

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Complainant: Commissioner of Police
(represented by Mr Nikolas Barron and Ms Caroline Chapman of State Solicitor's Office)

First respondent: Rum Holdings Pty Ltd
(represented by Mr John Prior, instructed by Mr Peter Fraser of Dwyer Durack Lawyers)

Second respondent: Mr Anthony David Fleming

Third respondent: Mr Keith Huddart Sherlock Bond

Commission: Mr Seamus Rafferty (Chairperson)
Ms Belinda Lonsdale (Member)
Dr Eric Isaachsen (Member)

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

Premises: Dampier Mermaid Hotel & Motel, The Esplanade, Dampier

Date of Hearing: 1 September 2015

Date of Determination: 16 December 2015

Determination:

- The complaint in respect to grounds (1) & (4) is dismissed.
- The complaint in respect to grounds (2) & (3) is made out.
- The following conditions are imposed on the licence:
 - 1) The licensee shall not promote or sell drinks which offer liquor by virtue of their emotive titles such as, but not limited to, “laybacks”, “shooters”, “slammers”, “test tubes” or “blasters”.
 - 2) No liquor is to be supplied mixed with energy drinks. For the purposes of this condition “energy drink” has the same meaning as formulated caffeinated beverage within the Australia New Zealand Food Standards Code with a composition of 145mg/l of caffeine or greater.
 - 3) The sale of bottles or cans containing liquor in a quantity greater than 375mls is prohibited.
 - 4) The sale and supply of “ready to drink” (RTDs) for consumption on the premises with an alcoholic content greater than 5% is prohibited after 7pm.
 - 5) A CCTV video surveillance system that records continuous images throughout the public areas of the premises, including all entrance and exit points to the premises, shall be installed and maintained in accordance with the policies of the Director of Liquor Licensing.
 - 6) Jackets or any other clothing or accessory, or any clearly visible body marking, bearing patches or insignia of any Outlaw Motor Cycle Gangs not limited to, but including, the following listed Outlaw Motor Cycle Gangs, are not permitted to be worn or to be visible on the licensed premises:
 - Coffin Cheaters;
 - Club Deroes;
 - Gods Garbage;
 - Gypsy Jokers;
 - Outlaws;

- Finks;
- Rebels;
- Comancheroes;
- Hell's Angels;
- Rock Machine;
- Mongols;
- Lone Wolf; and
- Bandidoes.

7) A minimum dress standard policy must apply. A notice of dress standard must be displayed at each entrance to the premises. A copy of the dress standard policy is to be submitted to the Director of Liquor Licensing within 14 days.

8) The maximum number of persons permitted on the licensed premises at any one time is five hundred (500).

9) Crowd controllers, licensed under the *Securities and Related Activities (Control) Act 1996*, are to be employed on Fridays, Saturdays and public holidays at a ratio of one (1) crowd controller for the first hundred patrons (general public) and one (1) crowd controller for each additional 100 patrons or part thereof, from 5pm until 30 minutes after trading ceases.

Authorities referred to in the determination:

- *That's Entertainment (WA) Pty Ltd v Commissioner of Police* [2013] WASC 75
- *Douglas-Brown v Commissioner of Police* (1995) 13 WAR 441
- *Briginshaw v Briginshaw* (1938) 60 CLR 336

BACKGROUND

- 1 On 18 May 2015 the Commissioner of Police (“the Complainant”) filed a complaint pursuant to section 95 of the *Liquor Control Act 1988* (“the Act”) with the Liquor Commission (“the Commission”) alleging that there was cause for disciplinary action against Rum Holdings Pty Ltd (“first respondent”), Anthony David Fleming (“second respondent”) and Keith Huddart Sherlock Bond (“third respondent”). The company and Mr Fleming are the licensees of the Dampier Mermaid Hotel & Motel (“the Mermaid Hotel”) and Mr Bond is a Director of the licensee company.
- 2 The complaint alleged that there was cause for disciplinary action on the following grounds, namely:
 - a) Ground (1) - The licensed premises are not properly managed in accordance with the Act;
 - b) Ground (2) - The licensee has been given an infringement notice under section 167 and the modified penalty has been paid in accordance with that section;
 - c) Ground (3) - The licensee has contravened a requirement of the Act or a term or condition of the licence;
 - d) Ground (4) - The safety, health or welfare of persons who resort to the licensed premises is endangered by an act or neglect of the licensee.
- 3 The first and second respondents conceded that grounds (2) and (3) had been made out on the basis that six infringement notices had been issued and paid over a twelve year period. No concessions were made in respect to the third respondent.
- 4 In written submissions dated 21 August 2015, the complainant outlined the remedies sought against the three respondents, namely:
 - a) In respect to the first and second respondents that a monetary penalty be imposed and they be disqualified from holding a licence for a period as the Commission thinks fit;
 - b) In respect to the third respondent that he be disqualified from being the holder of a position of authority in a body corporate that holds the licence or being interested in, or in the profits or proceeds of a business carried on under the licence.
- 5 At the hearing of the application on 1 September 2015, after it was pointed out that the complainant was essentially seeking that the only licensed premises in Dampier be closed, counsel for the complainant sensibly submitted that the following remedies were appropriate:
 - a) If grounds (1) and (4) were proven to the requisite standard, then a monetary penalty should be imposed. Further, the interim conditions imposed on the

licence by the Director of Liquor Licensing on 5 June 2015 ought be made permanent;

- b) If only grounds (2) and (3) were proven to the requisite standard, the interim conditions imposed on the licence by the Director of Liquor Licensing on 5 June 2015 ought be made permanent.

EVIDENCE RELIED UPON BY THE COMPLAINANT

6 The catalyst for the complaint was the tragic death of a man in the car park of the Mermaid Hotel, Dampier on 26 January 2015.¹ A number of unsigned statements were tendered in support of the complaint. Two substantive issues arose from this evidence, namely:

- a) what weight the Commission could give to the unsigned statements of witnesses relating to the events of 26 January 2015 in determining the complaint;
- b) based on the evidence before the Commission, whether there was any evidence of a nexus between the manner in which the hotel had been operating on the day of the incident and the actual incident leading to the death of the deceased.

7 Ultimately, counsel for the complainant submitted at the hearing that, 'what we say is that across the course of the day [26 January 2015] there is evidence that intoxication was permitted on the premises; that people were growing increasingly drunk and the crowd control situation in place at the premises was insufficient.'² The evidence relied upon in support of these assertions were the statements of Sgt Kim Briggs and S/C Dean Lyon, both of the Pilbara Liquor Enforcement Unit.

8 The statement of Sgt Briggs refers to the following relevant matters:

- a) he first attended the Mermaid Hotel at 6.15pm on 26 January 2015;
- b) there was excessive noise coming from the beer garden;
- c) some patrons were holding two or more drinks;
- d) upon entering the sports bar, he noticed patrons showing signs of being drunk, which he ascertained from their demeanour, unsteadiness on their feet, slurred speech and facial expressions;
- e) people were dancing and running around the sports bar;
- f) he observed a female patron wobble on her feet and then as she stepped forward, trip over her own feet;

¹ Transcript p.4

² Transcript p.5

- g) two males were singing loudly, holding each other up and swaying;
 - h) a male staggered up to a table and then passed out with his head resting on his cup of beer. Nicholas Bond walked past this male twice without doing anything;
 - i) he counted over 30 people he believed to be drunk. The levels of intoxication were some of the highest he had ever seen;
 - j) he observed a member of the Rebels OMCG in the bar;
 - k) he observed drunk people in the beer garden;
 - l) he had a conversation with Nicholas Bond regarding the operation of the premises prior to leaving;
 - m) he returned to the premises at 8.15pm;
 - n) he observed a bus being loaded with various patrons who were intoxicated;
 - o) people were consuming alcohol off-premises and there was only one crowd controller at the front of the premises;
 - p) all patrons were drunk;
 - q) a male purchased two bourbon and cokes from Anthony Loveridge and drank from both cups. He had no fine motor skills at that time;
 - r) he and Loveridge disagreed as to the level of intoxication of the patron;
 - s) S/C Lyon video-taped patrons in the hotel.
- 9 The footage taken inside the licensed premises by S/C Lyon has been viewed by the Commission and will be referred to in greater detail in these reasons for decision.
- 10 In support of the assertion that the premises are not properly managed in accordance with the Act and as a consequence of this, the safety, health or welfare of persons who resort to the licensed premises is endangered by an act or neglect of the licensee, the Commission was provided with evidence in respect to significant alleged criminal incidents. Those incidents were:
- a) Incident (1) on 6 June 2012 in which two males were assaulted by unknown persons in the car park of the Mermaid Hotel;
 - b) Incident (2) on 28 January 2013 (reliance on this alleged incident was abandoned by the complainant);

- c) Incident (3) on 9 May 2013 in which a male sustained a broken jaw at the Mermaid Hotel;
- d) Incident (4) on 15 November 2014 in which a patron of the Mermaid Hotel “glassed” another patron;
- e) Incident (5) on 26 January 2015 in which a person died as a result of an assault in the car park of the Mermaid Hotel.

EVIDENCE RELIED UPON BY THE RESPONDENTS

- 11 In response to the Complaint, the respondents relied on the following evidence, namely:
- a) Statement of Nicholas Bruce Bond dated 21 August 2015;
 - b) Statement of Keith Huddart Sherlock Bond dated 21 August 2015;
 - c) Statement of Anthony Bruce Loveridge dated 30 August 2015.
- 12 Reliance upon a statement of a local Dampier police officer was withdrawn at the hearing of the complaint as the officer had not been authorised by the Police Commissioner to give such a statement.

RELEVANT LAW

- 13 The purpose of disciplinary action as set out in section 95 of the Act is ‘to protect the public by maintaining the standards of behaviour for licensees which are set out in, and contemplated by, the Act. The object of those proceedings is not to punish licensees.’³
- 14 In determining whether there is a proper cause for disciplinary action, the Commission needs to be satisfied on the balance of probabilities that one of the grounds of complaint alleged pursuant to section 95(4) of the Act has been made out.⁴
- 15 The standard of proof applicable to section 95 proceedings is proof on the balance of probabilities. In *Briginshaw v Briginshaw*⁵, Dixon J explained the civil standard of proof in the following terms:

The truth is that, when the law requires the proof of any fact, the tribunal must feel an actual persuasion of its occurrence or existence before it can

³ *That’s Entertainment (WA) Pty Ltd v Commissioner of Police* [2013] WASC 75 per Pritchard J at [39]

⁴ *Douglas-Brown v Commissioner of Police* (1995) 13 WAR 441 per Pidgeon J at 447

⁵ (1938) 60 CLR 336

be found. It cannot be found as a result of a mere mechanical comparison of probabilities independently of any belief in its reality. No doubt an opinion that a state of facts exists may be held according to indefinite gradations of certainty; and this has led to attempts to define exactly the certainty required by the law for various purposes. Fortunately, however, at common law no third standard of persuasion was definitely developed. Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect inferences.'

DETERMINATION OF GROUNDS (1) & (4)

- 16 Having regard to the concessions made on behalf of the first and second respondents, the issues for determination are as follows:
- a) have grounds (1) and/or (4) been made out against the first respondent;
 - b) have grounds (1) and/or (4) been made out against the second respondent;
 - c) have any of the grounds been made out against the third respondent;
 - d) if any grounds have been made out, what sanction should be imposed.
- 17 The substantive issue for determination in this proceeding is whether the Commission is satisfied to the requisite degree that the respondents have permitted drunkenness on the licensed premises, sold liquor to a drunk person and permitted violent, quarrelsome or disorderly behaviour.

Drunkenness on the licensed premises

- 18 The primary evidence in support of an assertion that there was drunkenness at the licensed premises on 26 January 2015 are the statements of Sgt Briggs⁶ and S/C Lyon⁷ and 5 minutes and 46 seconds of video footage taken by S/C Lyon on the evening of 26 January 2015. Both officers attended the Mermaid Hotel at 6.15pm and 8.15pm.

⁶ Brief pages 265-274, paras. [6]-[21], [23]-[24] and [43]-[47]

⁷ Brief pages 275-286, paras. [38]-[40], [50]-[54] and [58]

The observations of the police officers relevant to the issue of drunkenness can be summarised as follows:

Attendance at 6.15pm

- a) Some patrons were holding two or more drinks;
- b) some patrons showed signs of being drunk by their demeanour, unsteadiness on their feet, slurred speech and facial expressions;
- c) one female patron tripped over her own feet;
- d) two males were singing loudly and swaying;
- e) a male patron staggered to a table, sat down and passed out;
- f) over 30 persons were considered by Sgt Briggs to be drunk.

Attendance at 8.15pm

- a) Patrons boarding a bus appeared highly intoxicated and loud;
 - b) patrons were drinking from open containers at the front of the premises;
 - c) patrons inside the hotel appeared highly intoxicated;
 - d) a patron at the bar purchased two bourbon and cokes. His speech appeared to be slurred;
 - e) patrons were in possession of multiple drinks
- 19 The statements of Nicholas Bond and Anthony Loveridge dispute the assertion that patrons were drunk on 26 January 2015. Mr Bond was of the opinion that the patrons were 'lively' but not intoxicated.
- 20 In determining the issue of whether drunkenness was allowed at the licensed premises on 26 January 2015, the Commission has placed significant weight on the video footage obtained by S/C Lyon. The footage shows a number of patrons who are clearly affected by alcohol to differing degrees, in that their behaviour is disinhibited. However, all persons shown are in good spirits, behaving appropriately for a venue such as a hotel and in no way pose a risk to others who were present in the licensed premises. There is nothing within the footage upon which the Commission could determine that the licensee was permitting drunkenness on the licensed premises.
- 21 Section 3A of the Act states that a person is drunk for the purposes of the Act if –
- a) the person is on licensed premises or regulated premises; and

- b) the person's speech, balance, co-ordination or behaviour appears to be noticeably impaired; and
 - c) it is reasonable in the circumstances to believe that that impairment results from the consumption of liquor.
- 22 The clear purpose of obtaining footage on 26 January 2015 was to show people who were drunk in the opinion of the police officers present. The mere fact that a person is affected by alcohol, does not necessarily mean that they fall within the definition of the term "drunk". Any objective viewing of the footage shows people affected by alcohol, but not to the extent that the person's speech, balance, co-ordination or behaviour appears to be *noticeably impaired*. [emphasis added]
- 23 It should also be noted that the police had the power to charge the respondents with an offence contrary to section 115(1)(a) of the Act if in their opinion the licensee was permitting drunkenness to take place on the licensed premises. No such charge has been laid against the respondents.
- 24 The Commission is not satisfied to the requisite standard that any of the respondents allowed drunkenness to take place at the licensed premises on 26 January 2015. The discrepancy in the evidence before the Commission in respect to this crucial issue, the competing inferences that are open on the evidence (eg people may be in possession of more than one drink on the basis they have purchased a drink for a friend) and an objective viewing of the footage inside the hotel some time after 8.15pm has led to this conclusion.
- 25 None of the other evidence tendered by the complainant in respect to other occasions has persuaded the Commission to the requisite standard that drunkenness has been allowed to take place at the licensed premises. The Commission is not persuaded on balance that the evidence establishes any nexus between the management of the licensed premises and the incidents relied upon by the complainant.
- 26 In respect to the incident that led to the death of David Pavlic on 26 January 2015, the Commission is not prepared to give any weight to unsigned witness statements. Whilst the Commission is not bound by the rules of evidence⁸ it would be inappropriate in the context of this matter to give weight to such statements that a deponent had not attested to. Even if the Commission were to give weight to such statements and all other relevant evidence, it would lead to a conclusion that there was absolutely no nexus between the management of the licensed premises and the incident that led to the death of Mr Pavlic. It was conceded by counsel for the Police that, 'I would say that we don't place strong reliance on the actual outcome that day, which is to say that we don't sheet home the death of that patron to the respondents per se.'⁹ Accordingly, the Commission has not taken the tragic death of Mr Pavlic into account as a relevant evidentiary matter in determining the complaint.

⁸ s.16(7)(a) *Liquor Control Act 1988*

⁹ Transcript p.5

Sale/Supply of liquor to drunk persons or allowing or permitting a drunk person to consume liquor

- 27 The evidence in support of the assertion that liquor was sold or supplied to a drunk person and/or allowed or permitted a drunk person to consume liquor is contained in the statements of Sgt Briggs¹⁰ and S/C Lyon¹¹. In summary, the statements of the police officers reveal the following relevant matters that were observed on 26 January 2015:
- a) bar staff were serving as quickly as possible and paying little attention to the demeanour of patrons;
 - b) a person who in the opinion of Sgt Briggs was drunk was served with two cups of bourbon and coke;
 - c) a number of patrons were carrying two drinks;
 - d) patrons boarding a bus appeared intoxicated.
- 28 Having viewed the footage of the person who purchased the two bourbon and cokes from Mr Loveridge, the Commission is not satisfied that he was drunk. It is clear that he was affected by alcohol but not to the extent that it was inappropriate to serve him with alcohol. Further, it was open to the police in attendance to charge the licensee with an offence contrary to section 115(2) of the Act if they were of the opinion that a drunk person had been served with alcohol on licensed premises. The police did not charge any of the respondents with such an offence.
- 29 The evidence that people were carrying multiple cups of alcohol can give rise to a number of inferences. It may be that a person was drinking from two cups at the same time, that a person had purchased a drink for another person and was taking that drink to that person or that a person was holding the drink belonging to another person. However, the fact those patrons were holding more than one cup does not establish that the licensee or its staff sold or supplied alcohol to drunken persons.
- 30 Having regard to all of the evidence, the Commission is not satisfied on balance that the licensee, either personally or by an agent sold or supplied alcohol to a drunk person or allowed or permitted a drunk person to consume liquor on 26 January 2015.

Permitted violent, quarrelsome or disorderly behaviour

- 31 The evidence in support of the assertion that the licensee permitted violent, quarrelsome or disorderly behaviour is contained in a number of unsigned statements that relate to the death of David Pavlic. Further evidence in support of this assertion is a statement of Chris Tsalamangos, who stated that only two security guards were on

¹⁰ Brief pages 267, 270-271, paras. [15], [36]-[42] and [44]

¹¹ Brief pages 281-283, paras. [39]-[41], [50], [54] and [58]

duty on 26 January 2015, that he had warned the respondents of the risks associated with Australia Day celebrations and that they had failed to provide sufficient security at the hotel on that date. Given the absence of a nexus between the operation of the hotel on 26 January 2015 and the act leading to the death of Mr Pavlic, the Commission places no weight on this evidence.

- 32 Having regard to all of the evidence, the Commission is not satisfied that the licensee, either personally or by an agent permitted violent, quarrelsome or disorderly behaviour at the licensed premises on 26 January 2015.

2 June 2012 incident

- 33 The Commission has been provided with Incident Report number 060612004513475, the narrative of which states:

'Victim 1 met police and stated his friend (victim 2) was being beaten up by someone from the Mermaid Hotel. Victim 1 came to his aid and they were both set upon by a group of people. Victim 1 was able to get away and run to Fitzroy Street where he was able to get assistance. Victim 2 was located at the Mermaid Hotel with a laceration to the back of his head. He stated he had fallen over and both persons present corroborated this story. Victim 2 was conveyed to NBH by Ambulance. Police conveyed victim 1 to hospital where his injuries were assessed (appeared to be minor lacerations) He decamped from the hospital prior to police taking a statement. Despite extensive patrols, he was unable to be located. Police spoke with victim 2 further. He changed his story and stated he was going for drinks with the skimp after the pub had closed. He got into the passenger side of a car and she was driving. He was pulled out of the car and beaten up – unknown numbers and offenders unknown. Neither victims were able to provide any sort of descriptions of numbers of POI's.'

- 34 Putting aside the obvious issues of credibility and hearsay, it is entirely unclear how this alleged incident is attributable to the manner in which the licensed premises are conducted. As was rightly pointed out by counsel for the respondents in his written submissions, the incident happened 40 minutes after closing time, there was no evidence that a patron or patrons of the hotel were the assailant or assailants and the incident was unrelated to the operation of the hotel.

- 35 The Commission places absolutely no weight on this alleged incident in determining the complaint.

9 May 2013 incident

- 36 This incident relates to an altercation between two males at the hotel on 9 May 2013 in which an injured and intoxicated male ended up at the Rio Tinto security gate in Dampier. At the conclusion of the incident, Mr Loveridge drove one of the males away

from the hotel. The other male was then involved in another incident with another patron whilst Mr Loveridge was absent from the premises.

- 37 Infringement Notices 331927 and 331928 were issued in relation to the licensee failing to ensure that an approved manager was present at the licensed premises at a time when the business was being conducted at the premises and permitting drunkenness or disorderly behaviour.
- 38 In his written submissions, counsel for the complainant stated that, 'It is submitted that although Anthony Loveridge may have been acting in good faith by conveying one of the patrons home, he should have called the Police and asked for assistance. This action would likely have prevented injuries to the male and permitted Police to conduct an investigation into the first incident.'
- 39 The Commission agrees that the approved manager did not act appropriately in respect to this incident and in his subsequent dealings with police relating to this incident. However, it is also accepted that he acted in good faith in dealing with the matter in the manner in which he did. However, given that this is one discrete act, the Commission is not satisfied that this incident alone establishes that the business conducted under the licence is not properly conducted in accordance with the licence or that the safety, health or welfare of persons who resort to the premises is endangered by an act of neglect of the licensee.

15 November 2014 incident

- 40 The Commission has been provided with Incident Report number 151114235013663, which relates to the glassing of a person at the hotel on the evening of 15 November 2014. The narrative refers to a long term animus between the parties that appears to have boiled over on the evening of the offence. There is no suggestion that the parties were drunk or that there is anything that the staff of the hotel could have done to avoid this incident.
- 41 The Commission places no weight on this incident in determining the complaint due to the absence of any evidence that suggests that the manner in which the business was conducted had any relationship to this incident or that there was an act of neglect by the licensee that led to this incident.

DETERMINATION OF GROUNDS (1) & (4)

- 42 Having regard to the totality of the evidence before the Commission, grounds (1) and (4) have not been made out to the requisite standard against any of the respondents. Accordingly, there are no grounds for disciplinary action on the basis that:
 - a) The premises are not properly managed in accordance with the Act;

- b) The safety, health or welfare of persons who resort to the premises is endangered by an act or neglect of the licensee.

DETERMINATION OF GROUNDS (2) & (3)

- 43 Based on the totality of the evidence the complaint against the third respondent has not been proven to the requisite standard. In any event, given the determination of the complaint in respect to the first and second respondents, even if the Commission were satisfied on balance that there was a ground for disciplinary action against the third respondent, the outcome of the matter would be the same, in that conditions would be attached to the licence and no other penalty would be imposed.
- 44 The first and second respondents conceded that grounds (2) and (3) had been made out. As such there are grounds for disciplinary action and the Commission is able to deal with the matter pursuant to section 96(1) of the Act. The complainant submitted that the imposition of conditions to which the licence is subject would be an appropriate way to deal with the manner. These interim conditions were imposed by the Director of Liquor Licensing between the filing of the complaint and the hearing of the complaint. The conditions are:
- a) the licensee shall not promote or sell drinks which offer liquor by virtue of their emotive titles such as, but not limited to, “laybacks”, “shooters”, “slammers”, “test tubes” or “blasters”;
 - b) no liquor is to be supplied mixed with energy drinks. For the purposes of this condition “energy drink” has the same meaning as formulated caffeinated beverage within the Australia New Zealand Food Standards Code with a composition of 145mg/l of caffeine or greater;
 - c) the sale of bottles or cans containing liquor in a quantity greater than 375mls is prohibited;
 - d) the sale and supply of “ready to drink” (RTDs) for consumption on the premises with an alcoholic content greater than 5% is prohibited after 7pm;
 - e) a CCTV video surveillance system that records continuous images throughout the public areas of the premises, including all entrance and exit points to the premises, shall be installed and maintained in accordance with the policies of the Director of Liquor Licensing;
 - f) jackets or any other clothing or accessory, or any clearly visible body marking, bearing patches or insignia of any Outlaw Motor Cycle Gangs not limited to, but including, the following listed Outlaw Motor Cycle Gangs, are not permitted to be worn or to be visible on the licensed premises:
 - Coffin Cheaters;
 - Club Deroes;

- Gods Garbage;
 - Gypsy Jokers;
 - Outlaws;
 - Finks;
 - Rebels;
 - Comancheroes;
 - Hell's Angels;
 - Rock Machine;
 - Mongols;
 - Lone Wolf; and
 - Bandidoes.
- g) a minimum dress standard policy must apply. A notice of dress standard must be displayed at each entrance to the premises. A copy of the dress standard policy is to be submitted to the Director of Liquor Licensing within 14 days;
- h) the maximum number of persons permitted on the licensed premises at any one time is five hundred (500);
- i) crowd controllers, licensed under the *Securities and Related Activities (Control) Act 1996*, are to be employed at a ratio of one (1) crowd controller for the first hundred patrons (general public) and one (1) crowd controller for each additional 100 patrons or part thereof, from 5pm until 30 minutes after trading ceases.
- 45 The first and second respondents indicated that they have no difficulty with each of these conditions, with the exception of the final condition relating to crowd controllers. It was submitted that the cessation of transient worker accommodation within Dampier for fly in/fly out workers is a significant change in circumstances between now and the period of time encompassed by the section 95 complaint.
- 46 It was argued that the patronage of the hotel has declined due to the end of the mining boom and that there was no need for crowd controllers to be present at the licensed premises. Annual turnover for the hotel in the years between 2008 and 2015 have been provided by the respondents. At the peak of the boom in 2011/2012, bar and bistro sales for that financial year were \$5,868,071.07. There has been a notable decline in the turnover since that period, with the bar and bistro sales between 1 July 2014 and 31 March 2015 being \$3,056,615.70.
- 47 Notwithstanding the evidence adduced by the respondents in respect to the end of the mining boom and the consequent effect on the patronage of the hotel, the Commission has concluded that it is appropriate to include a condition relating to crowd controllers. The sales figures provided by the respondents indicate that the licensed premises are still relatively busy despite the reduction in patronage. The presence of crowd controllers will assist in the effective operation of the licensed premises and act as a deterrent to those who may engage in anti-social or inappropriate behaviour.

48 The statement of Nicholas Bond reveals that the peak trading nights of the hotel are Friday and Saturday nights. Accordingly, the Commission has determined that the following condition is appropriate in conjunction with the conditions outlined at paragraphs 41(a) to (h) of these reasons, namely:

- Crowd controllers, licensed under the *Securities and Related Activities (Control) Act 1996*, are to be employed on Fridays, Saturdays and public holidays at a ratio of one (1) crowd controller for the first hundred patrons (general public) and one (1) crowd controller for each additional 100 patrons or part thereof, from 5pm until 30 minutes after trading ceases.

49 The evidence before the Commission does not suggest that crowd controllers would be required on any other night of trading.

ORDERS MADE

50 The Commission makes the following orders:

- a) Grounds (1) and (4) of the complaint against all of the respondents are dismissed;
- b) Grounds (2) & (3) of the complaint against the third respondent are dismissed;
- c) Grounds (2) & (3) against the first and second respondents are proven and the interim conditions attached to the licence are made final with the exception of the variation of the condition relating to crowd controllers.



SEAMUS RAFFERTY
CHAIRPERSON