



CASE NOTE D (Liquor – Disciplinary Action) 22 June 2020

In the matter of an inquiry into whether there are grounds to take disciplinary action against the holder of a general licence, and if so, whether to take disciplinary action under Part 6 of the *Liquor Control Reform Act 1998*.

Commission: Ms Deirdre O'Donnell, Deputy Chair
Ms Helen Versey, Deputy Chair
Mr Des Powell AM, Commissioner

Date of hearing: 13 February 2020

Date of decision: 10 June 2020

Date of reasons: 10 June 2020

Date of publication: 22 June 2020

Decision: The Commission determined that there were grounds for disciplinary action against the Licensee in accordance with section 93(1) of the *Liquor Control Reform Act 1998* and determined to suspend the licence for six months, from 10 June 2020 (inclusive) until 9 December 2020 (inclusive), in accordance with sections 93(1) and 93A(2).

CASE NOTE

The Grounds of Inquiry

1. On 22 January 2019, the Commission considered whether to conduct an own-motion inquiry pursuant to section 91 of the *Liquor Control Reform Act 1998* (**the LCR Act**), to ascertain whether there are grounds for disciplinary action against the holder of a general licence (**the Licensee**).
2. Two grounds were considered as potential grounds for disciplinary action pursuant to the LCR Act:

Section 90(1)(h) – *that the Licensee has been found guilty in Victoria or elsewhere of an offence punishable by a maximum term of imprisonment of three years or more; and*

Section 90(1)(q) – *that the licensee is otherwise not a suitable person to hold a licence or BYO permit.*
3. The facts relevant to the Particular, upon which the Commission determined to hold an inquiry, were not disputed by the Licensee. In summary, it was agreed that in 2012 the Licensee was convicted of six counts of obtaining financial advantage by deception and one count of common law conspiracy to obtain financial advantage by deception. Each charge of obtaining financial advantage by deception carried a maximum sentence of 10 years' imprisonment. However, the Licensee received a cumulative sentence of four years' imprisonment in relation to all the charges.

The Inquiry

4. A hearing took place on 13 February 2020 at which the Licensee and his wife gave evidence about the history of the premises and how it was operated at the time of the hearing.
5. The Commission explained that there was a *prima facie* ground for disciplinary action in accordance with section 90(1)(h), as the Licensee had been found guilty of multiple offences punishable by a maximum term of imprisonment of three years or more.

The Commission's findings

6. The Commission determined that there was a ground for disciplinary action in that the Licensee has been found guilty in Victoria of an offence punishable by a maximum term of imprisonment of three years or more.
7. The Commission noted that the criminal offences of which the Licensee was convicted were of a serious nature and involved repeated dishonest acts by the Licensee while employed in a position of trust. However, the Commission referred to the substantial period of time between the Licensee's conviction for criminal offences and the date of the hearing, which provided the Licensee with an opportunity to demonstrate that he was able to manage the premises in a manner which minimised risk.
8. No demerit points had been recorded by the Commission pursuant to section 86A of the LCR Act and this further indicated that the premises generally operated in a manner which did not constitute a significant risk to the public.
9. The Commission referred to other features of the premises indicating that it presented a low risk of harm with respect to the supply of liquor in its decision. These included the character of the premises as a motel business and the minor component of the premises' turnover (approximately 2%) attributable to liquor sales.
10. Section 93A(2) of the LCR Act required the Commission to either cancel or suspend the licence held by the Licensee if satisfied that stated that Licensee had been found guilty of an offence punishable by a maximum term of imprisonment of three years or more. Accordingly, the Commission determined to suspend the licence held by the Licensee for six months, from 10 June 2020 (inclusive) until 9 December 2020 (inclusive) in accordance with sections 93(1) and 93A(2) of the LCR Act.