

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

Complainant: Director of Liquor Licensing
(*represented by Mr Joshua Berson of the State Solicitor's Office*)

First Respondent: Lucky Entertainment Pty Ltd
(*represented by Mr Peter Fraser of Dwyer Durack Lawyers*)

Second Respondent: Mr Wayne Poon, Director and Shareholder
(*represented by Mr Peter Fraser of Dwyer Durack Lawyers*)

Commission: Mr Seamus Rafferty (Chairperson)
Ms Emma Power (Member)
Ms Pamela Hass (Member)

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

Premises: Crown Karaoke Restaurant
Shop 11/60 Roe Street, Northbridge

Date of Hearing: 29 August 2019

Date of Determination: 29 August 2019

Date of Reasons of Determination: 20 December 2019

Determination:

The Commission finds the Complaint has been made out to a satisfactory standard such that proper cause for disciplinary action exists on the following terms:

1. The Second Respondent, Mr Wayne Poon is to pay a monetary penalty of \$10,000 pursuant to section 96(1)(m) of the *Liquor Control Act 1988* within 4 months of 29 August 2019 and lodge with the Commission evidence of payment of the penalty within 28 days of making the payment.
2. The First Respondent, Lucky Entertainment Pty Ltd as the licensee of Crown Karaoke Restaurant (Licence Number 6060115635) is to have and maintain a CCTV video

surveillance system in accordance with the policies of the Director of Liquor Licensing within 28 days of 29 August 2019. In addition, the CCTV system must:

- a) record continuous images of all entrance and exit points to the premises, dining rooms, public access areas and the front regulated area of the Premises;
 - b) provide full coverage and monitoring of all dining, karaoke rooms and other general areas of the Premises to which the public have access excluding toilets;
 - c) operate from the time the Premises open until one hour after trading ceases and can identify individuals showing time and dates; and
 - d) images reporting via the video surveillance system must be retained for 28 days and must be made available for viewing or removal by the Police or other persons authorised by the Director.
3. No liquor is to be sold or supplied for consumption on the Premises in any of the following ways:
- a) in a vessel with a capacity exceeding 600 ml, except bottles of wines and no spirit-based beverages are to be supplied in vessels with a measurement capacity exceeding 375 ml;
 - b) in measurements of spirits that exceed 45 ml in any vessel. For the purpose of this condition the term “spirits” means potable spirit which at 20 degrees Celsius contains more than 20.06 per cent ethanol by volume; and
 - c) liquor is not to be sold in any manner which would encourage the rapid consumption of liquor including but not limited to the sale of shots.
4. Two licensed crowd controllers are to be engaged on Friday and Saturday evenings between 9 pm and closing time and one licensed crowd controller is to be engaged on Thursdays and Sundays between 10 pm and closing time.
5. The serving of liquor to patrons is restricted to table service by staff engaged by and in the employ of the licensee.
6. A minimum number of two approved managers to be on duty at all times the Premises are trading.
7. Each dining/karaoke room in use must be inspected at least twice an hour by an approved manager and/or licensed crowd controller. This condition will be satisfied by one inspection per hour by an approved manager and one inspection per hour by a licensed crowd controller.
8. The trading hours are between 10:00am and 3:00am.
9. Unaccompanied juveniles on the Premises are prohibited and juveniles are prohibited from being on the Premises after midnight.

Background

1. The First Respondent is the licensee of Crown Karaoke Restaurant (Licence Number 6060115635) (Licence) situated at Shop 11/60 Roe Street, Northbridge WA 6003 (Premises).
2. The Crown Karaoke Restaurant trades as a karaoke themed restaurant with individual rooms to hire. The rooms must be entered in order to be effectively monitored by staff. The rooms are set up with mainly coffee tables and lounge settings rather than typical restaurant-style dining tables and chairs.
3. The First Respondent has held a restaurant licence for the Premises since 13 June 2007.
4. On 8 October 2013, the Director approved the First Respondent's application for an Extended Trading Permit 'Liquor Without A Meal' - Restaurant Limited to A Maximum of 120 Persons.
5. The Extended Trading Permit expired on 7 October 2018.
6. On 31 July 2019, in response to the Complaint made, the licensing authority imposed interim conditions upon the Licence, pursuant to s 95(6) of the *Liquor Control Act 1988* (the Act).
7. The Second Respondent was the sole director and a shareholder of the First Respondent at the time of the Licence application and remains in that position.

The Complaint

8. By the Complaint dated 14 June 2019 signed by Ms Narelle Lethorn as Delegate of the Director of Liquor Licensing, the Complainant alleges that there is a proper cause for disciplinary action against the First and Second Respondents on seven grounds:

- Ground (1) The Premises are not properly managed in accordance with the Act (section 95(4)(b));
- Ground (2) The First Respondent has contravened a requirement of the Act or a term or condition of the Licence (section 95(4)(e)(i));
- Ground (3) The First Respondent has been given infringement notices under section 167 and the modified penalty has been paid in accordance with section 95(4)(fa);
- Ground (4) The Second Respondent (who is interested in the business or the profits or proceeds of the licensee) is or becomes not a fit and proper person to be so interested under the Act (section 95(4)(h));
- Ground (5) The continuation of the Licence is not in the public interest or the Licence has not been exercised in the public interest (section 95(4)(j));
- Ground (6) The safety, health or welfare of persons who resort to the Premises is endangered by an act or neglect of the First Respondent (section 95(4)(k)); and
- Ground (7) An infringement notice given under section 167 to the employee or agent of a licensee may be used as evidence in respect of a complaint lodged under this section with respect to that licensee (section 95(9)).

9. It was submitted and conceded at the hearing that:
- a. Ground (4) be discontinued;
 - b. Ground (5) be discontinued; and
 - c. Ground (7) was not effectively a ground.

As such, the above grounds have not been further considered in the decision.

Submissions by the Complainant

10. The Complainant provided:
- a. an Outline of Submissions dated 16 August 2019; and
 - b. an Outline of Responsive Submissions dated 23 August 2019.
11. The grounds of the Complaint relate to six incidents that occurred at the Premises between 9 June 2018 and 23 February 2019, which involved:
- a. the sale or supply of alcohol to drunk persons and permitting drunkenness on the Premises;
 - b. failure to seek the approval of the licensing authority before a change to the corporate structure and allowing a person who is not a fit and proper person to be appointed as a shareholder; and
 - c. failure to comply with enforcement officers' requests to produce CCTV and sales receipts in relation to the service of liquor without a reasonable excuse.
12. The relevant five instances of the sale or supply of alcohol to drunk persons and permitting drunkenness on the Premises occurred between 9 June 2018 and 23 February 2019 as follows:

9 June 2018

- a. On 9 June 2018 at approximately 1:05am, an inspection of the Premises was carried out by four inspectors.
- b. When visiting the karaoke room with the Approved Manager of the Premises the inspectors identified a total of five drunk patrons in various rooms as well as in the upstairs corridor and on the ground floor.
- c. The Approved Manager Ms Ong admitted that there were drunk persons on the Premises. Approved Manager Mr Feng would not make assessments of patrons identified as drunk by the inspectors.
- d. Following the inspection, three infringements were issued to the First Respondent on 21 June 2018 for permitting drunkenness to take place on licensed premises and for

the sale or supply of liquor to a drunk person in contravention of sections 115(1)(a) and 115(2)(a) of the Act.

18 August 2018

- a. On 18 August 2018 at approximately 2:00am an inspection of the Premises was carried out by three inspectors and a compliance manager. Four WA Police Liquor Enforcement Unit Officers later arrived and were also in attendance at the Premises.
- b. Inspectors observed a drunk person enter a room on the ground floor used by hostesses of the Premises.
- c. Inspectors identified a drunk patron being assisted down the stairs from the corridor by other patrons.
- d. Approved Manager Ong assessed both persons to be drunk.
- e. The Second Respondent discussed the manner of trade at the Premises with the compliance officer.
- f. Following the inspection, two infringements were issued to the First Respondent on 22 August 2018 for permitting drunkenness to take place on licensed premises in contravention of section 115(1)(a) of the Act.

7 September 2018

- a. On 7 September 2018 at approximately 11:40pm two inspectors attended the Premises to serve three infringement notices upon the First Respondent by hand delivery.
- b. While in attendance at the Premises, the inspectors conducted an inspection in the company of the Approved Manager, Ms Kam Mei So.
- c. The inspectors and Approved Manager So saw a drunk patron leaving one of the upstairs rooms.
- d. Approved Manager So was asked to make an assessment of the patron and confirmed that the patron was drunk.
- e. Following the inspection an infringement was issued to the licensee on 21 September 2018 for permitting drunkenness to take place on licensed premises in contravention of section 115(1)(a) of the Act.

4 November 2018

- a. On 4 November 2018 at approximately 1:00am two inspectors attended the Premises to conduct an inspection.
- b. An inspection of the Premises was conducted accompanied by Approved Manager, Ms Mei Teng Ong.
- c. Three male patrons were identified by the inspectors as being drunk in one room. Approved Manager Ong assessed the patrons and confirmed that they were drunk.

- d. The inspectors requested that Approved Manager Ong provide CCTV footage of VIP Room 2 to support her claim that she had checked the room thirty minutes prior to the inspectors' arrival and confirmed the patrons were not drunk at that time. Ms Ong was unable to access the CCTV footage in the presence of the inspectors, despite having accessed such footage on earlier occasions.
- e. Following the inspection, on 8 November 2018 three infringements were issued on the First Respondent and one infringement issued on Approved Manager Ong for permitting drunkenness on licensed premises in contravention of s 115(1)(a) of the Act.

23 February 2019

- a. On 23 February 2019 at approximately 2:35am, four officers from the WA Police Liquor Enforcement Unit conducted an inspection of the Premises.
 - b. Upon entering the Premises, a Senior Constable found an unresponsive and unconscious female patron who was unable to be roused and smelled of alcohol.
 - c. Senior Constable Forde was advised by Approved Manager Ms Mei Teng Ong that the patron had arrived at the venue with four other patrons at 10:00pm.
 - d. The patron was eventually roused and Approved Manager Ong confirmed the patron's state of intoxication.
 - e. The patron was subsequently identified as being highly intoxicated.
 - f. Following the inspection, on 11 March 2019 infringements were issued to the First Respondent and Approved Manager Ong for permitting drunkenness on licensed premises in contravention of section 115(1)(a) of the Act.
13. The five incidents display the ongoing failure of the First Respondent to comply with the requirements of the Act in monitoring levels of intoxication on the Premises.
14. The repeated nature of the incidents, despite the issuance of infringements, also demonstrates the failure of the First and Second Respondents to make changes to training and other processes and procedures undertaken at the Premises to prevent further incidents of a similar nature from occurring.
15. In respect to the failure to seek approval to changes of corporate structure, the following facts are relevant:
- a. A review of the First Respondent's corporate structure on 19 June 2018 identified discrepancies between the information recorded by ASIC and the information held by the licensing authority.
 - b. Two individuals, Ms Jing-Ting Hsieh and Ms Ya Ling Huang, had become shareholders in the First Respondent without the approval of the licensing authority, in contravention of section 102(1)(a) of the Act.
 - c. Infringements were issued to the First Respondent and Ms Huang on 1 August 2018.

- d. On 30 July 2018 an application for a person in a position of authority or of shareholding was received from Ms Huang, and on 7 November 2018 a Delegate of the Director of Liquor Licensing found that Ms Huang was not a fit and proper person to assume a position of authority or shareholding.
 - e. Not only had persons assumed a position of authority within the corporate structure of the First Respondent without the required approval of the licensing authority, but one of those persons was, after the fact, found to not have been a fit and proper person to have assumed such a position.
16. In relation to the alleged failure to comply with the requirements of an authorised officer, the following is asserted:
- a. During the inspection carried out by WA Police Officers on 23 February 2019, Approved Manager Mei Teng Ong was informed that she was required under section 154 of the Act to produce CCTV footage and receipts for the room of the Premises where the unconscious female patron was located.
 - b. Those required items were not provided by Approved Manager Ong at the time of the inspection or at any subsequent date.
 - c. On 25 February 2019, the Second Respondent was contacted by Sergeant Sedgman. The Second Respondent said that the CCTV footage was only retained for 48 hours.
 - d. On 11 March 2019 infringements were issued to the First Respondent and Approved Manager Ong for failing to comply with a requirement of an authorised officer under section 154(3)(b) of the Act.
 - e. The section 154(3)(b) infringement issued to the First Respondent was withdrawn on 23 April 2019.
 - f. The section 154(3)(b) infringement issued to Approved Manager Ong was subsequently paid on 9 April 2019.
17. The Complainant further alleges that the First Respondent's operation of the Premises is not consistent with the restaurant licence under which it operates due to the following:
- a. An analysis of the wholesale supply of liquor shows that:
 - i. the First Respondent predominately purchased spirits rather than beer and wine in the 2016/17 and 2017/18 financial years; and
 - ii. the volume of spirits purchased increased in 2017/18 compared to 2016/17 while the volume of beer and wine purchased decreased in the same period.
 - b. During an inspection which took place on 18 August 2018 a photograph was taken which shows a large amount of spirits, mostly whisky, stored behind the reception counter.
18. This conduct and pattern of purchasing by the First Respondent indicates a focus on the sale of spirits, which is not typical of the buying patterns of restaurants where beer and wine are sold to accompany a meal.

19. A business conducted under a restaurant licence must consist primarily and predominantly of the regular supply to customers of meals to be eaten there.
20. The remaining grounds (as set out in paragraph 8 above) are supported as follows:

Ground 1 - Premises are not properly managed in accordance with the Act

- a. The Complainant submits that all of the incidents and offences against the Act described above, along with the evidence suggesting that the Premises is not properly operating as a restaurant, amply demonstrate that the Premises are not being managed by the First Respondent in accordance with the Act.

Ground 2 - First Respondent has contravened the Act and Licence

- a. The Act creates offences where:
 - i. a licensee, personally or by an employee or agent, permits drunkenness to take place on licensed premises;
 - ii. a licensee, personally or by an employee or agent, sells or supplies liquor to a drunk person;
 - iii. a person who, without the approval of the licensing authority assumes a position of authority in a body corporate that holds a licence; and
 - iv. a person fails, without reasonable excuse, to comply with an order of an authorised officer under the Act.
- b. The Act also imposes conditions on restaurant licensees that require that liquor must not be consumed by a person on the licensed premises except ancillary to a meal and that the business conducted at the licensed premises must consist primarily and predominantly of the regular supply to customers of meals to be eaten there.
- c. The Commission can be satisfied that all the listed incidents occurred and that each constituted a breach of the Act or Licence.
- d. Taken in isolation, some of the incidents might be regarded as falling towards the lower end on the scale of seriousness. However, in their totality, the incidents demonstrate that the First Respondent has, on multiple occasions and over a prolonged period, with no apparent attempts to remedy or make improvements, contravened the requirements of both the Act and the conditions of the Licence.
- e. These contraventions have occurred despite the First Respondent being aware that it was under scrutiny by the licensing authority and the Liquor Enforcement Unit of the WA Police.
- f. The evidence establishes that the First Respondent has persistently and brazenly breached the requirements of the Act. This ground is made out.

Ground 3 - First Respondent has been given infringement notices and paid accordingly

- a. Section 95(4)(fa) of the Act provides that when a licensee has been given an infringement notice under section 167 and the modified penalty has been paid in accordance with that section, there will be proper cause for disciplinary action.
- b. Fifteen infringements have been issued and paid and therefore form a proper cause for the Commission to take disciplinary action against the Respondents.
- c. The sheer volume of paid infringements clearly makes out this ground in support of the Commission taking disciplinary action against the Respondents.

Ground 6 -Safety, health or welfare of persons is endangered

- a. Section 95(4)(k) provides that a proper cause for disciplinary action exists where the safety, health or welfare of persons who resort to the licensed premises is endangered by an act or neglect of the licensee, or the licensee's employees or agents.
- b. The Complainant alleges that the health, safety and welfare of patrons of the Premises are endangered by the failures of the First Respondent and its employees and agents to prevent drunkenness to occur on the Premises.
- c. Each of the incidents described above exemplify the First Respondent's lack of regard for the Act's section 5(1)(b) primary object to minimise harm and ill-health caused to people due to the use of liquor.
- d. Even if the Commission accepts that in each case the First Respondent's employees were not aware of the condition of the intoxicated patrons until they were discovered by inspectors and Liquor Enforcement Unit Officers, the repetition of incidents of drunkenness on the Premises indicates a lack of concern for the safety, health and welfare of the patrons on the Premises.

- 21. If proper cause for disciplinary action against the First Respondent has been established, the Complainant submits that the Commission should cancel the Licence, pursuant to section 96(1) of the Act.
- 22. If the Commission is not minded to cancel the Licence, the Complainant initially submitted the Commission may impose the following:
 - a. Pursuant to section 96(1)(d) of the Act, suspension of the Licence for a specified period or until further order; or
 - b. Pursuant to section 96(1)(b) of the Act impose the following conditions upon the licence, over and above the prevailing conditions:
 - i. A licensed crowd controller is to be present inside each operating karaoke/dining room at all times to monitor patron behaviour and the responsible service of alcohol.
 - ii. The licensee is to have and maintain a CCTV video surveillance system in accordance with the policies of the Director of Liquor Licensing. In accordance with the policy it is expected that this system will provide and record continuous

images of the entrances and exits to the Premises from the opening of the Premises until one hour after trading ceases; and

- a. Each karaoke room and entertainment area is to have CCTV coverage. The system will provide and record continuous images of all bars, karaoke rooms and entertainment areas, from time of opening until one hour after trading ceases and be able to identify, showing time and dates; and
 - b. Images recorded via the video surveillance system must be retained for 28 days and must be made available for viewing or removal by the police or other persons authorised by the Director.
- iii. The sale, supply or consumption of any spirit based liquor is prohibited on the licensed premises. For the purposes of this condition, the term spirit means any potable spirit which at 20 degrees Celsius contains more than 20.06% ethanol by volume.
 - iv. The premises will be set up with permanent dining tables, chairs and cutlery in each of the karaoke rooms.
 - v. Juveniles are not permitted on the licensed premises.
 - vi. Liquor may only be consumed ancillary to a meal and only consumed 30 minutes prior to the consumption of a meal and 30 minutes after the provision of a meal.
 - vii. Liquor may only be consumed by patrons while seated at a dining table, or a fixed structure used as a table for the eating of food, and not elsewhere.
 - viii. The serving of liquor to patrons is restricted to table service by staff engaged by and in the employ of the licensee.
 - ix. Staff engaged by and in the employ of the licensee are to record the time of arrival of the party, the time the meal is served, and the time any liquor is served.
 - x. A minimum number of two Approved Managers are to be on duty at all times the Premises are trading. An Approved Manager is required to conduct frequent RSA inspections of the licensed area occupied by patrons. Details of all such inspections are to be maintained as a record in the Incident Register.
23. The Second Respondent is the sole director of the First Respondent and is, therefore, an officer of that body corporate.
24. The Complainant submits that, at the least, the evidence submitted in support of the Complaint establishes that the grounds upon which the Complaint was made are attributable to the Second Respondent's failure to take all reasonable steps to secure compliance by the First Respondent with the Act.

25. The Second Respondent has been on notice since at least 9 June 2018 that the licensing authority and officers from the Liquor Enforcement Unit of the WA Police were scrutinising the management of the Premises.
26. Despite this, the Second Respondent has failed to take the steps necessary to ensure compliance with the Act.
27. In light of the fact that proper cause for disciplinary action against the First Respondent has been established, the Complainant submits that the Commission should, pursuant to sections 164(1a)(a) and 96(1)(g) of the Act, disqualify the Second Respondent, for such a period as the Commission thinks fit, from being:
 - a. the holder of a position of authority in a body corporate that holds a licence; or
 - b. interested in, or in the profits or proceeds of, a business carried on under a licence.
28. The Respondents' submissions fail to appreciate the seriousness of the breaches of the Act identified by inspectors and are demonstrative of the First Respondent's blatant disregard for the regulatory framework in which it operates.
29. In those circumstances, the First Respondent has proven that it is not an entity that the Commission, or the public, can trust to adhere to the standards of behaviour required by the Act or the Licence.
30. The Respondents rely on section 167(7a) of the Act, which provides that payment of the penalty for an infringement is not taken to be an admission in any proceedings, whether criminal or civil. However, section 167(7a) must be read in light of section 95(4)(fa) of the Act which, in effect, provides that the payment of an infringement is an admission that grounds for disciplinary action exists.
31. Although the Commission must consider all of the circumstances surrounding the conduct complained of and exercise the discretion accordingly, the evidence before the Commission is sufficient to establish, on the balance of probabilities, that the First Respondent and its agents did, in fact, permit drunkenness on the Premises.
32. On every occasion where drunkenness was quickly and easily detected on the Premises by inspectors and Police Officers there had been opportunities for detection by the First Respondent via its Approved Managers, service staff and security staff. However, by failing to adequately monitor the consumption of alcohol in the private karaoke rooms, the First Respondent, through the Approved Managers and licensed crowd controllers engaged on its behalf, deliberately turned a blind eye to the issue of drunkenness on the Premises and, in so doing, permitted drunkenness on the Premises.
33. The onus is on the Second Respondent to prove either his lack of knowledge of the matters founding the Complaint, or that he had taken reasonable steps to prevent the matters the subject of the Complaint.
34. The Complainant submits that the Second Respondent has not proven either of those matters, and that an assessment as to whether the Second Respondent is a fit and proper person has no application in this context.

35. There are a number of issues of concern that suggest the Premises were not operating consistently with the requirements of the restaurant licence, which is generally considered to be a low-risk licence within the context of the Act.
36. First, the number of infringements issued to the First Respondent for permitting drunkenness and the incidents of permitting drunkenness are unusually high for a restaurant licence.
37. Second, there are serious concerns as to whether the business conducted at the Premises consists primarily and predominantly of the regular supply to customers of meals to be eaten there.
38. Third, the focus on the service of spirits and alcohol at the expense of meals is highlighted through the presence and role that the hostesses perform at the Premises.
39. Fourth, the evidence of the Second Respondent is that most groups of customers will spend between \$50 and \$100 on food. However, the First Respondent's website lists the minimum spend on food and drinks on the weekdays is \$250 for a small or medium room and \$500 for a large room.
40. Finally, it bears noting that it is unusual for a premises operating under a restaurant licence to require the attendance of two licensed crowd controllers on weekends or to be subject to conditions which seek to ensure the responsible service of alcohol and minimise alcohol related harm.
41. The First Respondent breached the Interim conditions that were imposed by the Complainant on 31 July 2019 pursuant to section 95(6) of the Act.
42. This demonstrates a continuous disregard for the regulatory framework to which it is subject, despite the increased attention of liquor licensing inspectors and the Liquor Enforcement Unit and the commencement of this Complaint.
43. As such, the appropriate disciplinary action is to cancel the Licence pursuant to section 96(1)(e) of the Act.

Submissions by the First and Second Respondent

44. The Respondents provided:
 - a. submissions on behalf of the Respondents dated 16 August 2019; and
 - b. responsive submissions on behalf of the First and Second Respondent dated 23 August 2019.
45. It is acknowledged that the infringements issued have been paid.
46. However, Section 167 (7a) relevantly provides that:

“the payment of the penalty shall not be taken to be an admission, in any proceedings whether criminal or civil.”

47. It is submitted that while proper cause for disciplinary action exists upon payment of an infringement it is necessary for the Commission to make findings of fact to enable it to determine what action it should take when exercising its discretion under section 96 of the Act.
48. Accordingly, it is appropriate to consider the evidence or lack thereof with respect to each infringement.
49. With respect to each of the individuals whom have been identified by inspectors and/or the Liquor Enforcement Unit as being drunk there is no evidence with respect to:
- a. how long the person in question had been on the Premises;
 - b. whether the person in question had purchased liquor while on the Premises; or
 - c. whether the person in question had consumed liquor while on the Premises.
50. Upon the evidence, it cannot be determined whether, prior to the inspectors/authorised officers attending, whether:
- a. the individuals in question exhibited any behaviour which would lead a reasonable person to conclude they were drunk; or
 - b. if they did exhibit such behaviour, if it occurred at a time when employees of the licensee were present.
51. The Respondents provided various explanations and evidence which refuted the Complainant's asserted version of events that occurred on the Premises. The same are not reproduced in full here.
52. There is no evidence before the Commission that:
- a. the patrons in question in any of the incidents were displaying or exhibiting signs of intoxication in view of the licensee during the time that they were on the Premises;
 - b. the patrons had been intoxicated at the time that the employees of the licensee last conducted an assessment of their room; or
 - c. the Approved Managers named in the Infringements had the sufficient opportunity to observe the patrons prior to being required to make an assessment as to their levels of intoxication.
53. The position of the Respondents is that the evidence is not sufficient to establish that the licensee has permitted drunkenness. Rather, taken at its highest the evidence establishes that drunk patrons were located upon the Premises on the dates in question.
54. There is no evidence of, nor has it been alleged, that patrons of the First Respondent engage in anti-social or violent behaviour.
55. Taken at its highest, the evidence relied upon by the Director gives rise to a concern as to whether the First Respondent has sufficient practices and procedures in place to identify patrons whom are affected by alcohol and approaching the point of being drunk.

56. It is submitted that any penalty imposed with respect to the Permit Drunkenness Infringements should be directed towards ensuring that the First Respondent has adequate management practices to ensure monitoring and detection. This is more appropriately dealt with through a combination of conditions and management practices.
57. A statement of Lenno Parasuraman dated 14 August 2019, a crowd controller, was provided in respect to the usual instructions given to monitoring patrons. A statement dated 16 August 2019 by Wayne Poon, a director of the licensee was provided in respect to the measures taken to date to address the issues arraigned in the infringement notices.
58. The evidence of Mr Wayne Poon with respect to the shareholder infringement is as follows:
- a. the oversight and failure to seek approval of the new shareholders from the licensing authority was an oversight only; and
 - b. immediate steps were taken to rectify the situation.
59. The infringements issued in relation to the failure to advise of the change to the shareholding were paid on the understanding that to do so would be the end of the matter.
60. The Respondents submit that no further action should be taken with respect to these infringements, given the evidence that the error was a mere oversight, which was immediately sought to be remedied by the actions of the licensee.
61. The Premises currently trades under a Restaurant Licence.
62. Prior to 7 October 2018 the Premises traded with an Extended Trading (Liquor Without a Meal) Permit.
63. It is submitted that this method of trade complies with the statutory definition contained within section 50(1) of the Act, when read in conjunction with section 3, and as such the venue is trading as a bona fide restaurant.
64. A review of the evidence relied upon by the Director reveals that there is no evidence that would support a finding that:
- a. *"Inspections of the venue have also noted that menus, condiments and cutlery have been lacking or non-existence"*;
 - b. the First Respondent sells minimal food to its patrons;
 - c. the First Respondent does not provide "genuine meals"; or
 - d. the provision of genuine meals is secondary to the service of liquor.
65. Finally, there is no evidence before the Commission that would ground a finding that liquor was consumed other than:
- a. ancillary to a meal, during that period of time it traded under a restaurant licence; or
 - b. in accordance with the terms and conditions of its extended trading permit prior to the 7 October 2018.

66. As such, it is submitted that the submissions of the Director are without foundation.
67. It is not disputed that significantly more spirits are purchased when compared to wine and beer.
68. The clear inference that can be drawn is that consumers attracted to the First Respondent's venue choose to drink spirits as their drink of choice. There is nothing inherently sinister with respect to this data.
69. The First Respondent submits that:
- a. it caters to its patron's tastes with respect to liquor stocked at the venue.;
 - b. the focus of the business is not upon the sale of spirits. The focus of the business is operating as a karaoke restaurant; and
 - c. patrons attend the venue for the purpose of enjoying a meal and karaoke.
70. Collectively this evidence demonstrates that patrons are attracted to the venue because it is a karaoke restaurant, enjoying both the ability to have a meal and enjoy karaoke.
71. The Director has not adduced any evidence that, for consumers, the ability to enjoy a meal and partake in karaoke is ancillary to the ability to purchase spirits.
72. Accordingly, it is submitted that the Director's submission that the business is predominantly focussed upon the provision of hard liquor in the form of spirits should be rejected.
73. It is submitted that cancellation of a licence is the ultimate and most serious penalty that can be imposed.
74. When regard is had to the evidence before the Commission in this matter as compared to the evidence and findings of the Commission in previous section 95 Complaints, it is submitted that the present Complaint does not fall within that category of complaints whereby cancellation of the licence is a potential appropriate penalty.
75. The discretion granted to the Commission by section 96 of the Act is not penal or punitive in nature.
76. The object of disciplinary proceedings is to protect the public by maintaining standards of behaviour of persons permitted to work or carry on business under a liquor licence.
77. A suspension would achieve little purpose other than to deny the public access to the facilities provided by the First Respondent.
78. The Respondent submits that the imposition of conditions would be an appropriate penalty in the circumstances. However, certain of the suggested conditions by the Complainant are not appropriate and unduly onerous and the Respondents suggest alternative conditions.
79. Various submissions were made as to the appropriateness of the conditions proposed by the Complainant as set out in paragraph 22 above, which are not reproduced here.

80. The Director has failed to adduce any evidence that the Second Respondent did not take reasonable steps to ensure that the First Respondent complied with the Act.
81. The appropriate penalty to be imposed was addressed further by way of oral submissions at the hearing of the Complaint.

Relevant Law

82. In determining whether there is proper cause for disciplinary action, the Commission needs to be satisfied on the balance of probabilities that one or more of the grounds of complaint alleged pursuant to section 95(4) of the Act have been made out.
83. The standard of proof applicable to section 95 proceedings is proof on the balance of probabilities.
84. Section 95(11) of the Act states that it is not a defence to a complaint lodged pursuant to section 95 of the Act to show that the licensee:
 - a. did not know, or could not reasonably have been aware or have prevented the act or omission which gave rise to the Complaint; or
 - b. had taken reasonable steps to prevent the act or omission from taking place.
85. The policy of the Act is that a licensee is to be held personally responsible for acts or omissions on their licenced premises. This is illustrated by the following:
 - a. the conduct of business under a licence is always the responsibility of the licensee and shall be personally supervised and managed by a natural person in accordance with section 100(1) of the Act;
 - b. it is a criminal offence for the licensee to fail to ensure that the conduct of the business at the licensed premises is supervised and managed in accordance with section 100 of the Act, section 100(8) of the Act; and
 - c. a licensee is liable for offences committed on the licensed premises by an employee or agent of the licensee, or by a person acting, or purporting to act, on behalf of the licensee - even if the licensee did not know of and could not reasonably have been aware of or have prevented, the commission of the offence, in accordance with section 165 of the Act (see also sections 95(4)(f) and (k) of the Act).

Determination

86. At the hearing it was conceded by the parties that Grounds (2) and (3) of the Complaint were substantially made out and that grounds for disciplinary action existed.
87. In all the circumstances, the Commission is satisfied, on the balance of probabilities, that there is proper cause for disciplinary action on all four grounds pursuant to section 95(4) of the Act being:
 - a. the licensed premises are not properly managed in accordance with section 95(4)(b);

- b. the licensee has contravened a requirement of the Act or term or condition of the licence under section 95(4)(e)(i);
 - c. the licensee has been given infringement notices under section 167 and the modified penalty has been paid in accordance with that section under 95(4)(fa); and
 - d. the safety, health or welfare of persons who resort to the licensed premises is endangered by an act or neglect of the licensee under section 94(4)(k).
88. This finding is based upon the totality of the evidence that was put before the Commission, but primarily in relation to six occasions, in which during the course of inspections, inspectors noted that there were a total of 12 persons found to be drunk and to some degree significantly intoxicated on the Premises.
89. The Complainant and the First Respondent provided the Commission with a document including a list of appropriate conditions to be imposed upon the Premises as a result of the disciplinary action and the grounds of complaint being made out. Such conditions are expressed in Items 2 to 9 inclusive of the Orders made by the Commission in this matter.
90. In respect to disciplinary action against the Second Respondent, at the hearing the Complainant asserted that having regard to the application of section 164(1)(a)(ii) of the Act an appropriate disqualification period of the Second Respondent was 12 months.
91. There is much merit to that particular submission having regard to the failure that appears to have been ongoing since 9 June 2018. However, these Premises have been operated since 2007 with no transgressions or complaints prior to this period of offending.
92. Accordingly, the Commission can take the Second Respondent's prior good character into account in determining whether a penalty should be imposed.
93. The Commission is satisfied that there should be a penalty imposed against the Second Respondent on the basis that he is responsible for some of the breaches of the Act that are substantiated by the Complaint.
94. In all the circumstances the Commission considers that a fine in the sum of \$10,000 is a suitable sum that reflects the seriousness and ongoing nature of the relevant breaches.

Orders

95. On the basis that the Complaint in respect of grounds (1), (2), (3) and (6) are made out, the Commission makes the following orders:
- 1. The Second Respondent, Mr Wayne Poon is to pay a monetary penalty of \$10,000 pursuant to section 96(1)(m) of the Liquor Control Act 1988 within 4 months of 29 August 2019 and lodge with the Commission evidence of payment of the penalty within 28 days of making the payment.
 - 2. The First Respondent, Lucky Entertainment Pty Ltd as the licensee of Crown Karaoke Restaurant (Licence Number 6060115635) is to have and maintain a CCTV video surveillance system in accordance with the policies of the Director of Liquor Licensing within 28 days of 29 August 2019. In addition, the CCTV system must:

- a) record continuous images of all entrance and exit points to the premises, dining rooms, public access areas and the front regulated area of the Premises;
 - b) provide full coverage and monitoring of all dining, karaoke rooms and other general areas of the Premises to which the public have access excluding toilets;
 - c) operate from the time the Premises open until one hour after trading ceases and can identify individuals showing time and dates; and
 - d) images reporting via the video surveillance system must be retained for 28 days and must be made available for viewing or removal by the police or other persons authorised by the Director.
3. No liquor is to be sold or supplied for consumption on the Premises in any of the following ways:
- a) in a vessel with a capacity exceeding 600 ml, except bottles of wines and no spirit based beverages are to be supplied in vessels with a measurement capacity exceeding 375 ml;
 - b) in measurements of spirits that exceed 45 ml in any vessel for the purpose of this condition the term "spirits" means potable spirit which at 20 degrees Celsius contains more than 20.06 per cent ethanol by volume; and
 - c) liquor is not to be sold in any manner which would encourage the rapid consumption of liquor including but not limited to the sale of shots.
4. Two licensed crowd controllers are to be engaged on Friday and Saturday evenings between 9:00 pm and closing time and one licensed crowd controller is to be engaged on Thursdays and Sundays between 10:00 pm and closing time.
5. The serving of liquor to patrons is restricted to table service by staff engaged by and in the employ of the licensee.
6. A minimum number of two approved managers to be on duty at all times the Premises are trading.
7. Each dining/karaoke room in use must be inspected at least twice an hour by an approved manager and/or licensed crowd controller. This condition will be satisfied by one inspection per hour by an approved manager and one inspection per hour by a licensed crowd controller;
8. The trading hours are between 10:00 am and 3:00 am.
9. Unaccompanied juveniles on the Premises are prohibited and juveniles are prohibited from being on the Premises after midnight.



SEAMUS RAFFERTY
CHAIRPERSON