

Liquor Commission of Western Australia
(*Liquor Control Act 1988*)

Applicant: Commissioner of Police
(*represented by Mr Nicholas van Hattem of State Solicitor's Office*)

First Respondent: B.A.H (Brookton) Pty Ltd
(*represented by Mr Gregory Marr, Sole Director*)

Second Respondent: Mr Gregory William Marr

Commission: Mr Jim Freemantle (Chairperson)
Ms Helen Cogan (Member)
Dr Eric Isaachsen (Member)

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

Premises: Bedford Arms Hotel, 99 Robinson Street, Brookton

Date of Hearing: 26 August 2013

Date of Determination: 17 September 2013

Determination:

1. Pursuant to section 96(1)(m) of the *Liquor Control Act 1988* the first respondent, B.A.H (Brookton) Pty Ltd, is to pay a monetary penalty of \$3,000 within 30 days of the date of this determination.
2. Pursuant to section 96(1)(k) the second respondent, Mr Gregory William Marr, is required to complete the full *Course in Management of Licensed Premises (52473WA)* within 3 months of the date of this determination.
3. The entertainment condition on the licence is confirmed as follows:

1. *A person resorting to, or on the premises, including the licensee or manager, or an employee or agent of the licensee or manager, shall not :-*
 - a) *be immodestly or indecently dressed on the licensed premises, and/or*
 - b) *take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner*
2. *The licensee or manager, or an employee or agent of the licensee or manager, is prohibited from :-*
 - a) *exhibiting or showing, or causing, suffering or permitting to be exhibited or shown on the licensed premises, any classified "R18+", "X18+" or "RC" classified publication, film or computer game or extract there from;*
 - b) *causing, suffering or permitting any person employed, engaged or otherwise contracted to undertake any activity or perform any entertainment of the licensed premises to be immodestly or indecently dressed on the licensed premises, or*
 - c) *causing, suffering or permitting any person to take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner.*
3. *Under this condition "licensed premises" includes any premises, place or area :-*
 - a) *which is appurtenant to the licensed premises, or*
 - b) *in respect of which an extended trading permit granted to the premises is for the time being in force, but does not include any part of the premises which is reserved for the private use of the licensee, manager or employees of the licensee and to which the public does not have access.*

Introduction

- 1 B.A.H (Brookton) Pty Ltd became the licensee of the Bedford Arms Hotel on 30 November 2011. Gregory William Marr is the sole director of the licensee company.
- 2 On 7 June 2013, the Commissioner of Police (“the Police”) lodged a section 95 complaint with the Liquor Commission (“the Commission”) against the first respondent, B.A.H (Brookton) Pty Ltd and the second respondent, Gregory William Marr. The complaint alleged three breaches of section 95 of the *Liquor Control Act 1988* (“the Act”) and provided evidence in respect of three incidents. The following remedies were sought:
 - imposition of a monetary penalty on the first respondent;
 - the second respondent is to complete the full *Course in Management of Licensed Premises (52473WA)* within three months of the determination;
 - the first and second respondents be restricted from using ‘skimpy’ barmaids for a period of no less than six months, or as the Commission sees fit.
- 3 On 17 June 2013, the Director of Liquor Licensing (“the Director”), pursuant to section 95(b) of the Act imposed an amended entertainment condition on the licence pending the determination of the complaint by the Commission.
- 4 A hearing in respect of the complaint was heard on 26 August 2013.

Submissions on behalf of the Commissioner of Police

- 5 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:
 - the business conducted under the licence is not being properly conducted in accordance with the licence - section 95(4)(a);
 - the licensed premises are not properly managed in accordance with the Act - section 95(4)(b);
 - the licensee has contravened a requirement of the Act or a term or condition of the licence – section 95(4)(e)(i).
- 6 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.
- 7 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.

- 8 The Police provided evidence, through “incident 1” and “incident 3” below, that relate to the alleged breaches of the entertainment conditions, specifically:
 - (1) On 14 November 2012, (“Incident 1”) the Police, acting in a covert manner, observed in the bar area of the licensed premises a ‘skimpy’ barmaid who was not wearing a bra top and had her nipples covered with ‘pasties’. On a couple of occasions she removed either one of the ‘pasties’ revealing her nipples. At a later time in the evening she appeared completely naked exposing her breasts and outer vagina to the patrons. The second respondent was present at the time of both these occurrences and made no attempt to stop these activities.
 - (2) On 13 February 2013 (“Incident 3”), local uniformed police entered the premises, and observed a barmaid serving patrons whilst she was not wearing any upper clothing garments. She rapidly fled the bar area once she became aware of the police presence. The second respondent was not in the bar at this time. Review of the CCTV showed him to have been present earlier when the barmaid was collecting money which was placed in a glass jug. This was identical to the technique observed in Incident 1 when touting patrons for extra money to undress beyond the decency standards. The second respondent was observed to have made no endeavours to curtail this activity.
- 9 The incidents referred to above constitute breaches of section 110(1)(aa) of the Act by permitting an employee to be immodestly dressed.
- 10 The Police also provided evidence of an incident (“incident 2”) on 14 November 2012 which was observed whilst they were attending the licensed premises in a covert manner. Two patrons were noted to be consuming alcohol and showing signs of drunkenness through their speech, co-ordination and demeanour. Despite these characteristics being clearly evident the second respondent provided these patrons with further alcohol and did not seek to refuse them service nor to request that they leave the premises.
- 11 This incident constitutes a breach of section 115(1)(a)(i) of the Act in that drunkenness was permitted on the licensed premises.

Submissions on behalf of the respondents

- 12 Mr Marr, the second respondent, did not contest that incident 1 and incident 2 had occurred. He was aware that these incidents would both constitute breaches of relevant sections of the Act and would provide cause for disciplinary action.
- 13 Mr Marr stated that in his view the Bedford Arms Hotel conducted its business in a manner consistent with the standards of the other five local pubs. He has conducted business at these premises for almost two years and has only needed to call for police assistance on two occasions. He resides on the licensed premises and is only aware of a single event of anti-social activity by patrons being directed at the premises themselves.

- 14 With respect to incident 3, he stated that his instructions to the barmaid employed through an external entertainment agency were to 'keep it clean, keep it legal'. He assumed that barmaids employed through such agencies would know the rules. He had been confident of the conduct of his business and had invited the police attendance. He had been frustrated and annoyed by the actions of the barmaid concerned.

Determination

- 15 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 such that a proper cause for disciplinary action exists, the Commission may exercise its discretion under section 96(1) of the Act.
- 16 The Commission is of the view that the behaviour identified in the two incidents (incident 1 and incident 3) and also consented to by the second respondent, Mr Marr, constitutes a breach of the entertainment condition on the subject licence and was contrary to the "entertainment policy" of the Director. Mr Marr was aware of each of these breaches and made no endeavours to curtail these activities.
- 17 The Commission is also of the view that the conduct of the second respondent in relation to incident 2 constitutes a breach of the Act in that drunkenness was permitted on the licensed premises and in addition is a significant departure from the House Management Policy. That the second respondent considers drunken patrons to be "harmless" is indicative of an inappropriate approach in relation to managing drunkenness on licensed premises.
- 18 The Commission is therefore satisfied that the three grounds of the complaint have been made out and that there is proper cause for disciplinary action against both the first and second respondents in the following terms:
1. Pursuant to section 96(1)(m) of the *Liquor Control Act 1988* the first respondent, B.A.H (Brookton) Pty Ltd, is to pay a monetary penalty of \$3,000 within 30 days of the date of this determination.
 2. Pursuant to section 96(1)(k) the second respondent, Mr Gregory William Marr, is required to complete the full *Course in Management of Licensed Premises (52473WA)* within 3 months of the date of this determination.
 3. The entertainment condition on the licence is confirmed as follows:
 1. *A person resorting to, or on the premises, including the licensee or manager, or an employee or agent of the licensee or manager, shall not :-*
 - a) *be immodestly or indecently dressed on the licensed premises, and/or*

- b) *take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner*
- 2. *The licensee or manager, or an employee or agent of the licensee or manager, is prohibited from :-*
 - a) *exhibiting or showing, or causing, suffering or permitting to be exhibited or shown on the licensed premises, any classified "R18+", "X18+" or "RC" classified publication, film or computer game or extract there from;*
 - b) *causing, suffering or permitting any person employed, engaged or otherwise contracted to undertake any activity or perform any entertainment of the licensed premises to be immodestly or indecently dressed on the licensed premises, or*
 - c) *causing, suffering or permitting any person to take part in, undertake or perform any activity or entertainment on the licensed premises in a lewd or indecent manner.*
- 3. *Under this condition "licensed premises" includes any premises, place or area :-*
 - a) *which is appurtenant to the licensed premises, or*
 - b) *in respect of which an extended trading permit granted to the premises is for the time being in force, but does not include any part of the premises which is reserved for the private use of the licensee, manager or employees of the licensee and to which the public does not have access.*



**MR JIM FREEMANTLE
CHAIRPERSON**