

Victorian Commission for Gambling and Liquor Regulation

DECISION AND REASONS FOR DECISION

In the matter of an inquiry into whether there are grounds to take disciplinary action against SP Burke Pty Ltd, the licensee of the premises trading as the Ararat Hotel, operating general licence number 31900392 and whether to take disciplinary action under Part 6 of the *Liquor Control Reform Act 1998* if such grounds exist.

Commission:

Ms Helen Versey, Deputy Chair

Ms Deirdre O'Donnell, Deputy Chair

Mr Des Powell AM, Commissioner

Date of hearing:

25 November 2019

Appearances:

Mr Stephen Paul Burke, director of the Licensee

Senior Sergeant Phil Eager, Victoria Police

Mr Lee Konstantinidis, Counsel Assisting the Commission

Mr John Williams, director of Willfamco Pty Ltd

Date of decision:

13 February 2020

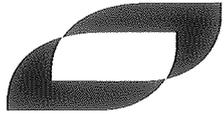
Date of reasons:

13 February 2020

Decision:

The Commission determines that there are grounds for disciplinary action against the Licensee in accordance with section 93(1) of the *Liquor Control Reform Act 1998* and has determined to:

(a) Disqualify SP Burke Pty. Ltd. from holding a licence or BYO



permit for five years, from 13 February 2020 until 13 February 2025, in accordance with section 93D(1).

(b) Disqualify Stephen Burke for a period of five years, from 13 February 2020 until 13 February 2025, in accordance with section 93D from:

- holding a licence or BYO Permit;
- being a director in any body corporate that holds a licence or BYO permit;
- being a partner in any partnership that holds a licence or BYO permit;
- having a beneficial interest (whether directly or indirectly) in the shares of any body corporate that holds a licence or BYO permit; and
- in any way (whether directly or indirectly) taking part in, or being concerned in, the management of any licensed premises or a body corporate that holds a licence or BYO permit or any licensed club.

(c) Endorse the licence held by SP Burke Pty Ltd with the name of the owner, Willfamco Pty Ltd, in accordance with section 93E(1).

Signed:

A handwritten signature in black ink, appearing to read 'Helen Versey'.

Helen Versey

Deputy Chair

REASONS FOR DECISION

THE LICENCE

1. SP Burke Pty Ltd (**the Licensee**) holds late night general licence no. 31900392 (**the Licence**) in relation to the premises trading as the Ararat Hotel, located at 130 Barkly Street, Ararat (**the Premises**).
2. The Registered Proprietor of the Premises is Willfamco Pty Ltd (**the Owner**) who granted a five-year lease in favour of the Licensee, with a commencement date of 3 March 2010.
3. The Licence permits the supply of liquor for consumption on and off the Premises.
4. The permitted hours for consumption on the premises (excluding the beer garden) are as follows:

Sunday	Between 10 am and 11 pm
Good Friday & Anzac Day	Between 12 noon and 11 pm
Monday to Thursday	Between 7 am and 1 am the following morning
Friday and Saturday	Between 7 am and 3 am the following morning

5. At all relevant times, the Licence was subject to the following conditions, amongst others:
 - *The licensee shall not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises to which the licence relates during or immediately after the trading hours authorised under this licence. The licensee shall ensure that the level of noise emitted from the licensed premises shall not exceed the permissible noise levels for entertainment noise as specified in the State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2.*

When live or recorded amplified music other than background music is provided:

- *The licensee shall install and maintain a surveillance recording system able to clearly identify individuals, which shows time and date and provides continuous images of all entrances and exits, bars and entertainment/dance floor areas. The surveillance recording system must operate from 30 minutes before the start of the entertainment being provided until 30 minutes after closure. A copy of the recorded images must be available upon request for immediate viewing or removal by the Victoria Police, or a*



person authorised in writing by the Victorian Commission for Gambling and Liquor Regulation, or otherwise retained for at least 1 month.

- *Crowd controllers, licensed under the Private Security Act 2004, are to be employed at a ratio of 2 crowd controllers for the first 100 patrons and 1 crowd controller for each additional 100 patrons or part thereof. One crowd controller is to be present outside the premises to monitor patrons arriving at and departing from the premises. Crowd controllers are to be present from 30 minutes before the start of the entertainment being provided, until 30 minutes after closure.*

When the premises is open after 11 p.m on any day, one crowd controller licensed under the Private Security Act shall be positioned at the door of the premises leading into the beer garden. That crowd controller will monitor patron behaviour in the beer garden and ensure no liquor is taken into the area.

The licensee shall ensure that the premises surveillance recording system, able to clearly identify individuals which shows time and date, includes four continuous images of the beer garden area. Recordings of this area must operate from when the premises opens until thirty minutes after closure. A copy of the recorded images must be available upon request for immediate viewing and or removal by the Victoria Police or a person authorised in writing by the Victorian Commission for Gambling and Liquor Regulation. or otherwise retained for at least 1 month.

THE REQUEST

6. On 20 May 2019, the Commission received a request (**the Request**) from a Victoria Police Licensing Inspector (**the Requestor or Victoria Police**) that it conduct a disciplinary action inquiry pursuant to section 91 of the *Liquor Control Reform Act 1998* (**the LCR Act**), into whether there were grounds to take disciplinary action in relation to the Licensee.
7. The Request proposed that there were four grounds for disciplinary action under section 90(1) of the LCR Act. Specifically, these were:
 - (a) that the licensee or permittee has contravened a provision of the LCR Act, the regulations, the licence ... or a condition of the licence ...;

...



- (l) that the licensee or permittee has paid a penalty for an offence under the LCR Act for which an infringement notice within the meaning of the *Infringements Act 2006* has been served;
- ...
- (o) that the licensee ...has conducted the business under the Licence, or allowed it to be conducted, in a manner that detracts from or is detrimental to the amenity of the area in which the licensed Premises is situated.
- ...
- (q) that the licensee or permittee is otherwise not a suitable person to hold a licence or BYO permit.

THE INQUIRY

8. On 5 June 2019, the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) gave notice to the Licensee that the Commission proposed to conduct an inquiry pursuant to section 91(1) of the LCR Act into whether there are grounds to take disciplinary action in relation to the Licensee, upon the written request of the Requestor. This notice contained four possible grounds supported by 14 alleged particulars.
9. On 3 September 2019, Victoria Police sought to file a 15th particular with the Commission and sought that it be included in the Request. Then, on 18 September 2019, Victoria Police filed a 16th particular with the Commission and sought that also it be included in the Request. The Commission permitted this amendment to the Request and served a copy of Particular 15 and 16 on the Licensee on 20 September 2019.
10. A hearing took place before the Commission (**the Hearing**) on 25 November at which the Licensee was represented by its sole director, Mr Burke (**the Director**).

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

11. In conducting an inquiry under Division 1 of Part 6 of the LCR Act¹, the Commission must have regard to the objects of the LCR Act as set out in section 4(1).² The objects that are relevant to this inquiry are:
- (a) to contribute to minimising harm arising from the misuse and abuse of alcohol, including by–
 - (i) providing adequate controls over the supply and consumption of liquor; and
 - ...
 - (iv) encouraging a culture of responsible consumption of alcohol and reducing risky drinking of alcohol and its impact on the community.
12. Section 4(2) of the LCR Act requires that the Commission, in the conduct of an inquiry, exercise its powers “with due regard to harm minimisation and the risks associated with the misuse and abuse of alcohol”.
13. There are two steps involved in a disciplinary inquiry by the Commission under Division 1 of Part 6 of the LCR Act. Section 93(1)(a) provides that, after conducting an inquiry, the Commission must first determine whether one or more of the grounds for disciplinary action against the Licensee exist. If so, section 93(1)(b) requires the Commission to decide what, if any, disciplinary action to take against the Licensee or a related person.

What are the grounds for disciplinary action?

14. Section 90 of the LCR Act defines “grounds for disciplinary action.”³ The specific grounds for disciplinary action proposed by the Request are set out in paragraph 7 above.
15. There are circumstances prescribed by the LCR Act as indicative of when someone is not suitable to hold a licence⁴ but these circumstances are not exhaustive. Therefore, it is

¹ All references to legislation are references to the LCR Act unless stated otherwise.

² See *Victorian Commission for Gambling and Liquor Regulation Act 2011*, s 9(3).

³ Section 90(1) of the LCR Act, subparagraph (a) under the definition “grounds for disciplinary action”.

⁴ See LCR Act, s 44(3): “[w]ithout limiting the reasons why a person is not a suitable person to hold, or carry on business under, a licence or BYO permit, a person is not a suitable person to hold, or carry on business under, a licence or BYO permit if the person or, if the person is a body corporate, any director of the person has, within the preceding 3 years—

- (a) been convicted, whether in Victoria or elsewhere, of an offence of supplying liquor without a licence or of supplying adulterated liquor or of an offence against any law relating to customs or excise; or
- (b) engaged in activities involving the trading in or marketing of liquor in a manner contrary to the provisions of this Act.”



necessary to consider the concept of suitability in the context of the particular legislation.⁵ It was recognised in *Buzzo Holdings Pty Ltd and Anor v Loison* [2007] VSC 31 that the purpose of Division 1 of Part 6 of the LCR Act is “the protection of the public, the upholding of industry standards, and the maintenance of public confidence in the liquor industry”.⁶ It is not “for the punishment of particular individuals or corporations”.⁷ Further, the Commission considers that protection of the public and the object of harm minimisation are paramount. Therefore, in assessing suitability, the Commission “must look at what is in accordance with the public interest which embrace matters, amongst others, of standards of human conduct acknowledged to be necessary for the goodf order and well-being of the public...[and] also take into account that the Act...was designed to protect the interest of the community...and the issue of protection of the public remains an important consideration”.⁸

What disciplinary action can the Commission take?

16. Section 90 of the LCR Act defines “disciplinary action” against a licensee to mean any one, or a combination, of the following:
- (a) the cancellation, or suspension for a specified period, of the licensee's licence;
 - (b) the variation of the licensee's licence;
 - (c) the endorsement of the licensee's licence;
 - (d) the issuing of a letter of censure to the licensee; and/or
 - (e) the imposition of a fine not exceeding an amount that is 250 times the value of a penalty unit fixed by the Treasurer under section 5(3) of the *Monetary Units Act 2004* on the licensee.⁹
17. If the Commission finds that a ground for taking disciplinary action under section 90 of the LCR Act is made out, the Commission may also determine, pursuant to section 93D of the LCR Act, that the licensee or a related person be disqualified -
- (a) from holding a licence or BYO permit;
 - (b) from being a director in any body corporate that holds a licence or BYO permit;

⁵ *West Heidelberg RSL Sub-Branch Inc v Director of Liquor Licensing* [2006] VCAT 347; *Egan v Director of Liquor Licensing* [2007] VCAT 806.

⁶ *Buzzo Holdings Pty Ltd and Anor v Loison* [2007] VSC 31 at [16] (Kaye J).

⁷ *Ibid.*

⁸ *Whiting v AMC Investments (Occupational and Business Regulation)* [2005] VCAT 1830, [21]; See also *Raz Pty Ltd & Anor v Director of Liquor Licensing (Occupational and Business Regulation)* [2008] VCAT 857, [11], [28].

⁹ The relevant value of a penalty unit at the time of this decision is \$165.22, which provides for a maximum fine of \$41,305.

- (c) from being a partner in any partnership that holds a licence or BYO permit;
 - (d) from having a beneficial interest (whether directly or indirectly) in the shares of any body corporate that holds a licence or BYO permit;
 - (e) from in any way (whether directly or indirectly) taking part in, or being concerned in, the management of any licensed premises or any body corporate that holds a licence or BYO permit or any licensed club; or
 - (f) from being employed by any licensed club or any person that holds a licence or BYO permit.
18. Sections 93D(2) and (3) of the LCR Act provide that the Commission may disqualify a person in all or any of the ways listed above even if it determines not to take disciplinary action under section 93, and it must specify a period for which the disqualification is to apply.
19. Section 93D(5) further states that a related person in relation to a licensee or permittee relevantly means -
- (a) any director or nominee of the licensee or permittee (if it is a body corporate); or
 - ...
 - (c) any person who, whether directly or indirectly, is concerned in or takes part in the management of licensed premises or club of the licensee or permittee.

HISTORY OF PROCEEDING

20. In the Notice, the Commission identified one individual as a related person who may be subject to a determination under section 93D of the LCR Act, which relates to disqualification. That individual is Mr Stephen Burke, who has been the sole director of the Licensee and the person responsible for the management of the Premises under the Licensee, during the period when the conduct described in the alleged particulars occurred.
21. In accordance with section 92A(1)(a) of the LCR Act, the Commission is required to notify all interested persons¹⁰ of its proposal to conduct an inquiry and invite them to make submissions to the Commission. The Director was notified of the Commission's proposed inquiry on 5 June 2019 by the Commission sending a copy of the Request to the Director. The Commission was not aware of any interested persons, other than the Director, who required notification in accordance with this section.

¹⁰ An interested person effectively includes a related person: See LCR Act, s 92A(1)(a)(ii).



22. As required by section 92A(1)(b) of the LCR Act, the Commission published notice of the disciplinary action inquiry in a newspaper circulating generally throughout Victoria (the Herald Sun) on 16 August 2019, and on the Commission's website, inviting any persons whose commercial or financial interests may be detrimentally affected by the inquiry to attend and/or make submissions regarding the inquiry.
23. The Commission received a submission from the Owner of the Premises in response to this notice annexing a copy of the lease granting the Licensee possession of the Premises. The Owner's submission notified the Commission that the Owner would terminate the Licensee's lease with respect to the Premises if the Commission determined that the Licensee had breached its obligations under the LCR Act. The Owner's submission also notified the Commission that the Owner would seek to be endorsed on the Licence if the Commission determined that grounds for disciplinary action against the Licensee existed.
24. On 11 September 2019, the Commission conducted a preliminary meeting at which the Licensee was represented by LGS Legal, and Victoria Police Licensing was represented by Senior Sergeant Phil Eager. At this preliminary meeting, the Commission directed that the parties must provide a summary of agreed facts by 25 September 2019.
25. As at 25 September 2019, Victoria Police had drafted a summary of facts, however this was not accepted by the Licensee, nor did the Licensee provide details of what parts of this summary it did not accept or provide its own summary in lieu.
26. On 20 October 2019, LGS Legal informed the Commission that it no longer acted for the Licensee. The summary of agreed facts remained outstanding at this time. Soon thereafter, a hearing date of 25 November 2019 was set for the disciplinary action inquiry.
27. On 19 November 2019, the Licensee informed the Commission by email that while it disagreed with a number of the particulars alleged by the Request, it did not seek to call any of Victoria Police's witnesses at the Hearing.
28. On 20 November 2019, Victoria Police sought to file a 17th particular for inclusion in the Request (**Particular 17**). Particular 17 related to an alleged contravention of sections 119 and 120 of the LCR Act. Senior Sergeant Eager advised the Commission that Victoria Police intended to prosecute the Licensee with respect to this alleged contravention. For the reasons set out at paragraph 32 below, Particular 17 was not included in the Request.

THE HEARING

29. On 25 November 2019, a hearing took place in which the Director appeared both as a representative of the Licensee and as a related person to the Licensee within the meaning of section 93D of the LCR Act (**the Hearing**). While a legal representative had previously represented the Licensee in the inquiry, the Director represented himself at the Hearing.
30. Senior Sergeant Eager appeared at the Hearing on behalf of Victoria Police.
31. A director of the Owner, John Williams, also attended the Hearing and gave evidence in support of his submission referred to in paragraph 23.
32. At the commencement of the Hearing on 25 November 2019, and after hearing submissions from Victoria Police on the subject, the Commission informed the parties that it would not include Particular 17 in the disciplinary action inquiry because Victoria Police intended to prosecute the Licensee with respect to the alleged contraventions raised by Particular 17. While the Commission decided not to determine this Particular as part of its inquiry, it noted that it would be considered by the Commission in a subsequent inquiry if a further request was made pursuant to section 91 of the LCR Act.
33. Also, at the commencement of the Hearing, Victoria Police indicated that it did not intend to advance Particular 12 on grounds that Victoria Police no longer considered the evidence in support to be sufficient to establish the facts relevant to whether Particular 12 gave rise to a ground for disciplinary action.
34. Accordingly, the Commission considered it appropriate that only Particulars 1 to 11, and 13 to 16 be determined by the disciplinary action inquiry.

GROUND FOR DISCIPLINARY ACTION AND FINDINGS

35. The following particulars were alleged as giving rise to each ground for disciplinary action (set out in paragraph 14 above). Prior to the inquiry, the Director of the Licensee indicated that he accepted the facts alleged by some particulars and disagreed with those alleged by others. In summary, the Director:
 - (a) did not dispute the facts alleged by Particulars 1, 2, 3, 5, 6, 9, 13 and 14; and
 - (b) disputed the facts alleged by Particulars 4, 10, 11, 15 and 16.
36. For reasons explained in paragraph 33 above, the Commission did not hear and determine Particular 12.

37. The Request submits that the ground for disciplinary action set out in section 90(1)(q) of the LCR Act, being that the Licensee is not suitable to hold the Licence, is supported by all 15 particulars which were dealt with at the inquiry. Accordingly, the Commission's findings with respect to the suitability of the Licensee are addressed cumulatively at paragraph 224 below.

Particular 1

38. The Request alleges that on 6 July 2018, the Licensee:
- 1.1. failed to produce a copy of the plan or depiction of the premises for inspection when asked to do so by a gambling and liquor inspector contrary to section 101B(2) of the LCR Act;
 - 1.2. failed to maintain an approved RSA register in that the Licensee failed to keep a record of persons involved in the sale of liquor on the premises contrary to section 108AD(2) of the LCR Act;
 - 1.3. supplied liquor other than in accordance with the crowd controller condition of the Licence, contrary to section 108(1)(a)(i) of the LCR Act;
 - 1.4. supplied liquor other than in accordance with the CCTV condition of the licence contrary to section 108(l)(a)(i); and,
 - 1.5. failed to exercise sufficient management and control over the licensed premises to ensure that the conditions of the licence and the provisions of the LCR Act were complied with.

Summary of evidence

39. A statement from Glenn Kilburn, an Inspector of the Victorian Commission for Gambling and Liquor Regulation (**the VCGLR**), dated 30 January 2019, was provided in support of Particular 1. A written warning letter dated 13 July 2018 and referred to in the statement was also provided in support of Particular 1.
40. The statement alleges that on 6 July 2018 at 9:35am, VCGLR Inspectors attended the Premises where they observed amplified music played above background music levels. It further alleges that the Licensee failed to produce a plan of the Premises when asked to do so by a VCGLR Inspector.
41. It is also alleged that when requested by VCGLR Inspectors, the Licensee produced an RSA register which did not contain RSA certificates of all staff involved in the supply of liquor as required by the LCR Act.
42. Following the above breaches being observed by VCGLR Inspectors, a warning letter was issued to the Licensee on 13 July 2018 which alleged that the following contraventions of the

LCR Act occurred, but stated that regulatory action would not be taken in response to these contraventions:

- (a) Breach of section 108(1)(a)(i) for supplying liquor other than in accordance with the licence by failing to ensure adequate licensed crowd controllers were employed as required by the Licence;
- (b) Breach of section 108AD(2) for failing to maintain an approved RSA register; and
- (c) Breach of section 101B(1) for failing to produce a copy of the last plan or depiction of the licensed premises.

Submissions at the Hearing

- 43. The Director representing the Licensee did not dispute the facts alleged by Particular 1, but made submissions in mitigation.
- 44. These submissions specifically referred to the Director's lack of knowledge with respect to the requirements of the Licence at the relevant time. The Director submitted that there was some agreement between him and the previous owner of the business whereby there would be a handover period, but that this handover did not eventuate and the Director was therefore "thrown in the deep end" from day one. The Director submitted that the circumstances giving rise to Particular 1 were partly due to this.
- 45. The Director further submitted that the Licensee had spent \$9,500 upgrading the CCTV system at the Premises after being informed of the CCTV requirements listed on the Licence, to ensure that these were complied with, however the Director did not specify when this system had commenced operation at the Premises.
- 46. In response to a lack of licensed crowd controllers on the Premises, the Director stated that his current practice is to lock the entrance to the beer garden at 10pm or 11pm every night to avoid the requirement that a crowd controller be present at the door leading out to it.

Grounds for disciplinary action

- 47. The Request states that, if satisfied of Particular 1 on the evidence, the Commission should find grounds for disciplinary action in accordance with sections 90(1)(a) and 90(1)(q) of the LCR Act.¹¹

¹¹ These sections of the LCR relating to the relevant grounds are set out in paragraph 7 above

Findings on Particular 1

48. As the Director conceded the facts relevant to Particular 1, the Commission finds Particular 1 proven and is satisfied that there is a ground for disciplinary action in accordance with section 90(1)(a) of the LCR Act.
49. As all particulars alleged by the Request propose the ground for disciplinary action set out at section 90(1)(q) of the LCR Act, all particulars are considered cumulatively by the Commission in relation to this ground. The Commission's consideration of this ground may be found at paragraphs 224 to 228 below.

Particular 2

50. The Request alleges that on 11 August 2018, the Licensee:
- 2.1 Supplied liquor other in accordance with the crowd controller conditions of the Licence contrary to section 108(1)(a)(i) of the LCR Act;
 - 2.2 Supplied liquor other than in accordance with the CCTV conditions of the Licence contrary to section 108(1)(a)(i) of the LCR Act; and,
 - 2.3 Failed to exercise sufficient management and control over the licensed premises to ensure that the conditions of the licence and the provisions of the LCR Act were complied with.

Summary of the evidence

51. A statement from VCGLR Inspector Jessica Wright was provided in support of Particular 2, together with a copy of a warning letter issued by the VCGLR on 22 August 2018 and penalty infringement notice (**PIN**) #L003942.
52. These documents indicate that on 11 August 2018 at 11:30pm, VCGLR Inspectors attended the Premises and observed amplified music played above background music levels.
53. They observed two crowd controllers on duty while patron numbers were calculated at approximately 75. There was no crowd controller positioned at the door of the Premises leading into the beer garden in breach of a condition of the Licence.
54. The Licensee failed to provide evidence of a CCTV system which clearly identified individuals at all entrances/exits to the Premises, which recorded the dance room of the Premises and which recorded the back area of the Premises.



55. The Licensee further failed to comply with the crowd controller condition of the Licence which required crowd controllers licensed under the *Private Security Act 2004* to be present from 30 minutes before the start of entertainment being provided to 30 minutes following closure of the Premises.
56. PIN #L003942 was served on the Licensee with respect to these breaches and was subsequently paid on 16 January 2019.

Submissions at the Hearing

57. The Director did not dispute that insufficient crowd controllers were on duty as alleged nor did it dispute that the CCTV requirements of the Licence had not been complied with.
58. In mitigation, the Director attributed the Licensee's non-compliance with the conditions of the Licence to its lack of understanding of the requirements of the Licence.

Grounds for disciplinary action

59. The Request alleged that, if satisfied of Particular 2 on the evidence, the Commission should find grounds for disciplinary action in accordance with sections 90(1)(l) and 90(1)(q) of the LCR Act.

Findings regarding Particular 2

60. The Commission notes that the Director did not dispute the facts alleged by Victoria Police and indicated that he paid the PIN. Having regard to this and the statement from VCGLR Inspector Wright, the Commission finds Particular 2 proven and is satisfied that this supports the ground for disciplinary action at section 90(1)(l) of the LCR Act.

Particular 3

61. The Request alleges that on 26 August 2018, the Licensee:
- 3.1 employed a crowd controller who was not licensed contrary to section 131(2) of the *Private Security Act 2004*;
 - 3.2 supplied liquor other than in accordance with the crowd controller conditions of the licence contrary to section 108(1)(a)(i) of the LCR Act;
 - 3.3 permitted consumption of liquor other than in accordance with the trading hours endorsed on the licence contrary to section 108(1)(a)(iii) of the LCR Act;
 - 3.4 allowed a person under the age of 18 years who was not in the company of a responsible adult to be on licensed premises contrary to section 120(1)(a) of the Act; and



- 3.5 failed to exercise sufficient management and control over the licensed premises to ensure that the conditions of the licence and the provisions of the Act were complied with.

Summary of Evidence

62. In support of Particular 3, Victoria Police provided a written statement made by Sergeant Simon Grant with a contemporaneously recorded *Licensed Premises Incident Report (LPIR)*. A further statement of Sergeant Grant was provided, which appears to have been made in anticipation of a prosecution in the Magistrates' Court.
63. On 26 August 2018 at 12:20am, Victoria Police attended the premises where they observed a DJ playing amplified music above background music levels. A crowd controller not licensed in accordance with the *Private Security Act 2004* was located at the front entrance to the Premises.
64. Victoria Police observed 123 patrons on the Premises and only one licensed crowd controller located on the Premises, contrary to the conditions of the Licence.
65. Victoria Police observed approximately 30 patrons were in the beer garden, most of whom were in possession of liquor, in breach of a Licence condition restricting trading hours to 11pm for that area.
66. Also, contrary to the conditions of the Licence, there was no crowd controller positioned at the door to the beer garden of the Premises.
67. A 17-year old male was observed to be unaccompanied while leaving the Premises. When questioned by Victoria Police, this male informed Victoria Police that he was permitted entry to the Premises without being required to provide identification.

Submissions at the Hearing

68. At the Hearing, the Director stated that he had employed a crowd controller who was unlicensed. He stated that this was due to being informed at 10:45pm on the night of the incident by his scheduled crowd controllers that they could not provide the scheduled services. The Director stated that due to his lack of understanding of how crowd controllers operated at the date of the incident, he had organised a substitute crowd controller who happened to be unlicensed.
69. The Director also stated that he had since engaged a different and better security company following 26 August, explaining that this company charged \$10 more on an hourly basis, but was more reliable.
70. Later, in cross-examination, Senior Sergeant Eager suggested that the Director's primary motivation was to turn a profit, and referred to the Director's initial choice of crowd controller as an example of this. This suggestion was denied by the Director.

Grounds for disciplinary action

71. The Request alleges that, if satisfied of Particular 3 on the evidence, the Commission should find grounds for disciplinary action in accordance with sections 90(1)(a), 90(1)(l), 90(1)(o) and 90(1)(q) of the LCR Act.

Findings regarding Particular 3

72. At the Hearing, the Director indicated that a crowd controller was not on duty at the Premises as required by a condition of the Licence and as alleged in the statements of Sergeant Grant referred to above. These statements also indicate that an unaccompanied minor was found by police on the Premises and this was not disputed by the Director. Accordingly, the Commission accepts the statements of Sergeant Grant.

73. Having regard to the evidence and submissions above, the Commission finds Particular 3 proven and is satisfied that this supports the grounds for disciplinary action at sections 90(1)(a), 90(1)(l) and 90(1)(o) of the LCR Act.

Particular 4

74. The Request alleges that on 31 August 2018, the Licensee:

- 4.1 Allowed the business to be conducted in a manner that was detrimental to the amenity of the area in which the Premises is situated; and
- 4.2 Failed to exercise sufficient management and control over the licensed premises to ensure that the provisions of the LCR Act were complied with.

Summary of evidence

75. A statement of Senior Constable Boromeo was provided in support of Particular 4, together with contemporaneously recorded LPIR #11070283.

76. These documents indicate that on 31 August 2018 at 10:51pm, an assault occurred at the Premises which spilled out onto the street. The Licensee attempted to remove the two patrons involved in the incident, however no licensed crowd controllers were present at the time of the incident.

Grounds for disciplinary action

77. The Request alleges that, if satisfied of Particular 4 on the evidence, the Commission should find grounds for disciplinary action in accordance with sections 90(1)(a) and 90(1)(q) of the LCR Act.

Submissions at the Hearing

78. The Director submitted that he was not required to have a crowd controller present on the Premises at the date of the incident, because he didn't have live or amplified music at the time of the inspection. In response to the Director's submission, Victoria Police clarified that Particular 4.1 was not presented as a ground for disciplinary action on the basis that the Licensee had contravened a condition of the Licence relating to crowd controllers, but rather that the Licensee had contravened the amenity condition of the Licence by exercising insufficient management of the Premises and failing to prevent the assault from occurring.
79. In response, the Director of the Licensee stated that there was limited managerial action which could be taken to prevent patrons from engaging in an altercation and he did not consider it possible to have exercised better control of the Premises to prevent an incident from occurring on 31 August 2018. He further submitted that in a general sense, physical altercations were sometimes unavoidable, due to human nature and patrons with "steam under the collar", for example on a Friday after working a 40-hour week, in an environment where liquor was readily available.

Findings regarding Particular 4

80. Having regard to the statement of Senior Constable Boromeo and the LPIR, the Commission is satisfied that an assault occurred at the Premises as described. The Commission finds that to the extent that this assault involved "violent behaviour" within the meaning of section 3AA of the LCR Act, it constituted a detriment to the amenity of the area in which the Premises is situated.
81. The Director's submission indicated that he did not believe that he had failed to exercise sufficient management of the Premises or allowed it to be conducted in a manner detrimental to the amenity of the area because, in his view, such incidents were unavoidable.
82. The Commission's view is that the holder of a liquor licence is ultimately responsible for exercising sufficient management and control of licensed premises. The Commission notes that the Licensee had not complied with the crowd controller condition of the Licence, nor did the Director indicate that there was an adequate management framework in place to manage and prevent assaults from occurring at the Premises. In light of this, the Commission's view is that the Licensee's failure to sufficiently discharge its responsibility to manage and control the Premises resulted in a detriment to the amenity of the area in which the Premises is situated.
83. Having regard to the evidence in support of the Request and the matters prescribed by the LCR Act as constituting a detriment to amenity, the Commission is satisfied that Particular 4 is proven and that there is a ground for disciplinary action in accordance with section 90(1)(a) of the LCR Act.

Particular 5

84. The Request alleges that on 9 September 2018, the Licensee:

- 5.1 supplied liquor other than in accordance with the crowd controller condition of the licence contrary to section 108(1)(a)(i) of the LCR Act; and
- 5.2 permitted liquor to be consumed not in accordance with the Licence, contrary to section 108(1)(a)(iii) of the LCR Act; and
- 5.3 failed to exercise sufficient management and control of the Premises to ensure that the conditions of the licence and provisions of the LCR Act were complied with.

Summary of evidence

85. A statement from Sergeant Brett Johnson and LPIR #11051912 were provided in support of Particular 5.
86. These documents indicate that Victoria Police attended the Premises and observed alcohol being consumed in the beer garden area of the premises after 11pm while a crowd controller was not situated at the entrance to the beer garden.

Submissions at the Hearing

87. The Director did not dispute Particular 5, but stated that he had since locked the beer garden at 10pm or 11pm to prevent further breaches of the relevant crowd controller condition.

Grounds for disciplinary action

88. The Request alleges that, if satisfied of Particular 5 on the evidence, the Commission should find grounds for disciplinary action in accordance with sections 90(1)(o) and 90(1)(q) of the LCR Act.

Findings regarding Particular 5

89. The Commission notes that the Director did not dispute the facts relevant to Particular 5
90. Having regard to the statement of Sergeant Johnson which was provided in support of the Request, and noting that the Director did not dispute what this statement alleged, the Commission finds that Particular 5 is proven and is satisfied that there is a ground for disciplinary action in accordance with section 90(1)(a) of the LCR Act.

Particular 6

91. The Request alleges that on 23 September 2018, the Licensee:

- 6.1 conducted the Premises in a manner that was detrimental to the amenity of the area in which the Premises is situated;
- 6.2 allowed a patron to become drunk; and
- 6.3 failed to exercise sufficient management and control over the Premises to ensure that the LCR Act was complied with.

Summary of evidence

92. A statement of First Constable Gillian Morgan and contemporaneously made LPIR #11102862 were provided in support of Particular 6.
93. These documents state that on 23 September 2018 at 2:00am, Victoria Police attended the Premises in response to the complaint of a noise disturbance by a nearby resident.
94. At 3:56am, Victoria Police located a drunken male approximately 400 metres from the Premises. When questioned by Victoria Police, the male stated that he had consumed liquor at the Premises between 11pm and 3am.
95. On 28 September 2019, Licensing Inspector Weppner issued the Licensee with a written warning with respect to the incidents described within Particular 3, 4, 5 & 6. This warning referred to music emitted by the premises on 23 September 2018 causing an undue detriment to the area in which the Premises is situated.

Submissions at the hearing

96. At the Hearing, the Director submitted that he was not aware that recorded music was being played too loudly at the Premises until Victoria Police were called to attend. He stated that on 23 September 2018 there were between 190 and 200 patrons present on the Premises, and the Director stopped playing music when informed that it was too loud.
97. The Director also noted a drunken male referred to in the LPIR recorded on 23 September 2018 was allegedly found at 3:56am. He stated that the Premises closed at 2:10am on 23 September 2018 and that there was no evidence that the drunken male had come from the Premises apart from what the drunken male had told police when questioned.

Grounds for disciplinary action

98. The Request alleges that, if satisfied of Particular 6 on the evidence, the Commission should find grounds for disciplinary action in accordance with sections 90(1)(o) and 90(1)(q) of the LCR Act.

Findings regarding Particular 6

99. While not central to its consideration of Particular 6, the Director's assertion that the Premises closed at 2:10am on 23 September 2018 is at odds with the statement of Constable Gillian Morgan and the contemporaneously recorded LPIR which state that another call was made at 2:48am in relation to a man at the bar of the Premises who was taking photos of women at the Premises.
100. Even if the Commission were satisfied that a drunk patron was permitted on the Premises, the Commission cannot be satisfied on the evidence that the Licensee allowed that patron to become drunk, as alleged by Particular 6.2.
101. However, the Commission considers that the noise emitted from Premises at approximately 2:00am constituted a detriment to amenity, notwithstanding that the Director addressed this by ceasing to play music once alerted by Victoria Police that this was disturbing nearby residents.
102. The Commission is satisfied that this detriment to the amenity of the area in which the Premises is situated was caused by the Director's management of the Premises and finds Particulars 6.1 and 6.3 proven.
103. Accordingly, the Commission finds that there is a ground for disciplinary action in accordance with section 90(1)(o) of the LCR Act.

Particular 7

104. The Request alleges that on 29 September 2018, the Licensee:
- 7.1 supplied liquor other than in accordance with the Licence contrary to section 108(1)(a)(i) of the LCR Act;
 - 7.2 allowed the business to be conducted in a manner detrimental to the amenity of the area in which the Premises is situated; and
 - 7.3 failed to exercise sufficient management and control over the Premises to ensure that the LCR Act was complied with.

Summary of evidence

105. The statement of Senior Constable Daniel Boromeo signed 6 March 2019 and contemporaneously recorded LPIR #11123652 were provided as evidence in support of Particular 7.
106. The Request states that on 29 September 2018 at approximately 1:41am, Victoria Police attended the Premises in response to a report from Ambulance Victoria of a brawl involving three patrons. The Request further states that the Director informed Victoria Police that two "offenders" involved in the brawl had left the Premises, while the "victim" was described by the Request as



being “uncooperative” with Victoria Police, and was later conveyed home by Victoria Police.

107. CCTV records or still images were not provided to the Commission in support of Particular 7, however, the statement of Senior Constable Boromeo states that upon viewing the CCTV footage relating to the incident, he saw an assault occur between three patrons of the Premises at about 10:53pm, with several blows to the head being received by the “victim”. The CCTV footage allegedly did not show a crowd controller on duty at the Premises when the assault occurred.

Submissions at the Hearing

108. When asked by the Commission whether he had employed a crowd controller on 29 September 2018, the Director indicated that he had not because he was only required to do so when live or amplified music was played.

109. Victoria Police responded to this statement by clarifying that the Licence required a crowd controller to be positioned at the entrance to the beer garden regardless of whether live or amplified music was played at the Premises.

Grounds for disciplinary action

110. The Request alleges that, if satisfied of Particular 7 on the evidence, the Commission should find grounds for disciplinary action in accordance with sections 90(1)(a), 90(1)(o) and 90(1)(q) of the LCR Act.

Findings regarding particular 7

111. Based on the evidence provided in support of Particular 7 and the Director’s indication that he did not have a crowd controller on duty at the entrance to the beer garden on 29 September 2018, the Commission is satisfied that the conditions of the Licence were not complied with as alleged by Victoria Police.

112. The Commission notes that Victoria Police did not attend the Premises at 10:53pm, being the time of the alleged brawl, and therefore did not observe a brawl taking place at the Premises. However, the Commission notes that the facts alleged in the statement of Senior Constable Boromeo were not challenged by the Director, and the Commission is satisfied that the Director had either reviewed the CCTV footage of the incident or had ability to do so. Accordingly, the Commission is satisfied that the CCTV footage of the Premises showed an assault occurring on the Premises on 29 September 2018, as referred to in the statement of Senior Sergeant Boromeo.

113. The Commission finds that to the extent that this assault involved “violent behaviour” within the meaning of section 3AA of the LCR Act, it constituted a detriment to the amenity of the area in which the Premises is situated.

114. Accordingly, on the evidence available, the Commission is satisfied that Particular 7 is proven and that this supports the grounds for disciplinary action at sections 90(1)(a) and 90(1)(o) of the LCR Act.

Particulars 8 & 9

115. Particular 8 relates to the night of 19 October 2018 and Particular 9 relates to the early hours of 20 October 2018. As Particulars 8 and 9 relate to the same events, it is the Commission’s view that they should be considered together.

116. The Request alleges that on the night of 19 October 2018, the Licensee:

- 8.1 supplied liquor other than in accordance with the Licence contrary to section 108(1)(a)(i) of the LCR Act;
- 8.2 allowed the business to be conducted in a manner detrimental to the amenity of the area in which the Premises is situated; and
- 8.3 failed to exercise sufficient management and control over the Premises to ensure that the LCR Act was complied with.

117. The Request also alleges that on the morning of 20 October 2018, the Licensee:

- 9.1 supplied liquor other than in accordance with the Licence contrary to section 108(1)(a)(i) of the LCR Act;
- 9.2 contravened section 120(1)(a) of the LCR by permitting an unaccompanied person of under 18 years of age on the Premises; and
- 9.3 paid a penalty for an offence under the LCR Act for which an infringement notice within the meaning of the *Infringements Act 2006* has been served.

Summary of Evidence

118. A statement from Sergeant Silas Stephens and contemporaneously recorded LPIR (#11204772) were provided in support of Particulars 8 and 9.

119. The Request also included the following two PINs:

- (a) PIN 379525974 relating to a contravention of section 108(1)(a)(i) of the LCR Act by failing to have a crowd controller positioned at the entry to the beer garden of the Premises; and

- (b) PIN 379525985 relating to a contravention of section 120(1) of the LCR Act, relating to having a minor on the Premises.

The statement of Sergeant Stephens indicates that both PINs were paid on 25 January 2019.

120. The LPIR states that police were called to attend the Premises at 11:30pm on 19 October 2019 in response to a brawl. However, the brawl was described as having finished by the time police arrived, indicating that the brawl was not witnessed by police.
121. The LPIR then states that police returned to the Premises at 1:30am, where they observed patrons entering the beer garden with no crowd controller present at its entrance, contrary to a condition of the Licence. When questioned regarding the requirement to have a crowd controller on duty, the Director stated that he could not justify spending money on a crowd controller without knowing how many patrons would be in attendance.
122. The LPIR also indicates that upon leaving the Premises, a male known by police to be underage was found on the Premises. This patron was allegedly presented to the Director, who was informed that PINs would be issued with respect to contraventions of sections 108(1)(a)(i) and 120(1) of the LCR Act respectively.

Grounds for disciplinary action

123. The Request alleges that, if satisfied of Particulars 8 and 9 on the evidence, the Commission should find grounds for disciplinary action in accordance with sections 90(1)(a), 90(1)(l), 90(1)(o) and 90(1)(q) of the LCR Act.

Submissions at the Hearing

124. The Director originally disputed Particular 8 on the basis that no live or amplified music was played at the Premises at the time of the alleged contravention of the Licence, and that he did not therefore believe that the Licence required a crowd controller to be on duty on the Premises. Victoria Police then clarified that Particular 8 related to the requirement that a crowd controller be located at the entry to the beer garden. Having understood this, the Director conceded that no crowd controller had been employed at the time of the alleged contravention.
125. While the Director did not dispute that a crowd controller was not on duty on the Premises, he explained that the beer garden was the only smoking area within the Premises and that he believed it preferable that patrons smoke in the beer garden rather than on the street in front of the Premises, which he considered to be a "bad look". He stated that he now locked the beer garden as it was too difficult for him to prevent patrons from taking liquor into this area, forcing patrons to smoke at the front of the Premises.

126. The Director did not dispute that a 17-year old was found by police within the licensed area of the Premises, nor that the PIN which was issued with respect to this alleged contravention of section 120(1) of the LCR Act had been paid.

127. In mitigation, the Director stated that that when he questioned the minor on the date of the incident, the minor responded that he was 17 years old, had not attempted to purchase liquor, and had only been on the Premises for five minutes.

Findings regarding Particulars 8 & 9

128. Having considered the evidence put forth in support of Particulars 8 & 9, the Commission is satisfied that:

- (a) a contravention of section 120(1) of the LCR Act occurred in that an unaccompanied minor was on the Premises;
- (b) a contravention of section 108(1) of the LCR Act occurred in that liquor was supplied while a crowd controller was not on duty at the Premises; and
- (c) PINs issued with respect to these contraventions were paid by the Director.

129. As the evidence provided in support of Particulars 8 & 9 does not indicate that Sergeant Stephens observed an assault occur at the Premises, the Commission is not satisfied that an assault occurred on the Premises and does not find Particular 8.2 is proven.

130. As Particulars 8 & 9 relate to events continuing from the night of 19 October 2019 to the morning of 20 October 2019 and are considered together, the Commission considers Particulars 8.1 and 9.1 to relate to the same contravention of the Licence, such that the Commission need not make a separate finding with respect to Particular 9.1.

131. In summary, the Commission finds that Particulars 8.1, 8.3, 9.2 and 9.3 are proven, and that these support the grounds for disciplinary action at sections 90(1)(a) and 90(1)(q) of the LCR Act. As mentioned in paragraph 37 above, the Commission's findings with respect to the suitability of the Licensee are addressed cumulatively at paragraph 224 below.

Particular 10

132. The Request alleges that on 27 October 2018, the Licensee:

- 10.1 Allowed the Premises to be conducted in a manner detrimental to the amenity of the area.

Summary of Evidence

133. A statement from Senior Constable Ryan Hudson-Morgan and LPIR #11233943 were provided in support of Particular 10.

134. Together, these documents state that a male was found drunk and staggering on the footpath near Barkly Street at approximately 12:00am on 27 October 2018. This male is alleged to have been unable to stand upright when police approached him.

135. The statement of Senior Constable Hudson-Morgan states that this man informed police that he was consuming liquor at the Ararat Hotel between 11pm and 12am.

Submissions at the Hearing

136. The Director submitted that he was unable to comment on whether the person referred to in the evidence had been consuming liquor on the Premises, because the identity of this person was not known to the Director.

Grounds for disciplinary action

137. The Request states that, if satisfied of Particular 10 on the evidence, the Commission should find that the grounds for disciplinary action set out in sections 90(1)(o) and 90(1)(q) of the LCR Act exist.

Findings regarding Particular 10

138. The Commission considers that there is limited information indicating that the amenity disturbance caused by the male intercepted at 12:00am was a consequence of that male consuming liquor at the Premises. The Commission notes that the intoxicated male may have given an incorrect account of whether, and for how long he had consumed liquor at the Premises.

139. Further to this, the Licensee was not charged by Victoria Police with the offence described at section 108(4) of the LCR Act, namely, supplying liquor to an intoxicated person.

140. Noting that the evidence in support of this particular is limited to information conveyed to Victoria Police by an intoxicated person, the Commission does not find Particular 10 proven and is not satisfied that the proposed grounds for disciplinary action exist.

Particular 11

141. The Request alleges that on 27 October 2018, the Licensee:

11.1 Allowed the Premises to be conducted in a manner detrimental to the amenity of the area.

Summary of Evidence

142. A statement of Senior Constable Hudson-Morgan and a contemporaneously recorded LPIR #11232640 were provided in support of Particular 11.

143. The statement of Senior Constable Hudson-Morgan states that at 2:25am, police attended the

McDonalds restaurant in Ararat in response to a report of a drunken and aggressive male. Upon arriving, they allegedly located an intoxicated male banging on the door and acting in an abusive manner towards McDonalds staff.

144. The intoxicated male refused to provide his name when requested by police and attempted to walk away. He was then arrested for being drunk and placed in the back of a police van. He allegedly attempted to kick out at police and was consequently served with a PIN.

145. While the Request stated that this male “had been consuming liquor at the premises shortly before taking [a] taxi to the McDonalds Restaurant” the statement of Senior Constable Hudson-Morgan and the LPIR did not prove that this drunk male had been consuming liquor at the Premises prior to taking a taxi to the McDonalds restaurant.

Submissions at the Hearing

146. The Director submitted that he had no knowledge of the intoxicated male being at the Premises on 27 October 2018 as alleged by Particular 11.

Grounds for disciplinary action

147. The Request alleges that, if satisfied of Particular 11 on the evidence, the Commission should find grounds for disciplinary action in accordance with sections 90(1)(o) and 90(1)(q) of the LCR Act.

Findings regarding Particular 11

148. The Commission notes that the statement of Senior Constable Hudson-Morgan does not assert that the male intercepted by police on 27 October 2019 at 2:25am was a patron of the Licensee prior to being intercepted. Accordingly, the Commission is not satisfied that the intoxicated male was at the Premises prior to being intercepted.

149. The Commission finds that Particular 11 is not proven and the grounds for disciplinary action at sections 90(1)(o) and 90(1)(q) of the LCR Act do not exist in relation to Particular 11.

Particular 13

150. The Request alleges that on 9 December 2018, the Licensee:

13.1 supplied liquor to an intoxicated person contrary to section 108(4)(a) of the LCR Act;

13.2 paid a penalty for an offence under the LCR Act for which an infringement notice within the meaning of the *Infringements Act 2006* has been served;

13.3 allowed the Premises to be conducted in a manner detrimental to the amenity of the area;

and

13.4 failed to exercise sufficient management and control over the licensed premises to ensure that the conditions of the licence and the provisions of the Act were complied with.

Summary of Evidence

151. The statement of VCGLR Inspector Glenn Kilburn and PIN #L004047 were provided in support of Particular 13. The statement indicates that on 9 December 2018 at approximately 12:50am, Inspector Kilburn observed an intoxicated male at the Premises who appeared to have difficulty standing and holding his drink. This male was observed paying for, and been served liquor in an intoxicated state.

152. On 18 December 2018, PIN #L004047 was issued to the Licensee by Inspector Kilburn for contravening section 108(4)(a) of the LCR Act by supplying liquor to an intoxicated person.

153. This PIN was paid on 16 January 2019.

Submissions at the Hearing

154. At the Hearing, the Director advised that he paid the infringement issued with respect to the alleged breach of section 108(4)(a) of the LCR Act.

Grounds for disciplinary action

155. The Request alleges that, if satisfied of Particular 13 on the evidence, the Commission should find grounds for disciplinary action in accordance with sections 90(1)(a), 90(1)(l), and 90(1)(q) of the LCR Act.

Findings regarding Particular 13

156. The Commission is satisfied that by paying the PIN, the Director has conceded the facts alleged by the evidence summarised above. Having regard to this, and the evidence provided in support of Particular 13, the Commission finds Particular 13 proven and is satisfied that this supports the grounds for disciplinary action set out at sections 90(1)(a) and 90(1)(l) of the LCR Act.

Particular 14

157. The Request alleges that on 22 December 2018, the Licensee:

14.1 Permitted a drunken person to be on the Premises contrary to section 108(4)(b) of the LCR Act;

14.2 paid a penalty for an offence under the LCR Act for which an infringement notice within

the meaning of the *Infringements Act 2006* has been served;

14.3 allowed the Premises to be conducted in a manner detrimental to the amenity of the area;
and,

14.4 failed to exercise sufficient management and control over the licensed premises to ensure that the conditions of the licence and the provisions of the LCR Act were complied with.

Summary of Evidence

158. The statement of Sergeant Craig Buttigieg, contemporaneously recorded LPIR #31900392 and PIN #378657064 were provided in support of Particular 14.

159. These documents state that Sergeant Buttigieg attended the Premises after receiving information that a drunk person was being served alcohol on the Premises. Upon attending the Premises, Sergeant Buttigieg observed a male slurring his words, extremely unsteady on his feet and smelling of intoxicating liquid. Sergeant Buttigieg believed this male to be extremely drunk.

160. This male was later observed to require assistance to be placed on a bar stool, next to an open bottle of beer that he was allegedly drinking from. When questioned by police, this male admitted to being drunk and stated that he had consumed five beers while at the Premises.

161. Sergeant Buttigieg reattended the Premises on 27 December 2018 to obtain CCTV footage of the incident. Upon viewing this footage, he identified that the male was in the bar from 8pm until he was approached by police at approximately 11:04pm.

162. On 9 February 2019, Sergeant Buttigieg served PIN #378657064 with respect to this alleged contravention of sections 108(4)(b) of the LCR Act.

Submissions at the Hearing

163. When the Commission asked the Director whether PIN #378657064 had been paid on behalf of the Licensee, the Director replied that it had.

Grounds for disciplinary action

164. The Request alleges that, if satisfied of Particular 14 on the evidence, the Commission should find grounds for disciplinary action in accordance with sections 90(1)(a), 90(1)(l), and 90(1)(q) of the LCR Act.

Findings regarding Particular 14

165. As PIN #378657064 was paid, and having considered the Statement of Sergeant Buttigieg and the contemporaneously recorded LPIR which were provided in support of Particular 14, the Commission finds that Particular 14 is proven, and that this supports the grounds for disciplinary action set out in sections 90(1)(a) and 90(1)(l) of the LCR Act.

Particular 15

166. The Request alleges that on 3 August 2019, the Licensee:

- 15.1 allowed the Premises to be conducted in a manner detrimental to the amenity of the area;
- 15.2 permitted drunken (or disorderly) persons on the Premises contrary to section 108(4) of the LCR Act; and,
- 15.3 failed to exercise sufficient management and control over the licensed premises to ensure that the conditions of the licence and the provisions of the LCR Act were complied with.

Summary of Evidence

167. The statement of Sergeant Shane Allgood dated 11 August 2019 was provided in support of Particular 15. This states that on 3 August 2019 at approximately 10pm, Sergeant Allgood attended the Premises and observed a male of untidy appearance, unsteady on his feet and slurring his words while facing in the direction of police attending the Premises.
168. This male is alleged to have shouted at the top of his voice at Victoria Police, using offensive language to insist that they leave the Premises.
169. The statement of Sergeant Allgood stated that this male was drunk, as he was observed to be unsteady on his feet and collapsed onto his back when grabbed by Victoria Police by the collar at the back of his neck. He was then allegedly removed from the Premises by Victoria Police.
170. Sergeant Allgood was later provided with CCTV footage of the incident and interviewed the Director with respect to this. His statement reads that his review of the CCTV shows that the male arrived at the Premises at 3:24pm upon which he was immediately served with a beer, and that Victoria Police removed the intoxicated male from the Premises at 9:52pm.
171. Police asked the Director how much liquor the male had consumed while at the Premises, however the Director could not provide a detailed answer because the relevant bar tab had been torn out of a book in which it was his practice to record outstanding bar tabs. The Director explained that the bar tab had been torn out because his practice was to tear pages from the book upon payment of the relevant tab.
172. The statement of Sergeant Allgood indicated that the Licensee would be issued with a PIN in relation to permitting a drunken person on the Premises contrary to section 108(4) of the LCR Act, however a copy of this PIN was not provided.

Submissions at the Hearing

173. The Director gave evidence that he was managing the Premises at the time of the alleged incident referred to in paragraphs 167 to 168.
174. The Director stated that he did not believe the man arrested by police was intoxicated and stated

that patrons, including that male, often came to the Premises and did not consume liquor.

175. The Director added that he believed that the male referred to above had a speech impediment and stated that he could barely understand this man even when he had not had a single drink. He further added that he did not hear the man swear at or act abusively towards police as alleged by Victoria Police.

176. The Director stated that while he had been issued with a PIN in relation to the incident, his intention was to contest the PIN on grounds that the male was not intoxicated.

Grounds for disciplinary action

177. The Request alleges that, if satisfied of Particular 15 on the evidence, the Commission should find grounds for disciplinary action exist in accordance with sections 90(1)(a), 90(1)(l), 90(1)(o) and 90(1)(q) of the LCR Act.

Findings regarding Particular 15

178. While a PIN was issued by Victoria Police, it was unpaid by the Licensee on the date of the Hearing, and the Director indicated that he disputed the facts alleged by Particular 15.2 and intended to contest the PIN.

179. The Commission considers that the patron to whom Particular 15 relates was at the Premises for approximately 6.5 hours, between 3:24pm and 9:52pm. He was observed by Victoria Police to have exhibited signs of intoxication, and the Commission prefers Sergeant Allgood's account of what occurred on 11 August 2019, due to the fact that he made a written statement soon after the incident occurred and due to the level of detail contained in that statement. Based on this evidence, the Commission is satisfied that the patron was drunk.

180. The Commission also finds that the patron's conduct involving shouting offensive language at police was disorderly. Section 108(4) of the LCR Act states that a licensee or permittee "*must not permit drunken or disorderly persons to be on the licences premises...*" and the Commission is satisfied that Particular 15.2 would support the grounds for disciplinary action at sections 90(1)(a) and 90(1)(o) of the LCR Act, even if the Commission were not satisfied that the patron was drunk.

181. Accordingly, having considered the evidence of Sergeant Allgood and the Director's submissions at the Hearing, the Commission finds Particular 15 proven and is satisfied that this supports the grounds for disciplinary action at sections 90(1)(a) and 90(1)(o) of the LCR Act.

182. The Commission does not find that Particular 15 supports the ground for disciplinary action set out at section 90(1)(l) of the LCR Act, because the PIN served on the Licensee was not paid.

Particular 16

183. The Request alleges that on 6 September 2019, the Licensee:

- 16.1 Permitted a drunken person to be on the licensed premises;
- 16.2 Failed to exercise a reasonable duty of care in relation to the welfare and safety of a patron; and
- 16.3 failed to exercise sufficient management and control over the licensed premises to ensure that the conditions of the Licence and the provisions of the LCR Act were complied with.

Summary of Evidence

184. The statement of Sergeant Shane Allgood sworn on 18 September 2019 was provided in support of Particular 16. This statement alleges that Sergeant Allgood attended the Ararat Hospital on 6 September 2019 and spoke with the victim of an assault and the female friend of this victim.

185. According to Sergeant Allgood's statement, the victim's movements were slow and uncoordinated, his speech was slurred and his eyes appeared to be glassy and rolled back into his head when he spoke. He was reported to have blood on his face consistent with a person who had received a blow to the nose.

186. When questioned by Sergeant Allgood the victim's friend stated that the pair had been consuming liquor prior to arriving at the Ararat Hotel for "happy hour" at around 5:30pm. She informed Sergeant Allgood that the pair left the hotel at approximately 7:30pm and upon leaving the Premises, a male passing by the victim punched him in the face with full force before running away. According to the victim's friend, the victim was knocked into an unconscious state for approximately five minutes.

187. The victim's friend indicated that after the assault occurred she requested that the Director call 000. In response, the Director allegedly refused her request and told her to calm down.

188. The Statement of Sergeant Allgood indicates that the CCTV records of the event generally corroborate the victim's friend's account of what occurred outside the Premises, but does not provide details of the corroboration. The statement indicates that the version of events put forth by the victim's friend is incorrect insofar as the victim appears to have engaged the offender, and the victim is not rendered unconscious upon being knocked to the ground.

189. At the Hearing, a statement of the victim's friend dated 23 November 2019 was also provided, however due to the late provision of this statement, Victoria Police did not provide the Director with the opportunity to cross-examine this witness on the content of her statement.

190. In summary, this statement states that the Director refused to call an ambulance upon request and that the victim was "intoxicated but not drunk" at 5:30pm on the night of the incident.

Submissions at the Hearing

191. At the Hearing the Director disputed the account of the victim's friend. In particular, the Director submitted that he did not instruct an employee to not call an ambulance. He also stated that he was immediately approached by the victim's friend following the assault and that he called an ambulance immediately when requested.
192. When the Commission asked whether he spoke to anyone over the phone after calling an ambulance, to request that an ambulance attend the Premises, the Director was unable to confirm that he did so and stated that he waited for approximately a minute to speak with someone over the phone. The Director did not indicate whether he then ended the call.
193. The Director stated that he took a stool from inside the Premises for the victim to sit on outside, brought ice to put on his face and brought him water.
194. In cross-examination, Victoria Police put to the Director that the victim had become intoxicated by consuming liquor at the Premises which the Director denied. Victoria Police also suggested to the Director that he did not call for an ambulance when requested because he wanted to avoid negative attention or repercussions with respect to the Licence and the ongoing disciplinary action inquiry against the Licensee. The Director also denied this suggestion.

Grounds for disciplinary action

195. The Request proposes that if satisfied of Particular 16 on the evidence, grounds for disciplinary action exist in accordance with sections 90(1)(o) and 90(1)(q) of the LCR Act.

Findings regarding Particular 16

196. The Commission notes the inconsistencies between the Director's account of events and those alleged by Victoria Police, particularly with respect to whether the Director called for an ambulance when requested by the victim's friend.
197. Conflicting versions of events also exist between the Director, Victoria Police and the victim's friend. In particular, the victim's friend's statement is inconsistent with the statement of Sergeant Allgood in regards to whether the victim was knocked unconscious.
198. The Commission is satisfied that an ambulance did not arrive the Premises, as this is not disputed by the Director. The Commission is unable to be satisfied that the Director did not call for an ambulance and the Commission is satisfied, that at the very least, the Director turned his mind to the wellbeing of the victim and took some steps to assist him.
199. While the statement of Sergeant Allgood refers to CCTV footage, this was not provided to the Commission to indicate whether the Director called an ambulance when requested. This statement does not allege that the Director failed to call an ambulance.

200. Finally, while the Statement of Sergeant Allgood might be sufficient to prove that he viewed CCTV footage of the Premises, limited weight can be placed on his interpretation of what this CCTV footage depicted, partly due to the lack of detail in his statement.
201. While the Commission is satisfied that an ambulance did not arrive at the Premises, there is insufficient evidence before the Commission for it to be satisfied that the Director did not call for an ambulance and that the Director failed to take reasonable steps to ensure the safety of a patron. The Commission would be very concerned with the conduct of the Director if the evidence indicated that the incident was of sufficient severity to necessitate an ambulance, and the Director failed to call one.
202. Having regard to the statement of Sergeant Allgood and the statement provided by the victim's female friend, the Commission is satisfied that the victim was intoxicated while on the Premises and that the victim was assaulted outside the Premises.
203. Having regard to the above, the Commission finds Particulars 16.1 and 16.3 proven, but not Particular 16.2.
204. Accordingly, the Commission finds that Particulars 16.1 and 16.3 support the proposed ground for disciplinary action at section 90(1)(o) of the LCR Act.

Disciplinary actions sought by the Victoria Police

205. Once the Commission heard the Director's submissions regarding Particulars 1 to 16 and Senior Sergeant Eager was provided with an opportunity to cross-examine the Director, Victoria Police made submissions regarding what disciplinary action the Commission should take if satisfied that grounds for disciplinary action existed.
206. Senior Sergeant Eager submitted that the Commission should endorse the Owner on the Licence and disqualify the Licensee and Director from holding a licence immediately pursuant to section 93D of the LCR Act.
207. Senior Sergeant Eager further submitted that Victoria Police did not seek the imposition of a fine which in his view would not mitigate the risk to the public presented by the Licensee's operation of the Premises.

Submissions in mitigation by the Director

208. In addition to making submissions specifically in response to the particulars alleged by the Request, the Director of the Licensee also made general submissions at the Hearing to mitigate

what disciplinary action the Commission should take if satisfied that grounds exist. The Director's submissions were that:

- (c) the Director had not held a liquor licence prior to holding the Licence and had experienced a steep learning curve with respect to the management of the Premises;
- (d) upon purchasing the business, the vendor was supposed to provide the Director with a two-month training and handover period, but only provided two days;
- (e) a partner who was to be involved in co-running the business left the Premises after eight days, leaving the Director to manage the business alone;
- (f) the Director had taken steps to prevent breaches of licence conditions, including the closure of the beer garden from 10pm or 11pm in response to being unable to have a crowd controller stationed at its entry;
- (g) the Director had employed better crowd controllers in response to scheduled crowd controllers not attending the Premises;
- (h) assaults which had occurred at the Premises were not a result of the Director's mismanagement of the Premises, but rather '*human nature*' and as such, these were largely unavoidable;
- (i) the Director had upgraded the CCTV systems in the Premises approximately four months prior to the Hearing to increase security at the Premises and to prevent future incidents from occurring; and
- (j) the Director's (and therefore the Licensee's) operation of the Premises did not represent a risk to the public.

209. When asked by the Commission, the Director indicated that he had no intention of operating in the liquor industry in the future, and wished to sell the Licensee business and permanently relocate to Western Australia.

Submissions on behalf of the Owner

210. Mr Williams was sworn in as a director of the Owner to give evidence before the Commission. Mr Williams explained that he and his sister were the only directors of the Owner, which operated a five-star licence¹² at another premises.

¹² A "five-star" licence is a licence with respect to which no demerit points have been recorded in accordance with Part 4A of the LCR Act.

211. Mr Williams stated that he purchased the Ararat Hotel Premises approximately 20 years ago, and ran it for approximately five or six years prior to leasing the Premises to a licensee. The Owner then operated the Premises for an additional two to four years after that licensee became bankrupt.

212. Mr Williams stated that his experience in licensed premises also included working as a barman at the Gisborne Golf Club for approximately six months. Mr Williams submitted that he had completed the Licensees' First Step and Responsible Service of Alcohol programs.

The Commission's view

213. The Commission's records indicate that a transfer of the Licence was granted to the Licensee on 26 April 2018. The lease for the Premises indicates a commencement date of 3 May 2018.

214. On 6 July 2018, not long after the Licensee commenced operating the Premises, VCGLR Inspectors visited the Premises and detected breaches of the LCR Act and the conditions of the Licence relating to crowd controller and CCTV conditions. Upon detecting these breaches, the Commission took measures to educate the Licensee by providing it with a warning letter which merely outlined the detected breaches and did not impose a penalty.

215. VCGLR Inspectors then attended the Premises again on 11 August 2018 and detected further breaches of the crowd control and CCTV conditions of the Licence. In response to these breaches, the Commission issued a further warning letter to the Licensee together with PIN #L003942.

216. As set out in the above particulars, further breaches were detected by VCGLR Inspectors and members of Victoria Police between 11 August 2018 and 6 September 2019. In response to these breaches, regulatory action of escalating seriousness was taken against the Licensee.

217. Many of the particulars found proven by the Commission (either in whole or in part) involved repeated contraventions of the Licence or the LCR Act, or were otherwise of a similar nature, for instance:

- (k) Particulars 1, 2, 3, 5, 7, and 8/9 relate to breaches of crowd controller conditions on the Licence;
- (l) Particulars 4, 6, 8, 14, 15 and 16 related to amenity disturbances, and of these Particulars 4, 7, and 8 relate to brawls or assaults occurring on or in proximity to the Premises;
- (m) Particulars 3 and 9 relate to minors on the licensed Premises; and
- (n) Particulars 13, 14 and 16 relate to permitting a drunken person on the Premises or supplying liquor to an intoxicated person.

The repetitive nature of the contraventions alleged by the particulars indicates that while the Licensee has had an opportunity to correct issues which have arisen at the Premises through adopting appropriate systems of management, the Licensee has not taken sufficient steps to do so.

218. Further to this, the Licensee did not propose steps at the Hearing which it intended to take in order to prevent further incidents from occurring at the Premises. A venue management plan was provided to the Commission by a legal representative who acted for the Licensee prior to the Hearing, however in the Commission's view, this document did not indicate any significant commitment towards improving the management of the Premises.
219. After considering all evidence and submissions made leading up to and during the Hearing, the Commission is satisfied that 13 of 15 particulars constitute grounds for disciplinary action against the Licensee. The Commission recognises that during the approximate two-year period in which the Licensee operated under the Licence, many matters have arisen which constitute grounds for disciplinary action. The number of particulars proven, together with the Licensee's failure to stop further incidents from occurring, are relevant to the appropriateness and severity of disciplinary action.
220. The Commission considers that the repeated incidents of a similar nature raised by the particulars, the period over which the breaches have occurred and the Director's submissions at the hearing indicate that the Director does not understand the Licensee's responsibilities as the holder of a liquor licence. At the Hearing, the Director indicated that he did not believe that the assaults which had occurred on or in the vicinity of the Premises were caused by or contributed towards by his management of the Premises. The Commission's view is that the Licensee bears the ultimate responsibility for preventing such incidents from occurring and did not demonstrate sufficient management and control of the Premises.
221. The Commission has closely considered the matters contained in the alleged particulars and the submissions provided by the Director on behalf of the Licensee and in relation to himself as a related person, in relation to this matter. In the course of this inquiry, the Commission has had due regard to harm minimisation and the risks associated with the misuse and abuse of alcohol¹³, as well as the need to protect the public¹⁴.

¹³ See LCR Act, s 4(2).

¹⁴ With respect to public protection, see *Ross v Planet Platinum Ltd (Occupational and Business Regulation)* [2012] VCAT 1670 [130]; *Victorian Commission for Gambling and Liquor Regulation v Legend Enterprises Pty Ltd (Review and Regulation)* [2013] VCAT 1412 [112].



222. In the decision of *Hodgkin v Planet Platinum Ltd*¹⁵ the Victorian Civil and Administrative Tribunal (VCAT) held a disciplinary action inquiry with respect to a licensee under section 90 of the LCR Act. The evidence in that matter showed that a number of fights had started on the licensed premises and a number of drunk persons had been found on the licensed premises. VCAT considered that while the venue itself attracted patrons who seemed to be of “*a pugnacious character ... willing to indulge themselves in a fight both inside and outside the premises*” the management of that premises had also contributed to these events occurring, partly due to little action or discussion being taken to prevent this “litany of events” from occurring. VCAT considered that the premises had been operated in a manner clearly contrary to the objects of the LCR Act prescribed at section 4, particularly harm minimisation and preventing the risks associated with the misuse and abuse of alcohol. On this basis, VCAT disqualified the licensee and its directors for a period of 18 months.

223. The particulars which the Commission has found proven raise matters concerning the safety of the public. The case of *Kordister* is authority that the primary regulatory object of the LCR Act is harm minimisation. The accounts of brawls and assaults at the Premises alleged by the particulars indicate that the Licensee’s operation of the Premises presents a continuing risk of harm to the public.

Suitability of the Licensee

224. The question of suitability is to be decided with respect to the objects of the LCR Act, the obligations conferred upon the Licensee by the LCR Act, and the obligations conferred upon it by the conditions of the Licence. As stated in paragraph 222, *Kordister* is authority that harm minimisation is the primary regulatory object of the LCR Act, and a licensee’s inability to minimise harm may be a matter which affects its suitability to hold a licence.

225. The risk of harm to which the public is exposed through the Licensee’s operation of the Licence has included exposure to physical assaults, exposing minors to environments where liquor is consumed, supplying liquor to intoxicated persons and permitting intoxicated persons to remain on the Premises.

226. If the Licensee demonstrates an inability to comply with the conditions of the Licence and to effectively manage the Premises, this gives evidence to support the argument that the Licensee is not a suitable person to hold the Licence.

¹⁵ *Hodgkin v Planet Platinum Ltd* (Occupational and Business Regulation) [2011] VCAT 725 (4 May 2011) at [328] to [331].

227. The Director is the sole director of the Licensee, and the person responsible for the management of, and person in control of, the Premises. Therefore, the inability of the Licensee to minimise harm is attributable to the Director himself.

228. Having regard to the harms represented by the particulars which the Commission has found proven, and the Licensee's failure to prevent these from occurring between 6 July 2018 and 6 September 2019, it follows that the Director is unable to manage the Premises in a manner which minimises harm. The Director is responsible for the Licensee's unsatisfactory operation of the Premises, and it is therefore appropriate to consider whether he should also be disqualified.

DISCIPLINARY ACTION TO BE TAKEN

229. As the Commission finds that grounds for disciplinary action against the Licensee are proven, it must consider what disciplinary action is appropriate with reference to the objects of the LCR Act. As indicated above, the primary object is the need to minimise harm arising from the misuse and abuse of alcohol and the protection of the public through encouraging a culture of responsible consumption of alcohol.

230. The Commission takes into account a variety of factors in determining the appropriate disciplinary action, including (but not limited to):

- the paramount need to minimise harm, the risk associated with the misuse and abuse of alcohol¹⁶ and the need to protect the public¹⁷;
- the nature, extent and seriousness of identified grounds, including the period over which they extended;¹⁸
- the past compliance history of the licensee and/or similar previous conduct¹⁹ as well as whether evidence suggests that the licensee fosters and encourages a culture of compliance with the LCR Act;²⁰

¹⁶ See LCR Act, s 4(2), specifically, "[i]t is the intention of Parliament that every power, authority, discretion, jurisdiction and duty conferred or imposed by this Act must be exercised and performed with due regard to harm minimisation and the risks associated with the misuse and abuse of alcohol".

¹⁷ With respect to public protection, see *Ross v Planet Platinum Ltd (Occupational and Business Regulation)* [2012] VCAT 1670 [130]; *Victorian Commission for Gambling and Liquor Regulation v Legend Enterprises Pty Ltd (Review and Regulation)* [2013] VCAT 1412 [112].

¹⁸ *Buzzo Holdings Pty Ltd and Anor v Loison* [2007] VSC 31 [33]-[34]; *Hodgkin v Planet Platinum Ltd (Occupational and Business Regulation)* [2011] VCAT 725 [328].

¹⁹ *Hodgkin v Planet Platinum Ltd (Occupational and Business Regulation)* [2011] VCAT 725 [328]; *Buzzo Holdings Pty Ltd and Anor v Loison* [2007] VSC 31 [29].

²⁰ *Parr v K Marketing Pty Ltd (Occupational and Business Regulation)* [2010] VCAT 1108 [24].

- the level of cooperation with the Commission or other authorities responsible for enforcement under the LCR Act;²¹
- the financial position of the licensee;²²
- the need to generally deter and discourage similar behaviour from other licensees and specifically deter the licensee in question;²³
- remorse, contrition and/or corrective actions taken by the licensee to improve management of the premises;²⁴ and
- any mitigating circumstances relevant to the matter.

Consideration of disciplinary action options

231. On the basis of each proven particular, the Commission is satisfied that the Director is the person with management and control of the Licensee, and that it is his operation of the Premises which is the main issue in this inquiry.

232. The Director indicated that he represented the Licensee at the Hearing due to being unable to afford legal representation at the Hearing. He stated that he was similarly limited in his ability to pay any fine imposed by the Commission. Victoria Police also submitted that a fine would not contribute towards minimising the relevant harms as referred to in paragraph 207 and disqualification was the appropriate action to be taken by the Commission. Having regard to these submissions, the Commission does not consider it appropriate to fine the Director or Licensee.

233. While there are some cases where the imposition of a fine may be appropriate to serve as a specific deterrent to the Licensee as well as a general deterrent to other licensees, as the Ararat Hotel is the Director's source of income and accommodation, the financial impact of this disqualification is deterrent enough to make the imposition of a fine unnecessary.

234. The Commission therefore considers it appropriate to disqualify the Licensee from holding a licence for a period of five years and endorse the name of the Owner upon the Licence. It is up to the Owner whether they wish to continue to operate under the Licence in the future, or lease it to another licensee. The Commission also considers it appropriate to disqualify the Director for a period of five years.

²¹ *Starera PL v Melbourne CC* [2000] VCAT 213 at [114].

²² *Parr v K Marketing Pty Ltd (Occupational and Business Regulation)* [2010] VCAT 1108 [30].

²³ *Ross v Planet Platinum Ltd (Occupational and Business Regulation)* [2012] VCAT 1670 [130]-[132].

²⁴ *Ross v Planet Platinum Ltd (Occupational and Business Regulation)* [2012] VCAT 1670 [134].

Scope of disqualification

235. In relation to the appropriate scope of the disqualification of the Director under section 93D(1) of the LCR Act, the Commission considered whether it was necessary to prevent him as a related person from “being employed by any licensed club or any person that holds a licence or BYO permit”. The Commission acknowledges that the Director’s income is currently made from the operation of the Premises, and that while he indicated otherwise at the Hearing, he may seek employment in the hospitality industry at some time in the future.

236. While the Commission considers that the Director should not be involved in the management of any licensed premises during the period of disqualification, the Commission considers that this should not prevent the Director’s employment in non-managerial roles.

237. Accordingly, as a related person to the Licensee, the Director is disqualified from:

- (o) holding a licence or BYO permit;
- (p) being a director in any body corporate that holds a licence or BYO permit;
- (q) being a partner in any partnership that holds a licence or BYO permit;
- (r) having a beneficial interest (whether directly or indirectly) in the shares of any body corporate that holds a licence or BYO permit;
- (s) in any way (whether directly or indirectly) taking part in, or being concerned in, the management of any licensed premises or any body corporate that holds a licence or BYO permit or any licensed club -

from the date of these reasons until 13 February 2025.

The preceding two-hundred and thirty-seven (237) paragraphs are a true copy of the Reasons for Decision of Ms Helen Versey (Deputy Chair), Ms Deirdre O’Donnell (Deputy Chair) and Mr Des Powell AM (Commissioner).