

**Liquor Commission of Western Australia**

***(Liquor Control Act 1988)***

**Complainant:** Commissioner of Police  
*(represented by Mr Daniel Harrop of State Solicitor's Office)*

**Respondent:** John William Guy  
*(represented by Mr John Prior, instructed by Mr Peter Fraser of Dwyer Durack Lawyers)*

**Commission:** Ms Mara Barone (Presiding Member)  
Dr Eric Isaachsen  
Mr Alex Zilkens

**Premises:** Ongerup Hotel, 7<sup>th</sup> Avenue, Ongerup

**Matter:** Complaint pursuant to section 95 for disciplinary action pursuant to section 96 of the *Liquor Control Act 1988*

**Date of Hearing:** 3 August 2017

**Date of Determination:** 21 February 2018

**Determination:**

- Pursuant to section 96(1)(f) of the Act, Mr John William Guy is disqualified from the date of this determination from holding a licence for a period of 5 years.
- Pursuant to section 96(1)(m) of the Act, Mr John William Guy is to pay a monetary penalty of \$10,000 within a period of 60 days from the date of this determination and lodge with the Commission evidence of payment of the penalty within 28 days of making the payment.

## Background

1. On 12 April 2017, the Commissioner of Police (“complainant”) filed a complaint (“complaint”) pursuant to section 95 of the *Liquor Control Act 1988* (“Act”) against John William Guy (“respondent”). The respondent is the sole licensee (Licence No. 6010011387) of the Ongerup Hotel, 7<sup>th</sup> Avenue, Ongerup (“the premises”).
2. The complainant alleges that pursuant to section 95(4) of the Act there is a proper cause for disciplinary action on the following five grounds:
  - 2.1 the respondent has been given an infringement notice under section 167 of the Act and the modified penalty had been paid in accordance with that section (section 95(4)(fa) of the Act) (Ground 1);
  - 2.2 the respondent has been convicted of an offence under this Act (section 95(4)(f)(i) of the Act) (Ground 2);
  - 2.3 the respondent has contravened a requirement of this Act or a term or condition of the licence (section 95(4)(e)(i) of the Act) (Ground 3);
  - 2.4 the licensed premises are not properly managed in accordance with this Act (section 95(4)(b) of the Act) (Ground 4); and
  - 2.5 the respondent otherwise is, or becomes, an unsuitable person to hold a licence under this Act (section 95(4)(g) of the Act) (Ground 5).
3. The respondent has been the licensee of the premises for 23 years, including the period between 11 April 2009 and 12 October 2017 as a sole licensee.
4. It was apparent to the Liquor Commission (“the Commission”) at one point in the hearing, following an opportunity to confer, that the parties came close to an agreement on the complaint and remedy sought. That did not eventuate and the hearing was adjourned to another date to complete the matter.
5. Subsequently, the parties notified the Commission that they had settled a Statement of Agreed Facts, and requested that the Commission proceed to determining the complaint without the need to hold a further hearing.
6. The respondent concedes the five grounds of the complaint.
7. The complainant seeks the following disciplinary action:
  - 7.1 the respondent to be disqualified, for such a period as the Commission thinks fit, from holding a licence, pursuant to section 96(1)(f) of the Act; and
  - 7.2 the Commission impose a monetary penalty on the respondent, as the Commission sees fit, pursuant to section 96(1)(m) of the Act.
8. The respondent concedes that the remedies sought are appropriate.

## **Agreed Facts**

### **Incident on 3-4 December 2015**

9. The incident of 3-4 December 2015 is particularly relevant to consideration of the complaint.
10. During the evening of 3 December 2015, the respondent was present as the licensee of the Premises.
11. Ms Kaitlin Hilyard, an employee of the Respondent, was present and working as bar person.
12. At approximately 7:27p.m Mr Robert Hooper and Mr Rodney Spencer arrived at the premises and began drinking alcohol. They were in company with other patrons who worked on Mr Hooper's farm. Other members of the public, including a lodger of the premises, were also present.
13. The respondent and Ms Hilyard continued to serve alcohol past midnight, in contravention of a condition of the licence.
14. On 4 December 2015, CCTV footage indicated that between 00.03a.m and 01.53a.m, patrons were sold or supplied with liquor on 19 separate occasions, with three of those occasions being liquor supplied to a lodger.
15. Further, on five separate occasions patrons were permitted to take open liquor from the licensed area of the premises, in breach of section 110(3) the Act.
16. At some stage, Mr Hooper left the premises to sleep in his vehicle. Mr Spencer left the premises shortly after on 4 December 2015. Both had consumed alcohol. Mr Spencer drove Mr Hooper's vehicle. The vehicle was involved in an accident and as a result Mr Hooper died from his injuries.
17. Ms Hilyard was the first person to arrive upon the scene of the accident.
18. Ms Hilyard telephoned Mr Gary Flynn, a patron who was still at the premises and alerted him to the incident. Shortly after, Mr Flynn and a number of other patrons from the premises arrived at the accident scene.
19. The attending emergency services personnel variously described some of the persons at the scene as clearly affected by alcohol or intoxicated. The attending police officer was concerned about the potential for the situation to escalate given the behaviour of the bystanders.
20. On 9 December 2015, the respondent was interviewed by Sergeant Russell in relation to the incident on 4 December 2015.
21. The respondent stated that he and Ms Hilyard had stopped serving patrons at midnight on 3 December 2015.
22. Ms Hilyard was subsequently interviewed by Police and provided a witness statement and statutory declaration.

23. Ms Hilyard states that the respondent originally told her not to speak to Police in relation to the incident, and then told her that if asked she should say that she finished work at midnight on 3 December 2015 and then had a drink out the back of the pub before leaving to go home.
24. The respondent does not admit that he said those things to Ms Hilyard.

### **Incident on 22 January 2016**

25. On 22 January 2016, Sergeant Michael Russell attended the premises to speak to the respondent.
26. The premises began trading at 3.00PM.
27. The respondent was not at the premises, and the only staff member present was Emma Stratton who is not a licensee or an approved manager of the premises.
28. Sergeant Russell instructed Ms Stratton to telephone the respondent and tell him to come to the premises. The respondent could not offer any explanation as to why he was not present whilst the premises were trading.
29. The respondent was issued with Liquor Infringement Notice Number 1013000006463 for an alleged breach of section 100(2) of the Act on 10 February 2016, and paid the modified penalty of \$1000 on 25 February 2016.

### **Convictions for offences under the Act**

30. On 4 December 2015, between 00:03 hrs and 01:53 hrs the respondent, and his employee Ms Hilyard, continued to trade at the premises, supplying patrons with liquor on 19 separate occasions.
31. It is a condition of the licence that trading shall cease at midnight.
32. The respondent was subsequently charged with 19 counts of trading outside permitted hours. Three of the charges were discontinued on the basis that alcohol had been supplied to a lodger.
33. The respondent pleaded guilty to the remaining 16 charges of trading outside permitted hours in the Katanning Magistrates Court on 28 February 2017.
34. CCTV footage also indicated that the respondent permitted patrons to consume liquor outside of the permitted area at the premises.
35. The respondent was subsequently charged with five counts of permitting a person to take liquor from licensed premises in a manner not authorised.
36. Four of the charges were withdrawn by the prosecution.
37. The respondent pleaded guilty to the one remaining charge.

38. The respondent was fined a global sum of \$1,500 in relation to all 17 convictions.
39. In summary, the respondent was convicted of 17 offences under the Act:
  - (a) 16 convictions for trading outside licensed hours, contrary to section 111(1)(a) of the Act; and
  - (b) one conviction for unlawfully permitting liquor to be sold to a person to be consumed off licensed premises, contrary to section 110(3) of the Act.

### **Determination**

40. The Commission has reviewed all the material submitted in respect to this matter, including a Statement of Agreed Facts signed by both parties, and heard the submissions of the parties at the hearing.
41. The Commission notes the disparate witness statements of the respondent and Ms Hilyard in relation as to the cessation of service of liquor on 3 – 4 December 2015, however the Commission is of the view that those particular facts are not material to the decision.
42. At paragraph 6 above, the respondent is noted as having conceded the five grounds of the complaint.
43. At paragraph 8 above, the respondent is noted as having conceded that an appropriate remedy is to disqualify the respondent from holding a licence for such a period as the Commission thinks fit and to impose a monetary penalty on the respondent as the Commission sees fit.
44. The Commission is satisfied that the five grounds of the complaint are made out and that there is a proper cause for disciplinary action against the respondent in the following terms:
  - pursuant to section 96(1)(f) of the Act, the respondent is disqualified from holding a licence from the date of this determination for a period of 5 years; and
  - pursuant to section 96(1)(m) of the Act, the respondent is to pay a monetary penalty of \$10,000 within a period of 60 days from the date of this determination and lodge with the Commission evidence of payment of the penalty within 28 days of making the payment.



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**MARA BARONE**  
**PRESIDING MEMBER**