

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

Complainant: Commissioner of Police
(*represented by Mr James Bennett of State Solicitor's Office*)

First respondent: Mr Zane Charles Neave

Second respondent: Zacheave Pty Ltd
(*represented by Mr Zane Charles Neave, sole director*)

Commission: Mr Jim Freemantle (Chairperson)
Dr Eric Isaachsen (Member)
Mr Greg Joyce (Member)

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

Premises: Gnowangerup Hotel, 7 Allardyce Street, Gnowangerup

Date of Hearing: 7 May 2012

Date of Determination: 6 June 2012

Determination: 1. Pursuant to section 96(1)(g) of the *Liquor Control Act 1988* the first respondent, Mr Zane Charles Neave, is permanently disqualified from being a holder of a position of authority in a body corporate that holds a liquor licence or otherwise being interested in, or the profits or proceeds of a business carried on under a licence.

2. Pursuant to section 96(1)(m) of the *Liquor Control Act 1988* the second respondent, Zacheave Pty Ltd, is to pay a monetary penalty of \$15000.
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Authorities referred to in the determination:

- *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321
- *O'Sullivan v Farrer* (1989) 168 CLR 210

Introduction

- 1 Zacheave Pty Ltd ("the second respondent") was incorporated on 13 December 2010. Mr Zane Charles Neave ("the first respondent") is the sole director and shareholder of this company.
- 2 The second respondent was granted a liquor licence for the Gnowangerup Hotel ("the premises") on 11 May 2011. The first respondent was simultaneously appointed the sole approved manager under section 102B(1)(a) of the *Liquor Control Act 1988* ("the Act").
- 3 On 2 March 2012, the Commissioner of Police ("the Police") lodged a section 95 complaint with the Liquor Commission ("the Commission") against the first and second respondents. The complaint alleged five breaches of section 95 of the Act and provided evidence in respect of these breaches. The following three remedies were sought:
 - cancellation of the licence of the second respondent;
 - imposition of a monetary penalty on the first and second respondents;
 - disqualification of the first respondent from holding a position of authority in any licensed premises.
- 4 The Police advised the Commission that the first respondent has been charged with criminal offences arising from events which took place at the premises, namely five counts of aggravated sexual penetration of a child under the age of sixteen years, six counts of aggravated indecent dealings of a child under the age of sixteen years and two counts of possessing child exploitation material. These charges are proceeding and the grounds of this complaint do not rely on the outcome of those proceedings.
- 5 A hearing in respect of the complaint was heard by the Commission on 7 May 2012.

Submissions on behalf of the Commissioner of Police

- 6 The Police sought approval of the Commission to suppress the decision of the Commission on the grounds that there may be an adverse impact on the alleged victim and the first respondent given that the premises are located in a small country town. There has already been some media speculation on the alleged events.
- 7 The Police alleged that pursuant to section 95(4) of the Act there is a proper cause for disciplinary action against the first and second respondents on the following grounds:
 - (i) The licensed premises are not properly managed in accordance with section 95(4)(b) of the Act.
 - (ii) Pursuant to section 95(4)(g) of the Act the licensee otherwise is, or becomes, an unsuitable person to hold a licence under the Act.

- (iii) By operation of section 95(4)(h) of the Act a person holding a position of authority in a body corporate that holds the licence, or who is interested in the business or the profits or proceeds of the business, is or becomes not a fit and proper person to hold that position or to be so interested.
 - (iv) Pursuant to section 95(4)(j) of the Act the continuation of the licence is not in the public interest or the licence has not been exercised in the public interest.
 - (v) Pursuant to section 95(4)(k) of the Act the safety, health or welfare of persons who resort to the licensed premises is endangered by an act or neglect of the licensee.
- 8 The Police provided CCTV evidence and signed statements from the victim, the victim's brother, the first respondent and the Officer in Charge of the Gnowangerup Police Station. All of these statements corroborate the criminal allegations of the Police.
- 9 PARAGRAPH SUPPRESSED ON REQUEST OF THE APPLICANT.
- 10 In respect of the five grounds of complaint the Police made the following points:
- Ground (i): The evidence put before the Commission demonstrates that the first respondent made use of the facilities at the premises for the commission of the alleged offences. He supplied alcohol to the victim and the alleged offences took place on the premises.
 - Grounds (ii) and (iii): The first respondent is the sole director of the licensee company and the approved manager. Some guidance to factors relevant in considering whether a person is fit and proper can be found at section 33(6) and (6a) of the Act. Whilst the Act does not exclusively define "fit and proper" it is a concept which is not to be narrowly construed or confined and the expression takes its meaning from its context and from the activities in which the person is or will be engaged pursuant to a licence and from the ends to be served by those activities. *Australian Broadcasting Tribunal v Bond (1990) 170 CLR 321* at 380 per Toohey and Gaudron JJ, and at 348 per Mason J.
 - Ground (iv): The term "public interest" is one of wide import and classically imports a discretionary value judgment to be made by reference to undefined factual matters, confined only in so far as the subject matter and the scope and purpose of the Act may enable given reasons to be pronounced definitely, extraneous to any objects Parliament could have had in view. *O'Sullivan v Farrer (1989) 168 CLR 210* at 216 to 217. Some guidance as to what qualifies as "public interest" is provided by section 38(4) of the Act. The Commission should also consider the advancement of the objects of the Act set out at section 5.

- Ground (iv): Given the alleged events occurred, It is open for the Commission to conclude the safety, health and welfare of persons who resort to the premises have been endangered by the acts of the first and second respondents. Further there is evidence that the first respondent had commenced creating a crèche where he was going to personally offer his services to look after children of patrons of the hotel. This had not eventuated.

Submissions on behalf of the first respondent

- 11 The first respondent attended the hearing in person and acknowledged he had received all of the material before the Commission. He indicated he had nothing more to add other than that he had left Gnowangerup, the owner of the premises was endeavouring to sell the hotel and that he had no intention in the future of becoming a person occupying a position of authority in a licensed premises.
- 12 The first respondent did not contest the evidence of the Police in respect of the alleged events.

Determination

- 13 The Commission may on a complaint lodged under section 95 of the Act take disciplinary action provided it is satisfied, on a balance of probabilities that the grounds on which the complaint is made are made out. It is only necessary to show one ground is made out.
- 14 In this case the evidence of the Police, including admissions of the first respondent, is probative and the Commission accepts, on the balance of probabilities that the alleged events in respect of sexual penetration and indecent dealings occurred. Irrespective of the outcome of the criminal proceedings the Commission is obliged to take action on the information before it.
- 15 In respect of ground (i) of the complaint, which concerns the management of the premises, the bedroom of the first respondent is excluded from the premises. The Police argued that the shower is part of the premises and the supply of liquor to a minor are both matters which concern the management of the premises. However the Commission has formed the view that this ground is not properly made out. Management of premises is a broad concept which concerns the day to day operations of the business and the Police led no evidence of this kind.
- 16 In the Commission's opinion the second respondent, through the actions of its owner and sole director, is unsuitable to hold the licence. Similarly the first respondent is not a fit and proper person to hold a position of authority under the Act. It is clearly not in the public interest for the continuation of the licence and the Commission accepts that the safety, health and welfare of persons who resort to the premises is endangered.
- 17 The remedy for cancellation of licence was withdrawn by the Police at the hearing on the basis of a protection order having been granted to the freehold owner of the licensed premises.

18 Hence the Commission is satisfied that the remaining four grounds of the complaint are made out and that there is a proper cause for disciplinary action against both the first and second respondents in the following terms:

- Pursuant to section 96(1)(g) of the Act the first respondent, Zane Charles Neave, is permanently disqualified from being a holder of a position of authority in a body corporate that holds a liquor licence or otherwise being interested in, or the profits or proceeds of a business carried on under a licence.
- The second respondent, Zacheave Pty Ltd, is to pay a monetary penalty pursuant to section 96(1)(m) of the Act of \$15000.

19 The disciplinary action decided by the Commission is severe but necessary. The alleged events are serious matters and bring into disrepute the subject licence and the premises. This type of behaviour is not acceptable.

A handwritten signature in black ink, consisting of a stylized 'J' and 'F' followed by a horizontal line.

MR JIM FREEMANTLE
CHAIRPERSON