

Liquor Commission of Western Australia
(Liquor Control Act 1988)

- Complainant:** Commissioner of Police
(represented by Ms Joanna Vincent of State Solicitor's Office)
- Respondent:** Glenn Reginald Walker
(self-represented)
- Licensee:** Boomtown WA Pty Ltd trading as "Mister Walker"
(represented by Mr Brett Walker and Ms Sue Rickleman)
- Commission:** Ms Sarah Oliver (Presiding Member)
Dr Eric Isaachsen (Member)
Ms Emma Power (Member)
- Matter:** Complaint for disciplinary action pursuant to section 95 of the
Liquor Control Act 1988
- Date of Hearing:** 18 September 2019 and 16 October 2019
- Date of Determination:** 7 November 2019
- Determination:** Being satisfied that there is proper cause for disciplinary action, pursuant to section 96(1)(g) of the *Liquor Control Act 1988*, Mr Glenn Reginald Walker be disqualified for a period of 12 months from the date of this determination from:
1. being the holder of a position of authority in a body corporate that holds a licence under the Act; or
 2. being interested in, or in the profits or proceeds of, a business carried on under a licence under the Act.

Background

- 1 On 28 June 2019, the Commissioner of Police (“**the Complainant**”) made a complaint pursuant to section 95 of the *Liquor Control Act 1988* (WA) (“**the Act**”) against Mr Glenn Reginald Walker (“**the Respondent**”). The complaint alleges that there is proper cause for disciplinary action on the grounds that the Respondent, being a person holding a position of authority in a body corporate that holds the licence, or who is interested in the business or the profits or proceeds of the business, is or becomes not a fit and proper person to hold that position or to be so interested (pursuant to section 95(4)(h) of the Act).
- 2 The complaint follows the Respondent’s conviction for a number of criminal offences that were committed between around 3 March 2019 and 5 April 2019. At the time of the offending, the Respondent was a director Boomtown WA Pty Ltd (ACN 605 755 342) (“**the licensee**”), having been appointed a director of the licensee on 11 May 2015 (see Bundle of Relevant Material (“**BRM**”) at 135). The licensee holds liquor licences 6060085134 and 0208716816, issued on 30 May 2016 (BRM at 11-14).
- 3 On 4 June 2019, the Respondent ceased to be a director of the licensee (BRM at 135). However, he remains the sole director and shareholder of See Gull Star Pty Ltd (ACN 061 026 702) (BRM at 143-144). See Gull Star Pty Ltd holds 20% of the shares in the licensee (BRM at 136). In the circumstances, the Commission is satisfied that the Respondent is a person who is interested in the business or the profits or proceeds of the business of the licensee, for the purposes of section 95(4)(h) of the Act.
- 4 The complaint was listed for hearing before the Liquor Commission of Western Australia (“**the Commission**”) on 18 September 2019. At that hearing, the Complainant confirmed that the complaint had been served on the Respondent but had not been served on the licensee. It is a requirement of section 95(5a) of the Act that the Complainant serve a copy of the complaint on the licensee. Further, under section 95(7), the Commission is required to give notice to the licensee of the date and time of hearing of the complaint, and this had not occurred in relation to the hearing on 18 September 2019. In the circumstances, the Commission had to adjourn the hearing to allow for service of the complaint to be affected and notice of the resumed hearing to be given to the licensee.
- 5 The hearing was resumed on 16 October 2019. At that hearing, Mr Brett Walker (a director of the licensee) and Ms Sue Rickleman appeared at the hearing on behalf of the licensee. The Complainant and the Respondent also appeared at that hearing.
- 6 The hearing of the complaint was constituted in accordance with section 95(7a) of the Act.

Criminal Convictions

- 7 The Respondent has been conviction for a number of criminal offences that were committed between around 3 March 2019 and 5 April 2019. The criminal offending occurred following the breakdown of the Respondent’s relationship with his former partner, who we will refer to as “**DK**”. The criminal offending is not directly related to the Respondent’s involvement in or with the licensee.

8 On or around 15 February 2019, the Respondent and DK's relationship ended (BRM at 74, paragraph [6]). On 28 February 2019, a violence restraining order ("VRO") was issued protecting DK from the Respondent (BRM at 39). That VRO was personally served on the Respondent on 3 March 2019 at 1400hrs (BRM at 41). Pursuant to the terms of the VRO, the Respondent was prohibited from communicating or attempting to communicate with DK by any means whatsoever, including SMS or text message or any other electronic means, or causing or allowing another person to engage in the same conduct (BRM at 39). Further, the VRO prohibited the Respondent from behaving in an intimidatory, offensive or emotionally abusive manner towards DK (BRM at 39), and informed the Respondent that stalking DK was unlawful (BRM at 39-40).

9 On 3 March 2019, the Respondent sent an email to DK in the following terms (BRM at 43-44):

Brilliant [DK]

Just had the police here.

...

And I will see you in court because this is an embarrassment to both of us to say the least.

I will contest it out of principal and being a licensee of a bar, it is not what I need.

Just shows that you are such a weak person and cant face up to what you did.

I have seen you once since it happened and you need a VRO.

You have used the court system to stop me emailing you so this will be the last one. ...

10 The following day, the Respondent sent DK another email with a video attached to it. The video depicted a person saying "You're a cunt".

11 At 1940hrs on 5 March 2019, the Respondent sent a further email to DK (BRM at 53).

12 On 6 March 2019, the Respondent sent emails to DK at 1926hrs, 2111hrs and 2233hrs (BRM at 62, 61 and 63 respectively). The email sent at 1926hrs read (BRM at 62):

Hey [DK],

Have you got anything to say before I go into the Dunsborough Police Station and hand myself in tomorrow.

*I cant have them coming to Halcyon all the time looking for me and I can't tell them to F**k off each time they call.*

Just thought you might want to add something to it all.

This is Karma is it. Or Justice.

Karma for me and Justice for you!!!!

Must be I guess.

Hope your ok.

13 At 1425hrs on 7 March 2019, the Respondent sent a further email to DK (BRM at 65).

14 At around 1630hrs on 7 March 2019, the Respondent was arrested and charged with five offences of breaching the VRO, relating to the five emails outlined above (BRM at 67). On 8 March 2019, the Respondent was released to bail, which included a protective condition that he not contact or attempt to contact DK by any means, either directly or indirectly (BRM at 155-156).

- 15 Two days after being released on protective bail conditions, and whilst still subject to the VRO, the Respondent called a friend of DK three times and left a voicemail message for DK (BRM at 104). On the same day, the Respondent left a letter and gift for DK at her home address (BRM at 106).
- 16 The Respondent was arrested on 12 March 2019 and charged with two offences of breaching the VRO, relating to the phone calls and to the letter and gift outlined above (BRM at 103-107). On 13 March 2019, the Respondent was also summonsed for an offence of breaching the protective bail conditions, arising out of the letter and gift left at DK's house on 10 March 2019 (BRM 97).
- 17 The Respondent was brought before the Bunbury Magistrates Court on 13 March 2019 and was sentenced in relation to the seven offences of breaching the VRO and the one offence of breaching protective bail conditions. He was given a global fine of \$5,000 (see BRM 150-151). In sentencing the Respondent, the Magistrate said (transcript at 14-17):

...Mr Walker, I don't, with respect to Mr Macfarlane, accept the submission that you didn't understand the seriousness of what it was that you were doing. Manifestly you did. So you told the police that at the end of the first series – there are two series of offences as you are aware – when you were interviewed, you made full admissions that you didn't appreciate the full seriousness of it. So notwithstanding that assertion by you, which I don't accept, to police, you went on your merry way by changing your offending and substituting a written letter in place of the emails that constituted the first series of breaches.

And included in that letter a mischievous and manipulative intimidation to the victim namely asking to be – for that to be treated separately and saying that you were at her mercy. And manipulatively putting upon her a discretion to perhaps not complain about your persistent and continued breaches. And they are persistent and continued and the inference I draw, and the fact that I find, is that you simply chose to ignore the orders and considered that you weren't bound and that you would continue to contact the protected person as and when you felt like it.

You described her as weak and gutless and perhaps she was, certainly was in a vulnerable offence because she considered it necessary to seek the protection of a court to stop you from contacting her. If that's weak and gutless, that just perhaps represents an insight into your thinking that you are a person that does stand over this victim and perhaps she had, as no doubt whoever it was that granted the order, a reasonable apprehension that she would be exposed to further acts of violence from you. Notwithstanding the protection that was granted to her by way of the interim family violence restraining order, you chose to perhaps expose the weakness of that protection by contacting her in that offensive manner and describing her as weak and gutless.

You the persisted by sending her that video by which you got either a recording of someone else or engaged someone else – it doesn't matter – which to describe her or to tell her that "You're a cunt". I mean, that might describe a aspect of weak and gutlessness but it doesn't demonstrate an aspect of weak and gutlessness on the part of the victim, but rather yourself, Mr Walker. The messages from you to her demonstrate an entirely self-absorbed point of view as to "poor me, poor me" which on a personal level might be described as pathetic, but it doesn't in any sense mitigate your persistent and serious offending.

And these offences are serious, Mr Walker. You might not appreciate that. You might think it's all well and good to send emails notwithstanding that you had been told not to and in fact ordered

not to. You might think it's well and good to breach bail, notwithstanding you've told police "I didn't understand how serious it was" but pretty much immediately after you were released, you've breached your bail. These are serious offences. With regard to the breaches of the family violence restraining orders, there's a potential penalty of two years imprisonment in relation to each. There's a potential fine of \$6,000 in relation to each. There's seven of them. So you know, I'm not thinking anything like the maximum and it would be manifestly wrong for me to impose the maximum.

...

I'm not considering sentencing you to a term of imprisonment but it's open. Make no mistake about that. If you didn't have an understanding as to the seriousness of your conduct before, I hope more for the victim's sake than for your sake, that you leave here today under no illusion that you put yourself at risk of immediate imprisonment. Not for what you might do in the future, but for what you've done at this point. However, the law is that I can only sentence someone to immediate term if there are no other more appropriate sentencing options and I consider that there is a more appropriate sentencing option having regard to these features.

...

What I propose to do, Mr Walker, and you might now stand pleas, is to impose a global fine of \$5,000. That's the penalty together with the prosecution costs. That completes the matters. If you offend again by way of contacting this person, you could expect that the penalties only go up. And notwithstanding some difference of opinion between myself and the learned prosecutor as to whether a mandatory provision might apply, you might expect that if you were to contact this person again, that whoever is sitting in this chair will immediately sentence you to a term of imprisonment. ...

- 18 Fifteen days after being sentenced for the earlier offences, at 2346hrs on 28 March 2019, the Respondent emailed DK (BRM at 188 and 109). Between 28 March 2019 and 5 April 2019, the Respondent sent DK a total of 26 emails (BRM at 122-125).
- 19 Further, on 3 April 2109, the Respondent called DK three times (BRM at 122-125).
- 20 On 5 April 2019, the Respondent was arrested and charged with two offences of breaching the VRO (relating to the 26 emails and 3 telephone calls respectively) and one offence of stalking. He was refused bail and appeared before the Perth Magistrates Court on 9 April 2019, at which time he entered pleas of guilty and was sentenced (BRM 150-151). In sentencing the Respondent, the Magistrate said (transcript at 9-13):

...I've briefly had a look at the contents of the emails, or a sample of the emails, and what has been represented to the court is there's nothing overtly threatening in those particular emails and that they are akin to protestations of love or love letters. I don't agree in full with that categorisation for the simple reasons as follows. I have a look at the contents of the emails and the emails are – can be categorised in the following way.

Certainly, there are protestations of love and the requests to reconcile. But other parts of the email take on, in my view, a more insidious intimidation, and that is because you make reference repeatedly to the current violence restraining order proceedings and inform the protected person how upset you are with the violence restraining order, or the restraining order being issued, acknowledging that you were harassing her by email, making her feel as if she did not have any choice, and then interposing between that protestations of love and reference to various other songs and the like.

...

Now, in my view, repeated references to the restraining order proceedings in the manner that you did could reasonably be expected to intimidate the protected person about the merits of the

restraining order and, were it the fact that your emails were actually only about love letters, then I might be persuaded to characterise them in a way that's suggested by your counsel.

But that is not, in fact, what the email contents refer to. They very pointedly refer to the restraining order proceedings and insidious in that is that the restraining order proceedings have no merit and that the protected person is somehow disadvantaging you. And that repeatedly can reasonably be expected to intimidate the protected person. It did, in fact, intimidate the protected person and it's not difficult to see why that would be the case.

Now, more broadly speaking, I can see from your record – and your record is relevant in this sense. It's not an aggravating feature. But on 13 March in Bunbury Magistrates Court, noting we're on 9 April now, you were dealt with with repeated breaches of a restraining order, and those breaches occurred over a number of days in March 2019 and you were subject to a global fine of \$5,000; so a not insubstantial fine.

Did you learn from that? Clearly, you did not because within 15 days of that sentence being imposed in the Bunbury Magistrates Court you have repeatedly breached the restraining order again and you did so in a manner that intimidated the protected person. And, in my view, that demonstrates a flagrant disregard for court orders.

And clear indication of the requirement of specific deterrent penalty by the court and, more broadly, a general deterrent penalty to impose upon anyone else who thinks that somebody who comes to the court wanting protection should not receive that protection, or not at least have the sanction imposed that's demonstrative of the court's protection, in my view, is highly relevant.

In terms of whether you are a repeat offender under the restraining orders legislation, section 61A is, in my view, relevant. But even if I'm wrong about that, ordinary sentencing principles, in my view, would also apply in this particular case. That is, I would need to be persuaded that a penalty that did not include imprisonment could only arise where it was clearly unjust given the circumstances of the offence and the person and that the person is unlikely to be a threat to the safety of a person protected or the community generally.

Even if you were to satisfy the court that you were not a threat to the person protected, I could not in any way be satisfied that there is any unjustness in the circumstances of the offence. And that takes into account your personal circumstances. Difficult to imagine that your personal circumstances have radically changed since 13 March, and I would hazard a guess, reasonable in my view, that many of the submissions made in respect of your offending on 13 March was also applicable to what is being put before the court today.

But, in any event, the fact that 26 times you pushed a send button on an email, thereby making a conscious decision on each and every condition to breach the violence restraining order, and then on 3 April you made a conscious decision to contact the protected person, again, demonstrating a conscious decision to breach the violence restraining order, in my view, clearly does not render anything unjust in a sentence including a term of imprisonment.

...

So, therefore, even normal sentencing principles would apply in your particular place, Mr Walker, even if section 61A of the Restraining Orders Act did not. And for all of those reasons I would readily conclude a term of imprisonment is appropriate.

I have regard to your personal circumstances. Your personal circumstances demonstrate that, effectively, you're a man in your late fifties who has been separated in a relationship and has not reacted well to the separation. That's probably of little consequence or consideration to the protected person who has every right to be able to move on from a relationship when and if they

feel the need to do so for whatever reason, and they do not in any way need to give you an explanation. The fact that you cannot deal with that is a matter for you and not a matter for that person.

There are mechanisms or methods that you can employ to deal with the breakdown of a relationship, and that includes attending a general practitioner, and if it's appropriate you can be on a mental health plan and be eligible for numerous counselling under the Medicare system. It seems that you have made some effort to do that, and you haven't fully actioned it at this point in time.

The fact that there are some other issues going on with your business and you say you felt under duress, in my way, offers no explanation as to why you would continue to disregard the restraining order. The two seem to be quite separate, in my view, and I'm not persuaded that, necessarily, you were under the level of duress that seems to be impressed upon me that would provide any explanation as to why someone would continue to flagrantly disregard the restraining order.

- 21 The Respondent was convicted and sentenced to a total effective sentence of 8 months imprisonment, suspended for 12 months (transcript at 13-14).

Submissions on behalf of the Complainant

- 22 The Complainant provided two sets of written submissions to the Commission (dated 4 September 2019 and 3 October 2019), and made oral submissions at the hearing consistent with those written submissions.
- 23 The Complainant submitted that the evidence established, on the balance of probabilities, that there were grounds for disciplinary action against the Respondent under section 95 of the Act. The Complainant submitted that, given the nature and seriousness of the criminal offending by the Respondent, he was no longer a fit and proper person to be involved or have an interest in the profits or proceeds of the licensee's business.
- 24 The Complainant referred the Commission to the recent decision in *Director of Liquor Licensing v Sewell* (LC 17/2019) at [21], where it was held that, in deciding whether a person is fit and proper, many factors can be considered including the character and reputation of the person, and prior convictions. It was also noted in that case that prior convictions are relevant, regardless of whether the offences have taken place on the licensed premises or are directly related to the consumption of alcohol (*Sewell* at [25] and [33]).
- 25 In the present case, the Complainant submitted that the frequency of the offending, and the fact that offending continued after the Respondent was placed on protective bail conditions and even after he was sentenced, demonstrated a significant disregard for the law and reflected adversely on the character of the Respondent.
- 26 The Complainant further submitted that the timeline of the offending, and its repetitive and frequent nature, was critical to the assessment of whether the Respondent was a fit and proper person. In particular, it was noted that the second series of offending occurred just 15 days after the Respondent was sentenced for the first series of offences. The Complaint took the Commission to various parts of the sentencing remarks of the two Magistrates, to highlight

the seriousness of the offending and the blatant disregard the Respondent had shown towards the law and the terms of the VRO in particular. It was said that the course of conduct of the Respondent in disregarding the law demonstrated he was not a fit and proper person to be involved in the liquor industry.

- 27 The Complainant submitted that, as grounds for disciplinary action had been made out, it was appropriate for the Commission to take disciplinary action. The Complainant submitted that, even though the offending occurred over a relatively short period and the Respondent had no prior offences, a disqualification period of at least 5 years was appropriate. The Complainant noted that in the *Sewell* matter, the Commission had disqualified the Respondent for 4 years for offending that involved traffic matters and violence. It was submitted that this case provided a useful guide for the Commission in setting any disqualification period in the present case.

Submissions on behalf of the Respondent

- 28 The Respondent did not file any written submissions. In his oral submissions at the hearings, the Respondent accepted responsibility for the criminal offences, but did not want to go into detail in relation to the offending – accepting that what has happened, has happened.
- 29 He explained that the offending occurred at a difficult time in his life, that it was out of character, and that he was remorseful for the offending. He explained he has been seeing a mental health professional and has been diagnosed with PTSD. Initially he saw the mental health professional on a weekly basis, then fortnightly, and now his appointments have been reduced to monthly.
- 30 The Respondent submitted that the offending was in no way related to the licensed premises and had had no impact on the business at all. He submitted that the offending was an isolated and private matter. He also submitted that imposing a disqualification would not achieve anything, as he was not involved in the management of the licensee's business and had resigned as a director. Given those matters, he opposed the orders being sought by the Complainant.
- 31 The Respondent further submitted that, if disciplinary action was to be taken, a period of 5 years disqualification was too long and did not reflect the nature of the offending. He pointed out that the case of *Sewell* relied upon by the Complainant, which had resulted in a 4 year disqualification, involved actual violence, whereas the offending in his case was intimidatory not violent.

Submissions on behalf of the licensee

- 32 Mr Brett Walker made brief oral submissions at the hearing. He said that the licensee had notified the Department of the criminal convictions, in accordance with its duty to do so, and confirmed that the Respondent had ceased to be a director of the licensee.
- 33 Mr Walker explained that the Respondent was not involved in the licensee's business and was not involved in any of the management or decision-making. He agreed that the

Respondent was the sole director and shareholder of a company that is a 20% shareholder of the licensee but explained that the licensee has not returned a dividend.

Responsive submissions on behalf of the Complainant

- 34 It was submitted that the fact that the offending by the Respondent did not involve physical violence did not minimise the seriousness of his conduct, noting that violence can manifest itself in a variety of ways, including intimidation and psychological violence. Further, the Complainant submitted that even though the offending occurred in the Respondent's private life, the actions of a person in their private life can impact on their fitness to participate in and derive income from a liquor business.
- 35 The Complainant further submitted that, whilst the Respondent has now resigned as a director of the licensee, it was still in the public interest to make suitable orders under section 95 in relation to the Respondent.

Determination

- 36 The Commission may, where a complaint has been lodged under section 95 of the Act, take disciplinary action provided it is satisfied, on the balance of probabilities,¹ that the ground(s) upon which the complaint is based has, or have, been made out.
- 37 The purpose of the disciplinary action contemplated in section 95 of the Act is to protect the public by maintaining the standards of behaviour for licensees, or a person holding a position of authority in a body corporate that holds a licence, or who is interested in the business or the profits or proceeds of the business, which are set out in and contemplated by the Act.
- 38 The object of disciplinary proceedings is not to punish the person against whom a complaint has been made out.²
- 39 It is a primary responsibility of the licensing authority to provide adequate controls over the persons directly and indirectly involved in the sale, disposal and consumption of liquor and that the professional standards of the industry and the persons in responsible positions must be maintained at the highest level. The Commission protects the public by taking disciplinary action which:
- (a) prevents those who are unfit to do so from participating in the liquor industry, including holding positions of authority in a body corporate who holds a license, or from being interested in the profits or proceeds of such a body corporate;
 - (b) secures the maintenance of proper industry standards; and
 - (c) assures the public that appropriate standards are being maintained.³

¹ See *That's Entertainment (WA) Pty Ltd v Commissioner of Police* (2013) 228 A Crim R 201 at [60]

² *Craig v Medical Board of South Australia* (2001) 79 SASR 545 at [41]; *That's Entertainment (WA) Pty Ltd v Commissioner of Police* at [39]; and *Commissioner of Police v Parker* (LC 34/2018) at [11]

³ See, by analogy, *Craig v Medical Board of South Australia* at [41]

40 Where there is a wide discretion as to the disciplinary sanction to be imposed, as there is under section 96(1) of the Act, the Commission is required to consider all of the circumstances surrounding the conduct which is the subject of the complaint and to exercise its discretion accordingly.

41 In the present matter, the ground relied upon in the complaint is under section 95(1)(h) of the Act. That section provides:

There shall be proper cause for disciplinary action if –

...

(h) *a person holding a position of authority in a body corporate that holds the licence, or who is interested in the business or the profits or proceeds of the business, is or becomes not a fit and proper person to hold that position or to be so interested...*

42 The term “fit and proper” is not defined in the Act. Section 33(6) of the Act prescribes some relevant considerations when determining whether a person is a fit and proper person to hold a licence, which include the character and reputation of the person, and the number and nature of any convictions for that person for offences in any jurisdiction (see sections 33(6)(aa) and (b)). Whilst not binding on the Commission, this section does provide some guidance when determining a complaint under section 95.⁴

43 Determining whether a person is a “fit and proper” person involves an inquiry about a person’s honesty, knowledge and ability.⁵ Criminal conduct, whether the subject of a conviction or not, is clearly capable of reflecting a person’s character.⁶

44 Obviously, where conduct giving rise to a criminal conviction occurs in the course of the licensed business’ operations, there will be a direct connection between the conduct and the fitness of the person to hold the relevant licence or to be interested in the business of the licensee. However, criminal conduct that does not occur in the course of the licensee’s business may still be relevant to the question of whether a person is a fit and proper person. That is because the conduct may manifest the presence or absence of qualities which are incompatible with, or essential for, the carrying on of the occupation.⁷

45 Further, in determining whether a person is a fit and proper person to hold a licence or be interested in the business of a licensee, prior convictions may be regarded as more serious if they occur while the person is a holder of the relevant licence, or are otherwise so serious, either in themselves or as representing a course of disregard for the law, as to reflect particularly adversely on the character or reputation of the person committing them.⁸

46 In *Maxwell v Dixon* [1995] WAR 167 at 169, Hale J said:

⁴ *Commissioner of Police v Iconic Water Solutions Pty Ltd* (LC 30/2019) at [23]

⁵ *McNeill v Commissioner of Police* (LC 22/2018) at [37] citing *Hughes and Vale Pty Ltd v The State of New South Wales [No 2]* (1955) 93 CLR 127 at 156-157 and *Maxwell v Dixon* [1965] WAR 167 at 169

⁶ *Weininger v The Queen* (2003) 212 CLR 629 at [25]-[29]

⁷ *Director of Liquor Licensing v Sewell* (LC 17/2019) at [27] citing *Mavadatt v Real Estate and Business Agents Supervisory Board* [2009] WASCA 179 at [73]

⁸ *Minniti v Motor Vehicle Industry Board* (2011) 42 WAR 230 at [32]; *Sewell* at [23]

...what is meant by that expression is that an applicant must show not only that he is possessed of a requisite knowledge of the duties and responsibilities devolving upon him as the holder of a particular licence under the Act, but also that he is possessed of sufficient moral integrity and rectitude of character as to permit him to be safely accredited to the public, without further inquiry, as a person entrusted with the sort of work which the licence entails.

- 47 In the present matter, the Commission has considered all of the evidence and the submissions from all of the parties and has determined that the ground of the Complaint has been made out on the balance of probabilities. Even though the criminal conduct engaged in by the Respondent is unconnected with his involvement with the licensee, the nature and seriousness of that offending reflects particularly adversely on the character or reputation of the Respondent such as to render him no longer a fit and proper person to hold a position of authority in a body corporate that holds a licence, or to be interested in the business or the profits or proceeds of the business.
- 48 Although the offending occurred over a relatively short timeframe, it was repeated in its nature and demonstrates a disregard for the law. The gravamen of the offending lies in its ongoing nature, despite the fact that the Respondent had been arrested, had been bailed and later had been sentenced by the Magistrates Court. The Respondent was subject to a VRO and repeatedly and blatantly breached the terms of that order, and engaged in intimidatory conduct towards DK. The offending in which he engaged was objectively very serious.
- 49 The Commission also notes that the offending occurred during a time when the Respondent was a director of the licensee. He has since ceased to be a director of the licensee, but the fact the offending occurred whilst he was a licensee is a relevant consideration. Further, it is relevant that at the time the offending commenced, the Respondent appeared to be aware that being a person subject to a VRO may have adverse effects on his ability to be involved in the liquor industry, as reflected in the terms of the email sent on 3 March 2019 and reproduced in part at paragraph 9 above.
- 50 In all the circumstances, the Commission is satisfied, on the balance of probabilities, that there is proper cause for disciplinary action on the ground that the Respondent, being a person who is interested in the profits or proceeds of licensee, has become not a fit and proper person to be so interested (pursuant to section 95(1)(h) of the Act).
- 51 The Complaint seeks that the Respondent be disqualified from being the holder of a position of authority in a body corporate that holds a licence, or from being interested in, or in the profits or proceeds of, a business carried on under a licence, for a period of at least 5 years, pursuant to section 96(1)(g) of the Act.
- 52 Whilst the Commission agrees that the seriousness of the Respondent's conduct justifies an order being made under section 96(1)(g) of the Act, the Commission does not accept the Complainant's submission that the disqualification period should be at least 5 years.
- 53 It is true that the offences for which the Respondent was convicted are serious offences. Each carried maximum sentences that included terms of imprisonment. Further, when the Respondent was sentenced on 19 April 2019 he received terms of imprisonment, suspended for 12 months. It is unsurprising he received terms of imprisonment in light of the mandatory sentencing provisions in section 61A of the *Restraining Orders Act 1997* (WA), and in light of

the repeated and serious nature of the offending. Nonetheless, the offending appears to be an aberration and inconsistent with the otherwise good character of the Respondent.

54 The Commission also is concerned that the effect on the Respondent of disqualifying him from having an interest in the business of the licensee for 5 years, may have a significant impact on his ability to maintain a livelihood, particularly given the difficulties his other business has experienced, and given his age and his mental health issues (that are now being adequately treated). In those circumstances, a disqualification of 5 years may seem to be more in the nature of punishment rather than protective.

55 The Commission finds, having regard to the Respondent's prior good character and the fact that no further offending has occurred in over six months since the last offending, and given the particular circumstances in which the offending occurred, that the Respondent is a low risk of re-offending. In our view, the Complainant has not provided sufficient evidence of the Respondent's personal conduct to warrant the order they have sought.

56 Having regard to all of the circumstances, and to the serious nature of the offending by the Respondent (which demonstrated a disregard for the law that is incompatible with the standards of behaviour expected of persons involved in the liquor industry), the Commission is satisfied that the Respondent should be disqualified from being the holder of a position of authority in a body corporate that holds a licence, or from being interested in, or in the profits or proceeds of, a business carried on under a licence, for a period of at least 12 months, pursuant to section 96(1)(g) of the Act.

Conclusion

57 Being satisfied that grounds exist under section 95(1)(g) of the Act, the Respondent be disqualified from being the holder of a position of authority in a body corporate that holds a licence, or from being interested in, or in the profits or proceeds of, a business carried on under a licence, for a period of at least 12 months, pursuant to section 96(1)(g) of the Act, commencing on the date of this determination.



SARAH OLIVER
PRESIDING MEMBER