

Decision and reasons for decision

Disciplinary action against Clayton RSL Sub-Branch Inc. (trading as Clayton RSL, located at 171 Carinish Rd, Clayton VIC 3168 under section 3.4.25(1) of the *Gambling Regulation Act 2003*).

Delegate Jason Cremona
Director, Regulatory Services Division
Victorian Gambling and Casino Control Commission

Date of decision and reasons 18 March 2025

Decision Pursuant to the Instrument of Revocation and Delegation dated 1 November 2023 and effective 13 November 2023, I, Jason Cremona, Director Regulatory Services Division of the Victorian Gambling and Casino Control Commission, make this decision under section 3.4.25 of the *Gambling Regulation Act 2003*.

For the reasons attached to this decision, I have found there is a ground for disciplinary action and decided to take disciplinary action against Clayton RSL Sub-Branch Inc. by imposing a fine of \$5,000 for contravening section 3.4.25(1)(d)(ii) at the Clayton RSL.

Signed



Jason Cremona
Director Regulatory Service Division
Victorian Gambling and Casino Control Commission

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Introduction

- 1) This is the Victorian Gambling and Casino Control Commission's (**VGCCC's**) decision and reasons for the decision regarding disciplinary action taken against Clayton RSL Sub-Branch Inc., trading as Clayton RSL, located at 171 Carinish Rd, Clayton VIC 3168, under section 3.4.25(1) of the *Gambling Regulation Act 2003 (the Act)*.
- 2) The disciplinary actions arise out of Clayton RSL Sub-Branch Inc.'s failure to ensure that its electronic gaming machines (**EGMs**) operated within the permitted trading hours imposed by the Act on Good Friday, 29 March 2024.
- 3) On 25 October 2024, the VGCCC issued a notice to Clayton RSL Sub-Branch Inc. pursuant to section 3.4.25(2) of the Act to show cause why disciplinary action should not be taken on the grounds specified in the notice (**Notice**)¹.
- 4) On 31 October 2024, Clayton RSL Sub-Branch Inc. responded to the Notice and made written submissions to the VGCCC in response to the Notice (**Submissions**).
- 5) The VGCCC has considered the Submission as required by section 3.4.25(3) of the Act².
- 6) Pursuant to the Instrument of Revocation and Delegation dated 1 November 2023 and effective 13 November 2023, I, Jason Cremona, Director of the Regulatory Services Division of the VGCCC, make this decision under section 3.4.25 of the Act.
- 7) I am satisfied that the appropriate disciplinary action to be imposed on Clayton RSL Sub-Branch Inc. under section 3.4.25(4) of the Act is a fine of \$5,000 for contraventions that occurred on Good Friday, 29 March 2024.

Background

- 8) Clayton RSL Sub-Branch Inc. holds a venue operator licence V9710064 (**Gaming Licence**) for Clayton RSL.
- 9) The Act sets out requirements mandating Clayton RSL Sub-Branch Inc. to operate its gaming room within specified hours, including adherence to a mandatory shutdown period between 4am and 10am each day.
- 10) These requirements are safety measures that are designed to safeguard patrons and minimise gambling harm.

Grounds for disciplinary action

- 11) On 25 October 2024, the VGCCC issued a Notice to Clayton RSL Sub-Branch Inc., which contained grounds for disciplinary action related to the conduct that occurred at Clayton RSL.
- 12) In summary, the VGCCC alleged the following contravention:
 - a. 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.³ A venue operator must ensure its gaming room hours of operation comply with all requirements, including

¹ The 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 The venue operator, within the period allowed by the notice, may arrange with the Commission for the making of submissions to the Commission as to why disciplinary action should not be taken and the Commission must consider any submissions so made

³ 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.

but not limited to, the Victorian Gambling and Casino Control Commission rules⁴ under subsection 4.4 of the AAVR. A breach of this requirement is a contravention of a provision of the Act.

- 13) On 31 October 2024, Clayton RSL Sub-Branch Inc. provided its **Submissions** to the notice to show cause. I have considered the Submission as required by section 3.4.25(3) of the Act.

Findings on conduct

- 14) On the basis of the matters set out in the paragraphs below, I am satisfied that Clayton RSL Sub-Branch Inc., by its conduct on 29 March 2024 at Clayton RSL:
- a. failed to ensure that gaming did not occur outside the Liquor Licence Rules and thereby engaged in 1 contravention of the AAVR⁵, and giving rise to a breach of a provision of the Act within the meaning of section 3.4.25(1)(d)(ii) of the Act.
- 15) A liquor licence was granted to Clayton RSL under the *Liquor Control Reform Act 1998 (Vic) (Liquor Licence)*. The periods that the Liquor Licence authorised the consumption of liquor on the premises for the purposes of Part 2 of the Liquor Licence Rules were between 12 noon and 11:30 pm on Good Friday.
- 16) The VGCCC's Assurance and Risk Advisory team (**ARA**) detected gaming activity at Clayton RSL outside the Liquor Licence Hours on 29 March 2024 as follows:
- a. After 11:30 pm on Good Friday, 29 March 2024, multiple EGMs had gameplay with a total EGM net turnover of \$2,638.60.
- 17) I am satisfied that Clayton RSL Sub-Branch Inc. offered gaming services to patrons and that gaming occurred outside the permitted hours, namely after 11:30 pm on Good Friday 29 March 2024.
- 18) In the circumstances set out above, the grounds for disciplinary action under s. 3.4.25(1)(d)(ii) of the Act are established.

Appropriate action

- 19) Section 3.4.25(1) of the Act provides that the disciplinary action 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 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.*
- 20) Section 3.4.25(4) entitles the VGCCC to take any of the disciplinary action above against Clayton RSL Sub-Branch Inc. as it sees fit.⁶
- 21) I have concluded that disciplinary action in the form of a fine is warranted for the following reasons:

⁴ Part 2 of the Rules made under section 3.5.23 of the Act and published in the No. S33 Wednesday, 21 February 2007 Government Gazette states that a venue operator may offer gaming to a person only during the periods when a licence granted under the Liquor Control Reform Act 1998 in respect of the premises authorises the consumption on those premises.

⁵ 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.

⁶ The Commission may then take disciplinary action against the venue operator as the Commission sees fit and does so by giving written notice of the disciplinary action to the venue operator.

- a. the objective seriousness of this matter: As stated above, the contravention relates to measures designed to safeguard patrons and minimise the risk of gambling harm.
- b. there is a need for both general and specific deterrence: It is crucial to ensure that the price of such contraventions is sufficiently high to deter Clayton RSL Sub-Branch Inc., as well as other market participants, from engaging in similar conduct. 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.
- c. licensees are required to adhere to the requirements of the Act, including the operational requirements set by the Commission: Imposing fines for non-compliance with permitted trading hours ensures a level playing field among venue operators. If some venue operators are allowed to operate outside of permitted hours without significant consequences, it will create an unfair advantage and encourage others to flout the requirements for liquor licence hours, mandatory shutdown periods, and nominated gaming hours. Enforcing compliance ensures licensees like Clayton RSL Sub-Branch Inc. are held accountable for following the law.

Setting the fine in this case

- 22) The VGCCC has set out its general approach to setting a fine when taking disciplinary action in other determinations, but it does not repeat that here.⁷ Rather, I provide reasons for concluding that a fine of \$5,000 is an appropriate penalty in this case's circumstances.
- 23) The maximum penalty that may be imposed in this case is \$987,950.
- 24) While the setting of a fine is not a mathematical exercise, I consider that a fine at this level is at the appropriate range and is proportionate to the Contraventions.
- 25) In determining the appropriate level of the fine, I have considered:
 - a. the relative size of Clayton RSL Sub-Branch Inc. and its ability to pay the penalty.
 - b. that the contravention occurred in the venue operated by Clayton RSL Sub-Branch Inc. across 12 EGMs, with a total EGM net turnover of \$2,638.60 for 29 minutes and 30 seconds gameplay, outside the permitted hours.
 - c. this is Clayton RSL Sub-Branch Inc.'s first contravention of trading hour requirements.
 - d. the venue has acknowledged the contraventions.
- 26) I have taken into account the Submissions made that Clayton RSL Sub-Branch Inc. has taken or will take action to mitigate the risk of these incidents reoccurring, as a mitigating factor.
- 27) In setting the fine, I have considered the need for a fine that will achieve the required deterrence, both specific and general, to hold Clayton RSL Sub-Branch Inc. to account for the contravention and to deter other entities that operate EGMs.
- 28) In summary, I consider the fine, in this case, balances the various competing considerations that are relevant to setting a fine. What this disciplinary action shows to Clayton RSL Sub-Branch Inc. and to other venue operators is that non-compliance with the liquor licence hours, nominated gaming hours and mandatory shutdown requirements will not be tolerated by the VGCCC.

⁷ 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) and Responsible Service of Gambling failings (https://www.vgccc.vic.gov.au/sites/default/files/reasons_for_decision_rsg_da.pdf).