

Liquor Commission of Western Australia
(Liquor Control Act 1988)

- Complainant:** Commissioner of Police
(represented by Mr James Bennett of State Solicitor's Office)
- First Respondent:** Good Time Investments Pty Ltd
(represented by Ms Trina Lane, sole director)
- Second Respondent:** Ms Trina Lane
- Commission:** Mr Jim Freemantle (Chairperson)
Mr Alastair Bryant (Member)
Mr Greg Joyce (Member)
- Matter:** Complaint for disciplinary action pursuant to section 95 of the *Liquor Control Act 1988*
- Premises:** Katanning Hotel, 43 Austral Terrace, Katanning
- Date of Hearing:** 23 March 2012
- Date of Determination:** 17 April 2012

Determination:

1. In accordance with the Director's correspondence dated 7 February 2012, the Hotel licence remains suspended until 23 April 2012 to enable transfer of licence with the licensing authority failing which the licence will be cancelled.
2. CCTV cameras to be working in compliance with the Director's policy and be made available on request should the licence resume if cancelled.
3. Pursuant to section 96(1)(g) of the Act the second respondent ,Ms Trina Lane, is disqualified from being a holder of a position of authority in a body corporate that holds a liquor licence or otherwise being interested in, or in the profits or proceeds of a business carried on under a licence for a period of five years.

Introduction

- 1 Good Time Investments Pty Ltd (“the Company”) became the licensee of the Katanning Hotel on 26 May 2010. The approved manager at that time was Mr Vincent James Healey. On 24 January 2011, Mr Healey was charged with and convicted of possession of a prohibited drug and on 24 May 2011 was imprisoned for two years and four months.
- 2 Ms Trina Lane assumed the role of approved manager sometime in January 2011 and on 18 July 2011 Trina Lane became the sole director of the Company and increased her shareholding from 45 shares to ninety of the hundred shares.
- 3 On 8 June 2011, Director Licensing (“the Director”) sought submissions from the licensee to show cause why the operation of the business under licence should not be suspended for breach of section 102(1)(a) (assuming position of authority in licensee company without approval) of the *Liquor Control Act 1988* (“the Act”).
- 4 Notwithstanding that submissions along with the application for approval of the change in corporate structure were lodged thereafter, Ms Lane was served with an infringement notice pursuant to section 102(1)(a) of the Act . The applications lodged by Ms Lane for approval as a manager and a person in position of authority were subsequently withdrawn on 16 December 2011.
- 5 On 8 December 2011, the Commissioner of Police (“the Police”) lodged a section 95 complaint with the Liquor Commission (“the Commission”) against the first respondent, Good Time Investments Pty Ltd. The complaint alleged four breaches of section 95 of the Act and provided evidence in respect of seven incidents. The following four remedies were sought:
 - cancellation of the licence of the first respondent;
 - imposition of a monetary penalty on the first respondent
 - disqualify Trina Lane from holding a position of authority in any licensed premises; and
 - CCTV to be working in compliance with the Director’s policy should the licence resume.
- 6 On 3 January 2012, Ms Trina Lane advised the Commission that the licensee company, Good Time Investments Pty Ltd had ceased trading effective from 23 December 2011.
- 7 On 3 January 2012, the Director advised the Commission that, pursuant to section 92 of the Act, the subject licence had been suspended until 23 January 2012 and any application for transfer of licence pursuant to section 82 and 84 could be lodged during that time.

- 8 On 7 February 2012, this suspension was further extended by the Director until 23 April 2012 with the caveat that no further extensions of time would be given and the licence will be subsequently cancelled.
- 9 On 10 January 2012, the Police made an application to the Commission pursuant to Rule 11 of the *Liquor Commission Rules* to amend the original complaint so that it was made out against both:
- (i) Good Time Investments Pty Ltd as licensee of the Katanning Hotel and
 - (ii) Trina Lane personally as a person who holds a position of authority in a body corporate that holds the licence.
- 10 The Police also sought to amend the grounds for complaint to include:
- “5. a person (Trina Lane) who:*
- (a) holds a position of authority in a body corporate that holds the licence;*
 - (b) is interested in the business or the profits or the proceeds of the business, is or has become not a fit and proper person to hold that position or to be so interested.”*
- 11 Finally the Police sought to amend the third remedy to read:
- “Pursuant to section 96(1)(g) Liquor Control Act disqualify Trina Lane from holding a position of authority in a body corporate that holds a licence; and being interested in, or in the profits or proceeds of a business carried on under a licence.”*
- 12 A hearing in respect of the complaint was heard on 23 March 2012.

Submissions on behalf of the Commissioner of Police

- 13 The Police alleged that pursuant to section 95(4) of the Act there is a proper cause for disciplinary action against the first and second respondents on the following grounds:
- (i) The licensed premises are not properly managed in accordance with section 95(4)(b) of the Act.
 - (ii) The licensee has contravened a requirement of the Act or a term or condition of the Act pursuant to section 95(4)(e)(i) of the Act.
 - (iii) The licensee has sold or supplied liquor otherwise than in accordance with the authorisation conferred by the licensee pursuant to section 95(4)(e)(ii) of the Act.
 - (iv) The continuation of the licence is not in the public interest or the licence has not been exercised in the public interest pursuant to section 95(4)(j) of the Act.

- (v) A person (Trina Lane) who holds a position of authority in a body corporate that holds a licence; and being interested in, or the profits or proceeds of the business is or has become not fit and proper person to hold that position to be so interested.
- 14 The licence is subject to an entertainment condition prohibiting the licensee, manager or staff from being immodestly dressed or permitting any staff to be immodestly dressed. They are prohibited from performing or undertaking any activity that is considered lewd or indecent or permitting staff to perform or undertake any activity that is considered lewd or indecent.
- 15 The Director has developed a policy in relation to entertainment conditions which serves as a guideline for licensees as to what is acceptable in relation to adult entertainment on licensed premises. Subject to standard entertainment conditions, "immodest" includes but is not limited to bare breasts and bare buttocks including by way of see through material, nipple stickers or g-string underwear.
- 16 The Police provided CCTV evidence of seven incidents on the licensed premises alleging breach of the entertainment conditions, specifically:
- (i) On 20 May 2011, CCTV footage reveals a skimpy barmaid lying on the bar naked raising her right leg exposing her genitalia and anus in full view of patrons. Trina Lane is observed in the background photographing the skimpy barmaid in the exposed condition. The skimpy barmaid then moves to the pool table and exposes her genitalia and anus to patrons. A fight is then observed between two patrons which lasts for approximately two minutes. Throughout the footage patrons are observed consuming liquor and the licensee continues trading past midnight some two hours and twenty four minutes after the permitted hours of trading.
 - (ii) On 2 July 2011, CCTV footage reveals that the licensee continued to trade past the scheduled closing time and four skimpy barmaids conducted themselves in a lewd and immodest manner. This included bare breasts and bare buttocks and physical contact and interplay with patrons. Ms Trina Lane was present throughout this session.
 - (iii) On 3 July 2011, CCTV footage reveals a skimpy barmaid with bare breasts behind the bar and with patrons past the permitted hours of trading.
 - (iv) On 9 and 10 July 2011, the CCTV footage reveals an unidentified female exposing her breasts to patrons. A male patron is observed sucking the female's breasts. A skimpy barmaid and another female are observed dancing around a pole. The female takes off her pants and exposes her buttocks. Ms Trina Lane is observed taking photographs. The hotel has continued to trade for approximately one and a half hours past the permitted hours of trading.
 - (v) On 21 July 2011, the CCTV reveals two topless skimpy barmaids in the presence of Ms Trina Lane.

- (vi) On 4 August 2011, a review of the CCTV footage reveals an unidentified female inside the premises wearing g-string style French underwear exposing her buttocks to patrons. In addition, during a mud wrestle, one of the females has her top removed exposing her breasts to the view of patrons and, through an open window, to the general public. Ms Trina Lane can be observed taking photographs.
 - (vii) On 1 September 2011, at 7:30 pm Liquor Enforcement Officers attended the Katanning hotel. Whilst inside the premises they observed a female skimpy barmaid dressed immodestly and could be seen by the general public through the window.
- 17 The incidents referred to in paragraph 16 above are breaches of the Director's entertainment policy and sections 110(1)(a) (selling liquor outside of authorised hours) and 110(1)(aa) (acts that contravene a condition of the licence) of the Act.

Submissions on behalf of the Respondents

- 18 Ms Trina Lane, second respondent stated that she was not fully aware of the responsibilities of an approved manager under the Act. She stated that the gatherings at the Katanning hotel after the permitted hours of trading were private parties and the guests did not pay for their drinks and she thought she was able to permit the subject behaviour without infringing the Act or the licence conditions.
- 19 It was submitted that the women, the subject of the behaviour were friends of hers and had never been paid by herself or Good Time Investments Pty Ltd and she felt obliged to let them party. The fondling that took place with patrons was in fact with their partners.
- 20 It was further submitted that the period in which Ms Lane assumed the role of manager had been a financial disaster for her and she had lost everything.
- 21 It was confirmed that Good Time Investments Pty Ltd had ceased trading on 23 December 2011 and was expected to go into receivership.

Determination

- 22 The Commission with consent, at the commencement of the hearing, granted the applicant to amend the grounds of the complaint. In doing so, the Commission considered its jurisdiction to hear the complaint against the second respondent, Ms Trina Lane. Ms Lane was never an approved manager, director or shareholder and was operating on the licensed premises in breach of section 102(1)(a) and (b) of the Act. Whilst Ms Trina Lane was never approved pursuant to sections 33(5) or 102B(1) of the Act she was for the purposes of the Act a person who occupied a position of authority pursuant to section 3(4) of the Act. To construe the Act otherwise would lead to a conclusion where the Commission is unable to consider complaints against persons who assume positions pursuant to the operation of a licence without the required approvals. Accordingly, the Commission is of the view that it has jurisdiction

to hear the complaint against the second respondent, Ms Trina Lane pursuant to sections 95 and 96 of the Act.

- 23 The Commission may, on a complaint lodged under section 95 of the Act, take disciplinary action. Pursuant to section 96 of the Act if the Commission is satisfied, on the balance of probabilities, that the grounds on which the complaint was made have been made out so a proper cause for disciplinary action exists, the Commission may exercise its discretion under section 96(1) of the Act.
- 24 The Commission is of the view that the seven incidents outlined in paragraph 16 above were events of trading under the licence and the Act. There was a continuous supply of liquor past the scheduled closing time on the licensed premises and the CCTV footage as well as the submissions made by Ms Lane clearly prove that the patrons were not lodgers. It can therefore be concluded that that this was a licensed premises operating after the permitted hours of trading.
- 25 The behaviour of the women identified in the seven incidents referred above is a clear breach of the entertainment condition of the subject licence and contrary to the “entertainment condition” policy of the Director. It is of grave concern to the Commission that Ms Lane as “a person in position of authority or with an interest in a body corporate that holds the licence” (although not approved by the director) was not only present on each occasion but also actively participated in the activities by taking photographs thereby showing serious error in her judgement.
- 26 Further, although section 102B(5) of the Act provides that if a person has applied for a managers’ approval the person is to be taken to be an approved unrestricted manager or an approved restricted manager, as the case requires until the Director determines the application, the Commission notes that Ms Lane did not lodge an application until June 2011 (and withdrew it in December 2011) and thus for a considerable period acted in breach of the Act.
- 27 The Commission is satisfied that the grounds of the complaint are made out and that there is a proper cause for disciplinary action against both the first and second respondents in the following terms:
 1. In accordance with the Director’s correspondence dated 7 February 2012, the Hotel licence remains suspended until 23 April 2012 to enable transfer of licence with the licensing authority failing which the licence will be cancelled.
 2. CCTV cameras to be working in compliance with the Director’s policy and be made available on request should the licence resume if cancelled.
 3. Pursuant to section 96(1)(g) of the Act the second respondent, Ms Trina Lane, is disqualified from being a holder of a position of authority in a body corporate that holds a liquor licence or otherwise being interested in, or in the profits or proceeds of a business carried on under a licence for a period of five years.

28 Finally, given the evidence before the Commission, it would have imposed a monetary penalty against the licensee company for breach of the Act. However in view of the submissions made by the licensee in respect of the company's solvency and the fact that Ms Lane the sole director of the licensee company is disqualified for a period of five years, the Commission elected not to impose a fine in this instance as any such monetary penalty would have been detrimental to creditors of the licensee company.

A handwritten signature in black ink, consisting of a large, stylized initial 'J' followed by a horizontal line and a smaller, less legible signature.

MR JIM FREEMANTLE
CHAIRPERSON