

MEDIA RELEASE

14 AUGUST 2020 – MELBOURNE, AUSTRALIA

Playing Against A Stacked Deck – Mayfair 101 calls for ASIC to abide by its legal obligations

Investors will no doubt be aware of a report by Ben Butler at The Guardian claiming that ASIC has asked the Federal Court to freeze certain assets of the Mayfair 101 Group and to prevent Managing Director James Mawhinney from leaving Australia. The Mayfair 101 Group was provided with a copy of this order late yesterday, 13 August 2020.

The circumstances in which this order was made are:

1. Neither the entities involved, nor Mr Mawhinney were given any prior notice of the Court hearing or the chance to challenge ASIC's allegations;
2. Members of the media were able to dial in to attend the hearing. ASIC has advised that this is because the Court made an error in listing the matter on the public register when it should have been listed as private. Mr Mawhinney has asked the Court to clarify if this is correct and if so, how the error was made;
3. Journalists, including Mr Butler from The Guardian, were able to attend part of the hearing but when the issue of a travel ban was raised, the Court ordered that only Court staff and ASIC remain in the hearing; and
4. Despite these restrictions, Mr Butler at The Guardian was able to contact Mr Mawhinney less than an hour after he had received the Court Order to seek comment on the matter. Mr Butler stated that he "*understood an Order had been made*" but when asked how he could know this if the Court hearing was closed to everyone but the Court and ASIC, Mr Butler stated "*he could not reveal confidential sources*". Mr Butler's email exchange with Mr Mawhinney is telling, it demonstrates that either the Court or someone from ASIC has leaked the outcome of the Court hearing to Mr Butler. That is contempt of Court.

In 2020 Australia we have a situation where a Government agency can have a Court impose onerous restrictions on travel and the operations of a business without prior notice to those impacted, the media can be invited to such a hearing where the accused has no knowledge or legal representation and the result of a supposed private hearing is then leaked to journalists for one-sided reporting. How can this be allowed to occur in a democracy?

Mr Mawhinney wrote to the Court on the evening of 13 August 2020 asking for an explanation as to what has occurred. Mr Mawhinney also asked that the Court require each member of ASIC involved in this matter to provide a statutory declaration to the Court within 24 hours stating that the relevant individual has had no discussions with any media about this matter. No response has been received.

ASIC is required to act as a model litigant under guidelines imposed by the Federal Attorney-General. This includes “*apologising where the Commonwealth or agency has acted wrongfully or improperly*”. This implies an obligation to investigate to ensure ASIC has acted correctly and properly. In these circumstances, the Mayfair 101 Group calls on both the Federal Attorney-General and Mr Shipton, ASIC Commissioner, to require each ASIC staff member involved with this matter to provide a statutory declaration urgently. If Commissioner Shipton will not require this of his staff, why not? This should be a question every journalist is asking ASIC until the statutory declarations are provided.

More broadly, this is just one of many recent examples of ASIC’s failed “why not litigate policy”. The media, including the Australian Financial Review, have recently categorised numerous examples of the failures of such a policy. In the Mayfair 101 Group’s experience, it is not just the aggressive litigation strategy that destroys business and jobs, it is the continued leaking of comments/material to the media. The Mayfair 101 Group believes that as a Government regulator with enormous powers, ASIC of all entities, should be required to speak with the media on the record only. The Mayfair 101 Group calls for ASIC to adopt an immediate policy where all ASIC employees, agents and representatives must only speak to the media through official press-releases or in on the record interviews. If it is found that an employee, agent or representative breaches this policy, then termination should occur immediately.

In relation to the allegations themselves, the Orders sought by ASIC represent a massive overreach from a regulator that is not following its own model litigant guidelines of “*endeavouring to avoid, prevent or limit the scope of litigation and participating in alternative dispute resolution where appropriate*”. The Mayfair 101 Group and Mr Mawhinney were given no notice of the Court proceedings. If ASIC was concerned about Mr Mawhinney, currently in lock down in Melbourne with his fiancé and 4-month-old daughter leaving the country, they could have asked for his passport. In correspondence to the Court on the evening of 13 August 2020 Mr Mawhinney advised the Court that he is happy to surrender his passport to the Court. Mr Mawhinney makes a similar offer to ASIC.

Mr Mawhinney has been summoned to participate in a public examination for three days before the Court Registrar next week. It cannot be coincidental that ASIC would seek these Orders from the Court four days before the public examination commences and then seek to have the matter set down for case management on 20 August 2020, the same day Mr Mawhinney will be preoccupied with his public examination. This is clearly an attempt to distract Mr Mawhinney from preparing for the public examination and to intimidate him. In relation to that public examination, Mr Mawhinney provided an extraordinary volume of documents within the 14 days requested by the Court and did not object to any documents requested being provided, despite receiving legal advice that the information sought went well beyond what the provisional liquidators were able to request under the Corporations Act.

Mr Mawhinney and the Mayfair 101 Group have nothing to hide. They simply ask to participate in a process where the deck is not stacked against them by an overzealous corporate regulator with a history of aggressive litigation that is later proven to be misguided.

ASIC’s actions put at risk over \$150 million of investor funds and the Mission Beach and Dunk Island Projects. These projects are critical for business and communities in regional Queensland. Prior to ASIC’s actions, the Mayfair 101 Group was working with a team of top-tier advisors on a plan to refinance the Mission Beach and Dunk Island projects, so that distributions could be unfrozen and an exit path for existing investors established. Those plans

are now in serious jeopardy because ASIC would rather run off to Court and make spurious accusations, than pick up the phone and talk.

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MEDIA ENQUIRIES

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