April 2023, and is satisfied that it continued until approximately 6:00 am on Thursday, 20 April 2023 (ie. for a period of more than 20 hours). After that time, gaming was not offered to patrons between approximately 6:00 am and 9:00 am on 20 April 2023 (ie. a continuous break of less than 4 hours).
54. The Commission is satisfied that gaming occurred at the Millers Inn Hotel after 5:00 am and before 9:00 am on Thursday, 20 April 2023.

Village Green Hotel

55. ALH is the venue operator for the purposes of the Act of premises known as the Village Green Hotel, at the corner of Springvale Road and Ferntree Gully Road, Mulgrave. It is the venue operator of that premises pursuant to the Gaming Licence.
56. In April 2023, the hours nominated by ALH for the Village Green Hotel for the purposes of clause 4.4 of the AAVR were 10:00 am to 6:00 am on each of Monday to Sunday (**Village Green Nominated Gaming Hours**).
57. Monitoring of gaming hours by the DMA detected activity on one EGM at the Village Green Hotel after 6:00 am but before 10:00 am on Friday, 21 April 2023. The DMA detected a total net turnover from that EGM of \$135.
58. In its July Submissions, ALH states that on 21 April 2023, a patron gained access to the venue's gaming area during a function that was being held in another area of the venue and played an EGM for approximately seven minutes after the prescribed closing time. The submission state that "an ALH employee found the patron and alerted the venue's assistant manager, who promptly cashed out the EGM and escorted the patron out of the gaming area".
59. The Commission concludes that gaming commenced at the Village Green Hotel no later than 10:00 am on Thursday, 20 April 2023, and continued until 6:00 am on Friday, 21 April 2023. The Commission is satisfied that gaming recommenced at approximately 9:44 am and ceased at approximately 9:51 am on Friday, 21 April 2023. After that time, gaming was not offered to patrons between approximately 9:51 am and 10:00 am on 26 March 2023 (ie. a continuous break of less than 4 hours).
60. The Commission is satisfied that gaming occurred at the Village Green Hotel after 6:00 am and before 10:00 am on Friday, 21 April 2023.

Boundary Taverner

61. ALH is the venue operator for the purposes of the Act of premises known as the Boundary Taverner, at 730 Centre Roda, Bentleigh East. It is the venue operator of that premises pursuant to the Gaming Licence.
62. In April 2023, the hours nominated by ALH for the Boundary Taverner for the purposes of clause 4.4 of the AAVR were 8 am to 4 am on each of Monday to Sunday (**Boundary Taverner Nominated Gaming Hours**).
63. On Thursday, 25 May 2023, DMA detected activity on one EGM at the Boundary Taverner after 4:00 am but before 8:00 am. The DMA detected total net turnover of \$546.50.

64. In its November Submissions, ALH states that at 4:00 am on 25 May 2023 (being the venue's closing time), a patron remained in the gaming room of the venue and continued to use one EGM until approximately 4:12 am on 25 May 2023. The net turnover "of the EGMs was \$546.50 in this period."
65. The Commission concludes that gaming commenced at the Boundary Taverner no later than 8:00 am on Wednesday, 24 May 2023, and is satisfied that it continued until approximately 4:12 am on 25 May 2023 (ie. for a period of more than 20 hours). After that time, gaming was not offered to patrons between 4:12 am and 8:00 am on 25 May 2023 (ie. a continuous break of less than 4 hours).
66. The Commission is satisfied that gaming occurred at the Boundary Taverner after 4:00 am and before 8:00 am on Thursday, 25 May 2023.

Repeated breaches

67. The Commission intends to address certain submissions made by ALH in response to the First Notice.

Interpretation of repeated breaches with respect to the Liquor Licence Rule at the Elsternwick Hotel

68. In the First Notice, with respect to the Elsternwick Hotel, the Commission stated that ALH offered gaming to persons on five EMGs in breach of the Liquor Licence Rules made under section 3.5.23 of the Act. It is a ground of disciplinary action under section 3.4.25(b) of the Act, if there have been repeated breaches in the approved venue of the rules made by the Commission under section 3.5.23 of the Act. The Commission also stated in the First Notice that the venue contravened the Nominated Gaming Hours, giving rise to a separate ground for disciplinary action against ALH.
69. In essence, ALH submitted that there were no repeated breaches of the Liquor Licence Hours Rule.⁹
70. In the Clarification, the Commission stated that there has been 'repeated breaches' of section 3.5.23 of the Act in relation to the Elsternwick Hotel, as gaming was offered on five EGMs to persons outside of the venue's liquor licence hours.
71. In the Supplementary Submissions, ALH submitted that it is not a proper a construction of section 3.4.25(1)(b) of the Act, arguing that playing more than one EGM out-of-hours does not constitute "repeated breaches" of the Liquor Licence Rules.
72. The point under contention revolves around a matter of interpretation of the provision of the Liquor Licence Rules, as applied to the circumstances of this case. In particular, whether gaming was offered on one occasion, or each time a patron used the EGMs to constitute repeated breaches of the Liquor Licence Rules.
73. Regardless, Elsternwick Hotel failed to comply with its Nominated Gaming Hours, as gaming activity was detected at this venue after midnight on Wednesday, 15 February 2023 for a period of 42 minutes. In other words, the same facts that gave rise to the alleged contravention of the Liquor Licence Rules also give rise to contraventions of the Nominated Gaming Hours.
74. The Commission has decided to proceed to assess the breach at the Elsternwick Hotel solely based on the Nominated Gaming Hours. Disciplinary action for contravention of the Nominated Gaming Hours does not require repeated breaches to be established. In other words, a single breach of the Nominated Gaming Hours is sufficient grounds to take disciplinary action against the Elsternwick Hotel.
75. On the basis of the above, the Commission considers that there is no need to make a finding on the interpretation of repeated breaches of the Liquor Licence Hours at the Elsternwick Hotel.

Multiple contraventions across six separate ALH venues

76. The First Notice, states with respect to the conduct at the First & Last Hotel, Croxton Park Hotel, Albion Charles Hotel, Berwick Inn Taverner, the Millers Inn Hotel and Village Green Hotel that "it is a ground of disciplinary action against a venue operator if there have been repeated breaches in the approved venue of a condition of the venue operator's licence under section 3.3.9 of the Act."
77. In the Clarification, the Commission explains that reference to 'repeated breaches' through the First Notice regarding section 3.4.25(1)(d)(i) of the Act is merely reference to the fact that there were multiple breaches of the same provision (i.e., s3.3.9 of the Act) at the six venues by the same venue operator. In other words, there were multiple contraventions across six separate ALH venues.

⁹ July Submissions, [11(a)].

78. The Commission clarifies that, under sections 3.4.25(1)(d)(i) of the Act, disciplinary action is not dependent on establishing that ALH engaged in "repeated breaches" of its venue operator's licence under section 3.3.9 of the Act, with respect to the Mandatory Shutdown Period. The relevant ground of disciplinary action under section 3.4.25(1)(d) of the Act is that the venue operator has contravened the venue operator's licence, meaning that one breach of the Mandatory Shutdown Period is sufficient to establish this ground of disciplinary action.
79. The Second Notice states with respect to the conduct at the Boundary Tavern that it is a ground of disciplinary action against a venue operator if there has been contravention of a condition of the venue operator's licence under section 3.3.9 of the Act. This is consistent with the approach taken in the Clarification for the other six venues.

Appropriateness of a fine

80. Disciplinary action is defined by section 3.4.25(1) of the Act as:
- 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 on a venue operator 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* (Vic) on the venue operator.
81. The Commission has taken account of ALH's July Submissions, Supplementary Submissions and November Submissions including the remedial steps described in those submissions.
82. The Commission does not consider that it is appropriate, in relation to the First Notice, having issued a single show cause notice that describes all the grounds for disciplinary action, to impose a separate fine up to the statutory maximum for each of the grounds concerning the seven venues the subject matter of the First Notice. As set out below, the Commission has taken into account the extent of the offending conduct that occurred across seven venues in the First Notice, in determining the appropriate fine in respect of the First Notice. The Commission has applied the same approach to the Second Notice.
83. In the exercise of its discretion in section 3.4.25(4) of the Act, the Commission has determined that the appropriate disciplinary actions are:
- a. a fine of \$420,000 for contraventions outlined in the First Notice; and
 - b. a fine of \$60,000 for contraventions outlined in the Second Notice.
84. ALH submitted that the Commission ought to take no disciplinary action against ALH for the Contraventions.¹⁰ In the alternative, ALH submitted that should the Commission be minded taking disciplinary action, a letter of a censure will be an appropriate action as it has appropriately mitigated the risks associated with the Contraventions.¹¹
85. The Commission 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 Contraventions relate to measures designed to safeguard patrons and minimise the risk of gambling harm. Further, the Contraventions were not confined to a single venue operated by ALH. Rather, contraventions occurred across seven separate ALH venues pursuant to the First Notice, and contraventions occurred at one other ALH venue pursuant to the Second Notice. The conduct of ALH whilst giving rise to 15 separate contraventions as described in the First and Second Notice, are contraventions that arose from eight separate courses of conduct.
 - b. the Contraventions occurred over a period of approximately 14 weeks and involved breaches of both the Mandatory Shutdown Period and the Nominated Gaming Hours; and
 - c. there is a need in this matter for both general and specific deterrence. ALH is the largest operator of EGMs in Victoria. There is a need to ensure that the price of such contraventions is sufficiently high to

¹⁰ July Submissions, [28].

¹¹ July Submissions, [29].

deter ALH as well as other market participants from engaging in similar conduct.¹² There is also a need to advance the object and purpose in Chapter 3 of the Act, to ensure compliance with measures designed to safeguard patrons, limit the amount of gaming occurring and minimise harm.

86. In the circumstances, the Commission concludes that a fine is the appropriate sanction. The findings that underpin that conclusion are as follows:
- a. licensee's are required to adhere to the requirements of the Act, including the operational requirements set by the Commission. Imposing fines for non-compliance of permitted trading hours ensures a level playing field among venue operators. If some venue operators are allowed to stay open longer or operate outside of permitted hours without significant consequences, it will create an unfair advantage, and encourage others to flout the requirements for Mandatory Shutdown Period and the Nominated Gaming Hours. Enforcing compliance ensures that licensees like ALH are held accountable for following the law.
 - b. as stated above, the Contravention occurred across seven venues operated by ALH pursuant to the First Notice and one venue pursuant to the Second Notice. ALH in its response to the First Notice says the contraventions only occurred in a "confined subset" of ALH's licensed venues, and that each venue involved one incident, rather than a series of incidents. The Commission notes that the "confined subset" represents close to 10% of the 76 venues operated by ALH. The Commission does not agree with the characterisation that the contraventions occurred in a "confined subset". The contraventions occurred across a material number of venues, each of which is operated by the organisation with the largest number of EGM venues in Victoria.
 - c. with respect to the First Notice, the contraventions resulted in 19 patrons continuing to use a total of 14 EGMs for periods after the nominated closing time and the cumulative gaming time that occurred was approximately 3 hours and 16 minutes. The Commission is particularly concerned with the contraventions at the:
 - (i) Elsternwick Hotel, the result of which was that patrons were allowed to continue playing EGMs for approximately 42 minutes after the nominated closing time;
 - (ii) Albion Charles Hotel, the result of which was that a single patron was allowed to gamble for 1 hour and 4 minutes after the nominated closing time, during which time they gambled \$805.20; and
 - (iii) the Millers Inn Hotel, the result of which was that a casual employee of ALH entered the gaming area after the nominated closing time, and played an EGM for approximately 1 hour, during which time they gambled \$1,261.98.
 - d. by highlighting these particular contraventions, the Commission does not seek to derogate from the seriousness of the other contraventions, but simply to highlight these matters as raising particular concerns in light of the regulatory regime in Chapter 3 of the Act.

Imposing two separate fines in this case

87. As a preliminary matter, the Commission considers that, having determined there are grounds for disciplinary action against ALH, and having considered the July Submissions, Supplementary Submissions and November Submissions, it has the power under section 3.4.25(4) of the Act, when read with sections 3.4.25(1) to (3) of the Act, to impose two separate fines up to the statutory maximum with respect of the First and Second Notice.

Setting the two separate fines in this case

88. The Commission approaches the setting of an appropriate fine in this case on the basis that its task is not to apply any set of factors as a rigid catalogue or legal check list. Instead, it considers that its task is to determine what is an appropriate penalty in all the circumstances of this case.¹³ The Commission has also set out its approach to setting a fine when taking disciplinary action in other determinations and it does not intend to

¹²*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).

¹³ See *Australian Building and Construction Commissioner v Pattinson* (2022) 399 ALR 599, [15] (Kiefel CJ, Gageler, Keane, Gordon, Steward and Gleeson JJ).

restate its approach here.¹⁴ The court has identified factors that the Commission considers are relevant to its determination of the appropriate fine in this case.¹⁵

89. The Commission provides its reasons for concluding that a separate fine of \$420,000 for contraventions detected at the seven venues operated by ALH set out in the First Notice, and \$60,000 for contraventions detected at the eighth venue set out in the Second Notice are appropriate in this case.
90. *First*, the maximum penalty is 50,000 times the value of a penalty unit.¹⁶ At the time of the conduct that gave rise to this decision, the value of a penalty unit was \$184.92. The maximum fine that the Commission can impose under section 3.4.25(4) of the Act is therefore \$924,600 in respect of each of the First Notice and the Second Notice.
91. A fine of \$420,000 is about 45% of the maximum fine available for the First Notice. The fine of \$60,000 for the Second Notice, is of a smaller size as it takes into account that the contravening conduct is in relation to contravening conduct at only one venue. While the setting of a fine is not a mathematical exercise, the Commission considers that fines at this level are at the appropriate range and are proportionate to the Contraventions. The quantum of the fine in this case can be reasonably categorised as being at the lower to mid-range. However, lower to mid-range should not be misunderstood to suggest that the Contraventions giving rise to the grounds for disciplinary action were not serious.
92. *Second*, the maximum penalty is a yardstick for the worst category of contravention.¹⁷ The Contraventions, although serious contraventions, are not so grave as to warrant the imposition of the maximum penalty.¹⁸ While the determination of appropriate penalties does not involve applying incremental deductions from the maximum penalty, consideration of the maximum penalty permits comparison between the “*worst possible case and the case the [Commission] is being asked to address and thus provides a yardstick.*”¹⁹
93. *Third*, the Commission has considered in detail the submissions made by ALH in relation to the circumstances leading to the contraventions. In summary, ALH says the contraventions were the result of “human error/inadvertence”, rather than any kind of intentional wrongdoing.²⁰ The Commission accepts that ALH did not engage in the Contraventions deliberately. While it might be that human error or inadvertence contributed to the Contraventions, the fact that Contraventions occurred in March and April, some months after the initial contravention at the Elsternwick Hotel, supports the conclusion that inadequate procedures were put in place sufficient to stop later contraventions. The Commission has therefore moderated the fine to take this into account. If there was evidence of ALH deliberately flouting the Mandatory Shutdown Period and the Nominated Gaming Hours requirements, the Commission would have imposed fines at a level closer to the maximum penalty.
94. *Fourth*, the Commission has considered in detail the submissions made by ALH of the rectification steps that it has taken or intends to take, following the contraventions. These steps include acting promptly to discipline staff and to make “people changes” following the incidents, as well as a range of system and process enhancements across its venues to mitigate the risk of these incidents reoccurring. The Commission also notes ALH’s submission that it has implemented a technological solution which allows gaming machines to be automatically switched off outside playing hours.²¹ All of these are appropriate mitigating factors that have weighed in favour of a fine in the lower to mid-range of the maximum penalty. Absent these mitigating factors, the Commission would have been minded to impose a higher fine on ALH.
95. *Fifth*, the need for deterrence, both specific and general, weighs heavily on the Commission when setting the appropriate level of fine on ALH.
96. Specific deterrence requires that a fine be set a level that will hold ALH to account for the Contraventions that concern patron safety requirements. Further, as stated above, there is a need to deter other breaches in the future by ALH and other entities that operate EGMs.

¹⁴See the Commission’s reasons for decision in disciplinary action taken against the casino operator for the ‘China Union Pay’ process https://www.vqccc.vic.gov.au/sites/default/files/vqccc_decision_-_china_union_pay_0.pdf and Responsible Service of Gambling failings https://www.vqccc.vic.gov.au/sites/default/files/reasons_for_decision_rsg_da.pdf.

¹⁵ *Trade Practices Commission v CSR Limited* (1991) ATPR 41-076.

¹⁶ Section 3.4.25(1)(d) of the Act.

¹⁷ *Markarian v The Queen* (2006) 228 CLR 357 at [30]-[31].

¹⁸ *Australian Securities and Investments Commission v Westpac Banking Corporation (No 3)* (2018) 131 ACSR 585, [50] (Beach J).

¹⁹ *Australian Competition and Consumer Commission v Coles Supermarkets Australia Pty Ltd* (2015) 327 ALR 540, [6] (Allsop CJ).

²⁰ July Submissions, [27(a)].

²¹ July Submissions, [27(f)] and November Submissions, [5].

97. ALH operates a significant number of gaming venues (76 venues) in Victoria, and the shares of its parent entity (Endeavour Group Limited) are listed on the Australian Securities Exchange. In determining the appropriate fine, the Commission infers that ALH would be capable of paying a fine up to the statutory maximum.
98. General deterrence also ensures a level playing field among venue operators. When venue operators understand that the VGCCC will enforce consistently the permitted trading hours, it prevents unfair advantages that could arise if some operators disregard shutdown periods.
99. *Sixth*, ALH is not entitled to leniency on the basis that this is its first contravention of the Act.
100. The Commission has previously issued 31 warning letters to 23 venues operated by ALH for various breaches of the Act between March 2022 and October 2023. In respect of gaming venues involved in these disciplinary proceedings (i.e. Croxton Park Hotel and Elsternwick Hotel), two previous breaches were identified. Importantly:
- a. with respect to Croxton Park Hotel, a non-compliance letter was issued to ALH for allowing two patrons to gamble during the Mandatory Shutdown Period on 24 September 2022, thus constituting a breach of section 3.5.23 of the Act.²² A total EGM net turnover of \$70.20 occurred outside of the Nominated Gaming Hours. In this instance, ALH had self-reported the breach, expressed remorse for the activity, and made undertakings to ensure it is not repeated; and
 - b. with respect to Elsternwick Hotel, a non-compliance letter was issued to ALH for two instances of failing to comply with conditions of the venue operator's licence (i.e. code of conduct was not available on The Elsternwick Hotel's website) which occurred on 9 March 2022, thus constituting a breach of section 3.4.6 of the Act.²³
101. More recently, in August 2023, ALH was prosecuted and fined \$550,000 for operating 220 EGMs without mandatory pre-commitment technology (**YourPlay**) installed in contravention of section 3.8A.10(1) of the Act.
102. Finally, the Commission considers the fines in this case balances the various competing considerations that are relevant to setting a fine. What this disciplinary action shows to ALH and to others is that non-compliance with the Nominated Gaming Hours and Mandatory Shutdown Requirements will not be tolerated by the Commission.

²² WAR-9781

²³ WAR-8785