



DECISION AND REASONS FOR DECISION

In the matter of an inquiry into whether there are grounds to take disciplinary action against Oglu Industries Pty Ltd, the licensee of the premises trading as the Sin City Gentlemen's Club, operating late night (on-premises) licence no. 32235059, and whether to take disciplinary action under Part 6 of the *Liquor Control Reform Act 1998* if there are such grounds.

- Commission:** Ms Helen Versey, Deputy Chair
Ms Deirdre O'Donnell PSM, Deputy Chair
Mr Andrew Scott, Commissioner
- Date of hearing:** 28 July 2020
- Appearances:** Dr Mark Gumbleton of Counsel (instructed by Marcevski Lawyers), on behalf of the Licensee, the Director and the Manager
Senior Sergeant Philip Eager on behalf of Victoria Police
Mr Cameron Warfe, Counsel Assisting the Commission
- Date of decision:** 14 October 2020
- Date of reasons:** 14 October 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) Impose a fine of \$5,000 against the Licensee, to be paid within three months of the date of this decision.
 - (b) Vary the Licence as set out in paragraphs 57 and 58 of the Reasons for Decision.
 - (c) Issue a letter of censure to the Licensee.



- (d) Disqualify Jason Ametoglou for a period of two years, from 14 October 2020 until 14 October 2022, in accordance with section 93D from:
- i. holding a licence or BYO permit;
 - ii. being a director in any body corporate that holds a licence or BYO permit;
 - iii. being a partner in any partnership that holds a licence or BYO permit;
 - iv. having a beneficial interest (whether directly or indirectly) in the shares of any body corporate that holds a licence or BYO permit; and
 - v. 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.

Signed:

A handwritten signature in black ink that reads "Helen K. Versey".

Helen Versey
Deputy Chair

REASONS FOR DECISION

BACKGROUND

1. Oglu Industries Pty Ltd (**the Licensee**) holds late night (on-premises) licence no. 32235059 (**the Licence**) in relation to the premises trading as Sin City Gentlemen's Club, situated at Ground Floor & 1st Floor, Rear 31 Langhorne Street, Dandenong 3175 (**the Premises**).
2. The Licence permits the supply of liquor for consumption on the Premises during permitted trading hours. At all relevant times, the Licence was also subject to standard conditions for the provision of sexually explicit entertainment (**SEE Conditions**).
3. On 20 November 2019, the Commission received a request (**the Request**) from a Victoria Police Licensing Inspector (**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.
4. There are two steps involved in a disciplinary inquiry by the Commission under Division 1 of Part 6 of the LCR Act. The Commission must first determine whether one or more of the grounds for disciplinary action against the Licensee exists. If so, the Commission must decide what, if any, disciplinary action to take against the Licensee or a related person.

THE REQUEST

5. The Request proposed that there were two grounds for disciplinary action under section 90(1) of the LCR Act. Specifically, these were:
 - Section 90(1)(a) - that the Licensee has contravened a provision of the LCR Act and a condition of the Licence (**First Ground**); and
 - Section 90(1)(q) - that the Licensee is otherwise not a suitable person to hold a licence or BYO permit (**Second Ground**).
6. In summary, the Request alleged that on five separate occasions,¹ the Licensee:
 - (a) operated the Premises as a brothel within the meaning of the *Sex Work Act 1994* (**Sex Work Act**) having operated a business where sexual services were provided to patrons;²

¹ Being the evening of 7 June 2019, early morning of 8 June 2019, the evening of 16 August 2019, early morning of 17 August 2019 and early morning of 18 August 2019.

² On the basis that a female employee provided sexual services in that she performed an act of masturbation whilst making direct physical contact with as patron.



- (b) carried on a business of being a sex work service provider without holding a licence under the Sex Work Act;
 - (c) failed to take all reasonable steps to manage and supervise all aspects of the provision of sexually explicit entertainment to ensure no offences against the Sex Work Act were committed;
 - (d) supplied liquor other than in accordance with a condition of the Licence contrary to section 108(1)(a)(i) of the LCR Act; and
 - (e) failed to exercise sufficient management and control over the Premises to ensure that the conditions of the Licence and provisions of the Sex Work Act were complied with.
7. As a result of the above incidents, Victoria Police had:
- (a) Issued and served a total of 26 infringement notices for supplying liquor other than in accordance with the Licence; and
 - (b) Made an application to the Magistrates' Court to declare the Premises as a proscribed brothel pursuant to section 80(1) of the Sex Work Act for a period of two years, which was granted on 17 October 2019 (**Proscribed Brothel Order**).
8. On 20 February 2020, the Magistrates' Court granted an application by the Licensee to rescind the Proscribed Brothel Order, subject to a number of conditions (**the Magistrate's Order**).

Pre-Inquiry

9. On 13 December 2019, the Commission served a letter upon the Licensee informing it that the Commission had received the Request and was considering whether to conduct an inquiry to determine whether there were grounds to take disciplinary action against the Licensee.
10. On 24 April 2020, the Commission served a notice dated 23 April 2020 upon the Licensee pursuant to section 92(1) of the LCR Act (**the Notice**). The Notice stated that the Commission proposed to inquire into whether there were grounds to take disciplinary action against it and specified the grounds and particulars as set out in paragraphs 5 and 6 above.
11. The sole director of the Licensee is Demirel Ametoglou (**the Director**) and Jason Ametoglou is the manager and person in day-to-day control of the Premises (**the Manager**). The Licensee also appointed Suzanne Prior as the nominee of the Licensee (**the Nominee**).
12. In the Notice, the Commission identified three individuals as related persons who may be subject to a determination under section 93D of the LCR Act, which relates to disqualification.

Those individuals were the Director, the Manager and the Nominee, who were believed to be in those roles during the period when the conduct described in the alleged particulars occurred. Copies of the Notice were sent to the Director, the Manager and the Nominee pursuant to section 92A(1)(a)(ii) of the LCR Act.

13. As required by section 92A(1)(b) of the LCR Act, the Commission also published notice of the disciplinary action inquiry in a newspaper circulating generally throughout Victoria (the Herald Sun) on 29 April 2020, 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. The Commission did not receive any submissions from such persons in this regard.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

14. In conducting an inquiry under Division 1 of Part 6 of the LCR Act,³ the Commission must have regard to the objects of the LCR Act as set out in section 4(1).⁴ 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;

...

(c) to contribute to the responsible development of the liquor, licensed hospitality and live music industries ...

15. 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".

What are the grounds for disciplinary action?

16. Section 90(1) of the LCR Act defines "grounds for disciplinary action" to mean, relevantly in this matter:

³ All references to legislation are references to the LCR Act unless stated otherwise.

⁴ See *Victorian Commission for Gambling and Liquor Regulation Act 2011*, s 9(3).



- (a) that the licensee or permittee has contravened a provision of this Act, the regulations, the licence or BYO permit or a condition of the licence or BYO permit (as the case may be);

...

- (q) that the licensee or permittee is otherwise not a suitable person to hold a licence or BYO permit.

17. The SEE Conditions include, amongst others:

3 Activities on the Licensed Premises

3.1 The licensee must take all reasonable steps to manage and supervise all aspects of the provision of sexually explicit entertainment so as to ensure that no offences under the Sex Work Act 1994 or section 17(1)(d) of the Summary Offences Act 1966 occur on the licensed premises.

3.2 The licensee must develop within 28 days of the inclusion of these conditions on the liquor licence, a set of "House Rules" for the licensed premises which will establish the standards of conduct and behaviour required of patrons and performers. The "House Rules" will describe the management and supervisory arrangements through which the licensee will take all reasonable steps to ensure that no offences under the Sex Work Act 1994 or section 17(1)(d) of the Summary Offences Act 1966 can occur on the licensed premises.

3.3 The "House Rules" must be retained on the premises in the possession of the licensee, manager or other person in charge and be made available to an authorised member of the Victoria Police if requested.

3.4 The licensee shall take all reasonable steps to ensure that the "House Rules" are made known to all staff and performers and that those rules which contribute to the prevention of offences under the Sex Work Act 1994 Act or section 17(1)(d) of the Summary Offences Act 1966 are fully complied with.

3.5 There shall be no sexually explicit entertainment provided in areas that are not visible from the public areas of that part of the licensed premises used for the provision of sexually explicit entertainment.

...

18. There are some circumstances under the LCR Act where a person is considered not suitable to hold a licence⁵ but these circumstances are not exhaustive. Therefore, it is necessary to

⁵ See LCR Act, s 44(3): "...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— ... been convicted (a) 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."



consider the concept of suitability in the context of the relevant legislation.⁶ 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*”.⁷ It is not “*for the punishment of particular individuals or corporations*”.⁸

19. 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 good order and well-being of the public...*” and “*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*”.⁹

What disciplinary action can the Commission take?

20. 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.¹⁰
21. 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;

⁶ *West Heidelberg RSL Sub-Branch Inc v Director of Liquor Licensing* [2006] VCAT 347; *Egan v Director of Liquor Licensing* [2007] VCAT 806.

⁷ *Buzzo Holdings Pty Ltd and Anor v Loison* [2007] VSC 31 at [16] (Kaye J).

⁸ *Ibid.*

⁹ *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].

¹⁰ 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.
22. Sections 93D(2) and (3) of the LCR Act state 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 that it must specify a period for which the disqualification is to apply.
23. 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.

THE INQUIRY

Preliminary Meeting

24. On 7 May 2020, the Commission conducted a preliminary meeting via remote video-conference to determine what arrangements would need to be made for the conduct of an inquiry, including possible arrangements for witnesses to be called to give evidence.
25. Victoria Police was represented at the preliminary meeting by Sergeant Ben Hodson. The Licensee, the Director and the Manager were represented by Dr Mark Gumbleton of Counsel, instructed by Marcevski Lawyers. The Nominee was not represented.
26. Following the preliminary meeting, the Commission provided administrative directions which requested the parties to develop a statement of agreed facts in response to the Notice in order to identify those facts and particulars agreed to by the Licensee and its related persons, and those which remained in dispute.

Statement of agreed facts and settlement proposal

27. On 1 July 2020, the Commission received correspondence from Victoria Police, attaching a copy of a statement of agreed facts prepared by the parties, in which the Licensee admitted that:
- (a) on 26 occasions during the period 7 June 2019 to 18 August 2019, multiple females working under contract to the Licensee provided sexual services involving masturbating themselves and touching male patrons in a manner which constituted provision of sexual services as defined in the Sex Work Act; and
 - (b) the private rooms did not allow uninterrupted visibility from public areas of activities occurring within that area of the Premises, in breach of a standard condition of the Licence.
28. As part of that correspondence, the parties also provided the Commission with a settlement proposal which proposed that the Second Ground should be withdrawn and the Commission should impose the following disciplinary action:
- (a) Imposition of a fine on the Licensee in the amount of \$5,000;
 - (b) Disqualification of the Manager for two years pursuant to section 93D(1)(a) to (e) of the LCR Act; and
 - (c) Variation of the Licence to include:
 - i. A condition that the Manager is not to be on the Premises; and
 - ii. Special conditions that reflect the Magistrate's Order in relation to additional signage at the Premises, further restrictions on the interaction between entertainers and dancers, and crowd controllers requirements.
29. On 17 July 2020, the Commission informed the parties that it was listing the matter for hearing in order to hear evidence from the Director and the Manager and consider an appropriate sanction, having regard to the proposed disciplinary action as set out in the parties' settlement proposal.

The Hearing

30. A hearing took place on 28 July 2020, at which the Director and the Manager attended and gave evidence. The Licensee, the Director and the Manager were again represented by Dr Mark Gumbleton of Counsel, and Victoria Police was represented by Senior Sergeant Philip Eager.

31. The Commission outlined that the evidence set out in the Notice and the statement of agreed facts provided by the parties established that a ground for disciplinary action existed in accordance with section 90(1)(a), as the Licensee had breached a provision of the LCR Act and a condition of the Licence on 26 occasions between 7 June and 18 August 2019.
32. Accordingly, the Commission stated that the focus of the hearing would be to provide the Licensee and the related persons with an opportunity to give evidence in mitigation and for the Commission to seek further information in its consideration of what disciplinary action to take.
33. The Director (both personally and on behalf of the Licensee) and the Manager gave evidence at the Hearing. Both the Director and the Manager also provided written submissions together with a number of supporting documents, including letters of support from business associates, as well as current and former staff at the Premises.

Primary responsibility at the Premises during the relevant period

34. The Commission sought confirmation as to who was in management and control of the Premises during the relevant period.
35. The Director confirmed that he was travelling to and from Queensland during the time of the relevant breaches of the LCR Act, due to a family medical issue. This issue ultimately led to his proposed permanent relocation to Queensland on 31 August 2019. However, the Director could not be certain whether he was present at the Premises on any of the dates of the offending. The Director stated that the Manager was routinely left in charge in his absence, and that the Director trusted the Manager's ability to handle this responsibility as they had spent considerable time working together at the Premises.
36. The Manager stated that he had been in a managerial position at the Premises for between 12 to 13 years, however this was usually in conjunction with the Director. He gave evidence that he believed that he was primarily responsible for the work performance of the other managers and staff from approximately late 2018 when the Director commenced visiting Queensland for personal reasons referred to above. The Manager confirmed that he would often be the first person to arrive and the last person to leave as part of his role.
37. The Licensee submitted that although the House Rules were in place with relevant controls to address the risk of non-compliance with the Licence, it was apparent that these were not followed by a number of the contracted dancers during the relevant period, and those breaches were not adequately identified by management at the time. The Licensee accepted that this demonstrated a failure to take all reasonable steps to prevent breaches of the Sex Work Act

as required under the Licence, both in the level of monitoring the conduct of dancers and the adequate performance of other staff, such as the dance manager and security staff.

38. The Manager gave evidence of the roles and responsibilities that were expected of others at the Premises (including the individual responsibility of the dancers to comply with their contracts and the House Rules, as well as the monitoring responsibilities of the dance manager and security staff). However, the Manager accepted that his role (in the absence of the Director) involved ultimate responsibility to ensure compliance with the Licensee's obligations under the LCR Act and the Licence. As such, the non-compliance events that had been identified were ultimately his responsibility at the time.
39. The Commission asked the Director whether the Nominee on the Licence was still employed at the Premises. The Director gave evidence that the Nominee ceased employment at the Premises in approximately December 2018.
40. The Director gave evidence that once the Premises was permitted to reopen, he would return as the primary individual responsible for oversight at the Premises, indicating that he no longer had familial commitments in Queensland. The Director identified that the biggest risks to the business were the ongoing compliance with the House Rules by the dancers, and the ability to monitor behaviour within the private room.

Visibility into the private room

41. The Licensee accepted that, in breach of the conditions of the Licence, sexually explicit entertainment in the private room was not clearly visible. The Director gave evidence that the private room was monitored by security staff, covered by CCTV, and there were two large windows out into the public area of the Premises. Under cross-examination, the Manager accepted that the windows were tinted, and were difficult to see through unless you stood close to the windows themselves.
42. The Manager also gave evidence that there was a curtain across the door into the private room, however this has now been removed as part of the rectification works required under the conditions of the Proscribed Brothel Order.
43. Regarding the ability to see into the private areas of the Premises, the Licensee submitted that there is an inherent level of privacy that is required to perform the private dances that occur at the Premises so that other patrons do not receive a "free show". However the Licensee accepted that the level of visibility into the private room was not adequate to comply with the conditions of the Licence. The Licensee submitted that this has been rectified as part of

complying with the conditions of the rescission of the Proscribed Brothel Order in consultation with relevant units within Victoria Police.

Submissions in mitigation

44. Counsel for the Licensee submitted to the Commission that prior to being permitted to reopen as a condition of the Proscribed Brothel Order, the Licensee did everything it could to remedy the circumstances that led to the breaches and also comply with the conditions of the Proscribed Brothel Order. This included terminating the contracts of dancers that had breached the House Rules, increasing the number of security staff at the Premises (even beyond that required by the Proscribed Brothel Order), employing a new dance manager, revising the House Rules to emphasise the relevant obligations on staff and dancers, and the conducting of random checks of CCTV footage to ensure compliance with the House Rules.
45. Counsel for the Licensee also submitted that the Licensee had a good compliance history, particularly with regard to the long history in the industry (indicating that this was a minor failure at an instance in time, rather than a cavalier approach to its liquor licence obligations), had fully cooperated with Victoria Police during the investigation and subsequent processes, had demonstrated remorse and an acceptance of wrongdoing through the negotiation process with Victoria Police and entering into the statement of agreed facts, and had worked with Victoria Police in the implementation of the required changes to the Premises to mitigate any future risk of breaches occurring.
46. Counsel also noted that the prospects of rehabilitation of the individuals were high, in light of their ongoing cooperation with the Commission and Victoria Police and the actions taken to date in order to reduce the risk of future non-compliance with the LCR Act or the conditions of the Licence.

The Commission's findings

47. The Commission is satisfied that there is a ground for disciplinary action in that, on 26 occasions between the period 7 June and 18 August 2019, the Licensee has contravened section 108(1)(a)(i) of the LCR Act, as well as the SEE Conditions of the Licence. Notwithstanding this finding, the Commission notes the proposal by the parties that Ground Two be withdrawn from consideration. Further, no evidence was provided by Victoria Police directed towards whether the licensee or permittee was not a suitable person. Accordingly, the Commission is neither required, nor has before it sufficient evidence, to determine whether *"the licensee or permittee is otherwise not a suitable person to hold a licence or BYO permit"*.



48. As the Commission is satisfied that there are grounds for disciplinary action, it must proceed to make a determination in accordance with section 93 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.
49. 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 alcohol¹¹ and the need to protect the public;¹²
 - the nature, extent and seriousness of identified grounds, including the period over which they extended;¹³
 - the past compliance history of the licensee and/or similar previous conduct¹⁴ as well as whether evidence suggests that the licensee fosters and encourages a culture of compliance with the LCR Act;¹⁵
 - the level of cooperation with the Commission or other authorities responsible for enforcement under the LCR Act;¹⁶
 - the financial position of the licensee;¹⁷
 - the need to generally deter and discourage similar behaviour from other licensees and specifically deter the licensee in question;¹⁸
 - remorse, contrition and/or corrective actions taken by the licensee to improve management of the premises;¹⁹ and
 - any mitigating circumstances relevant to the matter.

¹¹ 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”.

¹² 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].

¹³ *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].

¹⁴ *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].

¹⁵ *Parr v K Marketing Pty Ltd (Occupational and Business Regulation)* [2010] VCAT 1108 [24].

¹⁶ *Starera PL v Melbourne CC* [2000] VCAT 213 at [114].

¹⁷ *Parr v K Marketing Pty Ltd (Occupational and Business Regulation)* [2010] VCAT 1108 [30].

¹⁸ *Ross v Planet Platinum Ltd (Occupational and Business Regulation)* [2012] VCAT 1670 [130]-[132].

¹⁹ *Ross v Planet Platinum Ltd (Occupational and Business Regulation)* [2012] VCAT 1670 [134].

Aggravating factors

50. The Commission notes that there were a significant number of breaches of the LCR Act and conditions of the Licence which occurred over three nights of trade at the Premises. On the basis that the infringement notices issued by Victoria Police will be withdrawn following the completion of this inquiry, the Commission considers that the disciplinary action taken must be sufficient to act as a general and specific deterrence to future non-compliance with such obligations.
51. Furthermore, the Commission finds that the Premises operates in a high-risk environment, being the provision of sexually explicit entertainment and operating post 1am on most nights of the year. In such circumstances, the Commission expects licensees to be proactively vigilant to the risks of non-compliance with their obligations. The nature of the offending indicates inadequate management of the Premises by the Manager during the period the offences occurred on behalf of the Licensee.

Mitigating factors

52. The Commission notes that the Licensee has a relatively good compliance history across the length of time that the Licensee has operated the Premises. Accordingly, the Commission is satisfied on the evidence before it that the Premises generally operates in accordance with its obligations under the LCR Act.
53. The Commission accepts that the Licensee has cooperated with Victoria Police during the investigation and the inquiry before the Commission, evidenced by its work with Victoria Police in the implementation of the required changes to the Premises to mitigate future risk, and in entering into the statement of agreed facts.
54. The Commission also accepts that the Licensee has taken a number of corrective actions to improve management of the Premises, as set out in paragraph 44 above.
55. The Commission generally notes that since a state of emergency was announced by the Minister for Health in response to the COVID-19 pandemic, a number of directions have been given pursuant to the *Public Health and Wellbeing Act (Vic) 2008* which significantly affect licensed premises. By placing limitations on the number of patrons present at licensed premises, these directions have resulted in financial challenges for businesses where liquor is consumed on licensed premises.



Decision

56. The Commission considers that the primary object of the LCR Act relevant to its determination of this matter is “to contribute to minimising harm arising from the misuse and abuse of alcohol...”. This object is achieved in part through the “upholding of industry standards, and the maintenance of public confidence in the liquor industry” as referred to in paragraph 24 above.

Disciplinary action under section 93

57. In light of the above findings, the Commission considers that the appropriate disciplinary action is generally consistent with that proposed by the parties in its settlement proposal. As such, the Commission has determined to:

- (a) impose a fine of \$5,000, to be paid within 28 days of the date of this decision;
- (b) vary the Licence to include the following special conditions reflecting items 1(a) and (b) of the conditions of the Proscribed Brothel Order:

The Licensee is to engage in an adult entertainment business that precludes patrons touching the persons providing the adult entertainment. This requires the Licensee to:

- a. *Install a sign at the entrance to the Premises advising patrons that they are not to touch the persons providing the adult entertainment. The sign is to be at least A3 in size, be clearly visible to patrons entering the Premises and in font size at a minimum of 14 point; and*
 - b. *Require all persons employed to provide the adult entertainment to enter into a written agreement that states patrons of the Premises are not to touch them whilst providing adult entertainment.*
- (c) vary the Licence to amend the condition in relation to crowd controllers reflecting items 2(a) and (b) of the conditions of the Proscribed Brothel Order:

The Licensee will employ crowd controllers, licensed under the Private Security Act 2004, at all times when the venue is open to members of the public as follows:

On all days except Fridays and Saturdays:

- *if only the first level is open to members of the public – a minimum of 3 licensed crowd controllers:*



- *2 of whom are to remain within the venue at all times, to perform duties including physical supervision of the adult entertainment provided in private rooms or areas; and*
- *1 of whom shall be on duty at the front of the premises and patrol the immediate vicinity outside the premises to ensure an orderly arrival/ departure of patrons;*
- *if the second level is open to members of the public – a minimum of 4 licensed crowd controllers:*
 - *3 of whom are to remain within the venue at all times, to perform duties including physical supervision of the adult entertainment provided in private rooms or areas; and*
 - *1 of whom shall be on duty at the front of the premises and patrol the immediate vicinity outside the premises to ensure an orderly arrival/ departure of patrons.*

On Fridays and Saturdays:

- *if only the first level is open to members of the public – a minimum of 5 licensed crowd controllers:*
 - *3 of whom are to remain within the venue at all times, to perform duties including physical supervision of the adult entertainment provided in private rooms or areas; and*
 - *2 of whom shall be on duty at the front of the premises and patrol the immediate vicinity outside the premises to ensure an orderly arrival/ departure of patrons;*
- *if the second level is open to members of the public – a minimum of 6 licensed crowd controllers:*
 - *4 of whom are to remain within the venue at all times, to perform duties including physical supervision of the adult entertainment provided in private rooms or areas; and*



- *2 of whom shall be on duty at the front of the premises and patrol the immediate vicinity outside the premises to ensure an orderly arrival/ departure of patrons.*

In addition to the above, from the closure of the venue until 30 minutes after close, the Licensee will employ licensed crowd controllers to be on duty at the front of the premises and patrol the immediate vicinity outside the premises to ensure an orderly departure of patrons as follows:

- *on any day except Fridays and Saturdays, a minimum of 1 licensed crowd controller;*
- *on Fridays and Saturdays, a minimum of 2 licensed crowd controllers.*

58. In relation to the proposed condition that the Manager not be permitted on the Premises while it is open to the public, the Commission accepts that this is a reasonable condition to ensure compliance with the disqualification order. However it does not consider that this prohibition should be permanent. The Commission is of the view that the prohibition should only remain in place for the period of any disqualification order made against him (see further in this regard below). Consequently, the Commission has determined to vary the Licence to include the following special condition:

Jason Ametoglou is not to be on the licensed premises at any time it is open to the public while he is subject to a disqualification order issued by the Victorian Commission for Gambling and Liquor Regulation.

59. In addition to the above disciplinary action, the Commission has determined to take disciplinary action against the Licensee in the form of a letter of censure. The letter of censure sets out the Commission's views in relation to management and oversight failures that occurred at the Premises and its expectations of the approach that the Licensee and the Director will consider as part of its future management of the Premises.

60. Further, as part of the letter of censure directed to the Licensee, the Commission has directed the Licensee not to permit or allow Jason Ametoglou to:

- (a) be employed by the Licensee at the Premises; or
- (b) in any way (whether directly or indirectly) to take part in, or be concerned in, the management of the Premises or the Licensee; or

- (c) be permitted to be on the Premises while it is open to the public,
at any time he is subject to a disqualification order issued by the Commission.

Disqualification order of related person under section 93D

61. In light of the above findings, the Commission is satisfied that the Manager is a related person with respect to the Licensee and was primarily in management and control of the Premises at the time of the matters giving rise to this inquiry. As such, the Commission considers that the disqualification order against the Manager proposed by the parties in its settlement proposal is appropriate in the circumstances. As such, the Commission has determined to disqualify the Manager for a period of two years.
62. In relation to the appropriate scope of the disqualification of the Manager under section 93D(1) of the LCR Act, the Commission considered whether it was necessary to prevent him from “being employed by any licensed club or any person that holds a licence or BYO permit”. Counsel for the Licensee submitted that it was appropriate to not include this aspect as part of the disqualification order given the long period of time the Manager has been involved in the industry, the steps taken by the Manager to remediate breaches and reduce risk, and the ability of the Manager to continue to support his family through working at a licensed premises (other than the Premises) in a non-managerial capacity.
63. The Commission acknowledges that the Manager’s income is currently derived from his employment at the Premises, and that he is likely to seek employment in the hospitality industry during the period of disqualification. As such, the Commission agrees with the position of the parties as set out in the settlement proposal that the disqualification order should not prohibit the Manager’s employment in non-managerial roles within the hospitality industry.
64. Accordingly, as a related person to the Licensee, the Commission has determined to disqualify the Manager from:
- (a) holding a licence or BYO permit;
 - (b) being a director in any body corporate that holds a licence or BYO permit;
 - (c) being a partner in any partnership that holds a licence or BYO permit;
 - (d) having a beneficial interest (whether directly or indirectly) in the shares of any body corporate that holds a licence or BYO permit;



- (e) 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 14 October 2020 until 14 October 2022.

The preceding 64 paragraphs are a true copy of the Reasons for Decision of Ms Helen Versey (Deputy Chair), Ms Deirdre O'Donnell (Deputy Chair), and Mr Andrew Scott (Commissioner).