



Mr Anthony Keon
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Mr Allan Francis Ogilvie
Licensee/Business Owner
Albion Hotel
155 Murray Street
FINLEY NSW 2 713

Malcolm and Kerry Smith
Hotel Premises Owners
Albion Hotel
C/o Kell Moore Lawyers
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By email and/or Express Post

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Dear Sir/Madam

**Disciplinary Complaint under Part 9 of the *Liquor Act 2007*
against Mr Allan Francis Ogilvie, licensee of Albion Hotel, Finley**

INTRODUCTION

1. On 28 November 2014, the Independent Liquor and Gaming Authority (Authority) received a disciplinary complaint (Complaint) under Part 9 of the *Liquor Act 2007* (Act) made by Mr Anthony Keon, (then) Acting Director of the Compliance Branch of the Office of Liquor, Gaming and Racing (OLGR) in his capacity as delegate of the Secretary (Secretary) of (then) New South Wales Trade and Investment (Complainant).
2. The Complaint is made in relation to Mr Allan Francis Ogilvie (the Respondent), the licensee of the Albion Hotel, located at 155 Murray Street, Finley (Hotel).
3. A "full" hotel liquor licence number LIQH400114117 attaches to the Hotel. The licence has the benefit of an extended trading authorisation (ETA) that enables the sale or supply of liquor at the Hotel to continue beyond the standard licensed trading hours prescribed by section 12 of the Act. In this case, liquor may be sold or supplied for consumption on the Hotel premises from 5:00am to 2:00am the following morning on Monday through Saturday and from 10:00am to 10:00pm on Sunday. The Hotel also has the benefit of a minors area authorisation for the dining room, lounge and bistro areas.

MATERIAL BEFORE THE AUTHORITY

4. The Authority has before it the following evidence or other material:

- a) The Complaint Form and letter of Complaint from Mr Anthony Keon, Acting Director of Compliance, OLGR dated 28 November 2014
- b) The Instrument of Delegation from the Secretary delegating power to the Complainant, dated 21 March 2014
- c) The former Government Licensing System (now "OneGov") record of liquor licence number LIQH400114117 for the Hotel as at 12 November 2014
- d) The Prosecution Fact Sheet in the case of *R v Allan Francis Ogilvie* for an offence against section 9(1)(b) of the Act, regarding the sale or supply of alcohol outside the authorisation permitted by the licence, committed on 12 April 2014, and the Certificate of Conviction for this offence
- e) The Prosecution Fact Sheet in the case of *R v Allan Francis Ogilvie* for an offence against section 9(1)(b) of the Act, regarding the sale or supply of alcohol outside the authorisation permitted by the licence, committed on 13 April 2014, and the Certificate of Conviction for this offence
- f) The Prosecution Fact Sheet in the case of *R v Allan Francis Ogilvie* for an offence against section 9(1)(b) of the Act regarding the sale or supply of alcohol outside the authorisation permitted by the licence, committed on 20 April 2014, and the Certificate of Conviction for this offence
- g) The Prosecution Fact Sheet in the case of *R v Allan Francis Ogilvie* for an offence against section 73(1)(a) of the Act regarding the permission of intoxication on licensed premises, committed on 12 April 2014 and the Certificate of Conviction for this offence
- h) The Prosecution Fact Sheet in the case of *R v Allan Francis Ogilvie* for an offence against section 73(1)(b) of the Act, regarding the permission of an act of indecency on licensed premises, committed on 12 April 2014 and the Certificate of Conviction for this offence
- i) The Prosecution Fact Sheet in the case of *R v Allan Francis Ogilvie* for an offence against section 73(1)(a) of the Act, regarding the permission of intoxication on licensed premises, committed on 16 May 2014 and the Certificate of Conviction for this offence
- j) The Prosecution Fact Sheet in the case of *R v Allan Francis Ogilvie* for an offence against section 73(2) of the Act, regarding the sale or supply of alcohol by a licensee to an intoxicated person, committed on 16 May 2014 and the Certificate of Conviction for this offence
- k) The Show Cause Notice from Mr Micheil Brodie, Chief Executive for the Authority addressed to the Respondent and dated 2 December 2014
- l) The Show Cause Notice from Mr Micheil Brodie addressed to Mr and Mrs Malcolm and Kerry Smith, owners of the Hotel (Hotel Premises Owners), dated 2 December 2014

- m) The letter from Mr Rod Pogson of *Pogson Cronin*, the legal representative for the Respondent, to the Complainant dated 19 January 2015
- n) The email from Mr Sean Goodchild (the Acting Director of the Compliance Division, OLGR) addressed to Mr Rod Pogson dated 23 January 2015
- o) The letter from Mr Pogson to Mr Goodchild dated 13 February 2015
- p) The short submission letter from Mr Alan Chick of *Kell Moore Lawyers*, the legal representative for the Premises Owners dated 18 February 2015
- q) The submission letter from the Complainant dated 26 February 2015
- r) A copy of *Authority Guideline 5: "Disciplinary Complaints under Section 139 of the Liquor Act 2007"*.

GROUND OF COMPLAINT

5. There are three grounds specified in the letter of Complaint (Grounds), all of which are available to plead under section 139(3) of the Act.
6. **Ground 1** is based on section 139(3)(a) of the Act, which provides that a complaint may be made against a licensee who has, while holding a licence or managing a licensed premises, been convicted of an offence against the Act.
7. The licence record for the Hotel indicates that the Respondent has held the licence since 31 October 2013.
8. It is alleged that between 12 April 2014 and 16 May 2014, while holding the licence, the Respondent committed a total of seven (7) offences against the Act.
9. These included **two** offences against section 73(1)(a) of the Act, **one** offence against section 73(1)(b) of the Act and **one** offence against section 73(2) of the Act – by permitting either indecency or intoxication on licensed premises. These offences also included **three** offences of selling or supplying liquor not in accordance with the authorisation provided by the licence, contrary to section 9(1)(b) of the Act.
10. All of these offences were found proven by the Albury Local Court on 4 November 2014. In respect of each of the offences of permitting indecency and intoxication that were committed on 12 April 2014, the Respondent was convicted and ordered to pay a fine of \$300.
11. For the offences of selling or supplying liquor not in accordance with the authorisation provided by the licence – committed on 12, 13 and 20 April 2014 respectively – the Respondent was convicted and ordered to enter into a good behaviour bond for 12 months, pursuant to section 9(1) of the *Crimes (Sentencing Procedure) Act 1999*.
12. For each of the offences of permitting intoxication on licensed premises and selling or supplying liquor to an intoxicated person that were committed on 16 May 2014, the Respondent was convicted and ordered to pay a fine of \$400.
13. The Complainant has provided, by way of supporting evidence, Certificates of Conviction from the Albury Local Court dated 7 November 2014 which record the outcome of these prosecutions.

14. The Complainant further relies upon two Prosecution Fact Sheets dated 14 May 2014 and 3 June 2014 which record the agreed facts in relation to all seven (7) of the offences referred to in this Complaint.
15. **Ground 2** of the Complaint alleges, per section 139(3)(i) of the Act, that the Respondent is not a fit and proper person to be the holder of a liquor licence (whether for the same reason as that set out in section 45(5) of the Act or otherwise).
16. In support of this Ground, the Complainant relies upon the facts of the Respondent's commission of the seven (7) offences that are noted above for which the Respondent was sentenced on 4 November 2014.
17. The Complainant also refers to the information provided in the Prosecution Fact Sheets for the section 73 offences and submits that the facts which gave rise to these offences include that the Respondent was *present on the premises* when the contraventions of section 73 occurred and that he *contributed to the occurrence* of those offences.
18. The Complainant also refers to the Fact Sheet dated 14 May 2014 which describes an incident that occurred inside the Hotel between the hours of 2:00am and 4:00am on the morning of Saturday 12 April 2014, confirmed using CCTV footage, during which the Respondent was present.
19. The Complainant notes that this time period is outside the Hotel's extended licensed trading hours of between 5:00am and 2:00am on Monday through Saturday evening. The Fact Sheet alleges that the Respondent supplied the patrons in question with alcohol during this time and that some of the patrons at times served themselves with drinks from behind the bar, contrary to section 9(1) of the Act.
20. This Fact Sheet also details of a number of sex acts that occurred in the open area of the "smoking" room of the Hotel at around 2:15am and 4:00am. The sex acts involved one female and two male patrons, during which the Respondent was present. The acts were recorded on the Hotel's CCTV system.
21. The Fact Sheet alleges that the Respondent made no attempt to stop this conduct, or to stop the patrons from walking around the Hotel, fully naked, in contravention of section 73(1)(b) of the Act.
22. The Complainant further refers to the Fact Sheet dated 14 May 2014 concerning the incident on 12 April 2014 which states that the female patron involved with these sex acts was "seriously affected by alcohol" after consuming alcohol – which the Respondent had supplied to her at the Hotel, in contravention of section 73(1)(b) of the Act – from when she arrived at the Hotel prior to 2:00am until 4:10am.
23. The Fact Sheet dated 14 May 2014 further states that, while Police were investigating the offences which occurred on 12 April 2014, they also confirmed, after viewing CCTV footage, that the Respondent had traded beyond 2:00am on the mornings of Sunday 13 April 2014 and Sunday 20 April 2014 in contravention of section 9(1) of the Act.
24. The Fact Sheet states that the CCTV footage of 13 April 2014 "clearly shows two male patrons drinking alcohol after 2:00am and one female drinking alcohol at approx. 3:10am" and the CCTV footage for 20 April 2014 "clearly shows male patrons and a female patron consuming alcohol between 2:00am and 3:00am".
25. The Complainant also refers to the Fact Sheet dated 3 June 2014, which describes the observations of plainclothes Police officers who attended the Hotel premises at around 9:05pm on Friday 16 May 2014. This document alleges that Police had a conversation

outside the Hotel with a male patron, who appeared to be heavily intoxicated. During this conversation, the man lost his balance and almost head butted the Police officers.

26. The Fact Sheet also records Police observations that on this date a person (whose name is redacted from the Fact Sheet), not being an employee of the Hotel, walked behind the bar of the Hotel on several occasions after 10:10pm to take alcoholic drinks from the fridge and to serve other patrons. This person appeared to Police to be heavily intoxicated.
27. Police also observed the Respondent to enter the bar area of the Hotel around 10:35pm and make no attempt to remove these clearly intoxicated patrons from the Hotel. Rather, the Respondent is alleged to have continued to supply these patrons with alcohol, in contravention of section 73(1)(a) and section 73(2) of the Act.
28. **Ground 3** of the Complaint alleges, per section 139(3)(m) of the Act, that the Respondent is a person who is interested in the business, or in the conduct or profits of the business, carried on under the licence and is not a fit and proper person to be so interested in a licensed business. In support of this Ground, the Complainant relies upon the same evidence or material relied upon in support of Ground 2.

COMPLAINANT RECOMMENDATIONS ON DISCIPLINARY ACTION

29. In the letter of Complaint, the Complainant contends that circumstances of "aggravation" exist within the meaning of section 141(7) of the Act in relation to the Complaint. [For ease of reference, an extract of section 141 of the Act is provided in the legislation section of this letter.]
30. The Complainant also submits that all seven offences committed by the Respondent are "prescribed offences" for the purposes of the "Three Strikes" disciplinary scheme in Part 9A of the Act. The Complainant submits that the April 2014 offences resulted in the incurring of an automatic "first strike" against the licence, while the May 2014 offences have "triggered considerations" as to whether a second strike ought to be imposed under the scheme.
31. The Authority notes that a decision to impose a second strike upon the licence was made by the Secretary on 23 December 2014 and an application for review of that second strike decision has been made by the licensee to the Authority and considered by the Authority simultaneously with this Complaint. The Authority's decision on review has been notified by separate correspondence, but the Authority notes that it has **confirmed** the decision to incur the second strike.
32. The Complainant submits that it is "alarming" that seven "serious offences" were committed less than 12 months after the Respondent became the licensee of the Hotel on 31 October 2013. The Complainant submits that, having been the Hotel's business owner since 2007, the Respondent ought to have been fully aware of the requirements of running a licensed premises.
33. The Complainant submits that the Respondent's role in relation to the occurrence of the offending conduct indicates a "permissive culture" at the Hotel which limits the effectiveness of any licence conditions that may be imposed to ensure that this venue is managed in line with the expectations of the community.
34. The Complainant submits that "the pattern, frequency and seriousness of offending indicates the risk of alcohol related harm to the community is too great should the Respondent be permitted to continue managing a licensed premises".

35. The Complainant submits that the Authority should take action:

- a) disqualifying the Respondent from holding a licence and managing a licensed premises for such period as the Authority thinks fit
- b) disqualifying the Respondent from being a person interested in the business, or in the conduct or profits of the business, carried on under a licence for such period as the Authority thinks fit
- c) any other disciplinary action as the Authority thinks fit.

LEGISLATION

36. When determining the Complaint, the Authority considers the statutory objects and considerations that are prescribed by section 3 of the Act, which states as follows:

3 Objects of Act

(1) *The objects of this Act are as follows:*

- (a) *to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community.*
- (b) *to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,*
- (c) *to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.*

(2) *In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:*

- (a) *the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),*
- (b) *the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,*
- (c) *the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.*

37. When determining the Complaint, the Authority also considers the objects and considerations prescribed by Part 9 of the Act, which states as follows:

139 Grounds for making complaint

(1) *A complaint in relation to a licensee, manager or close associate of a licensee may be made to the Authority by any of the following (referred to in this Part as **the complainant**):*

- (a) *the Director-General,*
- (b) *the Commissioner of Police,*
- (c) *a person authorised by the regulations to make a complaint under this Part.*

(2) *A complaint must be in writing and specify the grounds on which it is made.*

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

- (a) *that the licensee or manager has, while holding a licence or managing licensed premises, been convicted of an offence under this Act or the regulations (or under the former Act) or of an offence prescribed by the regulations,*
- (b) *that the licensee or manager has failed to comply with any of the conditions to which the licence is subject,*
- (c) *that the licensee has failed to comply with any of the conditions to which any authorisation or approval held by the licensee under this Act is subject,*
- (d) *that the licensee or manager has failed to comply with any other requirement under this Act or the regulations (or under the former Act), relating to the licence or the licensed premises,*
- (e) *that the licensee or manager has failed to comply with a direction or other requirement of the Authority, the Director-General or the Commissioner of Police under this Act (or of the Director-General or the Commissioner under the former Act),*

- (f) that the licensee or manager has engaged in conduct or activities that are likely to encourage misuse or abuse of liquor (such as binge drinking or excessive consumption),
 - (g) that intoxicated persons have frequently been on the licensed premises or have frequently been seen to leave those premises,
 - (h) that acts involving violence against persons or damage to property have frequently been committed on or near the licensed premises by persons who have been on the licensed premises,
 - (i) that the licensee is not a fit and proper person to be the holder of a licence (whether for the same reason as that set out in section 45(5) or otherwise) or the manager is not a fit and proper person to be the manager of the licensed premises (whether for the same reason as that set out in section 68 (4A) or otherwise),
 - (j) that the close associate is not a fit and proper person to be a close associate of a licensee,
 - (k) that a complaint against a licensee under this section has been made and that:
 - (i) the close associate knew or ought reasonably to have known that the 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,
 - (l) that the close associate is (or has become) a close associate of a licensee while disqualified by the Authority from being a close associate,
 - (m) that a person who is interested in the business, or in the conduct or profits of the business, carried on under the licence is not a fit and proper person to be so interested,
 - (n) that a person is (or has become) a person who is interested in the business, or in the conduct or profits of the business, carried on under a licence while disqualified by the Authority under this Part from being a person so interested,
 - (o) in the case of a limited licence – that the licensee has not exercised proper control and supervision over a function held under the licence,
 - (p) in the case of a limited licence – it is not in the public interest for liquor to be sold or supplied at functions held by or under the auspices of the non-proprietary association on whose behalf the licence is held,
 - (q) in the case of a licence held by a corporation – that a person who occupies a position of authority in the corporation is not a fit and proper person to occupy such a position in a corporation that is the holder of a licence,
 - (r) that public entertainment has been conducted on the licensed premises otherwise than in accordance with any requirements under the Environmental Planning and Assessment Act 1979 relating to the use of the premises for public entertainment,
 - (s) that the licence has not been exercised in the public interest,
 - (t) that the continuation of the licence is not in the public interest.
- (4) In subsection (3), **former Act** means the Liquor Act 1982 or the regulations made under that Act and includes, in the case of a licensee that is a registered club, the Registered Clubs Act 1976 as in force immediately before the repeal of section 9 of that Act by Schedule 2 to the Miscellaneous Acts (Casino, Liquor and Gaming) Amendment Act 2007.

140 Procedure for taking disciplinary action

- (1) If a complaint in relation to a licensee, manager or close associate is made under this Part, the Authority must, before taking any disciplinary action against the licensee, manager or close associate, notify the licensee, manager or close associate in writing of the grounds on which the Authority is proposing to take disciplinary action.
- (2) Any such notice is to invite the licensee, manager or close associate to show cause, by way of a written submission, as to why the Authority should not take disciplinary action against the licensee, manager or close associate.
- (3) The Authority must also, before taking disciplinary action against a licensee, invite written submissions from the following persons:
 - (a) if the licensee occupies the licensed premises under a lease—the lessor, suspend the club's licence for such period as the Authority thinks fit,
 - (b) each person named in the written statement referred to in section 41 that accompanied the application for the licence, suspend or cancel any authorisation held by the registered club under this Act,
 - (c) each person named in the information provided to the Authority (as required by section 55) who has become interested in the business, or the conduct of the

- business, carried out on the licensed premises concerned, remove from office the secretary of the club or a member of the governing body of the club,*
- (d) *if the grounds for taking the proposed disciplinary action relate to a person (other than the licensee) not being a fit and proper person—that person.*
- (4) *The Authority may specify:*
 - (a) *The time within which a submission under this section may be made, and*
 - (b) *Any other requirements that must be complied with in relation to the making of any such submission.*
- (5) *If any written submission is made in accordance with this section, the Authority must take the submission into consideration in deciding whether or not to take disciplinary action against the licensee, manager or close associate concerned.*
- (6) *Subsection (1) does not require the Authority to disclose any criminal intelligence.*

141 *Disciplinary powers of Authority*

- (1) *The Authority may deal with and determine a complaint that is made to it under this Part.*
- (1A) *If the Authority is satisfied that the criminal organisation associate ground applies in relation to a licensee, the Authority must do one or both of the following:*
 - (a) *disqualify the licensee from holding a licence for such period as the Authority thinks fit,*
 - (b) *cancel the licence.*
- (1B) *If the Authority is satisfied that the criminal organisation associate ground applies in relation to a manager, the Authority must do one or both of the following:*
 - (a) *disqualify the manager from being the manager of a licensed premises for such period as the Authority thinks fit,*
 - (b) *withdraw the manager's approval to manage licensed premises.*
- (2) *If the Authority is satisfied that any of the grounds (other than a criminal organisation associate ground) on which the complaint was made apply in relation to the licensee, manager or close associate, the Authority may decide not to take any action or may do any one or more of the following:*
 - (a) *cancel the licence,*
 - (b) *suspend the licence for such period not exceeding 12 months (or, if circumstances of aggravation exist in relation to the complaint, not exceeding 24 months) as the Authority thinks fit,*
 - (c) *order the licensee or manager to pay, within such time as is specified in the order:*
 - (i) *a monetary penalty not exceeding 500 penalty units (in the case of a corporation) or 200 penalty units (in the case of an individual), or*
 - (ii) *if circumstances of aggravation exist in relation to the complaint—a monetary penalty not exceeding 1,000 penalty units (in the case of a corporation) or 400 penalty units (in the case of an individual),*
 - (d) *suspend or cancel any authorisation or other approval (other than the licence itself) held by the licensee under this Act,*
 - (e) *impose a condition to which the licence, or any authorisation or approval held by the licensee under this Act, is to be subject or revoke or vary a condition to which the licence or any such authorisation or approval is subject,*
 - (f) *disqualify the licensee from holding a licence for such period as the Authority thinks fit,*
 - (g) *withdraw the manager's approval to manage licensed premises,*
 - (h) *disqualify the manager from being the manager of licensed premises,*
 - (i) *in the case of a limited licence held on behalf of a non-proprietary association—order that a limited licence is not, for a period of not more than 3 years from the date on which the decision takes effect, to be granted to any person on behalf of the non-proprietary association,*
 - (j) *disqualify the close associate from being a close associate of a licensee for such period as the Authority thinks fit,*
 - (k) *disqualify the close associate from holding a licence for such period as the Authority thinks fit,*
 - (l) *order the licensee, manager or close associate to pay the amount of any costs incurred by:*
 - (i) *the Director-General in carrying out any investigation or inquiry under section 138 in relation to the licensee, manager or close associate, or*
 - (ii) *the Authority in connection with the taking of disciplinary action against the licensee, manager or close associate under this section,*
 - (m) *reprimand the licensee, manager or close associate.*

- (3) If the Authority orders a licensee or manager to pay a monetary penalty under this section and the penalty is not paid within the time specified in the order, the Authority may:
 - (a) cancel the licence, or
 - (b) suspend the licence until such time as the penalty is paid (or for such other period as the Authority thinks fit).
- (4) While a person is disqualified by the Authority from being a close associate of a licensee, the person is conclusively presumed for the purposes of this Act to be a person who is not a fit and proper person to be a close associate of a licensee.
- (5) **Action against other interested persons**
 In deciding whether to take disciplinary action under this section against a licensee in relation to a complaint, the Authority may take disciplinary action against a person who is interested in the business, or in the conduct or profits of the business, carried on under the licence (regardless of whether the Authority takes any disciplinary action under this section against the licensee concerned).
- (6) If the Authority decides to take disciplinary action against any such interested person, the Authority may do any one or more of the following:
 - (a) disqualify the person, for a period commencing on a specified day, from being a person interested in the business, or in the conduct or profits of the business, carried on under a licence,
 - (b) reprimand the person.
- (7) **Circumstances of aggravation**
 For the purposes of this section, circumstances of aggravation exist in relation to a complaint if (and only if) each of the following paragraphs applies:
 - (a) the complaint concerns a contravention or alleged contravention of section 73 or 74,
 - (b) the complaint alleges that for the reasons specified in the complaint the matter of the complaint is so serious as to warrant the taking of action that is available to the Authority when circumstances of aggravation exist,
 - (c) the Authority, in finding that the matter of the complaint has been made out, is of the opinion (having regard to any matter such as the number of contraventions of the Act involved, the seriousness of the contravention involved, the number of people involved in the contravention or the seriousness of the outcome of the contravention, or any other relevant consideration) that the matter of the complaint is so serious as to warrant the taking of action that is available to the Authority when circumstances of aggravation exist.
- (8) In this section:
"criminal organisation associate ground" means:
 - (a) in relation to a licensee—that the licensee is not a fit and proper person to be the holder of a licence for the same reason as that set out in section 45 (5), or
 - (b) in relation to a manager—that the manager is not a fit and proper person to be the manager of the licensed premises for the same reason as that set out in section 68 (4A).

FITNESS AND PROPRIETY

- 38. As noted above, under section 139(3)(i) of the Act, a ground on which a complaint in relation to a licensee may be made is that the licensee is not a fit and proper person to be the holder of a licence (whether for the same reason as set out in section 45(5) of the Act or otherwise) or the manager is not a fit and proper person to be the manager of the licensed premises (whether for the same reason as that set out in section 68(4A) of the Act or otherwise).
- 39. It is well established at common law for the purposes of licensing that to be "fit and proper" a person must have a requisite knowledge of the Act (or Acts) under which he or she is to be licensed and the obligations and duties imposed thereby: *Ex parte Meagher* (1919) 36 WN 175 and *Sakellis v Police* (1968) 88 WN (Pt 1) (NSW) 541. Being fit and proper normally comprises the three characteristics of "honesty, knowledge and ability": *Hughes & Vale Pty Ltd v NSW* (No 2) (1955) 93 CLR 127.
- 40. Where a person has been convicted of offences, the decision maker must consider the circumstances of those convictions and the general reputation of the person apart from

the convictions and the likelihood of repetition – *Clarahan v Register of Motor Vehicle Dealers in the ACT* (1994) 17 FLR 44.

41. In *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, the High Court of Australia has held that:

The expression 'fit and proper person' standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of 'fit and proper' cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of those activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides an indication of likely future conduct) or reputation (because it provides an indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.

RECENT AMENDMENTS TO THE LIQUOR ACT

42. The Authority notes that, since the making of this Complaint, subsection 45(5A) has been inserted into the Act by the *Liquor Amendment Act 2014* (Amending Act). The Act was passed without amendment by the NSW Legislative Assembly and NSW Legislative Council on 30 January 2014.
43. The Amending Act inserted a new subsection 45(5A) into the Act which prescribes some express and non-exhaustive considerations to which the Authority must turn its mind, and provides further guidance in determining whether an applicant for a liquor licence is a fit and proper person.
44. Subsection 45(5A), which is now in effect, commenced operation on 17 December 2014. It states as follows:
- (5A) Without limiting subsection (3)(a), in determining whether an applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, the Authority is to consider whether the applicant:
- (a) is of good repute, having regard to character, honesty and integrity, and
 - (b) is competent to carry on that business or activity.
45. As noted above, section 139(3)(i) refers to section 45(5) of the Act. While the Authority may not consider that Parliament would have intended for subsection 45(5A) to have retrospective effect in the present disciplinary context, in any event, the Authority may be satisfied that the common law test that is applicable requires consideration of the Respondent's character and competence.

CONSULTATION ON COMPLAINT

46. On 2 December 2014, the Authority's Chief Executive wrote to the Respondent. Pursuant to section 140 of the Act, the Respondent was invited to show cause by way of written submissions as to why disciplinary action should not be taken against him on the basis of the grounds specified in the Complaint.
47. The Respondent was provided with a copy of all of the material provided to the Authority by the Complainant in the form in which it was provided by the Complainant (Complaint Material).
48. The Respondent was advised of a timetable for making written submissions and informed that in addition to making written submissions, he may also request a

Conference with the Authority. The Respondent was invited to advise the Authority by 19 January 2015 whether a Conference is requested and who will be accompanying him and their respective roles, should a Conference be convened.

49. It was noted that a Conference is a supplementary procedure and that the Respondent should ensure that his entire case is presented in the written material filed with the Authority.
50. The Respondent was directed to *Authority Guideline 5* for further information, a copy of which is published on the Authority website, www.ilga.nsw.gov.au.
51. On 2 December 2014, the Chief Executive also sent a letter to the Hotel Premises Owners, Mr and Mrs Malcolm and Kerry Smith. Pursuant to section 140 of the Act, the Hotel Premises Owners were invited to make written submissions on the Complaint and whether disciplinary action should be taken on the basis of the Grounds of Complaint. The Hotel Premises Owners were provided with the Complaint Material, timetable information and the option of a Conference was also noted.

SUBMISSION FROM THE RESPONDENT DATED 19 JANUARY 2015

52. On 19 January 2015, the legal representative for the Respondent, Mr Rod Pogson of the law firm *Pogson Cronin*, responded to the Complaint and Show Cause Notice dated 2 December 2014.
53. In this submission letter, Mr Pogson noted that a second strike had been incurred and that the Respondent was notified of this on 23 December 2014. Mr Pogson noted that the Respondent had sought a review of the second strike.
54. Mr Pogson submits that, if the Respondent's objections to the second strike are accepted and the second strike is "withdrawn", it is "less likely" that the Complaint action sought would be taken against the Respondent, particularly the actions referred to at "Actions 1 and 2" of the Complaint.
55. [The Authority notes that this is an apparent reference to the disciplinary actions recommended by the Complainant – in the first instance, the disqualification of the Respondent from holding a licence and managing a licensed premises for such period as the Authority thinks fit; and in the second instance, the disqualification of the Respondent from being a person interested in the business, or in the conduct or profits of the business, carried on under a licence for such period as the Authority thinks fit.]
56. Mr Pogson submits that the Complainant's proposed "Action 2" goes further than the Complainant's concern that the Respondent not be permitted "to continue managing a licensed premises".
57. Mr Pogson sought to "clarify" whether there was objection to the Respondent "being involved in the management of the Hotel" or whether the objection was to the Respondent "being involved or employed at the Hotel in any capacity".
58. Mr Pogson further noted that the Respondent was in the process of agreeing "consent conditions" with the local Police, one of which would involve the Respondent transferring the licence to an agreed transferee so that he would no longer be involved in the management of the Hotel.

SUBMISSION FROM COMPLAINANT DATED 23 JANUARY 2015

59. On 23 January 2015, Mr Sean Goodchild, the Acting Director of Compliance for OLGR, responded to the submission from on behalf of the Respondent dated 19 January 2015.
60. Mr Goodchild submits that this Complaint made under section 139 of the Act is a separate administrative process to the matters to be considered under the "Three Strikes Disciplinary Scheme". He submits that consideration of the disciplinary Complaint involves the application of differing legislative tests (from the review of the second strike) that "cannot be applied interchangeably".
61. Mr Goodchild further notes that the action sought under section 139 of the Act is not limited to Mr Ogilvie in his capacity as licensee. Mr Goodchild submits that Mr Ogilvie is also the business owner and "plays a key role in the operation of the Hotel".
62. Mr Goodchild expresses concerns regarding the autonomy of the proposed incoming licensee should the Respondent be permitted to continue being a person interested in the Hotel business. Mr Goodchild notes that it is the Complainant's submission that it is inappropriate for Mr Ogilvie to be involved at the Hotel "in any capacity".
63. Lastly, Mr Goodchild notes that the action sought within this Complaint reflects the disciplinary powers that are available to the Authority under section 141 of the Act. However, the Authority may also consider additional measures that are available to it under that section when determining this matter.

SUBMISSION FROM THE RESPONDENT DATED 13 FEBRUARY 2015

64. On 13 February 2015, Mr Pogson made a further, more substantive submission in response to the Complaint and the submission from Mr Sean Goodchild dated 23 January 2015.
65. Mr Pogson notes that this Complaint is based on three Grounds relating to sections 139(3)(a), (i) and (m) of the Act.
66. In response to **Ground 1** (based on section 139(3)(a) of the Act), Mr Pogson submits that, in light of the submissions made to the Albury Local Court when the prosecutions were dealt with on 4 November 2014, the Magistrate dealt with those matters by way of a conditional bond and fines. Mr Pogson submits that, after considering all of the facts of the matter, the Magistrate did not consider it appropriate to direct that any further penalty action be taken in relation to the licence.
67. In response to **Ground 2** (based on section 139(3)(i) of the Act), Mr Pogson submits that, "whilst not conceding" this Ground, the Respondent has previously indicated that he is prepared to transfer the licence to a suitable transferee. As such, Mr Pogson submits that the Complainant's recommended action of disqualifying the Respondent from holding a licence and managing any licensed premises for such period as the Authority thinks fit "would effectively be by consent".
68. In response to **Ground 3** (based on section 139(3)(m) of the Act), Mr Pogson notes the concerns expressed by Mr Goodchild in his email submission of 23 January 2015 (noted above) as to the autonomy of any proposed incoming licensee should the Respondent continue to be a person interested in the business. Mr Pogson submits that the proposal put to local Police was that the Respondent "simply be employed at the Hotel".
69. Mr Pogson notes that "Action 2" recommended by the Complainant proposes the disqualification of the Respondent from being a person interested in the business, or in

the conduct or profits of the business, carried on under a licence for such period as the Authority thinks fit.

70. Mr Pogson submits that the email from Mr Goodchild dated 23 January 2015 goes further than this in that it seeks to have the Respondent cease from being involved at the licensed premises "in any capacity". Mr Pogson submits that this action is "not available" under the subsection of the Act upon which the Complainant relies.
71. Mr Pogson concludes that the Respondent would consent to proposed Actions 1 and 2 recommended by the Complainant, "provided that agreement can be reached in relation to the period of disqualification".

SUBMISSION FROM HOTEL PREMISES OWNERS DATED 18 FEBRUARY 2015

72. On 18 February 2015, the legal representative for the Hotel Premises Owners, Mr Alan Chick from *Kell Moore Lawyers*, made a number of submissions in response to the Complaint.
73. Mr Chick advises, on behalf of the Hotel Premises Owners, that the Respondent has been the owner of the Hotel business since 19 March 2007. The Hotel Premises Owners contend that from this date up until the commission of the offences giving rise to the Complaint, there have not been any breaches of the Hotel's liquor licence conditions by the Respondent. The Hotel Premises Owners further contend that there "have not been any substantial breaches of the terms of the lease for the Hotel".
74. The Hotel Premises Owners note the Respondent's submissions that the Respondent has been negotiating licence conditions with local Police, centring around the transfer of the licence to a more suitably qualified person and that the Respondent would not be involved in the management of the Hotel. The Hotel Premises Owners further note that the Respondent was willing to accept the imposition of conditions regarding a reduction in licensed trading hours; increased CCTV surveillance and employment of an external security agency.
75. The Hotel Premises Owners submit that the offences have been the subject of proceedings in the Local Court and that the Magistrate made no recommendations that the matter be further pursued beyond the imposition of fines and good behaviour bonds.
76. In conclusion, the Hotel Premises Owners request the Authority to consider that, apart from the offences complained of, the Respondent is "of good character having been a supportive parent and an active member of the local community including the coaching junior football [*sic*] for several years".

SUBMISSION FROM COMPLAINANT DATED 26 FEBRUARY 2015

77. On 26 February 2015, the Complainant wrote to the legal representative of the Respondent in response to their submission dated 13 February 2015.
78. In this submission the Complainant advises that, in accordance with the timetable set by the Authority on 2 December 2014, this would constitute OLGR's final correspondence on this matter.
79. The Complainant submits that the powers available to the Authority under Part 9 of the Act are administrative in nature and thus are "not fettered by the course of action which may or may not have been considered by the Local Court at first instance in criminal proceedings".

80. The Complainant further notes that, despite the willingness of the Respondent to consent to a period of disqualification by agreement, the Authority itself must determine what, if any, disciplinary action should be taken if the Grounds of Complaint are established. The Complainant submits that the Authority must determine what an appropriate disqualification period is in the circumstances of this case and that there is "no benefit in trying to negotiate an agreement in this regard".
81. Finally, the Complainant advises that, on review of the material before the Authority, there is "no further information to add by way of submission on this matter". The Complainant notes that the basis for the Complaint was outlined in the initial letter dated 28 November 2014 and the supplementary email submission from Mr Goodchild dated 23 January 2015.

FINDINGS ON GROUNDS OF COMPLAINT

82. As noted in *Authority Guideline 5*: "Disciplinary Complaints under Section 139 of the *Liquor Act 2007*", findings in disciplinary matters are made on the balance of probabilities and an appropriate degree of care is taken with regard to allegations that the Respondent has committed an offence or some other act of serious moral wrongdoing, in accordance with the principle enunciated by the High Court of Australia in *Briginshaw v Briginshaw* (1938) 60 CLR 336.
83. The Authority notes that the alleged commission of the offences relied upon by the Complainant has been supported by evidence in the form of Certificates of Conviction. The occurrence of those offences has not been contested by the Respondent. There is no information or evidence that the Respondent has been the subject of offences other than the serious matters that are now before the Authority in this Complaint.
84. The Authority notes that the Respondent has not requested a Conference. In those circumstances, the Complaint has been determined on the papers.

Finding on Ground 1

85. The Authority is satisfied that Ground 1 has been established. Ground 1 is based on section 139(3)(a) of the Act, which provides that a complaint may be made against a licensee who has, while holding a licence or managing a licensed premises, been convicted of an offence against the Act.
86. The Authority is satisfied that the Respondent committed an offence on 12 April 2014 against section 9(1)(b) of the Act, involving the sale or supply of liquor outside the authorisation permitted by the licence. This finding is based upon the detailed account of the facts provided in the Prosecution Fact Sheet dated 14 May 2014 and the Certificate of Conviction dated 7 November 2014.
87. The Authority is satisfied that the Respondent committed an offence on 13 April 2014 against section 9(1)(b) of the Act, involving the sale or supply of liquor outside the authorisation permitted by the licence. This finding is based upon the detailed account of the facts provided in the Prosecution Fact Sheet dated 14 May 2014 and the Certificate of Conviction dated 7 November 2014.
88. The Authority is satisfied that the Respondent committed an offence on 20 April 2014 against section 9(1)(b) of the Act, involving the sale or supply of liquor outside the authorisation permitted by the licence. This finding is based upon the detailed account of the facts provided in the Prosecution Fact Sheet dated 14 May 2014 and the Certificate of Conviction dated 7 November 2014.

89. The Authority is satisfied that the Respondent committed an offence on 12 April 2014 against section 73(1)(a) of the Act, involving the permission of intoxication on licensed premises. This finding is based upon the detailed account of the facts provided in the Prosecution Fact Sheet dated 14 May 2014 and the Certificate of Conviction dated 7 November 2014.
90. The Authority is satisfied that the Respondent committed an offence on 12 April 2014 against section 73(1)(b) of the Act, by permitting of an act of indecency on licensed premises. This finding is based upon the detailed account of the facts provided in the Prosecution Fact Sheet dated 14 May 2014 and the Certificate of Conviction dated 7 November 2014.
91. The Authority is satisfied that in respect of the offences of selling or supplying liquor not in accordance with the authorisation provided by the licence, committed on 12, 13 and 20 April 2014 respectively, the Respondent was convicted and ordered to enter into a good behaviour bond for 12 months, pursuant to section 9(1) of the *Crimes (Sentencing Procedure) Act 1999*. This finding is based upon the Certificate of Conviction dated 4 November 2014.
92. The Authority is satisfied that in respect of each of the offences of permitting indecency and intoxication that were committed on 12 April 2014, the Respondent was convicted and ordered to pay a fine of \$300. This finding is based upon the Certificate of Conviction dated 4 November 2014.
93. The Authority is satisfied that the Respondent committed an offence on 16 May 2014 against section 73(1)(a) of the Act, by permitting intoxication on licensed premises. This finding is based upon the detailed account of the facts provided by the Prosecution Fact Sheet dated 3 June 2014 and the Certificate of Conviction dated 7 November 2014.
94. The Authority is satisfied that the Respondent committed an offence on 16 May 2014 against section 73(2) of the Act, involving the sale or supply of liquor by a licensee to an intoxicated person. This finding is based upon the detailed account of the facts provided by the Prosecution Fact Sheet dated 3 June 2014 and the Certificate of Conviction dated 7 November 2014.
95. The Authority is further satisfied that for each of the offences of permitting intoxication on licensed premises and selling or supplying liquor to an intoxicated person that were committed on 16 May 2014, the Respondent was convicted and ordered to pay a fine of \$400. This finding is based upon the Certificate of Conviction dated 4 November 2014.

Finding on Ground 2

96. The Authority is satisfied that Ground 2 has been established. This Ground is based on section 139(3)(i) of the Act, and it is alleged that the Respondent is not a fit and proper person to be the holder of a liquor licence (whether for the same reason as that set out in section 45(5) of the Act or otherwise).
97. In reaching this conclusion, the Authority accepts the facts alleged in the Prosecution Fact Sheets (dated 14 May 2014 and 3 June 2014) regarding the Respondent's commission of the seven (7) offences noted above for which the Respondent was sentenced on 4 November 2014.
98. The Authority is satisfied that the Respondent was present on the Hotel premises at the time that the alleged offences occurred and that he contributed to the occurrence of those relatively serious offences against the Act, in flagrant disregard for his obligations as a licensee.

99. The Authority has taken into account the relatively moderate penalties issued by the Local Court and the Respondent's submissions to the effect that the Local Court did not see fit to issue additional penalties available to it under Part 10 of the Act.
100. Nevertheless, the Authority's disciplinary jurisdiction under Part 9 of the Act serves a broader protective purpose, by comparison to the Local Court's penal jurisdiction when dealing with offences against the Act.
101. The Authority is satisfied that, notwithstanding the lack of any prior evidence of offences committed by the Respondent against this Act, the flagrant and repeated breaches of the Act that are the subject of this Complaint, committed over the course of just two months, indicates that the Respondent is not a fit and proper person to be the licensee of any licensed premises in New South Wales at this time.
102. The Authority cannot dismiss the Respondent's conduct as the product of a lack of supervision or a lack of diligence. The Respondent participated in deliberate contravention of the Act and these numerous events cannot be regarded as isolated incidents or a lapse in personal judgment.

Finding on Ground 3

103. The Authority is satisfied that Ground 3 is established. This Ground is based on section 139(3)(m) of the Act, and it is alleged that the Respondent is a person who is interested in the business, or in the conduct or profits of the business carried on under the licence, and is not a fit and proper person to be so interested in a licensed business. In support of this Ground, the Complainant relied upon the same evidence or material relied upon in support of Ground 2.
104. The Authority is satisfied that the Respondent is a "person interested" in a licensed business, being the licensee and owner of the Hotel business. A person interested is defined by section 137(3) of the Act as follows:
- (3) *For the purposes of this Part, a person is "interested" in the business, or in the conduct or profits of the business, carried on under a licence if the person:*
- (a) *is named in the written statement referred to in section 41 that accompanied the application for the licence, or*
 - (b) *is a person referred to in section 55 who has become interested in the business, or the conduct of the business, carried out on the licensed premises concerned, or*
 - (c) *in the case of a licence held by a corporation-is an individual who occupies a position of authority in the corporation that holds the licence, or*
 - (d) *in the case where the person referred to in paragraph (a) or (b) is a proprietary company:*
 - (i) *is a director of, or shareholder in, the proprietary company, or*
 - (ii) *is a director of, or shareholder in, a corporation that, within the meaning of the Corporations Act 2001 of the Commonwealth, is a related body corporate of the proprietary company.*
105. The Respondent has not contested that any of the offences alleged by the Complainant have actually occurred, but has made submissions in mitigation in relation to those offences, including that the offences have already been dealt with by the Local Court by way of a conditional bond and fines and that the Local Court did not impose further penalties in relation to the licence under Part 10 of the Act.
106. The Authority notes that the Respondent is prepared to transfer the licence to a suitable transferee but this is subject to a proviso that (in the Respondent's words) "acceptable commercial terms" can be reached with any intended "purchaser". However, the findings on this Complaint give rise to serious concerns as to whether the Respondent should be

placed in a position of influence or control over the operation of a licensed premises at this time.

107. The Authority has taken into account the submissions made by the Hotel Premises Owner as to Mr Ogilvie's general character. While accepting that he has been a supportive parent and involved with the local football team, the Authority is nevertheless satisfied that Mr Ogilvie has demonstrated serious failings as to the degree of ability with respect to observance of statutory duties that is expected of a reasonably diligent hotelier.

FINAL SUBMISSIONS ON DISCIPLINARY ACTION

108. On 19 August 2015, a detailed letter dated 18 August 2015 (Grounds Decision) was sent to the Complainant and the legal representatives for the Respondent and the Hotel Premises Owners, notifying them of the Authority's findings on the Grounds of Complaint and inviting final written submissions on the question of what, if any, disciplinary action should be taken by the Authority pursuant to section 141 of the Act as a consequence of its findings.
109. The Authority also advised that it was contemplating whether circumstances of aggravation exist, within the meaning of section 141(7) of the Act, on the material before the Authority – including but not limited to the apparent vulnerability of the young woman involved in the sex acts performed on the Hotel premises (noting in particular her age and degree of intoxication at the time) in the presence of the Respondent.
110. Any further submissions from the Complainant on legal or factual issues addressing the question of aggravation were requested within 14 days of the date of the Grounds Decision. Submissions from the Respondent and the Hotel Premises Owners were requested within 14 days thereafter.

Final Submission from the Complainant dated 24 August 2015

111. On 24 August 2015, the Complainant provided a final submission on disciplinary action to the Authority via email, copying the legal representatives for the Respondent and the Hotel Premises Owners.
112. Briefly, the Complainant maintains that the disciplinary action sought in the initial letter of Complaint and supplementary materials is "necessary and appropriate". Further, the Complainant strongly maintains that the matter is one where circumstances of aggravation exist as set out in section 141(7) of the Act, by reason that:
- a) The seven offences committed by the Respondent licensee, of which he was convicted, are all "serious" offences, and ones for which he was "personally and directly involved"
 - b) The contraventions are also "prescribed offences" under the "Three Strikes" disciplinary scheme contained in Part 9A of the Act, which the Government has identified as being the most serious offences under the Act
 - c) The offences occurred over the course of less than two months, with the Respondent licensee present on the Hotel premises and "effectively facilitating" the unlawful conduct.
113. The Complainant provides a brief outline of the facts in relation to the five prescribed offences occurring on 12 April 2014 and the two further prescribed offences occurring on 16 May 2014, and submits that:

...the complete inaction by [the Respondent] to take any steps to address patently obvious alcohol related harm that was occurring in front of him on his premises on multiple occasions warrants a finding that circumstances of aggravation exist.

114. The Complainant submits that such actions (or inaction, as the case may be) are "not consistent" with the principal objectives of the Act and are a "clear breach" of subsections 3(1)(a), 3(2)(b) and 3(2)(c) of the Act.
115. The Complainant submits that, having regard to the above, a disqualification period in the vicinity of five (5) years "would be appropriate in the circumstances". Further, given the Authority's findings as outlined in the Grounds Decision, the Complainant submits that the Authority may also be minded to impose a monetary penalty on the Respondent.

Submission from the Respondent dated 2 September 2015

116. The full text of this brief submission from Mr Rod Pogson of *Pogson Cronin*, the legal representative for the Respondent, states as follows:

I refer to your decision of 18 August 2015.

In the circumstances, my client is content to rely on the submissions which I have put to you on the question of penalty.

*In particular, I refer to the penalties imposed by his Honour when the matter was originally dealt with in the Albury Local Court, the subsequent objection taken by the Police to my client being involved in the **management** of the hotel and the further objection then being taken to my client being involved **in any way** in the operation of the hotel, which would of course deprive my client of any entitlement to derive a livelihood.*

I await your response.

No submission from the Hotel Premises Owners

117. While the Hotel Premises Owners' solicitor, Mr Alan Chick of *Kell Moore Lawyers*, was notified of the Authority's findings on the Grounds of Complaint, no submission was made on behalf of the Premises Owners, Mr and Mrs Malcolm and Kerry Smith, in response to the Grounds Decision.

DECISION ON DISCIPLINARY ACTION

118. The Authority has considered the Complaint and all of the material before it. The Authority notes the Complainant's submission, made at the commencement of the Complaint, that this matter involves circumstances of "aggravation" within the meaning of section 141(7) of the Act.
119. Were that finding to be made, Mr Ogilvie would be exposed to considerably greater financial penalties.
120. The Authority invited the Complainant to make further submissions as to why this matter involved circumstances of aggravation and further, albeit limited, submissions were made in the Complainant's final submissions.
121. The Authority is not persuaded that circumstances of aggravation have been established by the Complainant, and in particular the Complainant has not explained to the Authority's satisfaction how the particular requirements in section 141(7)(c) are satisfied in this case.
122. Notwithstanding that circumstances of "aggravation" have not been established, the Authority notes with concern the flagrant and repeated nature of the offences against the

Act that were committed by the Licensee and established by this Complaint. The Authority gives weight to the Licensee's personal awareness of and/or participation in the conduct that gave rise to this Complaint.

123. The Authority notes that the second set of offences against the Act occurred within a few weeks of the first set of offences detected by Police. This satisfies the Authority that the Respondent licensee was simply not responsive to the initial round of regulatory intervention by Police.
124. The Licensee's personal misconduct and repeated serious non-compliance with the Act indicates a lack of regard for his responsibilities as a licensee of this substantial full hotel licensed business that is authorised to engage in higher risk licensed trading until 2:00 am.
125. The Authority is satisfied, on the basis of the findings made on the Grounds of Complaint, that a substantial regulatory response is now required to serve the public interest with respect to the Act, informed by the objects and considerations prescribed by section 3 and giving weight to the statutory considerations in section 3(2)(a) and 3(2)(b) of the Act.
126. The Authority has taken into account the Respondent's submissions with respect to the relatively moderate penalties imposed upon him by the Local Court when the offences the subject of this Complaint were prosecuted. The Authority has taken into account the absence of other prior offences committed by the Respondent licensee.
127. However, the Authority's disciplinary jurisdiction under Part 9 of the Act serves a broader *protective* purpose, by comparison to the *penal* jurisdiction of the Local Court under Part 10 of the Act.
128. The Authority has taken into account and accepts the Hotel Premises Owners' positive statements with regard to Mr Ogilvie's personal character. The Authority accepts the Premises Owner's contentions that Mr Ogilvie has observed the terms of his commercial lease and is a supportive parent and is involved with the local soccer team.
129. However, it is not Mr Ogilvie's general character that is of concern, but his conduct as a professional liquor licensee. The acts of statutory non-compliance with respect to the operation of this hotel undermine the Authority's confidence that Mr Ogilvie has the ability to ensure compliance with the Act in the future.
130. Looking to the future, the Authority is satisfied that, for the protection of the public, the Respondent should not be involved with the operation of any licensed premises in New South Wales for a substantial period of time. The Authority has considered the Complainant's recommendation of a period of disqualification of five (5) years but the Authority considers that a longer period of disqualification is required.
131. The Authority is satisfied that disqualification of the Respondent licensee from acting as a licensee, approved manager or close associate of a licensee is warranted and in the public interest. A short period of 14 days will be granted to enable formal applications to be made by Mr Ogilvie, or another party, to transfer the licence.
132. The Authority is not satisfied that the Respondent can be trusted to either hold a liquor licence or be associated with a licensed business. The Authority does not accept, as an adequate response to this Complaint, the Respondent's proposal that a new licensee be appointed to run the hotel with Mr Ogilvie remaining as its business owner, given the likelihood that Mr Ogilvie will retain practical control and influence over the hotel business notwithstanding that another individual may be legally responsible for the licence.

133. Nevertheless, the Authority considers that Mr Ogilvie should be given some reasonable amount of time to divest his interest in the Albion Hotel business. To that end, it will suspend the commencement of the requirement that Mr Ogilvie not be a close associate of a liquor licence for a period of twelve (12) months so that he may make arrangements to sell the business. The disqualification of Mr Ogilvie from being a close associate of any other licensed business in New South Wales should commence immediately.

ORDERS

134. The Authority orders that:

- a. Pursuant to section 141(2)(f) of the Act, the Respondent, Mr Allan Francis Ogilvie, be disqualified from holding a liquor licence for a period of ten (10) years. This period of disqualification commences with effect from the date of this decision with respect to other licensed premises in New South Wales but commences fourteen (14) days from the date of this decision with respect to the licensed premises of the Albion Hotel, located at 155 Murray Street, Finley 2713.
- b. Pursuant to section 141(2)(j) of the Act, the Respondent, Mr Allan Francis Ogilvie, be disqualified from being a close associate of a licensee for a period of ten (10) years from the date of this decision. This period of disqualification commences with effect from the date of this decision with respect to other licensed premises in New South Wales but commences twelve (12) months from the date of this decision with respect to the licensed business of the Albion Hotel located at 155 Murray Street, Finley 2713.

REVIEW RIGHTS

135. Pursuant to section 144 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 or any person against whom any disciplinary action is taken, no later than 28 days after those parties receive notification of this decision.

136. 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



Micheil Brodie

24 NOV 2015

Chief Executive

for and on behalf of the Independent Liquor and Gaming Authority