

Mr James Hughes, Licensee C/o Mr Tony Hatzis Hatzis Cusack Lawyers GPO Box 3743 Sydney NSW 2001 th@hatziscusack.com.au	Feros Hotel Group Pty Limited C/o Mr Tony Hatzis Hatzis Cusack Lawyers GPO Box 3743 Sydney NSW 2001 th@hatziscusack.com.au
M.P.J. Holdings Pty Limited C/o Mr Jonathan Caplan Arnold Bloch Leibler Level 24, Chifley Tower 2 Chifley Square Sydney NSW 2000 jcaplan@abl.com.au	Mr David Byrne Director Liquor and Gaming NSW Department of Customer Service 4 Parramatta Square, 12 Darcy Street Parramatta 2150 Cc: matt.weber@liquorandgaming.nsw.gov.au

3 May 2021

Dear Sir/Madam

Complaint reference No.	DF19/016753
Matter	Disciplinary complaint
Complainant	Mr Sean Goodchild, (formerly) Director Compliance Operations, Liquor and Gaming NSW
Respondents	Mr James Hughes, the licensee of full hotel licensed business Taren Point Hotel-Motel (LIQH400105924) ("Hotel"). Feros Hotel Group Pty Limited, a close associate, being the business owner of the Hotel
Premises	105 Parraweena Road, Miranda, New South Wales 2228 ("Hotel").
Legislation	Part 8 of the <i>Gaming Machines Act 2001</i> (NSW)

Decision with Reasons and Notice of Disciplinary Action on Complaint to the Independent Liquor and Gaming Authority concerning Mr James Hughes and Feros Hotel Group Pty Limited under Part 8 of the *Gaming Machines Act 2001* (NSW)

On 10 December 2019, the Independent Liquor and Gaming Authority ("Authority") received a disciplinary complaint ("Complaint") from Mr Sean Goodchild, then Director of Compliance Operations, Liquor and Gaming New South Wales ("Complainant") as delegate of the Secretary of the New South Wales ("NSW") Department of Customer Service.

The Complaint is made under Part 8 of the *Gaming Machines Act 2001* (NSW) ("Act") in relation to:

- Mr James Hughes, the licensee of full hotel licensed business Taren Point Hotel-Motel (LIQH400105924) located at 105 Parraweena Road, Miranda, NSW 2228 ("Hotel"); and
 - Feros Hotel Group Pty Limited ("Feros Group"), a close associate, being the business owner of the Hotel.
- (collectively "the Respondents").

The Complaint specifies three grounds (“Grounds”) under section 129(3) of the Act. The Authority has considered the Complaint material and all submissions and is satisfied that:

1. Ground 1 of the Complaint, based on section 129(3)(a)(i) of the Act, is established. The licensee of the Hotel, Mr Hughes, contravened a provision of the Act or regulations – being the former clause 55(a) of the *Gaming Machines Regulation 2010* (NSW) (“2010 Regulation”).
2. Ground 2 of the Complaint, based on section 129(3)(b) of the Act, is established. The Hotelier, Mr Hughes, has engaged in conduct that has encouraged, or is likely to encourage, the misuse and abuse of gambling activities in the Hotel.
3. Ground 3 of the Complaint, based on section 129(3)(h) of the Act, is established. The Complaint against a hotelier has been made and:
 - (a) The close associate, Feros Group, knew or ought reasonably to have known that the hotelier was engaging (or was likely to engage) in conduct of the kind to which the Complaint relates (section 129(3)(h)(i) of the Act).
 - (b) The close associate, Feros Group, failed to take all reasonable steps to prevent the licensee from engaging in conduct of that kind (section 129(3)(h)(ii) of the Act).

After considering the further submissions received on what, if any, disciplinary action should be taken on the basis of the Authority’s findings, the Authority determined at its meeting on 11 November 2020 to take the following disciplinary action:

1. **impose** a monetary penalty of \$2,200 on Mr Hughes pursuant to ground 1 of the complaint and section 131(2)(a)(i) of the Act
2. **impose** a monetary penalty of \$2,200 on Mr Hughes pursuant to ground 2 of the complaint and section 131(2)(a)(i) of the Act
3. **suspend** Taren Point Hotel-Motel’s (LIQH400105924) authorisation or approval to keep approved gaming machines for a period of seven days from 17 May 2021 pursuant to section 131(2)(c)(iii) of the Act
4. **order** Mr Hughes to pay the Secretary \$19,291.85, being the costs incurred by the Secretary in conducting the investigation pursuant to section 131(2)(i)(i) of the Act
5. **issue** Feros Hotel Group Pty Limited with a reprimand.

Information about review rights is provided at the end of the attached statement of reasons. If you have any questions about this letter, please contact the Authority Secretariat via email at ilga.secretariat@liquorandgaming.nsw.gov.au.

Yours faithfully



Philip Crawford
Chairperson

For and on behalf of the Independent Liquor and Gaming Authority

STATEMENT OF REASONS

INTRODUCTION

1. On 10 December 2019, Mr Sean Goodchild (“Complainant”), formerly the Director of Compliance Operations, Liquor and Gaming New South Wales (“L&GNSW”), as a delegate of the Secretary of the New South Wales (“NSW”) Department of Customer Service (“Secretary”), submitted a disciplinary complaint to the Independent Liquor and Gaming Authority (“Authority”).
2. The complaint is made under Part 8 of the *Gaming Machines Act 2001* (NSW) (“Act”) in relation to:
 - Mr James Hughes, the licensee of full hotel licensed business Taren Point Hotel-Motel (LIQH400105924) located at 105 Parraweena Road, Miranda, NSW 2228 (“Hotel”); and
 - Feros Hotel Group Pty Limited (“Feros Group”), a close associate, being the business owner of the Hotel.

(collectively “the Respondents”)

3. The complaint arises from the events of 13 February 2019, when [REDACTED] allegedly attended the Hotel and was supplied by hotel staff with a total of ten (10) complimentary schooners of full strength beer which he consumed at the Hotel over a period of around six hours and ten minutes, within a day of gambling on the hotel’s gaming machines that lasted approximately nine hours and resulted in [REDACTED] losing around \$3000.

GROUND OF COMPLAINT

4. The complaint specifies three grounds (“Grounds”) under section 129(3) of the Act:
 - a. Ground 1 is based upon section 129(3)(a)(i) of the Act and alleges that the licensee, Mr Hughes, has contravened a provision of the regulations – being the former clause 55(a) of the *Gaming Machines Regulation 2010* (NSW) (“2010 Regulation”).
 - b. Ground 2 is based upon section 129(3)(b) of the Act and alleges that the hotelier, Mr Hughes, has engaged in conduct that has encouraged, or is likely to encourage, the misuse and abuse of gambling activities in the Hotel.
 - c. Ground 3 is based upon section 129(3)(h)(i) and (ii) of the Act and alleges that the close associate, Feros Group, knew or ought reasonably to have known that the hotelier (Mr Hughes) was engaging (or was likely to engage) in conduct of the kind to which the Complaint relates and the close associate failed to take all reasonable steps to prevent the licensee (Mr Hughes) from engaging in conduct of that kind.

COMPLAINT MATERIAL

5. The complaint material comprises a two-page cover letter dated 10 December 2019 and a submission letter (“Complaint”) specifying the Grounds of Complaint, with a list of Exhibits that are described in Schedule 1 to this statement.

CONSULTATION

Show Cause Notice dated 24 January 2020

6. On 24 January 2020 the Authority Secretariat sent a letter to the Respondents inviting them to show cause as to why disciplinary action should not be taken on the basis of the Grounds of Complaint.
7. This letter was also sent to the corporate premises owner, M.P.J. Holdings Pty Limited ("Premises Owner") inviting any written submissions on the Complaint.
8. The Complainant was also copied into this correspondence with the letter specifying a timetable for the filing of evidence or other material and submissions from the parties.

Premises Owner Initial Response dated 21 February 2020

9. On 21 February 2020, the Premises Owner advised that it did not intend to seek any further and better particulars or make a written submission on the merits of the Complaint.

Respondents' Request for Particulars dated 21 February 2020

10. On 21 February 2020, the Respondents (through their legal representative Mr Tony Hatzis of Hatzis Cusack Lawyers) addressed the Complaint by seeking further and better particulars of the Grounds of Complaint ("Request for Particulars").

Complainant Response to Request for Particulars dated 13 March 2020

11. The Complainant provided a letter dated 13 March 2020 responding to the Request for Particulars ("Response to Particulars").

Respondents' Merits Submission dated 23 April 2020

12. The Respondents provided a legal submission dated 23 April 2020 addressing the merits of the Complaint ("Respondents Submission") supported by materials briefly identified in Schedule 2 to this decision.

Premises Owner Submission dated 24 April 2020

13. On 24 April 2020, the Premises Owner made submissions through its solicitors addressing, *inter alia*:
 - The Premises Owner's ownership of the Hotel property for over 25 years;
 - The commercial lease arrangements for the Hotel and its current operation;
 - The lack of any previous disciplinary complaint in relation to the Premises;
 - The alleged breaches of the legislation;
 - The Premises Owner's lack of direct knowledge of the facts, matters and circumstances that are the subject of this Complaint.
14. The Premises Owner advises that it has no association with Feros Group other than the relationship of landlord and tenant.

Submission in Reply from the Complainant dated 21 May 2020

15. The Complainant replied to the Respondents' Submission in letter dated 21 May 2020 ("Complainant Reply Submission"), accompanied by a copy of the Request for Particulars and Response to Particulars.

Respondents' Rejoinder Submission dated 25 May 2020

16. In a four-page letter dated 25 May 2020, the Respondents provided through their solicitor a "rejoinder" to the Complainant Reply Submission ("Respondents Rejoinder"). This was accompanied by an extract from paragraph 14 of the *Responsible Gambling Expert Independent Report Into An Incident At Taren Point Hotel (the "Hotel")* prepared by a consultant commissioned by the Respondents, Leigh Barrett and Associates (Annexure 4 to the Respondents Submission) and a letter of instruction to Mr Barrett dated 18 March 2020.

STANDARD OF PROOF

17. A disciplinary complaint under Part 6A of the Act is an administrative matter and findings of fact are made on the civil standard of proof. However, in accordance with the principle enunciated by the High Court of Australia in *Briginshaw v Briginshaw* (1938) 60 CLR 336, the seriousness of the allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are matters that are relevant to deciding whether an allegation has been proved, on the balance of probabilities.

Findings on Background Contentions

18. The Complainant makes a number of contentions about the Hotel and the relevant legislation at paragraphs 1 to 5 of the Complaint, which are referred to and relied upon in support of the three Grounds discussed below.
19. Evidence provided with the Complaint [a OneGov licence record for the Hotel as at 29 November 2019 ("Licence Record")] establishes, as contended in paragraphs 1 and 2 of the Complaint that:
 - The Hotel is authorised to sell liquor from premises located in Miranda under a "full" hotel liquor licence LIQH400105924.
 - The Hotel has 24 approved gaming machines.
 - Feros Group (ABN 23 608 006 060) (a company whose website states currently owns and operates venues under seven liquor licences in NSW) is recorded as the licensed business owner since 2 December 2016.
 - Mr Hughes is recorded as the licensee of the Hotel, having commenced that role on 27 November 2017.
20. The Authority accepts the uncontested information in the Complaint that the Hotel operates a gaming room with 24 approved gaming machines. Paragraph 10 of the Respondents' Submission establishes that the Hotel services the "north eastern parts of the Sutherland Shire" and includes a bistro area with 200 seats, lounge/garden bar seating 150 serviced by an adjoining bar and food truck, regular live music offering, a drive-in bottle shop, a TAB function room, sports/public bar, lounge bar and the aforementioned gaming room.

21. The Authority accepts the Respondents' Submission that the Hotel is operated by the Feros Group (which operates a number of hotels across Sydney) and in 2019, the Australian Hotels Association awarded the Feros Group the accolade of its National "Group Operator of the Year" which is an award given on the basis of a range of criteria including, first and foremost, a commitment to excellence in customer service.
22. The Authority accepts the submissions in paragraphs 3 and 4 of the Complaint that, at the time of the alleged conduct that is the subject of the Complaint (13 February 2019), the 2010 Regulation was in force. The Authority notes that although the 2010 Regulation was repealed effective 1 September 2019 and replaced by the *Gaming Machines Regulation 2019 (NSW)* ("2019 Regulation"), clause 47(a) of the 2019 Regulation is similarly worded to the former clause 55(a) of the 2010 Regulation.
23. The Complainant alleges at paragraphs 4 and 5 that the licensee's conduct contravened clause 55 of the 2010 Regulation in that the licensee engaged in conduct that encouraged the misuse and abuse of gaming machines. The Complainant submits that a lack of action or intervention by the business owner, Feros Group, facilitated or enabled the licensee's conduct.

Findings on Complainant Common Facts

24. At paragraphs 6 to 46 of the Complaint, the Complainant makes a number of factual contentions that are relied upon in support of the Grounds.
25. Having reviewed the Complainant's evidence, the Authority makes the following findings on paragraphs 7 to 14:
 - On 15 February 2019, ██████████ complained to L&GNSW that while playing the gaming machines at the Hotel between 10:30 am and 8:00 pm on 13 February 2019 three to four staff members – including a manager – supplied him with eight (8) to ten (10) free alcoholic drinks to encourage him to continue to gamble on the Hotel's gaming machines.
 - On 27 February 2019, ██████████ provided more detailed information to L&GNSW inspectors ("Inspectors") in a sworn affidavit.
 - Inspectors found ██████████ version of events to be "factual, consistent, reliable and credible".
 - ██████████ is a 49-year-old resident of Miranda, previously employed as a member of the NSW Police Force (having served 20 years) and having recently worked as a Lifeguard. On ██████████ account, he visited the Hotel about twice a year to play its gaming machines
 - During the course of ██████████ visit to the Hotel on 13 February 2019 there were, at various times, four staff on duty who were attending to patrons in the gaming room. When ██████████ first arrived, this included Ms Madison Fooks, a gaming room attendant, and Mr Tomislav Pelikan, the Hotel's General Manager.
 - Their shifts concluded at 6:00pm and 5:00pm respectively, whereupon Ms Fooks was replaced by Ms Te-Arna McGhie, another gaming room attendant and Mr Pelikan was relieved by Mr Hughes, the licensee. Ms McGhie's and Mr Hughes' shifts concluded at 3:15 am and 3:30 am respectively the following morning.

- [REDACTED] affirmed that he arrived at the Hotel between 10:00 am and 10:30 am and left between 8:30 pm and 9:00 pm. During this time, [REDACTED] alleges Hotel staff supplied him with numerous free schooners of full-strength beer (Carlton Draught), causing him to become intoxicated and impacting his judgement. He alleges this led to him losing \$3,000 on gaming machines at the Hotel that day.
26. Paragraph 12 of the Complaint refers to [REDACTED] claim that the only reason he remained at the Hotel and continued to gamble was that he was supplied free liquor to the point of intoxication. He further claims that had he not been provided with these free drinks and became intoxicated, he would have ceased gambling much earlier and returned home at a “decent time” that day.
27. The Authority notes that these are [REDACTED] contentions, as set out in his sworn affidavit. The Authority has considered the Respondents’ submissions on why this evidence should not be accepted (discussed below under Ground 1), but is satisfied that the provision of free liquor was an important factor in [REDACTED] staying at the Hotel and continuing to gamble for the amount of time that he did.
28. The Authority further accepts, as contended at paragraphs 13 and 14 of the Complaint that this information from [REDACTED] prompted L&GNSW to investigate the gaming room practices at the Hotel and Mr Hughes, Mr Steve Rogers (Feros Group Gaming Manager), Mr Christopher Feros (Chief Executive Officer and director of Feros Group) and Mr Simon Johnston declined to be interviewed by Inspectors.
29. At this point it is convenient to note the Respondents’ contentions, at pages 3 to 5 of the Respondents’ Submission, with regard to the supply of free liquor to patrons:
- The Hotel’s marketing involves “offering discounts and free items”, particularly to members of the Feros Rewards loyalty program who are entitled to: discounts on bar purchases; discounts on food purchases; bottle shop specials for members only; \$25 credit on their birthday, redeemable in the bars or bistro; and loyalty points on bar purchases, redeemable against future purchases at the bar.
 - The playing of gaming machines at Feros Group hotels *does not* entitle members to rewards points redeemable for food and beverages.
 - The Woolworths/ALH Rewards Programme known as "Monty's Rewards", would have entitled [REDACTED] to \$73 worth of food and beverages for the turnover he generated at the Hotel on 13 February 2019, which is more than the value of the complimentary drinks served to him at the Hotel. Such points rewards schemes, linked to gaming machine play, are lawful under the Act.
 - At the time of the relevant events, the manager on duty had a “discretion” (which he could delegate to staff under his supervision) to offer a “publican’s shout”, being the provisions of free alcoholic drinks to patrons, as well as free food, soft drinks, coffee and sweets.
 - Any free or discounted items given by a manager on duty (or his delegate) to patrons were fully documented, with the free items entered into one of several special “tabs” set up in the Hotel's point of sale system. Free liquor offered by the manager would generally be included in the “F&B Promo” tab.

- The quantity and value of the free items given by a manager and their staff could be checked on a daily basis by the Hotel's General Manager (Mr Pelikan) and more occasionally overseen by the Ferros Group Chief Operating Officer (Mr Johnston), to ensure that the quantities given away were reasonable. Mr Pelikan's evidence is that the retail value of those promotional giveaways was generally in the order of around 2% of food and beverage turnover. On the day in question, the promotional tab was \$335, out of a total food and beverage turnover of approximately \$15,000.
 - A criterion of "reasonableness" effectively controlled the exercise of the discretion to provide free food, liquor and other drinks to patrons. Both Ms Fooks and Mr Pelikan said as much in their L&GNSW interviews.
 - The discretion was exercised across all parts of the Hotel. In their interviews, all Hotel staff were adamant that alcoholic drinks were "shouted" to patrons in all parts of the Hotel.
 - Within the dedicated gaming room at the Hotel, patrons can access free soft drinks, coffee and cake, lollies, chips and nuts.
 - The manager on duty has the same discretion to offer complimentary alcoholic drinks to patrons in the gaming room as he/she has to offer complimentary alcoholic drinks to people in other parts of the hotel.
30. The Authority accepts the Respondents' information on its marketing to members of its loyalty program and that this program does not link gaming machine play with rewards points, which occurs at some other licensed venues.
31. The Authority further accepts that the Hotel permitted its employees to exercise their own discretion in providing free liquor to patrons and this included gaming machine patrons.
32. As discussed below, the Authority does not accept that there was any meaningful control of this discretion to ensure compliance with clause 55(a) of the Regulation.

Findings on ██████ movements and gambling activity on 13 February 2019

33. Paragraphs 15 to 27 of the Complaint make more specific contentions regarding ██████ movements and gambling activity on 13 February 2019.
34. While the Authority did not have before it a full copy of the CCTV footage of the day in question, it did have, and has considered, edited footage and a L&GNSW File Note dated 12 March 2019 – which details that agency's analysis of the CCTV footage. The Authority is satisfied, on the information provided in the CCTV Review, and the further supporting evidence or material noted below, that ██████
- Attended the Hotel at 10:09 am and withdrew \$1,000 in cash in two \$500 withdrawals.
 - Gambled on the approved gaming machine 'Peacock Princess', which has the serial number XAW909616 and gaming machine identification number GMID484814.
 - Gambled on that machine from around 10:10 am until 10:23 am, and again from around 11:49 am until 8:54 pm.

- Between 10:10 am and 10:23 am, incurred a loss of \$1,000.
 - Left the Hotel around 10:23 am and returned home to collect an additional \$2,000 in cash before returning to the venue at 11:49 am when he resumed gambling on the same gaming machine.
 - Did not use any other facilities at the Hotel on that day, apart from the restroom for a total period of around 15 minutes, during this subsequent gambling session that lasted until 8:54 pm.
35. The CCTV Review establishes that ██████ gambled on the same “Peacock Princess” gaming machine for a combined period of not less than nine hours.
36. The Authority further accepts the contention in paragraph 18 that a review of CMS data performed by L&GNSW establishes that ██████ total gaming turnover at the Hotel that day was **\$78,143.94** while the average turnover of all of the Hotel’s machines during the same period that ██████ was playing was **\$7,171.18** per machine. As contended, ██████ turnover was almost eleven times the average of all other machines that day.
37. In reaching findings on ██████ movements and gambling activities on 13 February 2019, the Authority has had regard to pages 5-8 of the Respondents’ Submission, when they describe the events of that day. Briefly, the Authority accepts the Respondents’ contentions that:
- The Hotel is a member of the Australian Hotels Association *GameCare* Program and participates in a multi-venue self-exclusion program.
 - Staff on duty that day were familiar with the Hotel’s self-exclusion list and ██████ ██████ who was not known to them, was not on that list.
 - ██████ had previously attended the Hotel only a couple of times a year and was not a member of the Hotel’s loyalty scheme.
 - Staff did not observe ██████ going to the ATM to withdraw money.
 - After returning to the gaming room at around 11:48 am [the Authority notes that the CCTV Review records the time stamp as 11.48.09] and resuming gaming play, the evidence shows that ██████ deposited the following amounts into the note acceptor of the gaming machine by the following times: \$900 at 11:59 am; \$500 at 12:14 pm; \$600 at 12:44 pm.
 - No further amounts were deposited by ██████ into any of the Hotel’s gaming machines at any time thereafter.
 - At around the time that he made the last of these deposits, ██████ had a credit of \$2,410 on the machine he was playing.
 - Staff explained in their statements that accompanied the Respondents’ submission, that the description “betting big” in the interviews with Inspectors was a reference to the fact that the bet amounts of \$10 per hit ██████ was playing, were the maximum amounts allowable by the machines. Staff advise in subsequent statements that there is nothing unusual or uncommon about patrons betting \$10 hits at the Hotel.

- The Complaint material indicates that ██████ was credited with a large number of wins throughout his session: \$3,626 (12:29 pm); \$3,616 (2:29 pm); \$2,642 (3:29 pm); \$3,352 (4:29 pm); \$5,778 (6:44 pm) and \$2,378 (8:29 pm).
38. At paragraph 35 of the Respondents' Submission it is contended that the records show that across ██████ two playing sessions that day, ██████ recorded total wins of **\$70,895**, generating a total "turnover" of **\$73,895**, which resulted in a net loss of **\$3,000**. ██████ accounted for 30.4% of the Hotel's total gaming machine turnover that day. His outlay (\$3,000) represented about 1.2% of the total day's turnover. They contend that a "large number of wins" fuelled this long gaming session and a relatively large turnover.
39. The Authority accepts that ██████ early wins were one likely factor that fuelled his further gambling – but this does not discount the role that the substantial supply of free liquor played to keep ██████ on the premises and continuing to gamble. The Authority's findings on the role of this free liquor as an inducement to gamble are discussed below in Ground 1.

Findings on Supply of Free Liquor to ██████

40. The Authority makes the following findings on the allegations in paragraphs 19 to 27 of the Complaint:
- ██████ was supplied with and consumed on the Premises a total of ten (10) complimentary schooners of full-strength beer during his gambling session.
 - Mr Pelikan supplied liquor to ██████ at around 2:41 pm.
 - Ms Fooks supplied liquor to ██████ at around 3:01 pm, 3:18 pm, 3:40 pm, 4:50 pm, 5:20 pm and 6:09.
41. Ms McGhie supplied liquor to ██████ at 7:19 pm, 8:19 pm and 8:44 pm.
42. The Respondents address the contention at paragraph 19 that ██████ was not offered, and did not consume, any food, with analysis that the CCTV Review records ██████ being offered complimentary food on a number of occasions. Furthermore, in ██████ affidavit, he acknowledges (at paragraph 24) that he "hadn't eaten any food although staff members would also walk through the gaming room offering hot finger food".
43. The Authority accepts that some free hot food was made available to gaming room patrons, although ██████ did not eat it.
44. The Authority further accepts the contention at paragraph 20 that in response to a Notice to Produce issued by L&GNSW Inspectors, Mr Hughes provided a list of eight "promotional tabs" that the Hotel used to register the supply of all complimentary or discounted liquor, food and non-alcoholic products to patrons.
45. This list displayed itemised records, with almost all complimentary liquor supplied to patrons on 13 February 2019 recorded under a single tab on a spreadsheet entitled "*Promo Food and Drink – F and B Promo*". Only two (2) other complimentary liquor products (being a bottle of wine and a schooner of beer) were registered under a separate and unrelated promotional tab.
46. The Itemised Deductions Register and Itemised Complimentary Register indicate that under the "*Promo Food and Drink – F and B Promo*" tab, thirty-four (34) complimentary alcoholic drinks were recorded as having been supplied to patrons on 13 February 2019.

Of these, twenty-six (26) were recorded by Ms Fooks and Ms McGhie and two (2) recorded by Mr Pelikan.

47. The Complainant contends at paragraph 21 that since Ms Fooks and Ms McGhie were employed as gaming machine attendants, it is highly likely that those twenty-six (26) drinks were supplied to *gaming* patrons.
48. At page 17 of the Respondents' Submission, the Respondents contend that on the day in question 36 complimentary alcoholic beverages were served to all patrons of the Hotel (including a bottle of wine from the Garden Bar till). Ten of those were supplied to [REDACTED]. The Respondents refer to questions 134 and 135 of the Fooks Interview (which the Authority notes are actually at questions 314 and 315) where Ms Fooks said that [REDACTED] was given more free drinks than anyone else because "he was longer in the, in the hotel more than anyone else". The Respondents further submit that an analysis of the "F&B Promo" spreadsheet for the 13 February 2019 shows that 14 of the 36 drinks served to patrons that day were served from the "gaming till". 22 drinks were served from the Sports Bar till.
49. The Authority is satisfied, on the evidence before it, that of the thirty-four (34) complimentary alcoholic drinks listed under the "F & B promo" tab, 22 were rung up through the Sports Bar while 12 were rung up through the Gaming till. The two alcoholic drinks recorded under the "PUR – CONSUM BAR Drink Promo" tab indicate that one bottle of wine was also rung up on the Garden Bar till and a Tooheys New beer was rung up on the Sports Bar till.
50. The Itemised Complimentary Register establishes that the free alcohol provided to [REDACTED] on 13 February 2019 were rung up by staff using both the Sports Bar till and the Gaming till. The Authority accepts the inference invited by the Complainant that since Ms Fooks and Ms McGhie were employed as *gaming machine attendants*, it is highly likely that those twenty-six (26) alcoholic drinks were actually supplied to *gaming* patrons.
51. The Authority accepts the contention at paragraph 22 of the Complaint that [REDACTED] initially declined a complimentary drink from Ms Fooks when he first started gambling. The evidence establishes that [REDACTED] was later approached by Mr Pelikan at 2:40 pm where he eventually accepted his first complimentary drink.
52. The Authority further notes that during his interview, Mr Pelikan stated "I gave him a complimentary drink...I gave him his first drink that I know".
53. At paragraph 23 of the Complaint, the Complainant refers to questions 97 to 100 of the Fooks Interview where gaming room attendant Ms Fooks concedes that she supplied [REDACTED] with an additional six complimentary schooners of beer. The Authority finds that Ms Fooks supplied six (6) free beers to [REDACTED] after Mr Pelikan supplied the first one.
54. At paragraph 24 of the Complaint, the Complainant contends that Ms McGhie (who replaced Ms Fooks as the gaming room's sole gaming attendant at about 6:00 pm) accepted that she supplied [REDACTED] with an additional two (2) complimentary schooners of beer. The Authority accepts this on the basis of question 35 of the McGhie Interview, where Ms McGhie conceded supplying "approximately two that I can remember".

55. However, the Authority accepts the Complainant's clarification that CCTV footage records Ms McGhie actually supplying three (3) complimentary schooners to ██████████ which accords with the records in the Itemised Complimentary Register.
56. In conclusion, the Authority accepts the summary at paragraph 25 of the Complaint that, on the basis of the above evidence, ██████████ was supplied with and consumed ten (10) complimentary schooners on the Premises during a period of around six hours and ten minutes, across a total day of gambling that lasted approximately nine hours.
57. Paragraph 26 of the Complaint recounts ██████████ sworn contention that it was the supply of free liquor that caused him to not return home sooner and not halt his gambling session sooner than he did. ██████████ also contends that it was out of character to "drink anywhere near that much" and out of character for him to stay back that late and lose that much money. ██████████ also recounts asking other gaming patrons for cigarettes and stating that this was something that he would normally not do.
58. At paragraph 101 of the Respondents' Submission, the Respondents refer to evidence of Hotel staff that it is not unusual for gaming patrons to exchange cigarettes, or to offer a cigarette to a fellow patron. Ms Fooks describes this as a courtesy that she regularly observes among smokers. The Respondents submit that it could not be known by the staff members what ██████████ would normally do, as they did not know ██████████
59. The Authority accepts that the Hotel's staff were not familiar with ██████████ or his usual behaviour when gambling, since he only visited the Hotel a few times a year. The Authority further accepts that Hotel staff observe smokers sharing cigarettes in the gaming room.
60. Nevertheless, the Authority accepts ██████████ sworn statement that asking other patrons for cigarettes was not behaviour that he would normally engage in.
61. The Complainant further contends at paragraph 27 that, by reason of this prolonged gambling session, ██████████ wife attended the Hotel and was observed on CCTV footage confronting ██████████ in the gaming room at around 8:13 pm and 8:14 pm. ██████████ affirmed that this was the first time that his wife has ever gone out looking for him by reason of him not being home at a reasonable time without contacting her.
62. At page 18 of the Respondents' Submission, they counter that "[n]othing of that kind is observable on the CCTV footage" and ██████████ own affidavit states "My wife walked in about 8.15 pm...I don't think she spoke to me. She looked at me. I looked at her and she turned around and left". The Respondents refer to CCTV footage provided with the Respondents Submission and contend that there was nothing in the manner of a confrontation or conduct that would have conveyed to staff that the female who entered was the wife of the patron or that she had any concerns about his gambling.
63. The Respondents further submit that the staff on duty (Ms McGhie and Mr Hughes) say that they did not see ██████████ with any female and they were at no time approached by any family member of his.
64. The Authority is satisfied that ██████████ wife did enter the Premise at around 8:13 pm to 8:15 pm looking for ██████████. The interaction involved only a brief period of looking at each other. The Authority also accepts ██████████ statements that this was the first time that his wife had ever "gone out looking for" him by reason of him not being home at a reasonable time without contacting her.

65. As the exchange was brief and involved mere glances (according to ██████ the Authority accepts the Respondents' contention that there was nothing in this conduct that would have alerted staff this was ██████ wife, who had concerns with his gambling.
66. The Authority accepts the following further contentions made by the Respondents at pages 7-10 of the Respondents' Submission:
- Whilst in the gaming room, ██████ was well behaved, showing no signs of anxiety or distress. ██████ appeared no different in dress or appearance to other patrons, made no complaints and did nothing to draw attention to himself.
 - ██████ did not take up the offer of a drink in the morning session by Ms Fooks.
 - ██████ was supplied with his first alcoholic drink more than 2 hours after he made his last cash deposit into the note acceptors of the gaming machine (at 12.44 pm) and more than 4 ½ hours after first playing a gaming machine. After ██████ received his first drink, the staff members, in exercise of the "shout" discretion, offered ██████ a further beer, at various intervals, which ██████ accepted.
 - At that time, it was not the Hotel's practice to keep records of what free drinks were being supplied to individual patrons. Staff did record the total numbers of free drinks provided to all patrons by staff, the nature and value of each drink, and from which till each drink was provided.
 - Ms Fooks mistakenly thought she had only given ██████ two (2) free drinks. The service of the six (6) drinks by Ms Fooks to ██████ was "fairly evenly spread over a little more than 3 hours".
 - Ms McGhie thought she supplied ██████ with two (2) drinks after she came on duty at around 6:00 pm, however, Ms McGhie supplied 3 schooners to ██████
 - ██████ was "periodically offered" free food. However, he did not accept that food.
 - All staff stated in their interviews with Inspectors that ██████ displayed no signs of intoxication while he was at the Hotel.
 - CCTV Footage depicts ██████ leaving the Hotel and shows him, leaving his seat steadily, placing his glass on a table and then steadily walking out of the room. There is nothing in his balance, co-ordination or behaviour evident on that CCTV footage to suggest that he was noticeably affected by alcohol. The footage corroborates the staff assessments that he was not displaying any noticeable signs of intoxication.
67. The Authority accepts the Respondents' contentions at page 10 of the Respondents' Submission that shortly after these events, the Chief Operating Officer of Feros Group, Mr Simon Johnston, took action to prevent patrons being "shouted" any more than one (1) free drink per person per day and to document all alcoholic drinks "shouted" to individual patrons. Both Ms Fooks and Ms McGhie referred to this new policy at the time of their interviews in early March 2019.

68. The Authority further accepts that the CCTV Footage does not provide any clear signs of intoxication in respect of [REDACTED] and the Complaint did not make any claims in relation to breaches of the intoxication provisions of the Liquor Act.
69. Noting the concession at Page 9 of the Respondents' Submission on the actual supply of free liquor, the Authority has found that [REDACTED] was served and consumed ten (10) schooners of Carlton Draught beer over around 6 hours with one (1) drink provided by Mr Pelikan, six (6) drinks provided by Ms Fooks and three (3) drinks provided by Ms McGhie.
70. The Authority does not find it credible for the Respondents or its staff to claim, as they do in page 9 of the Respondents' Submission, that they had "no intent or purpose" of inducing [REDACTED] to gamble by providing him with that many free beers over the course of the day.
71. It is contrary to logic and common experience to assert that hotel staff would not appreciate that supplying a free alcoholic drink to a patron would at least induce them to remain on the premises. Liquor is a desirable product and the purpose of supplying free liquor is to at least ensure that the patron stays on the premises to consume it. Importantly, staff were here supplying the free liquor to a patron who *was only apparently interested in the hotel's gaming machine services* (having gambled for some four hours before being supplied with the first drink). It is not credible for the Respondents to claim that staff did not have an intent or purpose of inducing or encouraging this patron to remain in the gaming room and continue to play the gaming machines.
72. This is particularly the case with respect to staff members, Ms Fooks and Ms McGhie, who supplied this gambler with 6 and 3 drinks each. Staff must have known that *even one drink* supplied to a person gambling may induce a gaming machine player to keep doing what they are doing while several drinks will have a significant cumulative intoxicating effect, whether or not they reach a state of unlawful intoxication requiring removal.
73. The Authority does not give any weight to the submission that [REDACTED] had already fed a large amount of cash into the machines by the time he was supplied with his first drink. A patron may be induced to gamble, or gamble longer, even if they already have credits on the machine.

Findings on Staff Interactions with, and Assessments of, [REDACTED]

74. As contended at paragraph 28 of the Complaint, L&GNSW publishes a number of resources concerning problem gambling, including resources that are provided as part of the NSW Responsible Conduct of Gambling ("RCG") course.
75. As described in L&GNSW's published *RCG Student Course Notes* (published on the L&GNSW website), the indicators of problem gambling relevantly include:
1. gambling for three hours or more without a break of 15 minutes or longer;
 2. gambling so intensely that the person barely reacts to what is going on around them;
 3. betting \$2.50 or more per spin most of the time;
 4. spending more than \$300 in one session of gambling;
 5. gambling right through usual lunch break or dinner time;
 6. trying obsessively to win on a particular machine;
 7. starting gambling when the venue is opening;

8. avoiding contact, communicates very little with anyone else;
 9. staying on to gamble while friends leave the venue;
 10. leaving the venue to find money to continue gambling; and
 11. gambling after having drunk a lot of alcohol.
76. The Complainant contends that ██████ displayed all of these signs, and most (if not all) should have been clearly visible to staff.
77. At page 18 of the Respondents' Submission, the Respondents counter that ██████ was not known to staff on duty and did not appear on any self-exclusion register. They further take issue with the staff being judged against a 2018 document that was published "well after" these staff members obtained their RCG qualifications.
78. The Respondents contend at pages 19-20 of the Respondents' Submission that:
- The Complainant is "plainly wrong" about the alleged signs of problem gambling that ██████ displayed on the Premises.
 - ██████ gambled for approximately 4 hours before having his first drink. All of his outlay was made well before having his first drink.
 - The evidence establishes that there were significant interactions between staff and ██████ and between ██████ and other patrons.
 - Mr Leigh Barrett, a problem gambling expert commissioned by the Respondents to prepare a report, and who viewed the CCTV footage, notes ██████ having 39 interactions with staff and other patrons at the Hotel. The Investigators themselves identified a number of those interactions in their interviews with staff.
 - ██████ spent the vast bulk of his time in the gaming room alone (interacting intermittently with staff and other patrons) and only fleetingly with some friends who passed through the room at around 8.00 pm.
 - The Complainant oversimplifies the indicators of problem gambling in that a single session of more than 3 hours does not, of itself, amount to a sign of problem gambling.
 - Staff have provided evidence that it is not uncommon for people to spend more than 3 hours on a machine, especially if they are winning.
 - Hotel staff were unable to judge whether ██████ bets "bigger" amounts most of the time that he played gaming machines, as they had no prior experience of ██████ to compare.
 - When staff refer to him betting "big" they refer to the individual bet amounts that ██████ was "hitting" in that his \$10 hits represented the maximum permissible amount. Staff also say that it is not uncommon to see people who are max hitters or betting big.
 - Staff noticed that ██████ was playing his credits up and down during the course of his session, but no staff were aware of the amounts of money ██████ put into the machine. As Mr Pelikan indicated, for all that the staff knew, ██████ could have "put 10 dollars in, [won] five grand and play[ed] that money all day long, you know, up and down, up and down, you know, so you can't judge".

- Evidence provided by the Respondent, noting the list of prize cheques paid to gaming patrons, shows that gaming credits of several thousand dollars are not uncommon.
79. The Authority accepts that [REDACTED] was present on the Premises for no less than nine hours in total, and that all relevant staff noted that he was “betting big” and betting with a lot of money, As found above, [REDACTED] overall turnover was about 11 times the average for the day at \$78,143.94. [REDACTED] played for the entire time on the same one machine, even upon returning to the venue after leaving to find money in the morning, to continue gambling.
 80. The Authority is satisfied that it should have been apparent to staff responsible for the gaming machine room that [REDACTED] was demonstrating the first, third, fourth, fifth and eleventh of the problem gambling indicia specified by the Complainant.
 81. The Authority accepts the contention at a paragraph 30 of the Complaint that Mr Pelikan, Ms McGhie and Ms Fooks all hold valid RCG endorsements on their respective NSW Competency Cards. The Authority accepts that the training provided to persons with this endorsement should equip them with the knowledge and skills to address apparent harms and risks associated with irresponsible gambling on gaming machines.
 82. Notwithstanding that the RCG Course Notes are dated February 2018 and post-date the years in which Mr Pelikan, Ms Fooks and Ms McGhie undertook training, the Authority is satisfied that these staff members had all undertaken relevant RCG training, with Ms McGhie stating that her training covered a topic on problem gambling and Mr Pelikan stating that he was taught to identify problem gambling signs.
 83. The Authority finds that although [REDACTED] may not have been exhibiting signs of being anxious, distressed or angry - at the bare minimum staff should have displayed the skills to notice the length of time [REDACTED] had spent at the one gaming machine without taking a break or eating any food, and the amount of alcohol consumed.
 84. The Authority accepts the broad contentions in paragraph 31 of the Complaint that during their respective interviews staff were not able to articulate general signs of problem gambling. While all claimed to have assessed [REDACTED] for intoxication, none claimed to have conducted a thorough assessment of his gambling.
 85. The Authority makes the following findings:
 - As contended in paragraph 32 of the complaint, Mr Pelikan told Inspectors that he interacted with [REDACTED] during his gambling session and relayed his observation of the amount of money that [REDACTED] was betting. However, Mr Pelikan did not make any other gambling-related assessment. The Authority notes that at paragraph 13 of the Pelikan Statement, Mr Pelikan advised that through his RCG training, he had been taught to identify problem gambling signs, such as a patron being anxious, distressed or angry and he “did not notice any of these signs in this patron”. Mr Pelikan at paragraphs 11 and 12 of the Pelikan Statement indicates that often people play for several hours especially if they have been winning and they are “riding their winnings”, they “definitely play for longer” due to the “excitement factor” and this “often creates a buzz” among other patrons who “then stay and play longer” as there is “that ‘energy’ in the room”.

- As contended in paragraph 33 of the Complaint, Mr Pelikan appears to have had ample time to consider ██████ gambling play, and whether it was of concern in that CCTV footage establishes that Mr Pelikan interacted with patrons in the Gaming Room between 6:04 pm and 6:40 pm even after his shift ended at 5:00 pm. At 6:35 pm and 6:40 pm, Mr Pelikan is observed conversing directly with ██████ as he continued gambling.
 - As contended in paragraph 34, Ms Fooks had also observed what amounts to signs of problem gambling (██████ sitting at the same machine all day, not moving and not really talking to any other patrons), without recognising it as such. These observations occurred during reasonably frequent interactions with ██████ either when supplying him a complimentary beer or walking past to determine whether he had an empty glass. The Authority notes that at paragraphs 13 to 17 of the Fooks Statement, Ms Fooks states that it was not unusual for patrons to remain in the venue for hours even playing through her whole shift and that she did not observe signs of problem gambling in ██████ Ms Fooks contends that ██████ did not show signs of anxiety, distress, anger, poor grooming, poor hygiene, asking others for money, betting manically, being rude or making complaints. At paragraph 22 of the Fooks Statement, Ms Fooks states that she does not believe that ██████ showed any signs of problem gambling and she had no reason to apprehend that he was a problem gambler.
 - The Complainant contends in paragraph 35 of the Complaint, Ms McGhie (at question 90 of her interview) told Inspectors that she did not have any concerns regarding ██████ gambling activity. The Complainant states that this was despite her knowledge that he had been gambling for an extended period of time, that he was placing large bets and that he had been supplied complimentary liquor by Ms Fooks prior to commencing her shift. The Authority notes that at question 90, Ms McGhie is actually recorded stating “No” to the question “When you – did you raise any – any concerns or queries with management after you gave the patron that second drink that you gave him?”. Questions 49 to 52 of the McGhie Interview indicate that Ms Fooks had informed Ms McGhie that ██████ had been “in for a while betting big” and that he has had complimentary drinks. The Authority acknowledges Ms McGhie’s statements in the McGhie Statement at paragraph 14 where she states that she did not notice signs of problem gambling in ██████ as there were no signs of anxiety, poor grooming, asking for money or running to the ATM. At paragraph 15, Ms McGhie describes ██████ as playing the machine at a regular pace the same as others, he was not hitting the machine fast, slapping the machine or complaining about his losses.
86. As contended in paragraph 36, the evidence demonstrates that all three staff members interacted with ██████ in some way. During these interactions, assessments appear to have focused on ██████ level of intoxication, while a commensurate gambling-related assessment was not completed at any time. Nevertheless, these staff members did identify what can be considered signs of problem gambling, yet failed to recognise them as such, or to act upon them.
87. The Authority notes that the Respondents engaged Mr Leigh Barrett to review the evidence and prepare a report as to whether the staff members ought to have identified ██████ as a problem gambler, in the circumstances of this Hotel on 13 February 2019.

Mr Barrett was also engaged to review the training provided by the Feros Group to its staff members with regard to RCG and to opine as to whether that training is adequate. The Authority notes Mr Barrett's findings, as cited at pages 20 to 21 Respondents Submission:

- Only one of the 32 potential indicators of problem gambling was reasonably observable by the Hotel staff in respect of [REDACTED]. That is well short of the 10 indicators that must be present before a staff member can conclude that a person may be a problem gambler.
- A trained staff member in the position of these Hotel staff would not be expected to have identified [REDACTED] as a problem gambler.
- [REDACTED] did not show any of the signs described in the 3 most significant categories identified by the literature – social behaviour (poor hygiene, decline in personal grooming, concealing presence at venue, avoiding contact or conversation with others, rudeness to Hotel staff); emotional responses (such as distress, anger); irrational and superstitious behaviour (such as making complaints to staff about losing money, etc).

88. The Respondents further contend that:

- In their statements, all of the staff refer to signs of problem gambling that they have been trained to look for in patrons. Those signs largely correlate to the signs referred to above.
- [REDACTED] betting the maximum amount per hit and the fact that he was at the Hotel for a number of hours is not enough for a staff member to conclude that a person may be a problem gambler.
- All of the staff members say that it is not uncommon for people to be playing \$10 hits on the gaming machines and that it is also not uncommon for people to occasionally play gaming machines for several hours on end.
- [REDACTED] behaviour was not such that a reasonable, RCG-trained hotel worker would have identified [REDACTED] as a "problem gambler".
- Reference to the RCG Course Notes supports Mr Barrett's conclusions. At page 58 of those notes, there is a reference to the difficulty of defining "problem gambling". The most recent and definitive definition appears to be that of the Productivity Commission (2010) which defined problem gambling as:
"A cluster of significant harms and behaviours that includes social and psychiatric issues. It can be hard to know whether or not gambling is becoming a serious problem in someone's life."
- At page 62 of the RCG Course Notes [the Authority considers this to be a reference to page 63], it is specifically noted that "it can be hard to know whether or not gambling is becoming a serious problem in someone's life". The Respondents observe that it is necessarily even more difficult for staff to make such an assessment in relation to a patron who is not known to them, as was the case with [REDACTED]
- At page 59, the RCG Course Notes set out what is described as a "list of behaviours that a person who is experiencing problematic gambling during their

play may exhibit". There then follows a list of 52 indicators. The Complaint document only refers to 11 of those indicators. As Mr Barrett's analysis shows, quite a number of indicators were not present in respect of [REDACTED]

89. While both the Complainant and Respondents have devoted a good deal of submissions to whether [REDACTED] was exhibiting signs of problem gambling, the Grounds of this Complaint concern the alleged inducement of gambling through the supply of free liquor and conduct that encourages, or is likely to encourage, the misuse and abuse of gambling. Those Grounds do not turn on whether or not [REDACTED] is a "problem gambler" according to established definitions in the literature.
90. The Authority accepts that hotel staff were not familiar with [REDACTED] on 13 February 2019 but they clearly knew he was betting the maximum amount per hit and remaining at the one gaming machine for a lengthy period of time.
91. [REDACTED] was also exhibiting some observable behaviours that are associated with problem gambling, including gambling for three hours or more without a break of 15 minutes or longer; betting \$2.50 or more per spin most of the time; spending more than \$300 in one session of gambling; gambling through the usual lunch break or dinner time; gambling after having consumed a lot of alcohol.
92. These behaviours, the length of his gambling session and his sole focus on gaming machines that day were sufficient matters to alert Hotel staff to the risk that supplying liquor, let alone multiple drinks, may induce him to continue gambling or be likely to encourage the misuse or abuse of gambling. Nevertheless, staff instead chose to continue to exercise their discretion to "shout" [REDACTED] free liquor.

Findings on Hotel policies, procedures and staff training

93. At paragraph 37 of the Complaint it is contended that all staff employed at the Hotel are required to complete a set of relevant online modules in their training. Feros Group contracts Allara Learning, which provides an electronic learning system for staff to complete a tailored training induction package relating to their duties at the Hotel.
94. The Authority accepts that a review by L&GNSW of this package identified seven training modules which staff were required to complete, three of which are relevant to this Complaint:
 - "Feros Hotel Group Induction"
 - "RCG Recap (NSW)" and
 - "RSA Recap (NSW)",collectively referred to as "Training Review").
95. The Training Review establishes the contention in paragraph 38 that the "Feros Hotel Group Induction" module consisted of 21 read-only slides covering the Feros Group's organisational structure, its expectations of employees and the company's values, with no information regarding problem gambling or the provision of complimentary goods or services to customers.
96. As contended in paragraph 39, The Training Review further establishes that the "RCG Recap (NSW)" module is delivered to the user by means of a virtual gaming room with clickable icons. The user is presented with a number of relevant scenarios and invited to

select the correct options. This training covers gaming signage, information requirements (problem gambling brochures etc.), payout requirements, location of cash dispensing facilities and minors in restricted areas.

97. However, of the 55 interactive slides and scenarios reviewed, only one interactive icon (consisting of five scenario-based questions) concerned the topic of problem gambling and specifically how to identify and interact with problem gamblers. This training does not cover the provision of complimentary products or services (including liquor) to patrons, whether gaming or otherwise.
98. At page 24 of the Respondents' Submission, the Respondents argue that the only legal requirement for the training of gaming room staff is the completion of the RCG course and the fact that Feros Group provides additional training can only be to its credit. The Respondents refer to Mr Barrett's observation that Feros Group requires all staff, including those not required by law (such as glass collectors and bar usefuls) to undertake RSA and RCG qualifications. In relation to the training modules, provided through Allara Pty Limited, Mr Barrett noted that the training was sufficiently robust to enable staff to respond to a range of unacceptable customer behaviours in the Hotel including those pertaining to problem gambling as described in the 2014 checklist.
99. The Training Review also establishes the contention at paragraph 40 of the Complaint that the "RSA Recap (NSW)" training module is delivered in the same manner as the "RCG Recap (NSW)" module and does not cover the supply of complimentary products and services (including liquor) to patrons, whether gaming or otherwise.
100. The Authority is satisfied that the Hotel provides training to all staff that exceeds minimum legislative requirements. However, despite this training, several staff on duty supplied multiple free drinks to ██████████ over the course of his gambling, which indicates that the training has not been effective, or has been compromised by a practice of staff shouting liquor to gamblers in their discretion.
101. The Authority accepts the contention in paragraph 41 of the Complaint that on 19 March 2019, in response to a Notice to Produce issued by L&GNSW requesting (among other things) a copy of the "Responsible Conduct of Gambling Management Plan" and relevant training documents, Mr Hughes produced a document entitled *Training Gaming Room Manual* ("Gaming Room Manual").
102. As contended in paragraph 42, this Manual links to a broader set of Feros Group human resource policies including the "Gaming Room Operations Policy". In addition to specifying that all staff must hold "a current RCG certificate" and complete the gaming training program, the document states that "[i]t is also our policy that gaming rooms are operated according to the Gaming Room Manual and that all standards are enforced". That is, the Gaming Room Manual is a formal business document that all staff must adhere to.
103. The Authority accepts the contention at paragraph 43 of the Complaint that the Feros Group's *Gaming Room Manual* explicitly states, at section 2.3 (page 10), that: "*All food and beverage in the gaming room is complimentary with the exception of alcohol*". Each page of the Manual includes, in a prominent footer, the company's aim "that all customers never have to leave their seats for service".

104. As submitted by the Complainant at paragraph 44, it is not a legislative requirement for Hotels to provide in-house RCG or gaming harm minimisation training to staff. They need only ensure that all staff involved in gaming room operations hold a valid RCG endorsement on their approved competency cards.
105. The Authority further accepts the submission at paragraph 45 that adequate training, policies and procedures nevertheless play an important part in the overall compliance framework of a hotel, by setting expectations and imparting information that would prevent offending against the Act, and educate staff on the purpose and objects of gaming legislation, particularly gambling harm minimisation.
106. At paragraph 46 of the Complaint it is contended that, despite the importance of such framework, the actions of Hotel staff and the evidence provided by Mr Pelikan indicate that Feros Group policies have not been adequately conveyed to staff.
107. The Authority accepts the Complainant's observation that according to the Gaming Room Manual, Mr Pelikan, as General Manager, would be responsible for supervising the Hotel's gaming operations and should be aware of the policies in place. The Authority further notes that in his interview Mr Pelikan stated that there is "no policy" around free or discounted liquor.
108. The Complainant takes this as evidence that Mr Pelikan was *not aware of the Hotel's actual policy*. However, the Respondents submit that section 2.3 conveys (and all relevant staff understood it to convey) that food and beverages *other than alcohol* must be offered on a complimentary basis in the gaming room. This is why, for example, free food could be seen being offered to patrons in the gaming room at approximately 3-hourly intervals on the CCTV footage. That is also why chips, lollies, nuts and cake are made additionally available for self-service in the gaming room.
109. The Respondents submit that the Complainant has misconstrued this part of the Manual and wrongfully asserted that the Feros Group does not apply its own policies that prohibit free liquor in the gaming room. In respect of the footer in the Gaming Room Manual the Respondents submit that:
 - the gaming room is the only room in the Hotel where waiter service is offered;
 - gaming rooms are appropriate settings for waiter service;
 - gaming machines come equipped with buttons whereby patrons can call for various different types of service, including food and drink service [Hughes Statement – paragraphs 13, 14];
 - the Feros Group prides itself on a culture of "service";
 - in the context of a gaming room (where patrons are seated and have buttons available to them to call for service to their seat), Feros Group regards the measure of good service as the ability of patrons to be able to call for food and beverage to be provided to them without having to leave their seat, if they so choose;
 - all that is conveyed in the footer of the Manual is that staff should promptly provide food and drinks to customers who desire that service.

110. The Authority notes that at paragraphs 12 to 20 of the Johnston Statement, Mr Johnston states that when the Manual states *“All food and beverage in the gaming room is complimentary with the exception of alcohol”* this means that “in our gaming room, all food and beverage (except alcohol) must be offered on a complimentary basis to patrons”. Mr Johnston says that the Manual “does not prohibit staff from offering free drinks to patrons in the gaming room”.
111. According to Mr Johnston, the statement in the Manual that *“Our aim is to ensure that all customers never have to leave their seats for service”* reflects a commitment to providing good customer service “[n]othing more and nothing less” and that the Complainant seeks to “twist this statement into some kind of command by management which implies that staff are to ensure that patrons must remain affixed to their seats”. Mr Johnston assures the Authority that “this is not the intention conveyed by the Manual”.
112. Furthermore, at paragraph 8 of the Hughes Statement, Mr Hughes also says it was his understanding of the Manual to mean that all food and beverage (other than alcohol) must be provided free in the gaming room. Alcohol is not *required* to be provided free to patrons but it could be “shouted” to patrons in “all parts of the Hotel” at the discretion of management.
113. The Authority finds some lack of clarity in what is intended by section 2.3 the Gaming Room Manual but accept the Respondents account of what staff understood the Policy to mean. The supply of free liquor to gaming room patrons was in their discretion and not prohibited.

FINDINGS ON GROUNDS OF COMPLAINT

114. Paragraphs 47 to 115 of the Complaint specify the Particulars of the three Grounds of Complaint, which incorporate by reference the contentions made in the “Background” and “Facts of the Complaint” sections of the Complaint. The Complainant then makes a number of submissions in paragraphs 116 to 121 of the Complaint.
115. The Authority accepts the introductory submission at paragraph 47 that the Authority must be guided by the objects of the Act, which are set out in section 3 and state:
- 3 Objects of Act*
- (1) *The objects of this Act are as follows—*
- (a) to minimise harm associated with the misuse and abuse of gambling activities,*
- (b) to foster responsible conduct in relation to gambling,*
- (c) to facilitate the balanced development, in the public interest, of the gaming industry,*
- (d) to ensure the integrity of the gaming industry,*
- (e) to provide for an on-going reduction in the number of gaming machines in the State by means of the tradeable gaming machine entitlement scheme.*
- (2) *The Authority, the Minister, the Secretary, the Commissioner of Police and all other persons having functions under this Act are required to have due regard to the need for gambling harm minimisation and the fostering of responsible conduct in relation to gambling when exercising functions under this Act.*
- (3) *In particular, due regard is to be had to the need for gambling harm minimisation when considering for the purposes of this Act what is or is not in the public interest*
116. The Authority makes the following findings on the Particulars of the Complaint.

Ground 1

117. Section 129(3)(a)(i) of the Act states:

(3) The grounds on which a complaint in relation to a licensee or close associate may be made are as follows—

(a) that the licensee—

(i) has contravened a provision of this Act or the regulations, or

118. Ground 1 is based on section 129(3)(a)(i) of the Act and alleges that the licensee, Mr Hughes, has contravened a provision of the Act or the regulations, being clause 55(a) of the 2010 Regulation.

119. Section 127(1) of the Act defines a “licensee” to include a hotelier, which section 4 of the Act describe as having the same meaning as in the *Liquor Act 2007* (NSW) (“Liquor Act”). Section 4 of the Liquor Act defines a hotelier as “the holder of a hotel licence under this Act”.

120. Noting that Ground 1 concerns events on 13 February 2019, the Licence Record dated 29 November 2019 establishes that the hotelier at that time was Mr James Hughes, who according to the Updated Licence Record has held the licence since 27 November 2017 and continues to do so.

121. Clause 55(a) of the 2010 Regulation states:

55 Offering of inducements to gamble

A hotelier or registered club must not:

(a) offer or supply, or cause or permit to be offered or supplied, any free or discounted liquor as an inducement to play, or to play frequently, approved gaming machines in the hotel or on the premises of the club, or

122. At paragraph 56 of the Complaint, the Complainant “repeats and relies on the evidence, contentions and material provided in paragraphs 1 to 55” in support of this Ground. These are the “Background” and “Facts of the Complaint” sections of the Complaint and the Authority’s findings are above.

Supply of free or discounted liquor

123. The Complainant contends at paragraph 58, on 13 February 2019 at 10:10 am, ██████ attended the Hotel for the purpose of gambling on approved gaming machines, that over the course of about six hours and ten minutes, while playing on a gaming machine, ██████ was supplied ten (10) complimentary schooners of full-strength beer and each staff member who interacted with ██████ admits to their role in providing the complimentary liquor in their respective interviews.

124. The Authority accepts these contentions on the findings and evidence noted above regarding the Complainant’s Common Facts.

Inducement to play, or to play frequently

125. As submitted at paragraph 59 of the Complaint, neither the Act nor the 2010 Regulation define “inducement”. The *Australian Concise Oxford Dictionary* defines it as:

“an attraction that leads one on”.

126. "Induce" is defined as:

"to prevail upon; to persuade; to give rise to".

127. The Complainant submits that an inducement may also be described by alternative words, which include: incentive, attraction, encouragement, temptation, incitement, stimulus, bait, lure, pull, draw, spur, goad, impetus, motivation, provocation, reward; and informally, as a carrot or a sweetener.

128. At paragraph 60 the Complainant contends that the responses from Mr Pelikan and Ms Fooks during their interviews show a link between [REDACTED] betting habits – specifically his *bet size* and the *length of time* he was in the Hotel – and the provision of free liquor to him.

129. During the Pelikan Interview, Mr Pelikan told Inspectors at question 55 that he said to Ms Fooks "oh yeah he's been here a while, just...just look after him".

130. Then, in her own interview, Ms Fooks describes the nexus at questions 321 and 326 as follows:

Q321: *So the fact that he - - -*

A: *- - - as he requested.*

Q321: *- - - the fact that he was playing a gaming machine for an extended period of time - - -*

A: *Ah hmm.*

Q321: *- - - and a significant amount of money was being won and lost on that - - -*

A: *Ah hmm.*

Q321: *- - - compared to other machines. Did that factor into your thinking at all?*

A: *As to would I let him have a drink?*

Q322: *Yes. The, the amount of alcoholic, free alcoholic beverages that you gave him - - -*

A: *Ah hmm.*

Q322: *- - - and the fact that he was playing a gaming machine and betting significant amounts - - -*

A: *Ah hmm.*

Q322: *- - - did that factor into your decision to give him complimentary alcoholic beverages?*

A: *Well I did notice that he was betting big.*

Q322: *Mmm.*

A: *Whether a customer is betting big or not that doesn't mean that, it's complimentary, it's not an entitlement so - - -*

Q324: *So for this specific patron did that factor into your thinking?*

A: *Well I was aware of it so, it was in my knowledge so that would, my decision was to, to, I was happy to give him a drink.*

Q325: *So the fact that you gave him complimentary beverages - - -*

A: *Ah hmm.*

Q325: *- - - was it because he was playing the machine for so long and was betting significant amounts?*

A: *No. He requested drinks and - - -*

Q326: *Ah hmm.*

A: *- - - I was happy to serve them to him.*

131. Although Ms Fooks denied that she gave [REDACTED] free drinks because he was playing the gaming machines for so long and betting significant amounts, this interaction does establish Ms Fooks' awareness that he was betting big.
132. Furthermore, as contended at paragraph 61 of the Complaint, [REDACTED] gambling activity was sufficiently noteworthy to feature in the handover between Ms Fooks and Ms McGhie at the conclusion of Ms Fooks shift, thus *continuing* the supply of complimentary liquor. At question 32 of the McGhie Interview, Ms McGhie told Inspectors:

Well, when I arrived at 6.00, Maddy was leaving – the – the worker before me. She told me that he's been betting there all day and that he's got his drinks on a tab, because his machine – he's got money in his machine – didn't have to pay for it, so I gave him approximately two drinks after that, and then he left.

133. As contended in paragraph 62, Ms McGhie supplied [REDACTED] with a further three (3) complimentary schooners of beer following Ms Fooks' departure. When asked what the intention was behind the provision of complimentary beer, Ms McGhie stated:

"It's just like a - complimentary for...I don't know, saying – like, we look after them, and - so they come back and keep coming back" and that "It's just more of a – like, a thank you, like, for coming. It's my job to look after them".

134. The Authority accepts the submission at paragraph 63 of the Complaint that [REDACTED] was indeed "looked after" in this respect, in that the amount of liquor provided to him, as a single patron, on that day, represented almost one third of all complimentary liquor supplied by the Hotel that day.
135. At paragraph 64, the Complainant contends that [REDACTED] was actually induced to continue playing the gaming machines by the supply of free liquor and he explicitly affirmed this in his affidavit.
136. The Authority accepts [REDACTED] statements that he was induced to continue playing gaming machines by the supply of liquor on that day. The Authority has taken into account his concession that he has a gambling problem, while also accepting that his gambling that day was out of character and influenced by the supply and consumption of complimentary liquor.
137. The Authority notes paragraphs 34 and 35 of the [REDACTED] Affidavit which state:

34. The main reason I stayed at the hotel for so long was because I was getting free beers, became intoxicated, wasn't thinking straight, and enjoying the moment. It got to the stage where I was more focussed on getting the free drinks than winning. I think I had about eight to ten beers, possibly more and hadn't eaten any food the whole day. I only had a cup of coffee before I attended the hotel in the morning. As the money was running out I was more worried about not being able to stay there drinking.

35. I have always had a gambling problem but I've always been able to ensure that I'd be home at a decent time and stopped playing by 4:30pm or 5:00pm at the latest. It was hugely out of character for me to stay back that late and lose that much money, plus it was the longest session I have ever had. It was also out of character for me to drink anywhere near that much during the day. The fact they beers were free encouraged me to keep drinking and playing.

138. The Complainant contends at paragraph 65, and the Authority accepts, that the evidence provided, particularly that of Ms Fooks and Ms McGhie, indicates that one

motivating factor for the *supply* of complimentary liquor to patrons is to encourage gamblers to come back: inducing them to play, or play frequently, at the Hotel.

Mr Hughes Responsibility as Licensee

139. The Authority accepts the submission in paragraph 66 of the Complaint that clause 55 of the 2010 Regulation had a wide import. It included permitting the offering or supplying of free liquor as an inducement to play, or to play frequently approved gaming machines.

140. As submitted by the Complainant, the classic judicial formulation on permission is provided by *Adelaide Corporation v Australasian Performing Right Association Limited* (1928) 40 CLR 481 per Knox CJ at 487:

indifference or omission is 'permission' within the plain meaning of that word where the party charged (1) knows or has reason to anticipate or suspect that the particular act is to be or is likely to be done, (2) has the power to prevent it, (3) makes default in some duty of control or interference arising under the circumstances of the case, and (4) thereby fails to prevent it.

141. The Authority further accepts the submission in paragraph 67 that, as licensee, Mr Hughes is employed for the very purpose of overseeing the conduct and supervision of the Hotel. This responsibility is critical to the integrity of the venue's operations and adherence to legislative requirements, but also extends further to the need to ensure that controls around responsible conduct of gaming and responsible service of alcohol are robust enough to negate or minimise the abundant harms associated with problem gambling.

142. Section 91(1) of the Act makes clear that when a licence is held by an individual, that person is responsible at all times for the personal supervision and management of the conduct of the business of the licensed premises under the licence.

143. The Authority further accepts the submission at paragraph 68 that such controls should include, at a minimum, a framework for staff training, internal policies and procedures that ensure that the operation of the Hotel generally, and the gaming room more specifically, conforms with group policies and – more importantly – legislative requirements and community expectations. This would include compliance with the Feros Group's stated policy.

144. The Authority accepts the submission at paragraph 69 that while a portion of the Feros Group compliance framework is decided and implemented at a group level, Mr Hughes also has a positive obligation – indeed, a duty as licensee - to ensure that there are sufficient controls in place at the Hotel for which he is, under statute, solely responsible.

145. The Complainant submits at paragraph 70, that the evidence collected throughout this investigation indicates that Mr Hughes has failed in this duty as it relates to this particular offence and the Hotel's gaming operations more broadly. The Complainant contends that, the framework of policies, controls and staff training at the Hotel, if it can even be said to exist, is ad hoc at best.

146. While the Authority does not accept that the compliance framework was "ad hoc", it does accept that these measures did not control the supply of free liquor to gamblers or prevent the unacceptable level of inducement to gamble through the provision of free liquor in this case.

147. The Authority accepts the contention in paragraph 71 that there were “extremely limited” controls in place and that junior staff – including gaming attendants were permitted by the licensee to exercise an unfettered discretion around the provision of complimentary liquor to all patrons, including to gaming patrons.

148. The lack of any clearly defined structure around it was confirmed by Mr Pelikan, the Hotel’s General Manager, in his interview (with emphasis added) where he is recorded as stating the following at questions 76 and 119:

Q76: *Do staff members have to report to you before they provide complimentary drinks to patrons?*

A: *Mate, in, throughout the whole hotel it depends. You know, sometimes as a business we give away quite a few promos and whatever else right throughout the venue. And it’s, if they know the customer and they know that I know them or whatever, we do try to look after certain customers and anyone, new people, people that have been coming there, right through the venue so, if it’s, if they feel they need to report it to me, they will but there’s, they have, there’s a discretion towards certain, you know, if their mum and dad walk in I want them to be able to buy their mum and dad a beer. You know, I want, there’s a promo fund there for that. If you can’t buy your mum and dad a beer I don’t know who you can buy a beer for, so.*

...

Q119: *So, are staff aware of an informal or a formal drink limit on how many they can give away per day before they need to speak to you?*

A: *Not an actual limit but they’ll come and tell me, you know, “the tab’s at \$100”, “the tab’s at \$100”, you know, you know, “this is where we’re at for the day”, “it’s busy”, “it’s not busy”.*

149. At paragraph 72, the Complainant refers to Ms Fooks statements at questions 46, 125, 126, 258 and 259 of the Fooks Interview. The Authority is satisfied that these exchanges with Inspectors establish:

- The existence of a discretion of Ms Fooks to provide complimentary drinks.
- That Ms Fooks was not required to seek permission when exercising that discretion even in respect of alcoholic beverages.
- That at the time of the events alleged in Ground 1, there was no specific number of complimentary beverages that could be given away during a shift (i.e no limit).
- That Ms Fooks wouldn’t have given “everyone” a free drink.

150. The Authority further accepts the contention at paragraph 73 that both Ms Fooks and Ms McGhie told Inspectors that this discretion had *later* been limited to a maximum of one drink per person, with apparent application to the entire hotel, including the gaming staff.

151. Questions 117 to 120 of the Fooks Interview establish that this new rule was passed down to staff by all managers, including the licensee Mr Hughes while Question 72 of the McGhie Interview indicates that it was conveyed to her in “gaming meetings”.

152. The Authority accepts Mr Johnson’s evidence at paragraphs 30 to 32 of the Johnston Statement that the one (1) free drink limit was implemented in late February or early March 2019. The Authority notes that this was *after* learning that L&GNSW were investigating the matter and receiving CCTV footage.

153. The Authority accepts the contention in paragraph 74 that Mr Pelikan, Ms Fooks and Ms McGhie all exercised a significant discretion in supplying free liquor to ██████ providing him with ten (10) free drinks in just over six hours.
154. As contended at paragraph 75 of the Complaint, the misuse of a discretion to provide free drinks can be attributed to a lack of managerial oversight, but this failure, and the failure by staff to identify the signs of problem gambling exhibited by ██████ may also be attributed, at least in part, to a lack of appropriate or adequate staff training. To the extent that mandatory training was provided, it was not effective.
155. The contention at paragraph 75 that staff observed what amounted to signs of problem gambling but did not recognise them as such and this prevented them from intervening is accepted by the Authority. While the Authority does not consider that staff should necessarily have identified ██████ as “a problem gambler”, his lengthy and intense use of gaming machines (betting big and for a long time) were factors that at least should have moved staff to think twice before supplying ██████ with anything like the ten (10) free drinks provided over the course of the day.
156. The Authority accepts the Complainant submission that while staff training may be determined and implemented at a corporate group level, this does not obviate Mr Hughes’ responsibility as licensee to ensure that staff at the Hotel are adequately trained or controls were in place about obvious compliance hazards, like the supply of free liquor to gamblers.

Failures in Oversight

157. As contended in paragraph 76 of the Complaint, both Ms McGhie and Ms Fooks told Inspectors that Hotel supervisors were aware when complimentary liquor was provided to patrons generally, with Ms Fooks indicating that she would make management aware of the number of drinks given away on a particular shift.
158. As contended at paragraph 77, at questions 167 and 168 of the Pelikan Interview Mr Pelikan described a similar process of reporting free drinks to Mr Hughes. The Authority accepts that Mr Pelikan was not required to seek approval to give out complimentary food or beverages. While he told Inspectors that he did not inform anybody of his supply of free liquor to ██████ on the day in question, he concedes that he would generally advise Mr Hughes to the effect: “oh look, you know, there was an old lady come in today, I gave her, gave her a free meal”.
159. The Authority accepts the contention at paragraph 78 that Mr Hughes had access to detailed records of the number (and type) of complimentary drinks being provided throughout the Hotel, which staff member was providing them and from which point of sale. This indicated, for instance, that complimentary drinks were being provided by gaming staff, from tills associated with the gaming area, which was sufficient information to prompt further inquiries as to the nature of the complimentary drinks.
160. During his interview Mr Pelikan told Inspectors that he personally accessed such records to “make sure we’re not giving away just stupid amounts of drinks” and that, as licensee, Mr Hughes would have a similar level of access.
161. The Authority further accepts the contention at paragraph 79 that, on the basis of the information available to Mr Hughes through his discussions with Hotel staff and his

access to detailed sales records, Mr Hughes either knew, or ought to have known, that the provision of free liquor to gaming machine patrons was taking place.

Permitting the Conduct by Act or Omission

162. The Authority accepts the Complainant's contention at paragraph 80 that the evidence does not indicate that Mr Hughes directly provided [REDACTED] with complimentary liquor on the day in question.

163. However, the Complainant submits at paragraph 81 that Mr Hughes:

- Encouraged or instructed staff to provide complimentary liquor to patrons, including gaming patrons, contrary to Feros Group policies,
- Failed to implement an adequate system of policies, procedures and staff training specific to the Hotel and its operations to ensure such conduct did not occur.
- Allowed junior staff a significant degree of discretion in the provision of complimentary liquor to gaming patrons.
- Failed to maintain sufficient control, supervision and oversight of the actions of staff to ensure that their activities did not contravene the legislation or Feros Group policies, despite having access to systems and records that clearly indicated the provision of free liquor across the Hotel.

164. The Respondents' Submission addresses paragraph 81 as follows:

- The provision of free drinks to patrons was not contrary to the Gaming Room Manual. Mr Hughes did not encourage or instruct staff to provide free drinks. Staff were given a discretion, subject to an overall criterion of reasonableness, to provide free drinks. All staff understood that that discretion was given to them for the purpose of providing a "welcome" or "thank you" to patrons, consistent with the long-standing practice of the "publican's shout".
- The training of staff by Feros Group was more than was required by law. Even staff who are not required to be Responsible Service of Alcohol and RCG trained were trained in Responsible Service of Alcohol and RCG. The Complainant's submissions assume that the provision of free drinks is per se illegal, or was contrary to Feros Group policies. Neither is the case.
- All of the Hotel staff who provided free drinks to [REDACTED] had more than 3 years' experience. Whilst they did have a degree of discretion, it was a controlled discretion, subject to a criterion of reasonableness and subject to supervision and oversight.
- The contention that Mr Hughes failed to maintain sufficient control, supervision and oversight of the actions of staff to ensure that their activities did not contravene the legislation or Feros Group policies is rejected.

165. The Complainant contends in paragraph 82, that Mr Hughes' acts and omissions amounted to the "permission" of the supply of complimentary liquor as an inducement to gamble, applying the judicial consideration of "permitting" in *Adelaide Corporation v Australasian Performing Right Association Limited*.

166. The Complainant further contends that through the staff meetings detailed above (in which, for instance, the “one drink” policy was conveyed to staff), the information conveyed by staff to duty managers and the detailed records kept by the Hotel, Mr Hughes knew or had reason to anticipate or suspect that this conduct was occurring. As licensee, Mr Hughes had the ultimate power to prevent such conduct from occurring yet has failed in his duty to intervene and has therefore failed to prevent the conduct.
167. The Complainant contends at paragraph 83, that these acts and omissions on the part of Mr Hughes had the effect of creating an environment whereby the provision of complimentary liquor as an inducement to gamble was permitted. It is in this context that ██████ was supplied with ten (10) complimentary drinks, as an inducement to remain in the gaming room and gamble, on the day in question.
168. The Complainant concludes at paragraph 84, that on the balance of probabilities, Mr Hughes permitted the supply of complimentary liquor to ██████ as a clear inducement for him to remain in the gaming room and gamble and has therefore contravened clause 55 of the 2010 Regulation.

Respondents’ Submissions on the “Publican’s Shout”

169. At pages 1 and 2 of the Respondents’ Submission the Respondents discuss the “long tradition” in Australia of publicans “shouting” a drink for their patrons. The Respondents submit that other than the requirement not to supply liquor to intoxicated patrons or minors, there has been no specific regulation of the publican’s “shout” in NSW, until recently.
170. The Respondents refer to section 102A of the Liquor Act and clause 47 of the 2019 Regulation. The Respondents submit that neither of the requirements in those provisions imposes an “absolute prohibition” on the publican’s shout – in other words a publican’s shout is not per se unlawful.
171. The Respondents submit that clause 47 of the 2019 Regulation prohibits the provision of free drinks only if free drinks are provided for a proscribed purpose – a hotelier must not offer the free liquor as an inducement to play or play frequently approved gaming machines.
172. The Authority accepts that there is no absolute prohibition against supplying free liquor to a hotel patron. Whether this supply amounts to an inducement or an encouragement to misuse and abuse gambling will depend on the facts and circumstances of the supply.

Respondents’ Submissions on Clause 55

173. At pages 10 to 28 of the Respondents Submission the Respondents make the following key submissions:
- Section 210(3) of the Act provides that the regulations may create offences punishable by a penalty not exceeding 50 penalty units. Clause 55 of the 2010 Regulation is just such an offence with section 197 of the Act specifying that proceedings for breach of an offence may be brought before a Local Court in its summary jurisdiction.
 - Under the general principles of the common law governing criminal responsibility, there is a presumption that mens rea, or evil intention, or knowledge of the wrongfulness of an act, is an essential ingredient in any offence. That presumption

may be displaced, either by the words of the statute creating the offence or by the subject matter with which it deals: *He Kaw Teh v R* [1985] HCA 43 per Gibbs CJ at [4].

- In the present case, the textual indicators reinforce a presumption that the defendant must intend to induce, or has a purpose of inducing, the recipient to play gaming machines. It is not every provision of free liquor to a patron of a hotel (including a hotel with gaming machines) that attracts the prohibition. It is only where the free liquor is offered as an inducement to play gaming machines that the former clause 55 of the 2010 Regulation is offended.
- Parliament did not prohibit the provision of free or discounted liquor in any hotel or club; or in any hotel or club which operates gaming machines. It is unsurprising that Parliament did not do so, given the long-standing cultural practice of publicans and clubs "shouting" their patrons.
- Nor is there anything in the subject matter of the 2010 Regulation which suggests that Parliament intended to displace the usual presumption that *mens rea* must be present.
- The Complainant simply asserts that clause 55 does not require the presence of a wrongful intent and asserts that clause 55 amounts to a strict liability offence (Response to Particulars paragraphs 1-3). However, the Complainant offers no supporting reasoning for those assertions.
- *Sharpe v Hotel International Limited* [1969] VR 103 is a case that illustrates, in the liquor and gaming context, how the law ordinarily imports an intention requirement into an offence.
- In this Complaint, the Complainant does not have to prove all elements of the offence to the standard of "beyond reasonable doubt", but the Complainant must still prove all elements of the offence, on the balance of probabilities. A necessary element is that the licensee, Mr Hughes, had the purpose or intent of inducing ██████████ ██████████ to play gaming machines, or to play them frequently.

Respondents' Submissions on Whether ██████████ Was Actually Induced to Gamble

174. The Respondents make the following submissions:

- The question of whether the Hotel's licensee and employees had the requisite purpose or intent of inducing people to play gaming machines is viewed from the standpoint of the licensee and his employees - it is not a question of whether the patron says that he was induced to gamble.
- The circumstances demonstrate that the provision of free drinks did not in fact induce ██████████ to play the Hotel's gaming machines or to play them with any greater frequency.
- ██████████ evidence is that he only attended the Hotel a couple of times a year.
- ██████████ was clearly not induced to leave his home and come to the Hotel to play gaming machines because of any offer of free or discounted liquor. ██████████ did not even know that staff members could "shout" him a beer. He said that he assumed that he would be paying for drinks.

- Nor, logically, could it be said that the provision of free drinks induced him to outlay into the gaming machine the funds (\$3000) that he played and ultimately lost over the course of the day. He had outlaid the whole of those funds into the gaming machine by 12.44 pm, fully 2 hours before he first became aware that he could get a free drink. Although ██████ was offered a free drink by Ms Fooks during the morning session of play, ██████ says that he assumed that he would have to pay for that drink. Before ██████ received his first drink, at 2.41 pm, he appears to have "turned over" approximately \$24,000 on the gaming machine, from an outlay of \$3,000. He simply continued playing that gaming machine, as he did before, turning over another \$49,000 for nil further outlay, until he left at 8.54 pm.
- ██████ had a clear intention to come to the Hotel and to gamble this sum of money, independently of any offer of free drinks. He had no knowledge of the availability of free drinks when he came to the Hotel, or when he made his outlays. He only became aware of the availability of free drinks after he had been playing his credits up and down for approximately 4 hours.
- The length of time that he ultimately spent on the gaming machine is far more likely to have been a function of his wins, which sustained his credit balance for a number of hours, rather than the provision of any free drinks at the Hotel.
- That inference is all the more readily arrived at on the facts of this case, where the patron describes himself as having always had a "gambling problem". In other words, it is more readily inferred that his gaming machine play was likely to continue while there were credits on the machine.
- The Complainant's assertion at paragraph 12 of the Complaint that he gambled into the afternoon and evening only because of the free drinks flies in the face of those objective facts and would not be accepted by the Authority.

175. After referring to the Macquarie Dictionary definition of "inducement" and "induce" as "the act of inducing" or "something that induces or persuades an incentive", the Respondents make the following submissions:

- The question is whether Mr Hughes offered free drinks to ██████ with the purpose or intent of persuading or influencing him to play gaming machines at the Hotel or frequently play gaming machines at the Hotel.
- The offer or provision of complimentary drinks did not induce ██████ to come to the Hotel to play its gaming machines. ██████ was not induced by the provision of free drinks to more frequently attend the Hotel.
- On the purpose or intention of the staff members offering complimentary beers to ██████ the "overwhelming weight of evidence" is to the effect that the Hotel staff did not provide complimentary drinks to ██████ for the purpose of inducing him to play the Hotel's gaming machine.
- The weakness of the case made by the Complainant is evident from the terms of paragraph 60 of the Complaint, where the most that the Complainant can assert is some kind of ill-defined "link" between ██████ bet size and the provision of free

liquor. That assertion relies on a highly selective recounting and does not fairly represent the evidence given to the Complainant.

- Reinforcing a conclusion that there was no intention or purpose on the part of Hotel staff to induce patrons to gamble is the fact that there was no incentive, encouragement or direction given to staff to provide complimentary alcoholic drinks to gaming patrons. This was clear according to the Respondents from questions 149-151, 154-156 of the McGhie Interview.
- Evidence in the Johnston Statement makes clear that Hotel staff were in no way encouraged, directed or incentivised to offer complimentary alcoholic drinks. It was a matter of discretion only [Johnston Statement paragraph 38]. Ms Fooks gave similar evidence in the course of her interview.
- Rendering it even less likely that the complimentary alcoholic drinks were intended as a particular incentive to play gaming machines is the fact that the "shout" discretion vested in staff was exercised throughout all parts of the Hotel.

Respondents' Submissions on "Permission" by Licensee

176. The Respondents address what is meant by "permit" in clause 55(a) of the 2010 Regulation and makes the following key contentions and submissions in the Respondents' Submission:

- As at 13 February 2019, the licensee, Mr Hughes, and General Manager, Mr Pelikan, had a discretion to provide complimentary alcoholic drinks to patrons of the Hotel and could delegate that discretion to staff working under their supervision, such as Ms Fooks and Ms McGhie.
- Feros Group and Mr Hughes required that all staff record the provision of free drinks to patrons, so that the overall daily quantum of free drinks given to patrons remained reasonable.
- The discretion could extend to hotel patrons in all parts of the Hotel, subject to these controls. There is no per se illegality in providing free drinks to patrons in any part of a hotel, including a hotel's gaming room.
- There were limits and controls around the exercise of the discretion. Internal controls were in place which enabled the management of the Hotel to monitor the overall numbers of free drinks given to Hotel patrons. The Hughes Statement makes clear that those numbers were monitored on a regular basis and were the subject of further oversight by the Group Chief Operating Officer, Mr Johnston. This is clearly not a case where there has been an absolute uncontrolled discretion devolved to all staff.
- Mr Hughes did not "permit" the provision of 10 schooners of Carlton Draught to [REDACTED] with any purpose or intent of inducing [REDACTED] to play, or pay frequently, in the Hotel's gaming machines.
- The evidence of all staff members and Mr Hughes is clear; none of them were directed, encouraged or incentivised by Mr Hughes or Feros Group to offer free liquor to patrons. None of the staff members served free drinks to [REDACTED] intending thereby to persuade him to gamble, or to gamble more frequently, on the Hotel's gaming machines.

- Mr Hughes' own evidence (corroborated by Mr Johnston) is to the effect that at no time previously had anywhere near that number of free drinks been given to any individual patron.
- The test of "permitting" as laid down by the High Court in *Adelaide Corporation v Australasian Performing Right Association Ltd* (1928) 40 CLR 481,487, requires that the relevant defendant "knows or had reason to anticipate or suspect that the particular act is to be or is likely to be done".
- Mr Hughes had no reason to anticipate or suspect that 10 schooners of Carlton Draught (or anything approaching that number) would be offered on a complimentary basis to [REDACTED]
- Accordingly, it cannot be said that Mr Hughes "permitted" the provision of that number of drinks to this specific patron.
- Mr Hughes did know that some complimentary drinks were being offered on a discretionary basis, to patrons throughout the Hotel, including to patrons in the gaming room. But that does not mean that Mr Hughes intended or knew that any free drinks would be given for a proscribed purpose, i.e. as an inducement to gamble.
- The records available to Mr Hughes (even if they had been inspected by Mr Hughes while he was on shift and [REDACTED] remained at the Hotel) would not have identified the number of drinks that were provided specifically to [REDACTED]
- There is therefore no basis for saying that Mr Hughes could reasonably have anticipated that ten (10) beers would be provided to [REDACTED]. It cannot therefore be said that Mr Hughes has thereby "permitted" the service of ten (10) beers to [REDACTED]

177. The Respondents concede that, with the benefit of hindsight, Mr Hughes and Feros Group recognise that, by not previously recording the *numbers* of free drinks provided to individual patrons, there was a "weak link" in their systems.

178. Ms Fooks and Ms McGhie "simply lost track" of the numbers of free drinks that they gave to [REDACTED] over a number of hours. After positively assessing him for signs of intoxication (and where no signs were present) and after not seeing signs that would be reasonably attributable to problem gambling, the staff offered free drinks to the patron over a period of some hours, without recording the numbers of drinks served to him. However, that does not mean that free drinks were offered to [REDACTED] with the purpose or intent of inducing him to gamble, or that Mr Hughes permitted the service of that number of free drinks as an inducement to gamble.

179. The Respondents conclude that on the basis of the evidence before the Authority, the first Ground of Complaint is not established

Authority Conclusions on Ground 1

180. The Authority notes that clause 55 (and the current clause 47) does not require that alcohol not be *served* to gaming machine players. Rather, the provision precludes a licensee from influencing a patron's decision to play or stop playing gaming machines by providing *free* alcohol.

181. The Authority is satisfied that staff delegated by the licensee with responsibility for the Hotel and in particular its gaming room operations had a well understood discretion to supply free liquor to gaming machine players and this discretion was not subject to any clear limit. This systemic failure resulted in three staff members supplying ██████ with ten (10) drinks over the course of his lengthy gaming session at the Hotel on 13 February 2019.
182. ██████ was present at the venue for a total of no less than nine hours, and all relevant staff noted that he was “betting big” and was betting with a lot of money. Questions 49 to 52 of the McGhie Interview indicate that Ms Fooks had informed Ms McGhie that ██████ had been “in for a while betting big” and that he has had complimentary drinks.
183. The Authority does not accept the Respondents’ contention that staff did not intend to induce ██████ to gamble or continue to gamble on the premises by supplying him with multiple free alcoholic drinks. The whole point of supplying a patron with a free drink is to keep them on the premises while they consume the drink, and in the case of a patron who is only using gaming machines, to keep them on the premises gambling. While the Authority does not find that staff perceived the well-behaved ██████ to be intoxicated, they must know that when patrons drink alcohol on the premises, they will become affected by that consumption of alcohol.
184. Section 91(1) of the Liquor Act makes clear that when a licence is held by an individual, that person is responsible at all times for the personal supervision and management of the conduct of the business of the licensed premises under the licence.
185. The Authority accepts the contention at paragraph 70 of the Complaint, that Mr Hughes has failed in this duty as it relates to this particular offence and the Hotel’s gaming operations more broadly. The system of policies, procedures and staff training in place at the Hotel were not sufficient to ensure that a person who had been gaming for an extensive period of time and exhibiting some indicia of problem gambling was not repeatedly supplied with free alcohol.
186. The Authority accepts that ██████ outlaid the whole of his funds into the gaming machines some 2 hours before his first drink. However, this does not prevent the provision of free liquor by Hotel staff from being an inducement to stay and *continue* gaming. The Authority does not accept the Respondents’ contention that the length of time that ██████ spent on the gaming machine is far more likely to have been a function of his wins, which sustained his credit balance for a number of hours, rather than the provision of any free drinks at the Hotel. His early wins, and his acknowledged gambling problem were factors in his remaining on the premises, but the supply of this much liquor was an important factor inducing him to stay and affecting his judgement as to whether to cash in his wins or continue to gamble.
187. The Authority accepts the contention at paragraph 82 of the Complaint that Mr Hughes’ acts and omissions amounted to the “permission” of the supply of complimentary liquor as an inducement to gamble, applying the judicial consideration of “permitting” in *Adelaide Corporation v Australasian Performing Right Association Limited*.
188. The Authority accepts that through the staff meetings, the information conveyed by staff to duty managers and the detailed records kept by the Hotel, Mr Hughes knew or had reason to anticipate or suspect that this conduct was occurring. As licensee, Mr Hughes

had the ultimate power to prevent such conduct from occurring yet has failed in his duty to intervene and has therefore failed to prevent the conduct.

189. This created an environment whereby the provision of complimentary liquor as an inducement to gamble was permitted. It is in this context that ██████ was supplied with ten (10) complimentary drinks, as an inducement to remain in the gaming room and gamble, on the day in question.
190. On the balance of probabilities, the Authority finds that Mr Hughes permitted, through the delegation to staff responsible for gaming machine operations and through a systemic failure to structure the discretion of staff to supply free liquor to gamblers (which has since been remedied) the supply of complimentary liquor to ██████ as an inducement to gamble in the gaming room. Contravention of clause 55 of the 2010 Regulation is established.
191. Ground 1 is established.

Ground 2

192. Section 129(3)(b) states:

(3) The grounds on which a complaint in relation to a licensee or close associate may be made are as follows—

...

(b) that the hotelier or club has engaged in conduct that has encouraged, or is likely to encourage, the misuse and abuse of gambling activities in the hotel or on the premises of the club concerned,

193. Ground 2 is based on section 129(3)(b) and alleges that the Hotelier has engaged in conduct that has encouraged, or is likely to encourage, the misuse and abuse of gambling activities in the Hotel.
194. At paragraph 85, the Complainant “repeats and relies on the evidence, contentions and material provided in paragraphs 1 to 84 in support of this ground”. These paragraphs include the contentions made under the “Background”, “Facts of the Complaint” and Ground 1 of the Complaint. The Authority repeats its findings with regard to those matters, as detailed above.
195. As noted above, Mr Hughes was the licensee of the Hotel on 13 February 2019 and was therefore the “Hotelier” for the purposes of Ground 2.
196. The Authority notes the Complainant’s submission at paragraph 86, that the term “engaged in conduct” is not defined in the Act or the *Interpretation Act 1987*. There is a legislated definition in section 193H(3) of the *Crimes Act 1900* which defines “engage in conduct” to mean to “do an act” or “to omit to perform an act”.
197. As submitted in paragraph 87, “omit” is defined in the Cambridge Dictionary as “to fail to include or do something”. Of particular relevance to this Complaint is the absence of an element necessitating intent. A person may “omit to perform an act” either intentionally or unintentionally.
198. The Authority accepts the Complainant submission at paragraph 88 that to “encourage”, is defined in the Cambridge Dictionary to make someone more likely to do something, or to make something more likely to happen. It is also defined in the Oxford Dictionary as “to promote” or “to assist”.

199. The Authority accepts the submission at paragraph 89, that the Act provides no definition of “misuse and abuse” of gambling.
200. The Complainant submits that some assistance may be obtained from complaint provisions in section 139(3)(f) of the Liquor Act, which provides that conduct likely to encourage the misuse and abuse of liquor includes binge drinking or excessive consumption. The Authority accepts that these may be indicators of the misuse or abuse of gambling.
201. The Authority accepts the reference in paragraph 90 to the *Oxford Dictionary* definition of “misuse” as the wrong or improper use of something and “abuse” as using something to bad effect or for a bad purpose; to make excessive and habitual use of something.
202. The Authority accepts the Complainant submission at paragraph 91 of the Complaint that “misuse and abuse” can include situations where the conduct of the Hotel has encouraged a player to engage in “excessive” gambling.
203. The Authority further accepts the Complainant submission, at paragraph 92, that the danger of misuse and abuse of gaming machines is evident from the existence of the prohibition in clause 55 of the 2010 Regulation, which has been incorporated in the 2019 Regulation. The imperative of “minimising harm associated with the misuse and abuse of gambling activities” is enshrined as one of the statutory objects in section 3 of the Act.
204. Moreover, the Authority accepts the Complainant submissions at paragraph 93 that both alcohol and gambling have addictive qualities and when combined they may exacerbate harm and increase problems. At the very least, alcohol is likely to inhibit a person’s rational decision-making functions and may itself be addictive, and to meet this addiction a person will be encouraged to undertake another potentially harmful activity (namely, gambling).
205. The Authority further accepts the submission that this prohibition is not limited to conduct that *has* encouraged, but also conduct that is *likely to encourage* the misuse and abuse of gaming machines – whether or not such effect was actually experienced.
206. Nevertheless, as contended in paragraph 94, the Authority is satisfied that ██████ was in fact encouraged to misuse and abuse gambling on the day in question by the amount of free liquor supplied. ██████ affidavit, establishes the following indicia of the misuse and abuse of gambling:
 - He became “pissed” from the consumption of alcohol.
 - He ignored his wife’s attempts to contact him so that he could continue to gamble, culminating in her calling some people to try and locate him before going to look for him at the Hotel.
 - He “didn’t feel good about the money” having lost \$3000, plus the various amounts he won during the night.
 - He did not feel good about his wife coming to the Hotel to get him. His wife was not talking to him at the time and was “still upset” about the matter.
 - He attributed his conduct during this gambling session to the fact that he was “getting free beers, became intoxicated, wasn’t thinking straight and enjoying the moment”.

207. The Complainant submits at paragraph 95 that any conduct found to be a breach of clause 55 of the 2010 Regulation is “inherently conduct that would encourage the misuse and abuse of gambling activities at the Hotel”. Furthermore, that the provision of a single complimentary drink as an inducement to gamble would also be conduct that encourages the misuse and abuse of gambling activities.
208. The Complainant further submits at paragraph 96 that the provision of ten free alcoholic drinks over a period of six hours and ten minutes, provided by staff who had identified that [REDACTED] was “betting big” and “had money in his machine” encouraged the misuse and abuse of gambling.
209. The Complainant further submits that the provision of complimentary liquor to gaming patrons was an “organised” affair, with established methods of documenting and tracking the number of drinks supplied with discussions had by staff during their shift handovers and with supervisors during meetings. The conduct was not an “unofficial” policy or the actions of a rogue staff member, but occurred in the context of a permissive environment surrounding the provision of complimentary liquor at the Hotel, with limited or non-existent controls, in which junior staff enjoyed a significant level of discretion.
210. The Complainant further contends at paragraph 97, that Mr Hughes has permitted this conduct to occur, by creating and allowing an environment in which staff were able to provide a large quantity of complimentary drinks to a gaming machine patron. In so doing, Mr Hughes has “tacitly and implicitly” assisted staff to provide free liquor in a manner which – through [REDACTED] direct experience – has encouraged the misuse and abuse of gaming machines at the Hotel, resulting in [REDACTED] experiencing a significant negative impact.
211. Finally, the Complainant submits at paragraph 98 that through his acts and omissions, as detailed under both this and the first Ground, above, Mr Hughes has engaged in conduct that encouraged the misuse and abuse of gambling activities in the Hotel.

Respondents’ Submissions on Ground 2

212. The Respondents address Ground 2 at pages 30-31 of the Respondents’ Submission, arguing that to establish this Ground, the Complainant needs to prove that the conduct of Mr Hughes “encouraged” (or was likely to encourage) the “misuse and abuse of gambling activities in the Hotel”.
213. The Respondents refer to the definition of “encouragement” in the Macquarie Dictionary (3rd Ed) as follows:
- "To stimulate by assistance, approval etc."
214. According to the Respondents, the Complainant’s submission that section 129(3)(b) of the Act involves no requirement to demonstrate a “mental element” is misconceived and that it is difficult to attribute “fault” to a licensee, unless that licensee has intended to bring about the “misuse and abuse of gambling activities”.
215. The Respondents make the following submissions:
- There must be “conduct” on the part of Mr Hughes which can be established as showing that he “encouraged” the “misuse and abuse of gambling activities in the Hotel”.

- The Complainant alleges that the "misuse and abuse of gambling activities" in the present case is simply "excessive" gambling; as though to suggest that there is some clearly discernible, quantifiable and readily observable measure of when gambling activities can be said to be "excessive".
- As the RCG Course Notes themselves recognise, gambling problems arise on a continuum and it can be difficult to discern when gambling becomes problematic for any individual.
- The behaviours, appearance and conduct of ██████ whilst at the Hotel were not such as would have appraised a reasonable staff member in the position of these staff that ██████ was a problem gambler.
- In particular, only one of the 32 indicators on the "GBC-EGM-S checklist" were observable by staff members on the facts of this case, according to Mr Barrett's expert analysis. That falls well short of the requirement for 10 indicators to be present before a person might be thought to be a "problem gambler".
- There is no "conduct" on the part of Mr Hughes which could be said to have encouraged a problem gambler to keep gambling. Mr Hughes did not himself serve any free drinks to ██████ Mr Hughes did not direct, encourage or incentivise any of his staff to provide free drinks to ██████ All Mr Hughes did was to confer on Mr Pelikan and staff on duty a controlled discretion to serve complimentary alcoholic drinks to patrons in all parts of the Hotel.
- At paragraph 95, the Complainant seems to suggest that the relevant "conduct" of Mr Hughes in this case is an omission to prevent any free drinks being served to a person playing a gaming machine. However, that allegation is misconceived, as there is no per se illegality in providing a free alcoholic drink to a person located in a hotel's gaming room.
- Further, if an "omission" is to be relied upon as "conduct", then the relevant omission must be an omission to perform a duty which otherwise must be performed by the licensee. The Complaint provides no indication of what duty Mr Hughes is said to have failed to perform, such that it may be said that he has "omitted" to take otherwise necessary action, and which in turn might be said to be relevant "conduct" for the purposes of this Ground. There was certainly no absolute prohibition, operating on Mr Hughes, against serving any complimentary alcoholic drinks in the Hotel's gaming room.
- Nor can it be said that Mr Hughes has "encouraged" the misuse and abuse of gambling activities. The concept of "encouragement" pre-supposes some knowledge or intent to procure the particular result ("excessive gambling"). The Complainant appears to be claiming that the "encouragement" consisted of providing a certain number of drinks (ten (10) schooners over 6 hours) to ██████
- In the circumstances of the current case, Mr Hughes had no knowledge of the number of drinks that were provided to ██████ and had no reasonable basis to anticipate that anywhere near that number of drinks would be provided to ██████ It cannot be said that he has thereby "encouraged" ██████ to gamble excessively.

- Nor did Mr Hughes or his staff have any reasonable basis to conclude that [REDACTED] gambling was "excessive" (whatever that may mean) or that it amounted to problem gambling; which makes it harder again to conclude that Mr Hughes intended to procure an outcome of "excessive gambling" by [REDACTED]

216. For these reasons, the Respondents submit that Ground 2 is not established on the evidence and material before the Authority.

Authority Conclusions on Ground 2

217. The Authority does not accept the submission that a breach of clause 55 of the 2010 Regulation must necessarily equate to conduct that encourages or is likely to encourage the *misuse and abuse* of gambling.
218. The offer of only one (1) free alcoholic drink to a gaming machine player may be an inducement to gamble, or keep gambling, yet not rise to the level of conduct that encourages or is likely to encourage the *misuse* or *abuse* of gambling.
219. However, the Authority is comfortably satisfied that the supply of liquor to [REDACTED] was of such a quantity, frequency and duration that it encouraged the misuse and abuse of gambling. It was designed to, and had the effect of, keeping him playing in the gaming room for an extensive period of time, betting a substantial amount of money without breaks. It impaired his judgement and he lost a substantial amount of money.
220. The Authority takes note of the Australian Government Department of Health *Standard Drinks Guide* at www.health.gov.au which advises that a "large" (425 mls) glass of full strength beer (identified as a "schooner" in this Complaint) contains **1.6** standard drinks of alcohol. Ten schooners amounts to **16** standard drinks.
221. The Authority is satisfied that the provision of this many free alcoholic drinks to [REDACTED] a gaming machine patron (as found in the background, common facts and Ground 1 above) was conduct that *actually did encourage* or was *at least likely* to encourage the misuse and abuse of gambling.
222. Mr Hughes permitted this conduct to occur, by creating and allowing an environment in which staff were able to provide a large quantity of complimentary drinks to a gaming machine patron. In so doing, Mr Hughes has "tacitly and implicitly" assisted staff to provide free liquor in a manner which – through [REDACTED] direct experience – has encouraged the misuse and abuse of gaming machines at the Hotel, resulting in [REDACTED] experiencing a significant negative impact.
223. At paragraph 116 of the Complaint the Complainant re-iterates, and the Authority accepts, that the focus of the Complaint is that Mr Hughes and the staff of the Hotel failed to comply with clause 55 of the 2010 Regulation on a "systemic level", but in particular relating to [REDACTED] and in doing so engaged in conduct that encouraged the misuse and abuse of gambling activities at the Hotel.
224. The Complainant contends at paragraph 117, and the Authority accepts, that the evidence provided by staff clearly indicates that the Hotel's objective was to keep gaming patrons happy, to "look after them", and to keep them returning to the venue. While complimentary liquor was provided to patrons throughout the venue, the vast majority was provided to gaming patrons on the day in question. The largest portion was provided to [REDACTED] – no other patron in the Hotel's gaming room on that day received

as many complimentary alcoholic drinks as ██████ did. Similarly, no other patron was observed gambling for as long as ██████ and no other gaming machine had a turnover remotely close to the gaming machine that ██████ was gambling on throughout the day.

225. At paragraph 118, the Complainant submits and the Authority accepts that ██████ own statements make it clear that the intoxicating nature of excessive liquor consumption had diminished or at the very least affected his capacity to make rational decisions which eventuated in him remaining at the Hotel to continue gambling on the gaming machine as his credits gradually depleted, which is behaviour he affirms to be out of character. ██████ affirms that he was induced to continue gambling.
226. The Authority accepts the Complainant's conclusion at paragraph 119 that Mr Hughes's failure to implement a system of controls has resulted in an environment in which junior staff have used significant discretion to supply ten (10) complimentary full strength beers to a problem gambler displaying multiple overt signs of problem gambling, over a period of about six hours and ten minutes.
227. As found earlier, the evidence given by these staff members indicates a lack of awareness of problem gambling indicators, of gaming harm minimisation principles and of the requirements of the Act and the 2010 Regulation. Although the Complainant alleges that there was a complete lack of awareness with regards to Feros Group policies, the Authority accepts the Respondents' submission about what the policy in section 2.3 of the Gaming Room Manual actually meant, but nevertheless finds this policy and its implementation by staff to be inadequate to prevent the relevant risks of inducing gambling or encouraging the misuse or abuse of gambling through the supply of free liquor.
228. Ground 2 is established.

Ground 3

229. Section 129(3)(h) states:

(3) The grounds on which a complaint in relation to a licensee or close associate may be made are as follows—

...

(h) that a complaint against a hotelier or gaming-related licensee under this section has been made and that—

(i) the close associate knew or ought reasonably to have known that the hotelier or gaming-related licensee was engaging (or was likely to engage) in conduct of the kind to which the complaint relates, and

(ii) the close associate failed to take all reasonable steps to prevent the licensee from engaging in conduct of that kind,

230. Ground 3 is based on section 129(3)(h) of the Act and alleges that the close associate, Feros Group, knew or ought to reasonably to have known that the hotelier was engaging or likely to engage in conduct of the kind to which the Complaint relates and failed to take all reasonable steps to prevent it.
231. At paragraph 99, the Complainant repeats and relies on the evidence, contentions and material provided in paragraphs 1 to 89 in support of this ground. These paragraphs

include the contentions made under the “Background”, “Facts of the Complaint” and Grounds 1 and 2 of the Complaint.

232. The Complainant submits at paragraph 100 that Ground 3 “inherently relies on the material provided as part of the previous two grounds”. The Authority repeats its findings with regard to those matters, as detailed above.

Feros Group is a Close Associate

233. Section 4 of the Act defines a close associate as a close associate within the meaning of the *Gaming and Liquor Administration Act 2007* (NSW) (“GALA Act”). The Complainant sets out section 5 of the GALA Act at paragraph 103 which defines a close associate:

5 Meaning of “close associate”

(1) For the purposes of the gaming and liquor legislation, a person is a **close associate** of an applicant for, or the holder of, a gaming or liquor licence if the person—

(a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in his or her own right or on behalf of any other person), in the business of the applicant or licensee that is or will be carried on under the authority of the licence, and by virtue of that interest or power is or will be able (in the opinion of the Authority) to exercise a significant influence over or with respect to the management or operation of that business, or

(b) holds or will hold any relevant position, whether in his or her own right or on behalf of any other person, in the business of the applicant or licensee that is or will be carried on under the authority of the licence.

(2) In this section—

relevant financial interest, in relation to a business, means—

(a) any share in the capital of the business, or

(b) any entitlement to receive any income derived from the business, or to receive any other financial benefit or financial advantage from the carrying on of the business, whether the entitlement arises at law or in equity or otherwise, or

(c) any entitlement to receive any rent, profit or other income in connection with the use or occupation of premises on which the business of the club is or is to be carried on (such as, for example, an entitlement of the owner of the premises of a registered club to receive rent as lessor of the premises).

relevant position means—

(a) the position of director, manager or secretary, or

(b) any other position, however designated, if it is an executive position.

relevant power means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others—

(a) to participate in any directorial, managerial or executive decision, or

(b) to elect or appoint any person to any relevant position.

(3) For the purposes of this section, a financial institution is not a close associate by reason only of having a relevant financial interest in relation to a business.

(4) For the purposes of this section, a Presiding Officer (within the meaning of the [Parliamentary Precincts Act 1997](#)) is not, in the case of a licence under the [Liquor Act 2007](#), a close associate of an applicant for a licence or the holder of a licence that relates to premises within the Parliamentary precincts.

234. The Authority accepts the contentions at paragraphs 101 and 102 of the Complaint. The Authority finds that:

- The corporate entity considered to be a close associate for the purposes of Ground 3 is “Feros Hotel Group Pty Ltd”.

- The Licence Record dated 29 November 2019 indicates that the business owner is Feros Group, having held that position since 2 December 2016.
- The Australian Securities and Investments Commission (“ASIC”) record for “Feros Hotel Group Pty Limited” as at 29 November 2019 (E22) (“Feros Group ASIC Record”) indicates that Mr Christopher Feros is the sole director/secretary having commenced those roles on 2 September 2015.

235. As contended at paragraph 104, at the time of the offending conduct (13 February 2019) Feros Group was a close associate of Mr Hughes (the hotelier) in question. The Authority accepts that the Feros Group satisfies both the “relevant financial interest” limb and the “relevant power” limb of the close associate definition. Feros Group owns the business of the Hotel and employed Mr Hughes to be the licensee, who has then exercised his authority to manage the conduct of business at the Hotel.

Feros Group Knew or Ought Reasonably to Have Known of This Kind of Conduct

236. The Authority accepts the contention at paragraph 105 that, in a similar way to Mr Hughes’ overarching responsibility as licensee, the Feros Group as the Hotel’s ultimate owner has significant level of responsibility over the business operated pursuant to the licence at a corporate and group level.

237. This includes a responsibility to maintain oversight of the activities of each hotel it operates. The Authority further accepts that the evidence collected during the investigation (and relied upon in Ground 1 and 2 above), including the interviews conducted with staff and the policies provided by Mr Hughes, points to a centralised model of control with group-level policies and training rather than a “hands off” approach.

238. As contended at paragraph 106, this responsibility is not sufficiently discharged by the simple preparation of training documents or policies and procedures. A level of checking, verification, interaction with and oversight of each hotel within the group is required, to ensure that individual licensees are operating each hotel in a way that complies with internal policies and procedures and, more importantly, any and all legislative requirements.

239. The Authority accepts the contention at paragraph 107 that the evidence indicates that the provision of complimentary liquor is itemised throughout the Hotel’s finance reports, and the Itemised Deductions Register provided by Mr Hughes appears to be generated using data from a central system. These reports provide detail around the staff member who provided a complimentary drink and where it was sold – including gaming staff at gaming tills.

240. The information pointing to the offending was therefore readily available, had it been checked. Reviewing sales records, particularly records that depict the amount of complimentary products being given out (which incurs a loss of revenue) are basic functions of operating a business to which a hotel liquor licence relates. The Authority accepts that the conduct the subject of this Complaint was not hidden from the Feros Group, it was in fact, very well documented, which should have raised red flags at a corporate level.

241. As contended at paragraph 108, the evidence also indicates that the provision of complimentary liquor to gaming patrons at the Hotel was not restricted to the incident

involving [REDACTED] All staff interviewed reference an ongoing practice of essentially “looking after” hotel patrons, while Mr Pelikan’s interview also indicates that complimentary food and beverage at the Hotel broadly was ultimately authorised by Mr Simon Johnson, Group Operations Manager, indicating at the very least an awareness of the practice at the group level.

242. The Authority accepts, as contended at paragraph 109, that since the provision of complimentary liquor was authorised at a group level, it is implausible that the group itself was unaware the practice had occurred or was occurring, and the risk such conduct presented. If the Feros Group was indeed unaware of this practice, the fact that it was recorded on itemised registers within the Hotel and was reported to Mr Hughes as licensee (and the group’s agent) means that the Feros Group had the capacity to know, and ought to have known of the conduct.

Feros Group Failed To Take All Reasonable Steps to Prevent the Conduct

243. As contended at paragraph 110 of the Complaint, the Authority accepts that there were a number of reasonable steps that the Feros Group could have taken to prevent Mr Hughes from engaging in the type of conduct to which this Complaint relates. This includes implementing a comprehensive staff training system to ensure all staff are properly trained as to responsible gambling, instituting sufficient policies in respect of gaming and maintaining sufficient oversight of the Hotel’s operations with respect to the supply of free liquor to ensure that it is being operated appropriately and in accordance with all legislative requirements.
244. At paragraph 111 the Complainant acknowledges that the responsibility for training staff rests ultimately with Mr Hughes as licensee but contends that Feros Group has assumed at least part of this responsibility by implementing a Group level training system and its training was insufficient, with all staff interviewed unaware of Group policies and not recognising “extremely evident” signs of problem gambling from [REDACTED]
245. The Authority accepts that the licensee is primarily responsible for the venue’s compliance but that Feros Group’s conduct as close associate in implementing and resourcing such training across the business will be a substantial if not decisive factor in whether training will be effective. The Feros training slides and programs produced during the investigation are not sufficient with respect to problem gambling legislative compliance and gaming harm minimisation, particularly with respect to identifying and addressing signs of problem gambling.
246. At paragraph 112, the Complainant contends that the relevant Feros Group document, the Gaming Room Manual does not focus on compliance with the law or gaming harm minimisation. The Authority accepts the Complainant’s characterisation of the Manual as procedural in nature and focuses more on the daily tasks of staff in delivering customer service, with the dominant message being that gaming machine customers should not need to leave their seat (and hence interrupt play) to obtain services from the Hotel. However, on the specific allegation that Hotel’s General Manager, Mr Pelikan, was unaware of Hotel policy on serving free liquor in the gaming room when interviewed, the Authority has accepted the Respondent’s explanation of what its Manual actually means, despite some ambiguity.

247. At paragraph 113, the Complainant contends that the Feros Group failed in its responsibility to implement “checks and balances” to maintain a sufficiently robust level of scrutiny over Hotel operations generally. The Authority does not accept that there is *no* system of checks and balances with respect to the Hotel’s operations generally, but has found that there were inadequate controls to manage the inducement of gamblers through the supply of free liquor.
248. On the contention that Mr Hughes has been allowed to operate the Hotel in ongoing contravention of the Group’s policies, and consequently in contravention of the gaming laws, the Authority has accepted the Respondent’s explanation of what its Gaming Room Manual requires. Nevertheless, the Group should have had in place clearer systems and more restrictive controls to prevent the supply of free liquor as an inducement to patrons and address such instances where it occurred. The Authority finds that the supply of free liquor to patrons was recorded, but the discretion given to staff to supply liquor to gamblers was too broad to ensure compliance.
249. The Complainant contends at paragraph 114 that Feros Group has allowed Mr Hughes to create and foster a permissive environment in which the Hotel’s staff have provided a significant number of complimentary drinks to a problem gambler, in order to induce him to keep playing the gaming machines. The Authority accepts this contention on the basis that insufficient controls were in place to structure the discretion of Mr Hughes and his staff to supply free liquor and that [REDACTED] has suffered direct harm by reason of these systemic failures.
250. The Authority accepts the conclusion advanced at paragraph 115 of the Complaint that, on the balance of probabilities, the Feros Group, as close associate of the licensee, knew or ought to have known, of the type of conduct established in this complaint and failed to take all reasonable steps to address it.

Respondents’ Submissions on Feros Group Conduct

251. The Respondents address Ground 3 at pages 31 to 33 of the Respondents’ Submission, describing this Ground as an extension of Ground 2, in that if the Complainant demonstrates that Mr Hughes engaged in conduct that encouraged the misuse and abuse of gambling activities then the business owner knew or ought reasonably to have known of that conduct.
252. The Respondents submit that Ground 3 fails for the same reason that they say Ground 2 fails. The Complaint is based upon a misconception that the provision of *any* free liquor to a patron located in a gaming room is per se is illegal.
253. Briefly, the Respondents make the following submissions in respect of Ground 3:
- The fact that some alcoholic drinks would have been provided to Hotel patrons in the Hotel’s gaming room is not objectionable, if the drinks were not offered as an inducement to gamble.
 - The business owner did put in place controls around the exercise of the discretion to provide complimentary alcoholic drinks. The drinks provided were to be no more than a “reasonable” overall quantum and were to be recorded, with those records being checked by venue staff on a daily basis.

- To the knowledge of all relevant staff, nowhere near ten (10) complimentary alcoholic drinks had ever been provided to an individual patron in the past. The service of this many drinks to one patron was therefore an “aberration”.
- The Complainant confuses the provision of complimentary liquor as an inducement to gamble, with the provision of any complimentary liquor to a person who plays a gaming machine in a hotel. The former is necessarily illegal, as the proscribed purpose would be present; the latter is legal, unless it is done for the proscribed purpose. Ascertaining the presence of a proscribed purpose requires a consideration of the motivating factors for providing free liquor in the circumstances of the particular case.
- Feros Group was aware of the staff discretion to provide free drinks, to all patrons of the Hotel, pursuant to the traditional publican's "shout". However, it is a very different proposition to suggest that the Hotel owner "shouted" patrons to intentionally induce them to come to the Hotel to gamble on poker machines.
- The training provided by Feros Group is over and above any minimum legal requirement. It is provided by an accredited eminent external trainer. There is evidence before the Authority (from Mr Leigh Barrett), to the effect that that training provides a robust system for achieving the gaming harm minimisation objects of the legislation.
- All staff interviewed well understood the Gaming Room Manual to direct that food and beverages other than alcohol must be provided complimentary in the gaming room. The manual does not require, and all staff did not understand it to require, that complimentary alcoholic drinks were never to be provided to patrons in the gaming room. It is only the Complainant who seeks to place such a strained interpretation on the wording of the manual.
- The Complainant's contention that all staff "did not understand or recognise extremely evident signs of problem gambling" is based on a selective and incorrect reading of the RCG Course Notes.
- Mr Barrett has applied the most recent 32-point checklist developed for all Australian jurisdictions and found that only one of the 32 indicators would have been observable by staff on the facts of this case. The RCG Course Notes require that 10 of 32 indicators should be present before hotel staff take action.
- There is no reasonable basis to say that these staff members "did not understand or recognise extremely evident signs of problem gambling" on the facts of this case. Such a claim is grossly unfair to those staff members.
- The Feros Group policies did not prohibit the provision of free drinks but conferred a discretion on the licensee, the General Manager and their supervised delegates. The discretion was subject to an overall criterion of reasonableness and was to be applied [and was applied] across all departments of the Hotel's business.
- Records were kept of what food and beverages were provided to patrons and from which specific tills these were served from.
- It can hardly be said, in those circumstances, that the business owners created a "permissive environment"; much less can it be said that they have created that

environment in order to positively induce problem gamblers to come to the Hotel or to play machines frequently.

Authority Conclusions on Ground 3

254. The Authority accepts the contention at paragraph 120 that the responsibility for the conduct established by the Complaint flows to the Feros Group as the business owner and operator of the venue.
255. The Authority has considered the submissions from the Respondents on Ground 3 but does not accept that any clear and implemented controls were in place to ensure that staff did not induce gaming machine players to gamble or encourage the misuse and abuse of gambling through the supply of free liquor.
256. The Authority is satisfied that the business owner knew, or ought to have known, of the level of free liquor being provided to gamblers and that staff discretion was either unstructured or insufficiently structured. Its staff enjoyed an unacceptable degree of discretion to “shout” their gaming machine players and they acted accordingly in respect of [REDACTED] experience is not an aberration but a direct consequence of this unstructured discretion.
257. As business owner, Feros Group had the means to be aware of the supply of free liquor to gamblers through its officers and agents, including Mr Hughes and his managerial staff, as well as through its oversight of the Hotel’s financial performance.
258. The Feros Group had records of the provision of free liquor across the different zones of the Hotel, including to gaming machine patrons. Neither its Gaming Room Manual nor its training modules clearly addressed the legal requirement that free liquor not be provided as an inducement to gamblers.
259. While the business owner was not obliged to deliver regulatory training above minimum legislative requirements, the adequacy of its training becomes a real issue if its licensee and staff are permitted, on a day to day basis, to exercise considerable discretion to supply free liquor to gaming machine players.
260. The Authority finds that the business owner failed to take reasonable steps, through its reporting structure and compliance programs, to prevent the type of conduct established by this case.
261. The Authority notes the submission at paragraph 120 of the Complaint that the primary object of the Act is to minimise harm associated with the misuse and abuse of gambling activities, with gambling harm minimisation referenced multiple times within the objects of the Act.
262. The Complainant describes the conduct in this case as “reckless and almost predatory” and included a “complete failure of controls”, by a licensee who was in a position of trust operating within a sophisticated hotel business. The conduct is said to “strike at the very core” of gaming regulation in NSW and greatly intensifies the potential for harm to the community.
263. While the Authority does not describe the licensee or business owner as “predatory”, the Authority finds that its business practices in this regard were lax and the business owner failed to control the inherently risky supply of free liquor to gamblers. The conduct of its

responsible staff and the systemic failures established by this Complaint are contrary to the harm minimisation objects and considerations in section 3 of the Act.

264. Ground 3 is established.

FINAL SUBMISSIONS ON DISCIPLINARY ACTION

265. On 11 September 2020, the Authority sent a detailed letter (“Findings Letter”) to the Complainant and the Respondents notifying its findings on the matters specified in the Complaint and advising that the Grounds had been established. The Authority invited final written submissions confined to the question of what, if any, disciplinary action it should take on the basis of those findings.

266. Following a request for an extension of time to provide a response, a submission was received from the Complainant on 1 October 2020 (“Complainant Final Submissions”) proposing that the Authority take the following disciplinary action:

- a. In relation to grounds 1 and 2, order the Licensee to pay a monetary penalty, noting that the maximum monetary penalty available to the Authority in relation to these two grounds is 200 penalty units or \$22,000;
- b. suspend the Hotel’s (LIQH400105924) authorisation or approval to keep approved gaming machines for seven days.
 - i. based on the data available to L&GNSW, suspending gaming machines for seven days would result in loss of gaming machine profits of approximately \$70,000 to \$90,000 to the Hotel;
 - ii. order the Licensee to pay the amount of \$19,291.85, being the costs incurred by the Secretary of the Department of Customer Service in carrying out the investigation;
 - iii. in relation to ground 3, reprimand Feros Hotel Group Pty Limited.

267. On 9 October 2020, the Respondents and the Premises Owner each provided their own final submissions in response, summarised as follows:

Submission from the Respondents

- a. The Respondents have ceased the practice of providing complimentary drinks in all of their hotels. This new policy has been enshrined in the Hotel’s Gaming Training Manual as well as communicated to Hotel staff via regular staff meetings.
- b. The Respondents have engaged Mr Lincoln Poole, the Gambling Health Team Leader at Parramatta Mission, to design a specific program to assist staff to identify problem gambling and to instruct staff on the intervention action to take when they identify signs of problem gambling¹.
- c. The Complainant seeks payment for the amount of \$19,291.85 against the costs of the investigation and legal costs of prosecuting the complaint. Pursuant to section 131(2)(i)(i) of the Act, the Authority only has the power to award this amount against the licensee and not a close associate. Notwithstanding this, the Close Associate undertakes to pay that amount if awarded against the Licensee. In determining the extent of any monetary penalty imposed on the Licensee, it is relevant for the Authority to be aware of the Licensee’s financial circumstances.

¹ On 30 April 2021, the Respondents indicated that they were having difficulty arranging for this training, and subsequent training was being arranged across all its venues, to be provided by Leigh Barrett of Leigh Barrett & Associates.

- d. The Licensee's latest Police Clearance Certificate and character references for both the Licensee and the Close Associate demonstrate that both the Licensee and the Close Associate enjoy reputations of high standing in the community.
- e. ██████ was not a known patron to the Hotel, and it is acknowledged in the problem gambling literature that signs of problem gambling can be difficult to detect and may only be detectable over a number of visits. The fact that ██████ was not known to the Hotel places the conduct in a less serious category than if he had been a person known to the Hotel.
- f. This matter can be distinguished from the Authority's recent findings in the ALH case. In light of the orders imposed in the ALH case, the following suggested orders are more proportionate to the Authority's findings:
 - i. order the Licensee to pay the amount of \$19,291.85 being the cost incurred in carrying out the investigation, pursuant to section 131(2)(i)(i) of the Act. This order is made on the proviso that the Close Associate has undertaken to pay these costs. The cost shall be paid to the Secretary within 28 days from the date of this decision;
 - ii. impose a monetary penalty of \$500 on the Licensee, pursuant to section 131(2)(a)(i) of the Act, in respect of ground 1 of the Complaint;
 - iii. impose a monetary penalty of \$500 on the Licensee, pursuant to section 131(2)(a)(i) of the Act, in respect of ground 2 of the Complaint;
 - iv. issue the Close Associate with a reprimand as a close associate of the Licensee, pursuant to section 131(2)(j) of the Act.

Submission from the Premises Owner

- j. The Premises Owner has leased the Premises to companies associated with Mr Feros for over 20 years. During this period, the Premises Owner has never received a formal complaint in relation to the Hotel or any of the licensees that have operated the Hotel;
- k. The Complainant's findings did not reveal evidence of widespread breaches of the Act or other matters which would justify penalties at the higher end of the available range of penalties.
- l. The appropriate and proportionate disciplinary response for this matter is:
 - i. suspension of the Hotel's authorisation or approval to keep approved gaming machine is excessive;
 - ii. any monetary penalties should not be set at the higher end of the range of available penalties;
 - iii. the Complainant's submission regarding costs incurred in carrying out the investigation is accepted as appropriate;
 - iv. the Complainant's submission regarding the reprimand of the Close Associate is accepted as appropriate.

DECISION ON DISCIPLINARY ACTION

268. The Authority, having found that the Grounds of the complaint are established, must now turn to consideration of the appropriate disciplinary action to take. The objects of the Act guide this consideration, in particular, the need to minimise the harm associated with the misuse and abuse of gambling activities and to foster responsible conduct in relation to gambling.

269. The Authority's disciplinary jurisdiction provided by Part 6A of the Act is protective, rather than punitive in nature. As held by the New South Wales Supreme Court in *Seagulls Rugby League Football Club Ltd v Superintendent of Licences* (1992) 29 NSWLR 357 (at paragraph 373):

The over-riding purpose of the jurisdiction is the protection of the public, and of members of clubs by the maintenance of standards as laid down in the Act.

270. Nevertheless, as observed by Basten JA of the New South Wales Court of Appeal in *Director General, Department of Ageing, Disability and Home Care v Lambert* (2009) 74 NSWLR 523 ("*Lambert*"), while disciplinary proceedings are protective, that is not to deny that orders made by disciplinary bodies may nonetheless have a *punitive effect*. His Honour observed that a Court (and hence a regulatory decision maker such as the Authority) should be mindful that a protective order is reasonably necessary to provide the required level of public protection.

271. At paragraph 83 of the judgment in *Lambert*, Basten JA states that the "punitive effects" may be relevant to the need for protection in that:

...in a particular case, there may be a factual finding that the harrowing experience of disciplinary proceedings, together with the real threat of loss of livelihood may have opened the eyes of the individual concerned to the seriousness of his or her conduct, so as to diminish significantly the likelihood of repetition. Often such a finding will be accompanied by a high level of insight into his own character or misconduct, which did not previously exist.

272. At paragraph 85 of the judgment, Basten JA observes that:

...the specific message of the disciplinary cases explaining that the jurisdiction is entirely protective is to make clear that the scope of the protective order must be defined by the reasonable needs of protection, as assessed in the circumstances of the case.

273. The Authority notes that the conduct was serious and intensified the potential for harm associated with the misuse and abuse of gambling activities to the community. The business owner failed to take reasonable steps to prevent the conduct that occurred in this matter.

274. The Authority has carefully considered the interviews conducted with the Respondents' staff members, which demonstrated gaming room staff had a well understood discretion to supply free liquor to gaming machine players, but with no adequate controls or checks with respect to the limits on the "reasonable" number of drinks to be served. As found earlier, this systemic failure resulted in three staff members supplying [REDACTED] with ten (10) drinks over the course of his lengthy gaming session at the Hotel on 13 February 2019. The Authority considers that the disciplinary action taken must be sufficient to act as a general and specific deterrence to any potential future breaches occurring, and therefore imposes on Mr Hughes, monetary penalties, which are on the lower end of the scale. Whilst the Authority could have potentially imposed a maximum monetary penalty of up to \$22,000 in relation to ground 1 and ground 2 of the complaint, the Authority has imposed a lower penalty in relation to ground 1 and ground 2, taking into account the changes to business practices that have been implemented, and the insight that Mr Hughes has demonstrated with respect to his failures under the Act.

275. Given the changes already implemented, notably, the cessation of providing complimentary free drinks at the venue, and forthcoming additional training to be

provided by Leigh Barrett (which the Authority notes is in the process of being arranged), the Authority is more confident that the Respondents will, going forward, foster a compliant culture with respect to gaming.

276. The Authority considers that a seven day suspension of Hotel's authorisation or approval to keep approved gaming machines is necessary to mark to other licensees and those in the industry, and to the public, the seriousness of the conduct the subject of this decision. The grounds of complaint that have been found are serious. The public interest is served by a period of suspension as it reminds other licensees of their obligations under the Act and will act as an element of general deterrence. In all the circumstances, the Authority concludes that a suspension period of seven days is appropriate.
277. The Act does not empower the Authority to order that a close associate pay the Secretary's costs on an investigation giving rise to a complaint. Noting the Secretary's costs of \$19,291.85 appear reasonable, and that Feros Group undertakes to pay the costs claimed by the Complainant if such an order is made, the Authority is satisfied that the licensee, Mr Hughes, should be ordered to pay the Secretary's costs on the investigation in the amount sought. This order is made on the basis that Feros Group has undertaken to pay those costs.

ORDERS

278. The Authority makes the following orders:

- a. **impose** a monetary penalty of \$2,200 on Mr Hughes pursuant to ground 1 of the complaint and section 131(2)(a)(i) of the Act;
- b. **impose** a monetary penalty of \$2,200 on Mr Hughes pursuant to ground 2 of the complaint and section 131(2)(a)(i) of the Act;
- c. **suspend** Taren Point Hotel-Motel's (LIQH400105924) authorisation or approval to keep approved gaming machines for a period of seven days from 17 May 2021 pursuant to section 131(2)(c)(iii) of the Act;
- d. **order** Mr Hughes to pay the Secretary \$19,291.85, being the costs incurred by the Secretary in conducting the investigation pursuant to section 131(2)(i)(i) of the GMA. This order is made on the basis that Feros Group Pty Limited has undertaken to pay those costs; and
- e. **issue** Feros Hotel Group Pty Limited with a reprimand.

REVIEW RIGHTS

279. Pursuant to section 131C of the Act, an application for review of this decision may be made to the New South Wales Civil and Administrative Tribunal ("NCAT") by the Complainant, the licensee or any person against whom any disciplinary action is taken under Part 8 of the Act, by no later than 28 days after those parties receive notification of this decision.
280. For more information, please visit the NCAT website at www.ncat.nsw.gov.au or contact the NCAT Registry at Level 9, John Maddison Tower, 86-90 Goulburn Street, Sydney.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'P Crawford', enclosed in a thin black rectangular border.

Philip Crawford

Chairperson

For and on behalf of the Independent Liquor and Gaming Authority

Schedule 1 – Complaint Material

1. A two-page cover letter signed by Mr Sean Goodchild, then Director of Compliance Operations, Liquor and Gaming New South Wales (“L&GNSW”), as a delegate of the Secretary of the New South Wales (“NSW”) Department of Customer Service dated 10 December 2019.
2. A twenty-two page complaint submission letter specifying the grounds of complaint, with list of twenty-two Exhibits as noted below:
 - Exhibit E01: OneGov Licence record for Taren Point Hotel-Motel (“Hotel”) LIQH400105924 as at 29 November 2019.
 - Exhibit E02: CCTV Footage of the Hotel (edited).
 - Exhibit E03: Initial correspondence made by ██████████ to L&GNSW dated 15 February 2019.
 - Exhibit E04: Affidavit of ██████████ dated 27 February 2019.
 - Exhibit E05: Hotel staff roster between 11 February 2019 and 17 February 2019.
 - Exhibit E06: Email from Hatzis Cusack dated 21 March 2019 responding to an email from L&GNSW staff dated 19 March 2019 regarding voluntary interviews.
 - Exhibit E07: Photograph of the compliance plate for the gaming machine with serial number XAW909616.
 - Exhibit E08: L&GNSW File Note dated 12 March 2019 detailing a review of the CCTV footage from the Hotel dated 13 February 2019.
 - Exhibit E09 Central Monitoring System (“CMS”) data (refined).
 - Exhibit E10: Hotel *Itemised Complimentary Register* (refined) recording transactions on 13 February 2019.
 - Exhibit E11: L&GNSW Responsible Conduct of Gambling Student course notes dated February 2018.
 - Exhibit E12: Turnover audit of CMS data dated 13 February 2019.
 - Exhibit E13: Hotel *Itemised Deductions Register* recording transactions on 13 February 2019.
 - Exhibit E14: The Feros Hotel Group Training Gaming Room Manual.
 - Exhibit E15: L&GNSW File Note: Review of training provided to staff via Allara Learning dated 21 March 2019 to 22 March 2019.
 - Exhibit E16: Transcript of the interview conducted by L&GNSW Inspectors (“Inspectors”) with Ms Te-arna McGhie on 8 March 2019.
 - Exhibit E17: Transcript of the interview conducted by Inspectors with Mr Tomislav Pelikan on 8 March 2019.
 - Exhibit E18: Transcript of the interview conducted by Inspectors with Ms Madison Fooks on 14 March 2019.
 - Exhibit E19: L&GNSW File Note: Audit of OneGov competency card records for the Hotel dated 10 December 2019.
 - Exhibit E20: Email from Mr James Hughes to L&GNSW dated 12 March 2019.
 - Exhibit E21: MAXSys CMS Connected Machines Live View.
 - Exhibit E22: Australian Securities and Investments Commission Current and Historical Company Extract for Feros Hotel Group Pty Limited as at 29 November 2019.

The Complaint was also accompanied by the *Gaming and Liquor Legislation Instrument of Delegation (Secretary) 2019 (No 1)* dated 11 March 2019.

Schedule 2 – Respondents’ Submission Material

1. A thirty-four page legal submission dated 23 April 2020 prepared by Hatzis Cusack Lawyers on behalf of Mr James Hughes and the Feros Hotel Group Pty Limited, addressing the merits of the complaint. This submission was accompanied by:
 - Annexure 1: Email from the NSW Australian Hotels Association (“AHA”) to Simon Johnston dated 20 April 2020.
 - Annexure 2: An extract from *Monty’s Rewards Terms and Conditions* effective November 2018.
 - Annexure 3: CCTV footage from inside the Hotel on 13 February 2019 between 20:13:30 and 20:14:05.
 - Annexure 4: *Responsible Gambling Expert Independent Report Into An Incident At Taren Point Hotel (The “Hotel”)* prepared by Leigh Barrett and Associates.
 - Annexure 5: 2019 AHA National Awards For Excellence Media Release *Australia’s Top Hotels Recognised at AHA National Awards For Excellence*.
 - Annexure 6: Decision and Statement of Reasons from the former Casino Liquor and Gaming Control Authority dated 17 June 2010 in respect of a complaint regarding the Embassy Hotel Penrith.
 - Sworn statement of Te-arna McGhie dated 17 April 2020.
 - Sworn statement of Madison Fooks dated 17 April 2020.
 - Sworn statement of James Hughes dated 17 April 2020 accompanied by Attachment A comprising a list of cheque payments from the gaming room for the period January to June 2019.
 - Sworn statement of Tomislav Pelikan dated 17 April 2020.
 - Sworn statement of Simon Johnston dated 17 April 2020.
 - *Responsible Gambling Expert Independent Report Into An Incident At Taren Point Hotel (The “Hotel”)* prepared by Leigh Barrett and Associates.

Respondents’ Rejoinder Submission dated 25 May 2020

2. A four-page letter dated 25 May 2020 (a “rejoinder” to the Complainant Reply Submission) together with attachments as noted earlier in this document.

Other

3. Additional update received from the Respondents with respect to training dated 30 April 2021