

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Complainant: Commissioner of Police
(represented by Mr Peter Spragg of State Solicitor's Office)

First Respondent: Perth City Traders Pty Ltd

Second Respondent: Mr Elias Vlavianos
(Director, Perth City Traders Pty Ltd)

(both respondents represented by Mr John Prior, Barrister, instructed by Mr Kim Waters of Waterside Legal)

Commission: Mr Jim Freemantle (Chairperson)
Ms Belinda Lonsdale (Member)
Mr Alastair Bryant (Member)

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

Premises: Club Hotel Wiluna, Wotton Street, Wiluna

Date of Hearing: 28 August 2012

Date of Determination: 3 December 2012

Determination:

1. The first respondent pay a fine of \$2500 pursuant to section 96(1)(m) of the *Liquor Control Act 1988*.
2. The Director of Liquor Licensing conduct an inquiry into the special trading conditions for the Club Hotel Wiluna with a view to imposing, varying or cancelling any such conditions pursuant to section 64 of the *Liquor Control Act 1998*.
3. Within 6 months from the date of this determination, the first respondent constructs adequate fencing and a self-closing gate to secure the licensed area to prevent the removal of alcohol from the premises.

Introduction

- 1 The first respondent is the licensee of the premises known as the Club Hotel Wiluna (“the premises”), a hotel situated on Wotton Street in Wiluna.
- 2 The second respondent is the approved manager of the premises and a director of Perth City Traders Pty Ltd.
- 3 The second respondent was, at all material times, a director of Perth City Traders Pty Ltd.
- 4 Wiluna is a remote community approximately 560km north of Kalgoorlie. The town has a population of approximately 250 people who are mostly indigenous. It contains various businesses servicing Wiluna and surrounding communities. The Club Hotel is the only liquor outlet in Wiluna and the only facility to provide accommodation and a restaurant.
- 5 Alcohol related harm is a major concern within the community. This is reflected in the fact that, since 12 May 2008 the premises has been subject to special trading conditions imposed by the Director of Liquor Licensing (“the Director”) for the purpose of attempting to minimise that harm, whilst catering for the legitimate needs of consumers of alcohol.
- 6 The special trading conditions on the licence are:

SPECIAL TRADING CONDITIONS – SECTION 64 INQUIRY (EFFECTIVE FROM 12 MAY 2008)

1. *The sale of packaged liquor on Thursdays is prohibited.*
2. *Only low/mid strength liquor (3.5% ethanol or less) is permitted to be sold on Sundays (both packaged and on premise).*
3. *Packaged liquor may only be sold between 3pm and 6pm.*
4. *Only beer in cans (limited to 1 carton per person per transaction) is permitted to be sold as packaged liquor.*
5. *Only the following liquor is permitted to be sold for consumption on the premises:*
 - *beer;*
 - *UDL products, after 2pm in the saloon bar only; and*
 - *any liquor ancillary to food.*
6. *No packaged liquor is to be held behind the bar for collection before or after the approved hours for the sale of packaged liquor.*
7. *All staff to be trained in the responsible service of alcohol.*
8. *Furnishings at the hotel to be maintained to reasonable standards.*

9. *A dress code to be implemented by the licensee and displayed at each entrance to the licensed premises. The dress code is to be enforced by the licensee.*
10. *Regular six-monthly meetings to monitor the implementation and impacts of any restrictions.*
11. *Quarterly sales data to be submitted to the Department of Racing, Gaming and Liquor (detailing packaged sales and liquor sold for consumption off the premises).*
12. *Permitted trading hours for the hotel to be Monday to Saturday 11am to 10pm and Sundays 11am to 9:30pm.*
13. *Licence reviews at regular intervals together with key partners and the impact of availability of alcohol monitored in terms of the Wiluna Development Project in order to generate a shift towards responsible drinking in the hotel.*
14. *The licensee to consider alternative, responsible and safe events for those increased numbers likely to patronise the hotel, such as karaoke events.*
15. *The restrictions in points 1-4 above do not apply to bona fide tourists passing through town who are purchasing packaged liquor for consumption out of town or to mine site operators, pastoralists or other persons conducting a business out of town who are purchasing packaged liquor for consumption out of town and have registered with the licensee and that list being endorsed by the local police.*

In respect of any exempt sales, the licensee must complete a form which is present to police within 24 hours. The form must contain the following information:

- *The name of the person;*
- *The address of the person;*
- *The next destination of the person;*
- *The amount of alcohol purchased; and*
- *Vehicle registration.*

- 7 On 21 March 2012, the Commissioner of Police (“the Police”) filed a complaint against the first and second respondents with the Liquor Commission (“the Commission”) which alleged that there was proper cause for disciplinary action under section 95(4) of the *Liquor Control Act 1988* (“the Act”) on the following grounds:

CAUSES FOR DISCIPLINARY ACTION

1. *The business under the licence is not properly conducted in accordance with the licence [section 95(4)(a)].*
2. *The licensed premises are not properly managed in accordance with the Act [section 95(4)(b)].*
3. *The licensed premises have been altered without the prior approval of the Director [section 95(4)(c)(iii)].*

4. *The licensee has contravened a requirement of the Act or a term or condition of the licence [Section 95(4)(e)(i)].*
 5. *The continuation of the licence is not in the public interest or the licence has not been exercised in the public interest [section 95(5)(j)].*
 6. *The safety, health or welfare of persons who resort to the licensed premises is endangered by an act or neglect of the licensee [section 95(5)(k)].*
- 8 In an application dated 17 May 2012 the Police sought to discontinue proceedings against a third respondent and to add a further ground for disciplinary action against the second respondent (proposed ground 7) in the following terms:
- “a person (Elias Vlavianos) 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, is or has become not a fit and proper person to hold that position or is to be interested. [Section 95(4)(h)].”*
- 9 The complaint was heard on 19 June 2012. At that hearing, the parties sought and were granted an adjournment to a further hearing on 28 August 2012.
 - 10 At the resumption of the hearing on 28 August 2012, counsel for the complainant withdrew grounds 3, 5, 6 and the proposed ground 7 in relation to the first respondent and withdrew its complaint in relation to the second respondent.
 - 11 At the hearing on 28 August 2012, counsel for the respondents conceded that grounds 1, 2 and 4 had been made out.
 - 12 Consequently, the only issue for determination for the Commission was the question of what penalties should be imposed with respect to the first respondent.

Submissions on behalf of the Commissioner of Police

- 13 The Police had filed written submissions dated 6 June 2012 addressing the various allegations said to form the basis of the complaint. In those submissions, the Police sought to address grounds 1, 2 and 4 together. The Police contentions, in summary were as follows:
 - 13.1 On 20 August 2010, 30 August 2010 and 7 June 2011, staff at the premises sold unopened cans of packaged liquor which placed them in breach of the special trading conditions and consequently, in breach of section 110(1)(aa) of the Act.
 - 13.2 On 16 March 2011, police observed a group of five people, two of which were heavily intoxicated, drinking on the veranda of the premises, the veranda being an unlicensed portion of those premises. As the veranda area, being an area adjacent to, and habitually used in conjunction with, the licensed premises, was managed, or was reasonably capable of being supervised by the licensee, it is deemed to be “regulated premises”. Allowing heavily intoxicated people to drink liquor on the licensed premises constitutes an offence under section 115(2)(b) of the Act. As two of the persons on this occasion were juveniles, the conduct also established an offence under section 122(2) of the Act.
 - 13.3 On 25 March 2011, an employee of the licensee sold a carton of beer to a patron who was heavily intoxicated (a preliminary breath test producing a reading of 0.318%) in contravention of section 115(2)(a) of the Act.

- 13.4 On 25 March 2011 and 30 July 2011 the first respondent committed an offence under section 114(1) of the Act by selling takeaway alcohol in contravention of a requirement imposed by police under that section that it ceases selling takeaway alcohol.
- 13.5 As at May 2011, two staff members working behind the bar had not completed a responsible service of alcohol training contrary to special trading condition 7 of their licence and consequently, contrary to section 110(1)(aa) of the Act.
- 13.6 On 8 June 2011, a compliance check by officers attached to the Goldfields Esperance Alcohol and Drug Authority revealed several breaches of the Act and or licence conditions. The training and incidents registers required to be maintained under regulations 14AG and 18EB of the *Liquor Control Regulations 1989* ("the regulations") and section 116A of the Act respectively were incomplete. The second respondent had not submitted quarterly sales data to the Department of Racing Gaming and Liquor for a 12 month period contrary to special trading condition 11 of the licence and there had been alterations to the unlicensed area contrary to section 77(1) of the Act.
- 13.7 Drunken patrons were observed on the premises on 9 June 2011, 14, 15 and 20 July 2011 and 3 and 4 August 2011 and, on 26 August 2011, three drunken juveniles were observed in the beer garden, contrary to section 121(4) of the Act.
- 14 The respondents did not seek to deny any of these assertions and so the Commission proceeded on the basis that the various breaches of the licence and/or the Act could be established on the evidence.

Further submissions on behalf of the Commissioner of Police

- 15 Counsel for the Police submitted that the number of breaches constituted offending of a serious kind. Nevertheless, he conceded the respondents had a "previously unblemished record". He also acknowledged that there were problems not attributable to the respondent which would make it difficult to operate the business. For example, he acknowledged that it was likely that, on occasions, patrons became intoxicated prior to attending the premises.
- 16 Counsel for the Police advised the Commission that suspension of the licence was no longer sought and conceded that, in all of the circumstances, a fine of between \$5000 and \$15000 was an appropriate penalty, together with a bond.

Submissions on behalf of the first respondent

- 17 In submissions in mitigation of penalty, counsel for the respondents referred to the fact that the current licence had been in existence since May 2008 but that the first respondent had only been the licensee since October 2008. The first respondent had no previous convictions.
- 18 Counsel for the respondents emphasised the importance of the survival of business to the town of Wiluna. The Club Hotel Wiluna is the only licensed premises in the town and the only premises that provides a restaurant and accommodation. He referred to the fact that the respondent's financial situation was poor and that, depending upon the penalty imposed, there was a prospect that the business would fail. He noted that the business was essentially a family business which supported the second respondent, his de facto partner and two children.

- 19 Counsel for the respondents referred to a statement of Melissa Anne Reilly dated 28 August 2012 tendered during proceedings. That statement asserts that the nearest licensed premises is in Meekatharra (a 340km round trip) and that the absence of a licensed premises, or restrictions on the purchase of full strength alcohol would be likely to encourage people to travel to Meekatharra or Leinster to purchase alcohol and engage in “sly grogging”.
- 20 Counsel for the respondents submitted (and Council for the Commission of Police concurred) that there were mitigating circumstances in relation to the respondents’ various breaches. For example, there was a problem with the policing of the beer garden. In this regard, he indicated that the respondents had proposed renovations to the area which would alleviate this difficulty and suggested that there be a condition on the fencing to control ingress and egress.
- 21 He also noted that, due to Wiluna’s remote location, the ability to obtain, train and retain staff was difficult.
- 22 Counsel for both parties agreed that the matter should be referred under section 64 of the Act to have the special trading conditions reviewed. In this regard, the Commission acknowledged that the conditions had been imposed in 2008 and that no review of the conditions had been undertaken since that time. It is likely that in that time circumstances have changed, making some of the conditions inappropriate. For example, as submitted by counsel for the respondents, the prohibition on the sale of packaged liquor on Thursdays contained in condition 1 was likely to have been imposed to coincide with the date for the payment of social security benefits but that, in recent years, the system of the payment of such benefits had since moved to a graduated payment scheme. If that is so, then the desirability of retaining that condition needs to be examined.

Determination

- 23 The Commission may, where a complaint is 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 ground(s) upon which the complaint is based have been made out so that a proper cause for disciplinary action exists, the Commission may take action pursuant to section 96(1) of the Act.
- 24 At the hearing before the Commission, counsel for the respondents accepted that grounds 1, 2 and 4 had been made out and therefore, on the basis of this concession and the evidence submitted, the Commission is satisfied that proper cause for disciplinary action exists.
- 25 The Commission accepts that the operation of these licensed premises gives rise to a number of significant challenges due to the remote location and attendant difficulties in attracting and retaining competent staff.
- 26 The Commission also accepts that there is a serious level of alcohol related harm in the town and that patrons were often intoxicated before attending the premises.
- 27 The Commission formed the view that the nature and number of the breaches of the special trading conditions and/or breaches of the Act were very serious and, in ordinary circumstances, may well have warranted suspension or cancellation of the licence.

- 28 However, the Commission accepts that the first respondent is a first time offender and that there is some merit in examining the conditions of the licence to ensure that the requirements of consumers of liquor both residing in and passing through the town of Wiluna are adequately and safely catered for. The Commission acknowledges, on the evidence presented, that the respondent has significant challenges in complying with the special trading conditions and, for that reason also, the Commission has accepted the submissions of the parties that there should be a review of the special trading conditions imposed under section 64 of the Act and has referred the matter to the Director for that purpose.
- 29 The Commission gave considerable weight to the statement of Melissa Anne Reilly wherein she asserts that the nearest licensed premises are located in Meekatharra, a 340km round trip by road. Closure or severe restrictions such as restrictions on the sale of full strength beer would encourage people to travel to Meekatharra to purchase alcohol and indulge in "sly grogging".
- 30 Reilly's statement carried particular weight as it was supported by the Aboriginal Health Service which submitted that the Meekatharra solution to sourcing alcohol if the hotel closed would be disastrous for the indigenous people.
- 31 The Commission has taken the view that closure of the premises or blanket restrictions on the sale of full strength alcohol would ultimately result in further harm to a community already dogged by alcohol generated problems.
- 32 In all of the circumstances, the Commission does not consider that cancellation of the licence is advisable and accepts the submissions by the parties that a fine would adequately reflect the seriousness of the conduct.
- 33 Having regard to the first respondent's financial situation, the Commission has determined that a fine in the sum of \$2500 is the appropriate penalty.
- 34 Whilst the Commission accepts that the licensee appears to have responded to police concerns, and taken action to improve the situation, the licensee has clear responsibilities under the Act and must make a greater effort to discharge these responsibilities if it wishes to retain the licence.
- 35 The quantum of the fine and the Commission's decision not to impose further penalties should not be taken as any indication that the Commission does not take an extremely serious view of the breaches of both the Act and conditions of the licence by the licensee. However the Commission believes its decision properly discharges its obligations in respect of section 5 of the Act and best serves the public interest given the circumstances of the complaint.



MR JIM FREEMANTLE
CHAIRPERSON