

<p>Ms Rachel Watts, Mr Morgan Bensley and Australian Leisure and Hospitality Group Pty Ltd c/o Mr Jon Martin JDK Legal Level 5, 1 Castlereagh Street Sydney NSW 2000</p>	<p>Mr Dimitri Argeres A Director of Compliance Liquor and Gaming NSW Department of Customer Service, 4 Parramatta Square 12 Darcy Street Parramatta NSW 2150</p>	<p>Mr Andrew Wyeth Former licensee</p>
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9 July 2020

Dear Sir/Madam

Complaint reference No.	DF19/004586
Matter	Disciplinary Complaint
Licence name	Westower Tavern and South Tweed Tavern
Licence No.	LIQH400104928 and LIQH400123213
Complainant	Mr Paul Newson, Deputy Secretary Liquor, Gaming and Racing
Premises	Westower Tavern at Pacific Highway, Ballina West NSW 2478 South Tweed Tavern at 53-55 Minjungbal Drive, Tweed Heads South NSW 2486
Issue	Whether the grounds of the complaint have been established
Legislation	Part 8 of the <i>Gaming Machines Act 2001</i> (NSW)

Final Decision with Reasons on Complaint to the Independent Liquor and Gaming Authority concerning Mr Andrew Wyeth, Ms Rachel Watts, Mr Morgan Bensley and the Australian Leisure and Hospitality Group Pty Limited under Part 8 of the *Gaming Machines Act 2001* (NSW)

On 18 June 2019, Mr Paul Newson ("Complainant"), the then Deputy Secretary of Liquor, Gaming and Racing, as a delegate of the Secretary of the New South Wales Department of Industry (the responsible department now being the Department of Customer Service), submitted to the Independent Liquor and Gaming Authority ("Authority") a disciplinary complaint ("Complaint") made against licensees and close associates of Westower Tavern ("Westower") and South Tweed Tavern ("South Tweed").

Westower is a full hotel licensed premises (LIQH400104928) whose licence has a recorded start date of 16 November 1959. Its premises are located at 89-93 Kalinga Street, West Ballina 2478.

South Tweed is a full hotel licensed premises (LIQH400123213) with a licence start date of 2 July 1979. Its premises are located at 53-55 Minjungbal Drive, Tweed Heads South NSW 2486.

The Complaint is made in relation to:

- Mr Andrew Wyeth – as a former licensee of Westower and South Tweed.
- Ms Rachel Watts – as current licensee of Westower and former licensee of South Tweed.

- Mr Morgan Bensley – as a close associate of both Westtower and South Tweed.
- Australian Leisure and Hospitality Group Pty Limited (“ALH”) – as a close associate of both Westtower and South Tweed.

(“Respondents”)

The Complaint is made under Part 8 of the *Gaming Machines Act 2001* (NSW) (“Act”) and specifies four grounds of complaint (“Grounds”) that are available under section 129(3) of the Act. The Authority finalised its consideration of the Complaint at its meeting of 17 June 2020 after considering the Complaint material (listed in Schedule A) and all submissions received in relation to the Complaint. The Authority decided to take the following disciplinary action:

- 1) **Impose** a monetary penalty of **\$1,000** on the hotelier Mr Wyeth, pursuant to section 131(2)(a)(i) of the Act to be paid to the Secretary within 28 days from the date of this decision letter.
- 2) **Impose** a monetary penalty of **\$2,500** on the hotelier Ms Watts, pursuant to section 131(2)(a)(i) of the Act to be paid to the Secretary of the Department of Customer Service within 28 days from the date of this decision.
- 3) **Suspend** Westtower’s (LIQH400104928) authorisation or approval to keep approved gaming machines (30 Gaming Machine Entitlements) for a period of **two weeks from 7 August 2020**, pursuant to section 131(2)(c)(iii) of the Act.
- 4) **Suspend** South Tweed’s (LIQH400123213) authorisation or approval to keep approved gaming machines (26 Gaming Machine Entitlements) for a period of **two weeks from 7 August 2020**, pursuant to section 131(2)(c)(iii) of the Act.
- 5) **Disqualify** Mr Bensley from being a close associate for a period of 5 years, pursuant to section 131(2)(g) of the Act from the date of this decision.
- 6) **Order** the licensees Mr Wyeth and Ms Watts to pay the amount of **\$172,692.44**, being the costs incurred by the Secretary of the Department of Customer Service in carrying out the investigation, pursuant to section 131(2)(i)(i) of the Act. This order is made on the proviso that ALH has undertaken to pay these costs. Costs shall be paid to the Secretary within 28 days from the date of this decision.
- 7) **Issue** ALH with a reprimand as a close associate of Westtower (LIQH400123213) and South Tweed (LIQH400104928), pursuant to section 131(2)(j) of the Act.

Enclosed is a statement of reasons for the Authority’s final decision. Information about rights to seek review of this decision by the New South Wales Civil and Administrative Tribunal is provided at the conclusion of the reasons. If you have any questions about this letter, please contact the Authority Secretariat via email to ilga.secretariat@liquorandgaming.nsw.gov.au.

Yours faithfully



Philip Crawford
Chairperson

For and on behalf of the Independent Liquor and Gaming Authority

INTRODUCTION

1. On 18 June 2019, Mr Paul Newson (“Complainant”), the then Deputy Secretary of Liquor, Gaming and Racing, as a delegate of the Secretary of the New South Wales Department of Industry (the responsible department now being the NSW Department of Customer Service), submitted to the Independent Liquor and Gaming Authority (“Authority”) a disciplinary complaint (“Complaint”).
2. The Particulars of the Complaint are set out in further detail in the “Findings” section of this letter below. Briefly, the Complaint concerns two hotel licensed premises (“the Venues”) in New South Wales (“NSW”), situated in State suburbs on the far north coast of NSW, towards the Queensland (“QLD”) border – the Westtower Tavern at Ballina West (LIQH400104928) (“Westtower”) and the South Tweed Tavern at Tweed Heads South (LIQH400123213) (“South Tweed”). The Venues form part of numerous licensed businesses comprising the Australian Leisure and Hospitality Group Pty Ltd (ACN 067 391 511) (“ALH”).
3. The Complaint is made in relation to:
 - Mr Andrew Wyeth – the former licensee of Westtower and South Tweed.
 - Ms Rachel Watts – the current licensee of Westtower and the former licensee of South Tweed.
 - Mr Morgan Bensley – an area manager responsible for the Venues, and close associate of the Westtower and South Tweed licences.
 - ALH – the business owner and premises owner of the Venues and close associate of the Westtower and South Tweed licences.

(collectively, the “Respondents”).

GROUND OF COMPLAINT

4. The Complaint specifies four grounds (“Grounds”) that are available under section 129(3) of the *Gaming Machines Act 2001* (NSW) (“Act”). Relevantly, section 127(2) of the Act defines a reference to a “licensee” to include a reference to a *former* licensee. Briefly:
5. **Ground 1** is based upon section 129(3)(a)(i) and/or 129(3)(a)(ii) of the Act and alleges that the licensee has contravened a provision of the Act or the regulation and/or has failed to comply with any requirements under the Act or the regulations that relates to the licensee. In summary:
 - Ground 1(a) Particular 1 contends that Mr Andrew Wyeth, as licensee of Westtower between 14 August 2015 and 10 May 2017, breached the then clause 55 of the *Gaming Machines Regulation 2010* (NSW) (“2010 Regulation”) prohibition against the supply of free or discounted liquor as an inducement to gaming machine players (the “Prohibition”).
 - Ground 1(a) Particular 2 contends that Mr Andrew Wyeth, as licensee of South Tweed between 9 May 2017 and 8 November 2017, contravened the Prohibition.
 - Ground 1(b) Particular 1 contends that Ms Rachel Watts, as licensee of South Tweed between 31 July 2015 and 5 May 2017, contravened the Prohibition.

- Ground 1(b) Particular 2 contends that Ms Rachel Watts, as licensee of Westtower between 11 May 2017 and the date of Complaint, contravened the Prohibition.
6. **Ground 2** is based upon section 129(3)(b) of the Act and relies upon the allegations in Ground 1 and the material specified under the “Background” section and following matters in the letter of complaint (“Complaint Letter”). It is also alleged that, by reason of that conduct, the *hoteliers* (Mr Wyeth and Ms Watts) of the two Venues have engaged in conduct that has encouraged, or is likely to encourage, the *misuse and abuse of gambling activities* in those Venues during the relevant times when they held the licence.
 7. **Ground 3** is based upon section 129(3)(g) of the Act and alleges that Mr Bensley was the ALH State Operations Manager responsible for the Venues and a “close associate” of the hoteliers. By reason of the conduct specified in paragraphs 67 to 81 of the Complaint Letter, it is alleged that Mr Bensley is not a fit and proper person to be a close associate of a hotelier. In this Ground, the Complainant refers to and relies upon the allegations in Grounds 1 and 2 as well as the allegations and material specified under the “Background” section of the Complaint Letter.
 8. **Ground 4** is based upon section 129(3)(h) of the Act. The Complainant refers to and relies upon the allegations in Grounds 1, 2 and 3 and the allegations and material specified in the “Background” section of the Complaint Letter. The Complainant here alleges:
 - At Ground 4(a) Particular 1: the close associate, Mr Bensley, knew or ought reasonably to have known that the respective hoteliers were engaging or likely to engage in conduct of the kind to which the Complaint relates.
 - At Ground 4(a) Particular 2: the close associate, Mr Bensley, failed to take all reasonable steps to prevent the licensees from engaging in conduct of the kind to which the Complaint relates.
 - At Ground 4(b) Particular 1: the close associate, ALH, knew or ought reasonably to have known that the respective hoteliers were engaging or likely to engage in conduct of the kind to which the Complaint relates.
 - At Ground 4(b) Particular 2: the close associate, ALH, failed to take all reasonable steps to prevent the licensees from engaging in conduct of the kind to which the Complaint relates.

COMPLAINT MATERIAL

9. The Complaint comprises the following material (“Complaint Material”):
 - 2-pages cover letter from Mr Newson to the Chairperson of the Authority dated 18 June 2019 (“Cover Letter”).
 - 35-pages Complaint Letter settled by Mr Nicholas Owen SC.
 - 47 Exhibits (approximately 1034 pages) listed in the Schedule to this decision comprising: Liquor and Gaming NSW (“L&GNSW”) licensing records and tables indicating staff and roles at Westtower and South Tweed; transcripts of L&GNSW interviews with ALH staff; ALH gaming machine data for the two Venues; extracts from case law, media reports and excerpts from the Commonwealth Parliament Hansard from 2018

and internal emails from the ALH Queensland Operations Manager to hotel staff, including the Venues.

THE PROHIBITION AGAINST INDUCEMENTS FOR GAMING MACHINE PLAY

10. A common focus of the Grounds of Complaint is whether Mr Wyeth and Ms Watts are responsible for the alleged non-compliance, at the Venues, with clause 55 of the 2010 Regulation and whether Mr Bensley encouraged this behaviour, with ALH aware of it.
11. The Complaint alleges that the conduct occurred between 2015 and 2018.
12. The Authority notes that on 1 September 2019 the *Gaming Machines Regulation 2019* (NSW) ("2019 Regulation") commenced effect, replacing the 2010 Regulation. The relevant prohibition is now contained in clause 47(a) of the 2019 Regulation.
13. Clause 55(a) of the 2010 Regulation contained similar wording throughout the relevant period and was only slightly amended when replaced by clause 47(a).
14. As of the date of this Complaint, clause 55(a) stated:

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*

...

15. Since 1 September 2019 clause 47(a) of the 2019 Regulation states:

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 club premises, or*

...

CONSULTATION

Show Cause Notice dated 8 July 2019

16. On 8 July 2019 the Authority's Reviews and Secretariat Unit ("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 ("Show Cause Notice"). This notice was copied to the Complainant and specified a timetable for the filing of evidence or other material and submissions from the parties.

Mr Andrew Wyeth's Statement Addressing the Merits of Complaint

17. On 8 August 2019 Mr Wyeth addressed the merits of the Complaint by way of a one-page statutory declaration of that date ("Wyeth Statement") which states:

***Mr Andrew Wyeth (former licensee of Westtower and South Tweed Tavern's)
Show Cause – Complaint in relation to Westtower Tavern and South Tweed Tavern under Part 8 of the Gaming Machines Act 2001 (NSW)***

1. *During my time as a venue manager at the Westtower Tavern and South Tweed Tavern I was under the strict supervision of the Queensland State Operations Manager, there was very little room to move in the way the venue was managed.*

2. *As a result I was more an employee of ALH Group rather than a hotel licensee, on reflection a system I believe was set up in a way to protect the company from regulatory fines and responsibility placing the onus completely on the individual venue manager, removing the state operations team and largely ALH Group as a whole from accountability.*
3. *Every Venue Manager in the portfolio was tracked not only on our gaming performance but on the number of complimentary "shouts" were given out. The more, the better.*
4. *Due to the proximity of the main bars to the gaming room it was 'labelled' as a whole venue customer incentive. The intended recipients of the incentive were targeted towards gaming patrons, I would estimate that the actual split was 70% gaming to 30% bar/food patrons.*
5. *We were judged on these 'shout' and was commented via email usually 2 to 3 times per week. Always on a 'Monday Wrap' and on a Friday email from my Operations Manager.*
6. *The purpose of the 'shouts' was to create loyalty and keep gamblers in the room longer.*
7. *On moving to NSW from QLD there was no period of NSW induction training, we were 'learning on the job' and in one instance I took the advice of a Police Sergeant and modified my practice at the South Tweed Tavern towards the end of my tenure.*
8. *I believe my answers to questions asked to me in the interview were unfiltered since I didn't work for ALH anymore and as such provide more clarity into the company practices at the time.*

18. On 4 October 2019 the Authority forwarded the Wyeth Submission to all of the other interested parties.

ALH Submission Addressing Merits of Complaint

19. On 23 September 2019 after obtaining an extension, ALH provided through its solicitors, JDK Legal, a 50-pages legal submission addressing the merits of the Complaint from Mr Terrence Lynch SC ("ALH Submission") supported by approximately 128 pages of supporting material:
 - Attachment 1 - A press release issued by L&GNSW dated 19 June 2019 titled *Two ALH-run hotels on North Coast to face disciplinary complaint over gaming practices* ("L&GNSW Press Release").
 - Attachment 2 – RG+ ALH: *Responsible Gambling Review* Final Report dated 8 August 2018 submitted to the ALH Group ("RG+ Report").
 - Attachment 3 – Table of drinks served in the 2017/18 financial year at South Tweed and Westtower ("Drinks Served Table").
 - Attachment 4 – Table of monthly gross gaming profit in the 2017/18 financial year at South Tweed and Westtower ("Monthly Gaming Revenue Table").
 - Attachment 5 – ALH Group Gaming Policies and Procedures New South Wales Version 008 dated November 2015 ("ALH 2015 Gaming Policies & Procedures").
20. In email correspondence dated 3 October 2019, ALH's lawyers advise that Ms Watts and Mr Bensley "adopt" the ALH Submission and do not intend to lodge anything further. On 4 October 2019 the Authority forwarded the ALH Submission to all parties.

21. The ALH Submission makes 9 key contentions in support of a submission that the Complaint be dismissed. ALH's case is briefly noted in the Authority's findings on the Grounds of Complaint, set out below.

Complainant's Submission in Reply

22. On 1 October 2019 the Complainant requested a two-week extension in providing a submission in reply. This request was granted and advised via email dated 4 October 2019.
23. On 23 October 2019 the Authority received a cover letter enclosing a legal submission in reply from the Complainant, settled by Mr Nicholas Owens SC and dated 22 October 2019 ("Complainant Reply"). It was accompanied by the following material:
- Annexure A – a copy of the Wyeth Submission.
 - Annexure B – Gaming Daily Briefing Sheet for South Tavern on 1 November 2017.
24. Without repeating these submissions in full, the key submissions or contentions in reply are noted in the Authority's findings on the Particulars of Complaint, below.
25. This submission was forwarded to all relevant parties on 23 October 2019.

Second ALH submission

26. On 9 November 2019 the Authority received a short submission letter from JDK Legal on behalf of ALH ("Second ALH Submission"), copied to the Complainant, addressing three matters in reply to the Wyeth Statement and Complainant Reply. First, that there are difficulties in relying upon Mr Wyeth's "opinions" in establishing the ultimate issue of whether the supply of free liquor amounted to an inducement, because inspectors did not elicit the factual bases upon which Mr Wyeth's opinions are founded. Second, that the circumstances of the supply suggest that his opinions are unfounded. Third, that the Secretary admits in its Reply Submission that there is no way of knowing how particular gambling patrons were affected by the free liquor.
27. ALH advise that they, Ms Benson and Ms Watts do not require a further opportunity to address the question of disciplinary action.

Second Complainant submission

28. On 12 November 2019, the Authority received an email from the Complainant, copied to all relevant parties, advising that the Complainant does not wish to provide a further response and instead relies upon the original Complaint Material and supplementary submissions (that is, the Complainant Reply).

FINDINGS ON COMPLAINANT'S BACKGROUND CONTENTIONS

29. A disciplinary complaint under Part 8 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.

Contentions Regarding ALH Group

30. The Complainant makes a number of contentions about the operations of ALH in the “Background” section at paragraphs 1 to 7 of the Complaint Letter and all four Grounds of Complaint refer to the information provided in these paragraphs. The Authority accepts this largely uncontested information and is satisfied that ALH is a joint venture owned by Woolworths and the Bruce Mathieson Group; ALH operates over 330 licensed venues across Australia including over 50 in NSW and over 100 in QLD; both Westtower and South Tweed were owned and operated by ALH during the time period to which this Complaint pertains; that between about January 2015 and July 2018 these were the only NSW venues under the control of ALH’s State Operations Manager, Mr Bensley.
31. The Authority accepts the uncontested information provided in these paragraphs regarding the ALH company structure and its hotel operations in QLD and NSW. It is not in dispute that Mr Bensley was responsible for 17 ALH venues – including Westtower and South Tweed between January 2015 and July 2018.
32. Paragraph 5 of the Complaint Letter contends that the 17 venues for which Mr Bensley was responsible are apparent from his “weekly wrap” emails. A group email from Bensley dated 4 July 2017 (Exhibit E25 of the Complaint Material) (“the Bensley 4 July 2017 Email”) provides an example of the many emails that he sent to the group of venues for which he was responsible. At questions 137 to 140 in the interview between Mr Wyeth and L&GNSW inspectors dated 31 October 2018 (Exhibit E07) (“Wyeth Interview”), Mr Wyeth describes these weekly emails as “almost always” sent by Bensley to “the whole group”.
33. At paragraph 6 the Complainant provides an extract of clause 55 of the 2010 Regulation. The Authority accepts the uncontested submission that there is no “equivalent prohibition” applicable to hotels in QLD.
34. Paragraph 7 of the Complaint Letter describes the “focus” of this Complaint as an allegation that the operators of both Venues failed to comply with clause 55 on a “systemic level” and that disciplinary action should follow. Furthermore, that the conduct of Mr Bensley and ALH in relation to the “management and administration of gambling activities” at the Venues was such that disciplinary action should also result against them. ALH contest this conclusion and the Authority’s findings on the Grounds of Complaint are set out below.

FINDINGS ON THE COMPLAINANT’S COMMON FACTS

35. The Complainant makes a number of more specific factual contentions, by way of background, in paragraph 8 of the Complaint Letter. These matters are asserted as common facts in support of the four Grounds of Complaint, discussed below.

36. Briefly, it is here contended that the materials accompanying the Complaint demonstrate **free liquor was offered to patrons at the two Venues from at least August 2015**. A “stronger and more honed focus” was introduced from approximately the end of 2015 with “**daily reporting targets**” that formed **part of a program known as the “Greater” program** that was “regularly monitored” by Mr Bensley.
37. The contentions regarding a more “honed” focus are based upon Mr Bensley’s answers to questions 138-144 of the interview between L&GNSW inspectors and Mr Bensley dated 24 August 2018 (Exhibit E06) (“Bensley Interview”); Mr Wyeth’s responses to questions 100 to 103 of the Wyeth Interview; the Bensley Group Emails (the Authority assumes that the Complainant’s reference in footnote 11 to the Complaint Letter was intended to refer to “E23”, not “E22” being the emails sent by Mr Bensley to ALH licensees (“Bensley Group Emails”)); and Exhibit E42 of the Complaint Material – comprising an email from Bensley to a number of ALH email addresses dated 15 December 2017 on the subject of missing Gaming Sheets (the “Bensley 15 December 2017 Email”).
38. At questions 138 to 144 of the Bensley Interview, Mr Bensley and the inspectors discuss the intention behind the ALH “Greater” program, how it was originally suggested and the original discussion as to how venues in NSW could provide free liquor to gaming patrons whilst complying with legal requirements.
39. At questions 100 to 103 of the Wyeth Interview, Mr Wyeth and L&GNSW inspectors discuss when the provision of free liquor commenced at the Venues. Mr Wyeth confirms that liquor shouts were always something that was offered, but around six months into his time at Westtower, the supply of liquor shouts became a “thing that was scrutinised” and managed. Mr Wyeth describes how he would record that data into Google drive sheets on a daily basis that would be recorded as either “green” or “red”.
40. The Authority notes that a search of the OneGov licencing system for individuals at Westtower (Exhibit E02) and South Tweed (Exhibit E04) establishes that Mr Wyeth was the licensee at Westtower from 14 August 2015 until 10 May 2017 and at South Tweed from 9 May 2017 to 8 November 2017.
41. The Authority accepts, on the basis of questions 100 to 103 of the Wyeth Interview that free liquor shouts *were* required to be recorded and recorded, on a daily basis. They were identified in “red” (meaning the target was not met) or “green” (meaning the target was met) in the Google drive sheet, with an explanation required if the day was recorded as “red”. Mr Wyeth’s statements are further supported by the Bensley 15 December 2017 Email, which shows Mr Bensley following up with his 17 venues on missing gaming sheets and providing comments.
42. At paragraph 8 the Complainant contends that within this “whole of venue” initiative (i.e the “Greater” program) was a “specific and targeted” focus upon *gaming machine* patrons.

43. The Authority further accepts, on the above cited evidence and material, that free liquor was in fact offered to patrons at Westtower and South Tweed as part of the “Greater” program, being a business development program that was supervised and driven by Mr Bensley. The Authority’s more specific findings on the targeting of free liquor to gaming machine patrons is discussed immediately below and at Ground 1.
44. At paragraph 8(i) the Complainant contends that the **daily “targets” included the provision of free alcoholic drinks to gaming patrons.**
45. The Complainant here relies upon the email from Mr Bensley dated 3 March 2017 at Exhibit E24 (“Bensley 3 March 2017 Email”); the Westtower gaming daily briefing sheets at Exhibit E14 (“Westtower Briefing Sheets”); the South Tweed gaming daily briefing sheets at Exhibit E15 (“South Tweed Briefing Sheets”); Mr Wyeth’s statements at questions 59 and 69 of the Wyeth Interview; Mr Bensley’s statements at questions 187 to 188 of the Bensley Interview and Ms Jordan Hislop’s responses to questions 159 to 160 of her interview with L&GNSW inspectors dated 24 August 2018 at Exhibit E12 (“Hislop Interview”).
46. The Bensley 3 March 2017 Email states:

“The daily gaming briefing sheets were to include AM and PM targets and document each shifts AM and PM’s performance [v]s target” and

“To be clear gaming is our number one driver my top priority. We simply must have the best staff who achieve the greatest outcomes in our gaming rooms and we must be monitoring them daily rewarding the performers and cutting loose the ones ‘GOING THROUGH THE MOTIONS’.

Please demand the HIGHEST ROI from our gaming specialists”.
47. Mr Bensley goes on to state:

“I strongly suggest not limiting your daily targets to the minimum ones I have set on the template. No one ever won anything great just by doing the absolute bare minimum”.
48. At questions 59, 60 and 69 of the Wyeth Interview, Mr Wyeth explains how complimentary liquor shouts were phrased as an “all of venue” shout but that the practice was actually centred around the patrons of the gaming room. Mr Wyeth explains how these shouts were provided – not taken to the gaming machines but provided to the patron when they come to the bar. Mr Wyeth then explains how this would then be “rung up on the gaming till” as a “gaming shout” and reported as a “gaming shout” through the Google drive. Mr Wyeth confirms that this conduct was occurring at both Westtower and South Tweed.
49. At questions 187 to 188 of the Bensley Interview, Mr Bensley states that he assumes that a reference to customer shouts meant complimentary alcohol and accepts that given they are recorded on the *Gaming Daily Briefing Sheet*, a staff member would assume that those customer shouts are for *gaming* patrons
50. At questions 159 to 160 of the Hislop Interview, Ms Hislop clarifies that “comp drinks” mean soft drinks while “customer shouts” would mean liquor shouts.

51. The Authority is satisfied that paragraph 8(i) is established on the basis of the material relied upon by the Complainant.
52. At paragraph 8(ii) the Complainant alleges that **hotel staff were encouraged to ensure that they gave away the full value of the target in free alcoholic drinks and were criticised if they did not do so.**
53. The Complainant here relies upon questions 102 and 63 of the Wyeth Interview; Mr Grant Wheeler's response to questions 208 to 217 recorded in the transcript of his interview with L&GNSW inspectors dated 16 November 2018 at Exhibit E10 ("Wheeler Interview"); the Bensley 3 March 2017 Email; Page 4 of the group email from Mr Bensley regarding Week 21 Wrap and Focus Items dated 20 November 2017 at Exhibit E36 ("Bensley 20 November 2017 Email"). The Authority is satisfied that this evidence and material establishes this contention.
54. While question 102 of the Wyeth Interview is discussed above, at question 63 Mr Wyeth states that there were no discussions with Mr Bensley about the targets – staff simply had to meet the targets. Mr Wyeth recounts that while at South Tweed, he had a visit from a NSW Police Licensing Sergeant who told him that this could be regarded as an inducement, after which Mr Wyeth "ceased doing it" for the "larger part". Mr Wyeth states that he then made sure that it was an "all of venue" thing, not focused towards gaming patrons but as a result his gaming shouts became quite low and at one point he received an email questioning why he had only shout \$11.00 worth of drinks.
55. The Authority further notes the exchange at questions 208 to 217 of the Wheeler Interview in which Mr Wheeler discusses one of the weekly wrap emails and the section headed Gaming VIP shouts and comp drinks. Mr Wheeler confirms that a comment of "too low" in this section of the emails probably refers to Mr Bensley liking the venue managers to be spending more money with the patrons in the gaming room. Mr Wheeler confirms that free liquor possibly could have been provided to people in the gaming room as it was being provided to everyone in the venue. As for people in the gaming room, Mr Wheeler states that "it would have been provided as a loyalty thing" and not just solely for the purpose of gambling. Mr Wheeler confirms that Mr Bensley would probably have seen a correlation between gaming turnover being low and comp drinks being low. Mr Wheeler states that he thinks Mr Bensley's understanding of that was that "the more you spend in the room, the higher the turnover would be". Mr Wheeler clarifies, that although that was Mr Bensley's maybe perceived interpretation, it "definitely wasn't" his interpretation of how it was.
56. The key statements in the Bensley 3 March 2017 Email have been extracted above. The Authority further notes that under the heading "Gaming VIP Shouts & Comp Drinks" at page 4 of the Bensley 20 November 2017 Email, Mr Bensley states:
- We have backed off 4k per week
 - Please review your totals and trending
 - Is this shift managers taking their focus away?

- Mike double this week please
 - Grant \$92?
 - Coffees at Dublin soft Matt?
57. The Authority is satisfied that paragraph 8(ii) is established on the basis of the material relied upon by the Complainant.
 58. At paragraph 8(iii) of the Complainant Letter it is contended that **decisions regarding which patrons would be rewarded with free alcoholic drinks were made on the basis of the gaming habits of particular customers** - especially the amount they gambled.
 59. The Complainant here relies upon Mr Mark Absolom's statements at questions 42 to 55 and 87 to 88 of his interview with L&GNSW inspectors on 9 October 2018 at Exhibit E11 ("Absolom Interview") and questions 82 to 86 and 132 of the Wyeth Interview.
 60. The Authority notes that at questions 42 to 55 and 87 to 88 of the Absolom Interview, Mr Absolom (who worked at South Tweed) confirms that free drinks were provided to gaming VIPs to keep them gaming, that he was first told about the provision of free drinks when Mr Wyeth started and it was first mentioned in a staff meeting when they were told they had to start bringing out \$50 worth of free drinks for gaming each day. Mr Absolom states that if you didn't do it, you would lose your job. Mr Absolom explains how he would walk through the gaming area and if he saw one of the VIPs, he would automatically ask if they would like a drink. Mr Absolom states that you would get the drink, write it off as "wastage" and take the alcohol to the gaming patron with the patron not even getting out of the seat. Mr Absolom informed inspectors that the criteria for giving free drinks was that they be supplied to "big spenders" being "VIPs in general mainly". Mr Absolom states that he was told by Mr Wyeth, but this practice continued on with the next licensee, that if you saw anyone playing \$2.50 or more bets to "give them a free drink" and "if they want a drink – they can have it". When asked whether free liquor was rung up for other people in the venue, Mr Absolom stated "not that I knew of". He told inspectors that the managers shouts were for "more gaming, gaming only" as that was made "pretty clear" to him.
 61. The Authority further notes that at questions 82 to 86 and 132 of the Wyeth Interview, Mr Wyeth discussed the difference between the gaming clientele of Westtower and South Tweed and why Westtower had recorded more complementary drinks. Mr Wyeth explained that the gaming patrons at Westtower (although a small minority) were "big hitters", in that there was a larger percentage that were \$2.50, \$1.20 hitters. Whereas at South Tweed, although there were a lot of people in the gaming room, they're only "hitting 30 cents". Mr Wyeth states that if staff found someone doing \$1.20 hits, they would buy them a drink. Mr Wyeth stated that his instructions were that if you see a customer at South Tweed hitting more than a dollar, then look after them. At Westtower, the instruction was that if you see a \$5.00 hitter then "absolutely look after them". Wyeth states that they want to "keep that customer in the room rather than going to another venue". Mr Wyeth states that the provision of

free liquor to high hitters was at the licensee's discretion but that "obviously" staff would want to buy drinks for the people that are "hitting high amounts".

62. The Authority is satisfied that paragraph 8(iii) is established on the basis of the evidence cited by the Complainant.
63. At paragraph 8(iv) of the Complaint Letter it is contended that **while drinks were not generally delivered to a patron at a gaming machine**, the practice was that **when a gaming machine patron approached the bar to collect their drink, it would be recorded as a "gaming shout" and not part of a general hotel shout**.
64. The Complainant here relies upon questions 59 to 60 of the Wyeth Interview; questions 80 to 94 of the Hislop Interview; Westtower Briefing Sheets; and South Tweed Briefing Sheets in this regard.
65. Questions 59 to 60 of the Wyeth Interview are discussed above. At questions 80 to 94 of the Hislop Interview, Ms Hislop discusses how gaming shouts were reported, the use of gaming shouts spreadsheets and the reason behind providing free liquor to patrons. Ms Hislop states that gaming shouts were reported on the Google drive so that the "whole group" of ALH venue managers, not simply the Queensland venues, can see it. Ms Hislop stated that she never shouted people free liquor just because they were in the gaming area, stating that "I gave the same amount of shouts to someone in the public bar I don't give anyone in gaming". But when asked why there was a separate spreadsheet to record gaming shouts she states "an incentive I guess". When pressed by inspectors, Ms Hislop accepted the proposition that free liquor was given to gaming patrons (notwithstanding that it was also given to people in the public bar and restaurant) while stating that the reason was a "reward for customers that kept coming back or if someone was there, just for regulars really". She describes the practice as a "goodwill gesture".
66. The Authority is satisfied that paragraph 8(iv) is established on the basis of this evidence.
67. At paragraph 8(v) the Complainant contends that, **other than maintaining a different point of service** for the alcohol (i.e. other than the gaming room), **there were "minimal" controls in place to ensure compliance with Clause 55 of the 2010 Regulation**.
68. This is a conclusion the Complainant invites the Authority to draw from the allegations and evidence in support of paragraph 8 as a whole. Having taken into account the ALH Submission regarding the company's NSW compliance practices *generally* (discussed under the Grounds of Complaint below), the Authority accepts the contention that there were minimal controls in operation at the Venues to ensure that the practice of supplying free liquor to patrons did not contravene clause 55.
69. Paragraph 8(v) is established.
70. At paragraph 8(vi) the Complainant contends that it was **"perceived and intended" that, by providing free liquor to gaming patrons, they would enjoy playing gaming machines more, and either play longer or be more**

likely to return in the future to play the machines. The Complainant here relies upon the matters specified in the “L&GNSW interviews” section of the Complaint Letter.

71. The Authority notes that while some ALH staff (Mr Wheeler, Ms Hislop and Mr Crouch) characterise the free liquor as a benefit provided to *all* patrons, the Authority finds sufficient evidence and material in support of Paragraph 8 to establish that this “perception and intention” was, or should have been, apparent to ALH staff. This is most clearly evident in the Bensley emails and the admissions made by Mr Wyeth and Mr Absolom as to the intent behind the supply of liquor to gaming patrons. The “Greater” program might have been framed by Mr Bensley as a broader business development initiative, but there was an obvious focus and thus a perception and intent among staff of the Venues, of the importance of incentivising gaming machine players with free liquor.
72. Paragraph 8(vi) is established.

Complainant’s “Key Documents” In Evidence

73. At paragraphs 9 to 11 of the Complaint Letter, the Complainant provides its account of what the following Exhibits, which concern ALH business practices in relation to the supply of free liquor, disclose.
74. In the ALH Submission, the company describes the utility of these documents as “very limited” in that they are “incapable of evidencing any proscribed inducement”. Rather, they provide “some evidence” of the system (the “Greater” program) of *enhanced engagement* with patrons to *enhance the amenity of the premises generally*. As discussed below, the Authority does not accept this characterisation of the system. It accepts the Complainant’s description of the material and the following contentions made on the basis of that material.
75. **Reports on ALH internal inquiry from about February 2018 to about July 2018 (Exhibits E19 and E20).** At paragraph 9(i), the Complainant refers to this internal company inquiry conducted by Minter Ellison Lawyers instructing Mr Johnathan Forbes of Counsel. The inquiry identified two hotels in northern NSW (the Venues) that, between November 2017 and June 2018, had practices similar to ALH venues operating in QLD.
76. Exhibit E19 is the report: *Summary of Investigations and Conclusions* prepared by Minter Ellison dated 6 July 2018 (“Minter Ellison Conclusions”) and the Exhibit E20 is the report: *Summary of Investigation Methodology* prepared by Mr Forbes and Minter Ellison dated 27 July 2018 (“Minter Ellison Methodology”).
77. The Complainant describes these reports as identifying *Gaming Daily Briefing Sheets* used at the Venues between November 2017 and June 2018, in a similar form to those used at other ALH venues in QLD. The documents include reporting fields to record data on “customer shouts” (the provision of free liquor).
78. The Authority accepts this description of the two Reports.

79. **Westower Briefing Sheets** (Exhibit E14). At paragraph 9(ii) the Complainant provides the following description of these handwritten documents which vary in form between the Venues, but with the following content.
80. They are one-page documents. In the table for “AM Shift” and “PM Shift” there are rows for “Comp Drinks” and “Customer Shouts” (Westower Briefing Sheets for 29/5/18, 2/6/18 and 4/6/18). The phrase “Customer Shouts” refers to complimentary alcoholic drinks given to gaming patrons. “Customer shouts” are the same as shouts to persons who are gaming patrons. They can also be described as “gaming shouts” - as they both refer to complimentary alcoholic drinks given to gaming patrons. In support of these contentions, the Complainant relies upon questions 59 and 69 of the Wyeth Interview, questions 187 to 188 of the Bensley Interview and questions 159 to 160 of the Hislop Interview which are discussed above and support the Complainant’s contentions. The Complainant then contends that the “target” in the sheets was usually \$50 for the “AM shift” and \$100 for the “PM shift”. The Complainant relies on the Westower Briefing Sheets; South Tweed Briefing Sheets; and Bensley 3 March 2017 Email.
81. The Authority accepts this description of the Westower Briefing Sheets and the supporting evidence explaining their content, save for that the Westower Briefing Sheets show a target of \$50 for both the AM and PM Shift for customer shouts. It is the South Tweed Briefing Sheets that generally contain the \$100 target for the PM shift.
82. These documents include a section for staff to record the actual value of complimentary liquor provided. The Authority accepts that this accurately describes the layout of the Westower Briefing Sheets. The Complainant then contends that on the other hand, “complimentary drinks” or “comp drinks” usually refer to free non-alcoholic drinks like water, coffee and tea. The Complainant refers to question 92 of the Absalom Interview and questions 159 to 160 of the Hislop Interview.
83. The Authority notes that questions 159 to 160 of the Hislop Interview are discussed above and question 92 of the Absalom Interview records Mr Absalom stating in response to the question “And that was for gaming?”:

“Yeah mainly. That’s what it’s got here, customer shouts \$100 worth. Complimentary drinks it’s got thirty-seven, but that’s um, yeah, your waters, Cokes and teas and that”.
84. Only a few Gaming Daily Briefing Sheets were produced for Westower in response to a Notice to Produce issued by L&GNSW under section 21 of the *Gaming and Liquor Administration Act 2007* (NSW). This venue, apparently, did not keep the gaming daily briefing sheets for any length of time, unlike South Tweed. The Complainant cites questions 190 to 196 of the record of interview between L&GNSW inspectors and Ms Rachel Watts dated 23 August 2018 (Exhibit E08 of the Complaint Material) (“Watts Interview”) in support of this contention.
85. The Authority accepts this and notes that at questions 190 to 196 of the Watts Interview, Ms Watts stated that she did not know how many gaming daily

briefing sheets were completed, that there possibly would have been more than three and that if staff hadn't bothered to fill them out she wouldn't have kept them.

86. Only **3** Gaming Daily Briefing Sheets were produced to L&GNSW for Westtower (the Westtower Briefing Sheets dated 29/5/18, 2/6/18 and 4/6/18), whereas around **180** were produced for South Tweed. The Complainant cites the Watts Interview questions 175, 181, 190 to 192, 193 to 195 and 196 to 201.
87. The Authority accepts this count of the Sheets produced for each Venue on the evidence relied upon by the Complainant.
88. **South Tweed Briefing Sheets** (Exhibit E15). At paragraph 9(ii) the Complainant provides the following description of these handwritten documents.
89. These three-page documents, longer than the Westtower documents, address similar concepts, with a Table for "AM Shift" and "PM Shift" including information for "Target", "Comp Drinks" and "Customer Shouts". Save for noting that some of these Sheets are two pages in length, the Authority accepts this description.
90. They include a column for "Regulars" who play gaming machines, as a "Task and Focus" for both the "AM Gaming Trade" and "PM Gaming Trade". The "Regulars" column was completed on a regular basis until about 12 March 2018 when the format of the Sheets changed. The "Regulars" seemed to be a de facto recording of "high rollers" or "VIPs" in that these patrons would regularly attend and use the gaming machines for long periods of time. In support of this contention the Complainant refers to questions 81 to 86 of the Absolom Interview and questions 88 and 92 to 100 of the interview transcript between L&GNSW and Mr Danial Benson dated 9 October 2018 at Exhibit E13 ("Benson Interview").
91. The Authority accepts this description and account of the evidence, noting that at question 82 of the Absolom Interview Mr Absolom stated "...We seen them playing in the pokies. We just had to write down their name. So there was only one person there.... which was classed as one of those type of people we try, we try and get to stay". In response to the questions at 83 and 84 asking whether that person was served free liquor, Mr Absolom stated "Yes", "A couple of times, yes". At question 86 inspectors asked whether Mr Absolom was "given any um, information from licensees as to why that giving free liquor was to occur" to which Absolom replied: "Um, yeah to keep them in there. Like just for them to spend their money".
92. The Authority further notes that at question 88 of the Benson Interview Mr Benson states that "We had to keep, keep track of specific customers" and at questions 93 to 94 that "if someone comes in regularly and bets a lot, they'd get written down, as in, their names for us to recognise, and they're the people for us" to "pay attention to".
93. The Authority accepts this contention.

94. The documents also include an “AM and PM Task and Daily Focus Requirement” column listed as a daily task of “Update High Roller Register”. The Complainant contends in the footnote that although this register was said to not have been completed (referring to questions 146-149 of the Hislop Interview, question 126 of the Benson Interview and question 77 of the Absolom Interview), that at questions 179-182 of the Bensley Interview Mr Bensley stated that “somewhere, obviously they were using it” and Ms Watts stated at questions 264 to 266 of the Watts Interview said there was such a thing as a high roller register used at some of the venues but this was something she did not wish to adopt. The Complainant notes that on or about 12 March 2018 this reference to “Update High Roller Register” was removed from the format of the sheets.
95. The Authority notes that at questions 146 to 149 of the Hislop Interview, Ms Hislop explains that “We don’t have a high roller register” and that the briefing sheet is “just a template”. Mr Benson at question 126 of the Benson Interview agrees that there was a daily focus requirement to update the high roller register but he states at question 127 that “There was never, like, a, I didn’t see, there was never, like, an actual book type thing”. The Authority also notes that at question 77 of the Absolom interview, Mr Absolom is recorded as stating in response to the question “So were you ever aware of a high roller register?”, “No, well we used to sort of joke around and say we had the VIPs. But as far as a high roller register, we got, we had more people on the back wall who we pretty much kicked out - -”. Mr Bensley at questions 179 to 182 of the Bensley Interview answers questions about a high roller register and states at question 182 that it would be a document “Somewhere, obviously they were using it”. Ms Watts at questions 264 to 266 of the Watts Interview answers “Yep” to the question of whether there is such a thing as a high roller register but states that “it’s not something I’ve ever used because I don’t – I know it’s something that they used in some of the venues but it’s not something that I wanted to adopt because it’s not my approach to gaming”.
96. The Authority accepts this contention.
97. In a similar manner to the Westower Briefing Sheets, these sheets include data for “Target”, “Comp Drinks” and “Customer Shouts” in a similar table. The phrase “Customer Shouts” refers to complimentary alcoholic drinks given to gaming patrons. “Customer shouts” are the same as shouts to persons who are gaming patrons. They can also be described as “gaming shouts” - as they both refer to complimentary alcoholic drinks given to gaming patrons. The Complainant here refers to questions 59 and 69 of the Wyeth Interview; questions 187 to 188 of the Bensley Interview and questions 159 to 160 of the Hislop Interview which are all discussed above and support the Complainant’s contentions.
98. The Authority accepts this description of the South Tweed Briefing Sheets and the supporting evidence explaining their content.
99. The Complainant contends that the “target” in these Sheets was usually \$50 for the “AM shift” and \$100 for the “PM shift”. The Complainant here relies upon

the Westtower Briefing Sheets; South Tweed Briefing Sheets; and the Bensley 3 March 2017 Email.

100. The Authority accepts this description of the South Tweed Briefing Sheets and the supporting evidence explaining their content.
101. The Complainant further contends that these sheets included a section for staff to record the actual value of complimentary liquor provided. On the other hand, “complimentary drinks” or “comp drinks” usually refer to free non-alcoholic drinks like water, coffee and tea. The Complainant here refers to question 92 of the Absolom Interview and questions 159 to 160 of the Hislop Interview in support of this contention, which are discussed above and support these statements.
102. The Authority accepts this account of what is established by the South Tweed Briefing Sheets, on the face of the documents and by reference to the additional evidence relied upon by the Complainant.
103. At paragraph 9(ii) of the Complaint Letter the Complainant states that about 180 Gaming Daily Briefing Sheets for South Tweed were produced in response to a Notice to Produce issued under section 21 of the *Gaming and Liquor Administration Act 2007* (NSW), pertaining to the period from about December 2017 to about June 2018. The sheets for April 2018 were not available. The Authority accepts this account on the basis of the material provided at Exhibit E15.
104. At paragraph 10 the Complainant contends that on about 27 February 2018, the Hon Andrew Wilkie MP made allegations about ALH’s conduct in relation to responsible gambling in the Australian Parliament. The Complainant refers to excerpts from the Commonwealth House of Representatives Official Hansard for 6 February 2019 (421), 7 February 2019 (545) and 28 February 2019 (2353), which form Exhibit E21 of the Complaint Material (“Hansard Excerpts”).
105. The Authority accepts this description of the Hansard Excerpts and accepts, as further alleged by the Complainant, this matter generated “substantial” media attention, as evidenced by the news reports from the *Sydney Morning Herald* (“SMH Media Articles”) at Exhibit E22.
106. At paragraph 11 of the Complaint Letter it is contended, by reference to the *Gaming Daily Briefing Sheets* and the changes made to them on or about 12 March 2018, that after Mr Wilkie made the news reported allegations in Parliament on or about 27 February 2018, the Gaming Daily Briefing Sheets were “changed” by reason of the “public exposure” of these allegations. The Authority accepts, on the basis of the South Tweed Briefing Sheets, that there was a change to these documents on or about 12 March 2018 and this was a response to the statements made by Mr Wilkie that were reported in news media. The Authority notes that ALH state in the ALH Submission that their “own response” to the Wilkie allegations “was immediate and comprehensive”.
107. The Authority has made findings on the Particulars of the Grounds of Complaint below. In doing so, it has had regard to the following ALH submissions on the Briefing Sheets:

- The Complaint period in respect of South Tweed ends on 9 November 2017, the date upon which Mr Wyeth is recorded as ceasing to be licensee. There is some evidence from his successor, Mr Wheeler, that Mr Wyeth may have left in October 2017 (question 24 of the Wheeler Interview).
- The South Tweed Briefing Sheets cover the period from 1 November 2017 to 11 June 2018. These documents have a slightly different format from 18 March 2018 onwards.
- Only the pages from 1 November 2017 to 8 November 2017 are of even potential relevance to the allegations against Mr Wyeth, because later documents cannot be relevant to an allegation concerning a period ending on 9 November 2017.
- The Westtower Briefing Sheets are for three dates only, from 29 May 2018, 2 June 2018 and 4 June 2018 (all in the period when Ms Watts was licensee).
- There are significant differences between the form used for South Tweed and Westtower, it should be inferred that Mr Bensley did not “prescribe” any form of sheet. It was a matter for licensees.
- At questions 184 and 187 of the Watts Interview, Ms Watts stated that the Westtower form was hers.
- The Westtower Briefing Sheets showed: gaming gross turnover against targets; that there was a target for complimentary non-alcoholic refreshments of \$80 a day against which performance was recorded; the daily target for the complimentary alcoholic refreshments was \$100 per day rather than \$150 and performance against target was recorded; and the attention of those managing the venue was directed to the amenity of the venue as a whole; DOSA checks, toilet checks and premises security checks. The “very few” South Tweed Briefing Sheets “of potential relevance” to Mr Wyeth record in “slightly more elaborate form” the same information.
- None of the South Tweed Briefing Sheets record “shouts” as having been provided.
- The daily gaming briefing sheets “were gaming conscious” but the circumstances do not suggest alcoholic refreshments were targeted to “gamers”.

108. With regard to ALH’s submissions on the temporal relevance of the Briefing Sheets, the Authority accepts that the South Tweed Briefing Sheets *between 1 November 2017 to 8 November 2017* are the only documents of that type that pertain to the time frame in which Mr Wyeth held the licence for South Tweed (being 9 May 2017 to 8 November 2017).

109. However, noting the similarities between those documents and the remaining Briefing Sheets provided by the Complainant for South Tweed (which were prepared *prior to* their change in format around 12 March 2018), and noting that Mr Bensley was responsible for the area management of South Tweed until around October 2018, the Authority accepts that the South Tweed Briefing Sheets are relevant to establishing the alleged “system” in place at South Tweed and the recording of customer shouts *as a gaming objective*, which informs the Authority’s findings on the Grounds below.

110. On the ALH submission that none of the South Tweed Briefing Sheets record these shouts as *actually having been provided*, the Authority finds that the format of these sheets, when considered in the context of:

- the emails from Mr Bensley
- the Westtower Briefing Sheets (which also have “Customer Shouts” sections completed recording daily results for the AM and PM shifts)
- the statements from Mr Wyeth, Mr Absalom, Ms Hislop and Mr Benson, and the Gaming Shouts Spreadsheet for the 2017/2018 financial year at Exhibit E16 (“Gaming Shouts Spreadsheet”)

establish one element of the alleged system of providing free liquor to gaming patrons that was in place at the Venues.

111. On the ALH submission that it may be inferred from the differences in the forms between the two Venues that Mr Bensley did not “prescribe” any *particular* form, the Authority notes that the Complaint Material does not specifically identify the author of these Briefing Sheets, which do differ in form between the Venues. However, these documents nevertheless establish the systemic provision of “customer shouts” as a “gaming objective” that was regularly pressed by Mr Bensley as Area Manager of both Venues.

112. **The Gaming Shouts Spreadsheet (Exhibit 16).** The Complainant contends at paragraph 11(i) of the Complaint Letter that these documents were recorded electronically on a *Google Drive* system maintained by ALH for all seventeen (17) of the venues in the ALH Gold Coast, QLD and Northern NSW portfolio managed by Mr Bensley.

113. The Complainant highlights information pertaining to Westtower and South Tweed. Complainant Exhibit E16 contains forty-nine (49) documents for the period from week 2 to week 51 of the 2017/2018 financial year. [The Authority notes that Exhibit E16 actually describes “Week 2” to “Week 52” but Week 52 does not record any figures].

114. Having considered these documents and the below mentioned related evidence, the Authority accepts the Complainant’s analysis of this material as follows:

- The first table on each document shows for Westtower and South Tweed the amounts per day given for complimentary soft drink and coffee. There is then a total amount given in the final column of that table which shows the total weekly amount given for “comp” i.e. complimentary soft drink and coffee.
- The second table on each document is labelled “Non-Soft Drink and Coffee (comp liquor shouts) \$ figures please”. This is a reference to the supply of complimentary liquor as “gaming shouts”. There is a list of the seventeen (17) venues with each having a daily target amount for complimentary liquor that may be provided. The table shows \$100 for Westtower and South Tweed. This table then shows the amount expended per day, with a total in the final column.
- The Complainant refers to questions 167 to 195 of the Wheeler Interview, questions 204 to 220 of the Benson Interview, questions 61 to 70 of the Absalom Interview and questions 78 to 89 of the Wyeth Interview, and notes that various staff have commented on these spreadsheets.

- The Complainant notes that at question 194 of the Wheeler Interview, Mr Wheeler accepts the proposition that “So generally speaking you’re talking five hundred, six hundred, seven hundred, eight hundred, nine hundred - - - ” “ - - - a week?”.
- The Complainant further contends that according to question 204 of the Benson Interview the Gaming Shouts Spreadsheet, “*used to come from Morgan*” and per question 195 of the Wheeler Interview, when they were completed by ALH staff they were sent to Mr Bensley and the ALH operations team.
- The Complainant further contends that these Spreadsheets record daily target for the two Venues in question, with a total amount for weeks 2 to 51 of the 2017/2018 financial year of free liquor provided to gaming patrons in the sum of \$16,486.43 for the South Tweed and \$30,797.33 for Westtower. [The Authority notes that on its analysis, the figures in Exhibit E16 amount to \$16,488.43 for South Tweed and \$30,799.33 for Westtower].

115. When making the below findings on the Grounds of Complaint, the Authority has considered the following ALH submissions on the Gaming Shouts Spreadsheet:

- The spreadsheet was extracted from the ALH Google drive facility by Mr Bensley.
- The information in the spreadsheet is not the totality of the information uploaded to Google Drive (questions 40 and 77 of the Wyeth Interview).
- The spreadsheet also discloses at each venue that the “target” for complimentary alcoholic refreshments was \$100 per day, rather than \$150.
- The spreadsheet discloses amounts expended for complimentary non-alcoholic refreshments and for complimentary alcoholic refreshments.
- That this is the information being extracted from Google Drive by Mr Bensley discloses that he was monitoring with equal attention and focus the provision, across “his” venues, of complimentary refreshments generally; alcoholic and non-alcoholic.
- Mr Bensley’s concern was the provision of refreshments generally, an aspect of hospitality that he thought capable of improving the performance of “his” venues.
- The spreadsheet covers the period of weeks 2 to 51 in FY2017/18 (seemingly Monday 3 July 2017 to Sunday 23 June 2018). The period from Wednesday 01 to Wednesday 08 November 2017, possibly Mr Wyeth’s last week, straddles Weeks 16 and 17 in FY 2017/18.
- Over the 7 days of each of Weeks 16 and 17 the “target” for complimentary alcohol refreshment totalled \$700 at each of South Tweed and Westtower.
- The “actuals” for Week 16 were: South Tweed, \$412.00 (non-alcoholic refreshments) and \$209.40 (alcoholic refreshments); Westtower, \$936.00 (non-alcoholic refreshments) and \$656.60 (alcoholic refreshments).
- The “actuals” for Week 17 were: South Tweed, \$316.00 (non-alcoholic refreshments) and \$127.87 (alcoholic refreshments); Westtower, \$848.00 (non-alcoholic refreshments) and \$685.30 (alcoholic refreshments).
- There are no “Bensley” emails for Weeks 16 and 17. The closest in time is that sent on 20 November 2017, as the weekly wrap for Week 21 (13 to 20 November 2017). Mr Wheeler was by then the licensee of South Tweed.

- The “actuals” for Week 21 were: South Tweed, \$350.00 (non-alcoholic refreshments) and \$92.55 (alcoholic refreshments); Westtower, \$730.00 (non-alcoholic refreshments) and \$544.30 (alcoholic refreshments).
 - In none of weeks 16, 17 and 21 does the evidence suggest the targeting of free alcoholic drinks to “gamers”; the ratio of complimentary alcoholic to non-alcoholic refreshments is not disproportionate.
116. The Authority accepts that Mr Bensley was also monitoring the provision of *complimentary refreshments generally* as an aspect of the business performance of the venues for which he was responsible. This does not undercut the Authority’s satisfaction that the Venues under his supervision and at his encouragement were supplying free liquor as an inducement to gaming machine patrons in breach of the liquor Prohibition, per Ground 1 below.
117. An hotelier breaches the liquor Prohibition if they “offer or supply, or cause or permit to be offered or supplied, any free or discounted liquor as an inducement to play, approved gaming machines”. The Prohibition applies regardless of whether the hotelier also happens to provide free liquor to non-gaming patrons, or free non-alcoholic refreshments to patrons.
118. **Point of Sale (“POS”) records relating to complimentary liquor supplied from November 2017 to June 2018 (“POS Records”) (Exhibit 17).** The Authority accepts the Complainant’s description, at paragraph 11(ii) of the Complaint Letter, of these cash register and card payment systems for the two Venues.
119. There are various options on the till system and staff would “ring up” the *type* of sales as they occurred. The “manager’s shout” option button, available on the POS till system, was accessible to all staff and was described by Mr Wheeler at questions 89 to 91 of the Wheeler Interview. It was used for free vouchers, drinks and meals.
120. At questions 88 to 92 of the Absolom Interview, Mr Absolom gave similar advice, but added that the “manager’s shout” was *primarily used for recording free alcohol to gaming patrons* by reason of the low demand for other complimentary items.
121. The Authority notes that at questions 88 to 92, Mr Absolom stated that manager’s shouts were mainly for gaming as it was “very rare” for anyone to bring in a coupon for food.
122. The Authority further notes the exchange with Ms Hislop at questions 248 to 249 of the Hislop Interview where Ms Hislop accepted that “manager’s shout’s” were for “predominantly gaming customers”.
123. Moreover, at question 93 of the interview between Mr Brad Crouch and L&GNSW inspectors dated 23 August 2018 at Exhibit E09 to the Complaint Material (“Crouch Interview”) Mr Crouch describes the “manager’s shout”. Mr Crouch responds by stating “not as such” to the question of whether liquor was offered to gaming patrons. Mr Crouch then went on to describe how manager’s shouts were quite often used for food complaints by issuing a free drink card and that there was “nothing that actually targets gaming as such”. He states that “obviously, through the timeframe where we’d have our regulars, I would

do a drink for a patron, I would do a drink for his wife, his wife, or vice versa, may have been in gaming, but they were never targeted for them to stay in gaming”.

124. At questions 209 to 258 of the Watts Interview, Ms Watts advised that the “manager’s shout” was the same as the “customer shouts” on the *Gaming Daily Briefing Sheets*. At questions 209 to 258 Ms Watts describes what customer shouts are and the approval process for granting them. At questions 225 and 228 Ms Watts confirms that the numbers in red correlate to a transaction called a manager’s shout and that is the same as the one on the briefing sheet.
125. The Authority further accepts the Complainant’s observation that the POS Records, provided in response to the Notice to Produce dated 20 November 2018, are consistent with the advice provided during the records of interview. According to the Complainant, the POS Records indicate the following “manager’s shout” values provided at the Venues from November 2017 – June 2018:

Westtower Tavern

- a) Bistro: \$10,082.99
- b) Gaming: nil
- c) Public: \$17,233.01
- d) Grand total: \$27,316

South Tweed Tavern

- a) Bistro: nil
- b) Gaming: \$2,815.04
- c) Public: \$6,428.16
- d) Grand total: \$9,243.20

126. The Authority notes that the above figures actually cover the period from *May 2017* to June 2018 for South Tweed and from *October 2015* to June 2018 for Westtower.
127. Paragraph 11(ii) of the Complaint Letter notes that **these manager’s shout figures are sourced from the documents provided to L&GNSW by ALH**. In a footnote the Complainant refers to the POS Records (Exhibit E17) and explains that this Exhibit includes the original figures provided by ALH on 20 August 2018, which were *subsequently updated following additional explanation from ALH on 20 November 2018*. That is, the Complainant relies upon the *updated* figures from ALH (also included in email dated 20 November 2018 within Exhibit 17). The Authority accepts this clarification.
128. The Complainant further contends that the POS machines were apparently not activated in the bistro area for South Tweed or the gaming room for Westtower. Nevertheless, the Authority accepts the Complainant contention that the “preponderance of evidence” referred to above indicates that these manager’s shout figures were “at least predominantly” for *shouts in favour of gaming*

patrons, even when the liquor was physically provided in other areas of the Venues.

129. **Bensley Group Emails.** At paragraph 11(iii) of the Complaint Letter, the Complainant describes **emails from Mr Bensley to ALH employees that, amongst other things, drove gaming and VIP shouts at the 17 ALH venues that Bensley oversaw.** The emails included “Weekly Wraps” referencing data provided by venues in the gaming daily briefing sheets, specifically referencing “Comp Drinks” (coffee, etc.) and “VIP shouts” which form part of Exhibit E23 - noting that specific emails are contained at Exhibits E24 to E38 of the Complaint Material.
130. The Complainant further relies upon questions 208 to 217 of the Wheeler Interview (discussed above), questions 46 to 50 and 52 of the Absalom Interview (discussed above), and the Bensley Group Emails (in particular Exhibits E24 to E38) as evidence of Mr Bensley *driving gaming and VIP shouts* through this practice.
131. On the basis of this evidence, the Authority accepts that the reference to “VIP shouts” in the Bensley emails have the same meaning as “gaming shouts” and may also refer to the supply of free liquor to gaming “VIPs”.
132. At paragraph 11(iii) the Complainant contends that **while the format of Mr Bensley’s emails changed, they consistently included tables referring to “liquor shouts” and “VIP shouts”** and consistently referred to the performance figures and reports coming in from the various venues – including the two Venues the subject of this Complaint. These emails **linked the performance figures, particularly for gaming operations, with the need to provide complimentary liquor in relation to the gaming operations** of the Venue. The Complainant relies upon the excerpts from these emails that are set out below. The Authority accepts these contentions about Mr Bensley’s emails.
133. When making findings on the Grounds of Complaint, the Authority has taken into account the following observations made in the ALH Submission on the Bensley 20 November 2017 Email:
 - The content of the email for Week 21 is typical of Mr Bensley’s “weekly wraps”. It is, seemingly, 4 pages long. Others are longer.
 - The email proceeds by Mr Bensley noting the aggregate performance of “his” venues across all drivers, and the sales performance of some licensees; directing head chefs be rewarded; addresses “function packs” and the getting of bookings for Christmas functions and planning ticketed events under the heading “Future Success Planning”; with the next heading being “Other Focus Items”, the subheadings are “Accom Sales”, “Schoolies”, “Rump and Ribs” (a promotion), “Assistance from Rebecca” (for venue website information), “Outstanding Online Training” and “Revinat Scores”.
 - Then Gaming is dealt with, on the last page.
 - Mr Bensley set out in a table the week’s gambling turnover for each of his venues comparing the current year position to that of last year.
 - Mr Bensley then made observations under a heading “Gambling VIP stats and Comp Drinks”. The comments included “Grant \$92” and

“Coffees at Dublin soft Matt?” (the Dublin being another Bensley venue). Those comments again suggest Mr Bensley was as much concerned about the provision of non-alcoholic refreshments as he was with alcoholic refreshments, ie. that he was at his venues generally concerned with hospitality.

- Underneath those comments is a table to which to the extent it has been reproduced suggests a “stark difference” about the management of shouts and complimentary drinks at South Tweed and Westtower, compared to QLD venues.
- The difference points to a more restrained occasional provision of shouts in the NSW venues.
- On any fair reading of the email as a whole, Mr Bensley’s efforts and attention were directed to each of “his” venues as a whole; it was not focused on gaming to the exclusion of any other driver or aspect of a venue.
- This is the “case with all of the weekly wraps” (Exhibits E28, E33, E35 and E36).
- “Exhortatory statements” in the emails about gaming when read in the context of each email as a whole, and in the context of each other email, “do not evidence a focus on gaming to the exclusion of any other ‘driver’”.

134. Notwithstanding that in these emails Mr Bensley was *also* concerned with other categories of sales, the Authority is satisfied that his emails linked the performance figures for the Venues, particularly in respect of gaming operations, with the need to provide complimentary liquor.

135. The Authority’s more specific findings with regard to the alleged breaches of the liquor Prohibition are specified in Ground 1 below.

Complainant Contentions Regarding “System” of Incentives from 2015 to 2018

136. At paragraph 12 of the Complaint Letter it is contended that while the above-mentioned documents focus upon financial year 2017/2018, **it appears that this system of free liquor supplied at the Venues, with a focus on supply to gaming patrons, was operating before the 2017/2018 financial year.** Specifically:

- The Morgan Bensley emails go back to the previous financial year. For example, the email of 3 July 2017 refers to the daily gaming sheets and the targets Morgan Bensley had set on the template [the Authority assumes this was meant to be a reference to the Bensley 4 July 2017 Email] and the Bensley 3 March 2017 Email refers to the daily gaming briefing sheets.
- A perusal of the “many emails” shows that they all follow the same style. They refer to targets, liquor shouts, Mr Bensley perusing the various daily gaming sheets of the venues he was managing, including the two Venues in question and making comments about performance, reaching targets, the focus on gaming and so on. The Complainant contends that the earliest emails, dated 27 January 2017 (provided at Exhibit E46 of the Complaint Material (“Bensley 27 January 2017 Email”)) and 30 January 2017 (provided at Exhibit E47 of the Complaint Material (“Bensley 30 January 2017 Email”)) shows this conduct. The Complainant contends that it was a course of conduct that had not commenced on 1 January 2017. It was a continuing course of conduct, management and systems

that have been operating well before that time. The Authority accepts that this course of conduct has been occurring for a prolonged period of time.

- This system was implemented and managed by Morgan Bensley. He had been operations manager since about 2011/2012.
- Generally, the two licensees (Wyeth and Watts) during their records of interview, refer to this system as operating from when they commenced as licensees until the system changed in about mid-2018. The two licensees commenced at similar times. Ms Watts was licensee of South Tweed from 31 July 2015 and was there for about two years until 8 May 2017, when she moved to Ballina and became licensee of Westtower from 11 May 2017 to the present time. Meanwhile, for the approximately two years (2015 to 2017) in which Watts was licensee of South Tweed, Mr Wyeth was the licensee of Westtower, from 14 August 2015 to 10 May 2017. Then they swapped, with Wyeth becoming the licensee of South Tweed from 9 May 2017 until 8 November 2017 and Watts becoming licensee of Westtower, Ballina from 11 May 2017 to present.
- Other ALH staff interviewed by L&GNSW (Absolom, Benson and Crouch) gave evidence about the system of daily gaming briefing sheets, gaming shouts spreadsheets, POS and emails from Mr Bensley in operation before financial year 2017/2018. They refer to the system operating throughout their period of employment. The Complainant then refers to exhibit E05 containing the Table of Staff and Roles ("Table of Staff and Roles"), which contains a table of ALH staff and roles, listing their respective period of employment at the venues.

137. In the ALH Submission, ALH contend that the system that is impugned in Grounds 1 and 2 was *not operative* at any time before around 3 March 2017 and with respect to the period from August/July 2015 to March 2017:

- The "only evidence" of "systematic contravention" of clause 55, is from Mr Wyeth who is quoted by ALH as having stated the following at question 102 of the Wyeth Interview: "It's [complimentary alcoholic refreshments] is always something they offered, but yeah...about six months into my time in at Westtower it's something that we managed". ALH submits that Mr Wyeth was halfway through his time at Westtower in about September 2016.
- Mr Wyeth's evidence "does not establish anything systematic for the period from July/August 2015 (or before about September 2016)". ALH submits that this aspect of the allegations in the Grounds "faces a real difficulty; there was no 'system' in existence before about March 2017".
- The allegation of a contravention in a "pre-system period" cannot be a consequence of "systemic" failure. Proof of any such contravention "would require proof of the circumstance of particular offers and supplies". ALH contends that even on the Complainant's "own case pre-system contraventions of cl.55 would require evidence of the circumstances of the offer of supply (because there was no system)". ALH contends that Mr Wyeth's interview "did not produce that evidence". ALH further contends that the allegation in the Grounds of pre-system contraventions is "another example of the subsumption in the Complaint" that any provision of free alcohol to whoever might be a "gamer" is without more a contravention of clause 55.
- Mr Wyeth's recollection of when the "system" commenced is "in any event likely wrong". ALH also submits that Ms Watts was not asked the question about when the system commenced and the "earliest emails in

evidence” are dated 27 and 30 January 2017 (Exhibits E46 and E47), “neither” referring to “shouts”, “targets” or “Daily Sheets”.

- There is evidence of Mr Bensley (Exhibit E24) referring to aspects of the “system” on 3 March 2017, in terms that suggest that its introduction “was recent”. Aspects of the “system” were referred to in all subsequent “weekly wraps” (Exhibits E33 and E36).
- Mr Wyeth’s recollection is “anomalous” and the documentary record “should be preferred”, which suggests that there was no system in place before about March 2017.
- The Grounds, in so far as they alleged conduct from July/August 2015 to about March 2017 cannot be found to be established”.
- ALH also makes reference to the statements of Messrs Absolom and Benson stating that “[e]ach of them gave evidence of him soliciting from patrons at gaming machines requests for the provision of alcoholic refreshments and of such refreshments being delivered to patrons at machines, ie. they make statements contradicting those of Mr Wyeth, Ms Watts and Mr Bensley”. ALH contends that Mr Absolom was candid about his “hatred” for Mr Bensley and Mr Benson was equally frank about his distaste for Mr Bensley. According to ALH, each “were implicitly critical of Mr Wyeth”. In turn they may have been the “couple of staff” referred to by him (question 101 of the Wyeth Interview) as not happy “... but they weren’t performing”.
- ALH further notes, by reference to questions 174 to 176, 215 and 336 of the Hislop Interview, that Ms Hislop thought Mr Benson “unethical” and thought Mr Absolom “couldn’t handle ... the job”.
- The above statements of Mr Absolom and Mr Benson “were not corroborated by Mr Crouch, Ms Hislop or Mr Wheeler” (by reference to the questions 28 to 29 and 128 of the Crouch Interview; questions 41, 67, 76 to 79, 266 and 279 of the Wheeler Interview; and questions 64, 87, 93 and 98 of the Hislop Interview).
- The “preponderance of the evidence is against the account of the system given by Messrs Absolom and Benson. The evidence of Ms Watts and Hislop and Messrs Crouch, Wheeler, Wyeth and Bensley should be accepted”.

138. The Authority accepts that the Bensley 27 January 2017 Email and Bensley 30 January 2017 Email provide the earliest emails in the Complaint Material. They do not mention shouts, targets or daily sheets.

139. However, on the basis of the Table of Staff and Roles, the Authority finds that Mr Bensley commenced as State Operations Manager for the two Venues around 2014/2015. Furthermore, it is evident from the group emails from Mr Bensley that he was responsible for pushing the sales targets and clearly indicating (in the Bensley 3 March 2017 Email) that gaming was the “number one driver” and his “top priority”.

140. The Authority further notes the evidence at question 61 of the Wyeth Interview that:

“it first started with complimentary soft drink and coffees and then I’d say halfway through my time at Westtower that it became it was, it was liquor shouts. And that was, that wasn’t just the two hotels at New South Wales, that was all, all the hotels in the Gold Coast portfolio”. [Emphasis added by the Authority]

at question 101 of the Wyeth Interview:

"I would say from memory maybe six months into my time at Westtower that became a thing that was scrutinised"

and at questions 103 to 104:

"I would, I would say that my whole time when I was at Westtower it was provided in some, some form" "[t]o gaming patrons at the bar".

141. Furthermore, the Authority notes the evidence at question 98 of the Crouch Interview where Mr Crouch (who worked at Westtower) stated:

"As for the customer shouts, when I first started on managers, we had what was written as our managers' shouts"

and at questions 108 to 111:

"Management was given \$50 allowance per shift, and that's how it's been since I started" and that was with Mr Wyeth as licensee and that's "followed through".

142. Moreover, the Authority notes the evidence at question 45 of the Absolom Interview, when asked "when did you first get told about the free drinks to gaming" Mr Absolom (who worked at South Tweed) replied: "would have been about when Andrew [Wyeth] started over".
143. Finally, the Authority notes the evidence from Mr Benson (who worked at South Tweed) who, when asked at question 63 of the Benson Interview "When were you asked to give free liquor" he replied: "When Andrew [Wyeth] started working there".
144. In conclusion, although no *precise* commencement date can be pinpointed from the evidence, there is sufficient evidence and material to support the Complainant's contention that this system was likely in place sometime before March 2017 at both Venues.
145. The Authority notes some differing recollections between Mr Wyeth and other staff members of South Tweed as to when the system actually commenced. Staff at South Tweed, such as Messrs Absolom and Benson told L&GNSW inspectors during their interviews that the system commenced around the time that Mr Wyeth commenced as licensee, which according to the search of the OneGov licence system (Exhibit 04) was 9 May 2017.
146. However, the Bensley 3 March 2017 Email clearly refers to aspects of the system and this *pre-dates* Mr Wyeth's arrival at South Tweed. The Authority prefers the evidence of Mr Wyeth, who has made admissions against his interest from his experience as a former licensee about the provision of free liquor as an inducement at both Venues. He is the only staff member to provide a sworn statement verifying his answers at interview and was in a position of independence as a former employee of ALH.
147. While Bensley emails provide *documentary* evidence of the system from at least the time of the Bensley 3 March 2017 Email. The Authority further accepts Mr Wyeth's account at question 61 of his interview that the liquor shouts commenced "halfway through [his] time at Westtower" and that it "wasn't just the two hotel at New South Wales", instead it applied to "all the hotels in the Gold Coast portfolio". For these reasons the Authority is satisfied that the

system of inducing gaming machine players with free liquor had commended in some form at both Venues around halfway through Mr Wyeth's time as licensee at Westtower, or *around* June 2016.

Complainant's Contentions Regarding the "Processes" at the Two Venues

148. At paragraph 13 of the Complaint Letter, the Complainant contends that **it was Mr Bensley's decision to implement this "program" of incentives at the Venues, which involved the targeted provision of free alcohol to gaming machine patrons**. The Complainant refers to the Bensley 3 March 2017 Email sent to many ALH employees, where Mr Bensley said (amongst other things) in relation to the "Daily Gaming Sheets":

I strongly suggest not limiting your daily targets to the minimum ones I have set on the template.

149. The Complainant further relies upon questions 186 to 188 of the Bensley Interview (questions 187 to 188 have been discussed above) and question 62 of the Wyeth Interview, plus extracts from the Bensley 3 March 2017 Email quoted below. At question 62 of the Wyeth Interview, Mr Wyeth states that "it was implemented by my operations manager" in response to the question of whether it was during Mr Bensley's time that the complimentary liquor shouts started.
150. The Complainant contends that, as part of this program, **hotel staff would attempt to provide free liquor to gaming patrons to reward them for their custom and encourage them to return, and then record the free liquor supplied in the Google Drive via the gaming daily briefing sheets**.
151. The Authority accepts this contention on the basis of the evidence identified by the Complainant - questions 137 to 140 and 142 to 143 of the Benson Interview, questions 43 to 47 of the Wyeth Interview and questions 82 to 94 of the Hislop Interview.
152. At questions 137 to 143 of the Benson Interview, Mr Benson states that the "customer shouts" were for the gaming room and they are the same thing as the "manager shouts". He states that staff had one hundred dollars of customer shouts per shift that they had to give away.
153. Mr Wyeth stated at question 43 to 47 of his interview, that the pressure to achieve gaming results was quite "intensive" and quite "relentless" as the results were published in the weekly wrap. The results were green if you beat the target and red if you didn't. Mr Wyeth explains that the gaming results were reported daily on the Google drive and Mr Bensley would comment on gaming performance up to three times a week. Mr Wyeth states that if gaming performance was low, Mr Bensley would "be on you, he'd send an email out". Mr Wyeth also states that it was Mr Bensley who set the targets.
154. The Authority notes that questions 82 to 94 of the Hislop Interview are discussed above.
155. The Complainant further contends that **Mr Bensley then used these figures for the amount of complimentary liquor shouts provided at the Venues in his group emails, including them in the "Weekly Wrap"**. The Complainant

refers to Mr Wyeth's response to questions 43 to 47 of the Wyeth Interview and the emails from Mr Bensley (in Exhibits E24 to 38) to establish that Mr Bensley was "relentless" in pursuing these targets. The Authority accepts this contention on the evidence cited by the Complainant.

156. The Complainant further contends that the **"gaming shouts" would be recorded on the Venues' POS system under the "manager's shout" button.**
157. Although the Complainant does not specify the evidence in support of this contention, the Authority accepts this on the basis of question 220 of the Watts Interview, where Ms Watts told inspectors that "the discount has to go through a manager's code logon to get the manager's shout button". The Authority further notes Mr Wheeler's response to questions 89 to 91 of the Wheeler Interview, where he states that staff had a "manager's shout on the, on our tills" and "any time that one of the duty manager's or just a manager or myself, um, gave a voucher or a drink or um, a meal out to any one of the customers, um, it would just go through as a manager's shout and we would just print it and sign it". Mr Wheeler adds that "initially" it was "everyone" who had access to this button. The Authority understands this to mean all staff using the cash registers at South Tweed.
158. The Authority accepts the contentions in paragraph 13 of the Complaint on the evidence and material provided by the Complainant.
159. At paragraph 14 of the Complaint Letter, it is contended that **licensees within the ALH Group had "little control" over expenditure within their business.** The Complainant here relies upon the following evidence.
160. First, at questions 28 to 30 of the Wyeth Interview, Mr Wyeth stated that he answered to Mr Bensley during the entire period, that Mr Bensley had financial control and that he was "almost micromanaging". Mr Wyeth also states that they had targets they had to meet and report on with results reported every week and collated with Mr Bensley providing a weekly wrap on how the venue managers were performing.
161. Second, at question 270 of the Watts Interview, Ms Watts agreed that any decision to spend over \$500 would have to be run by Mr Bensley.
162. Third, at questions 291 to 292 of the Wheeler Interview, Mr Wheeler confirms that Mr Bensley "did micromanage the hotels". Although Mr Wheeler states that they definitely had control to an extent, things like Melbourne Cup promotions, Christmas Day bookings, Mother's Day booking and advertising had to be run by Mr Bensley/have a plan of attack. In terms of spending money and labour costs Mr Wheeler states that "[t]hey were all very micro and that, and we always had to be very cautious of what we could spend, and what we couldn't spend". In terms of whether Mr Wheeler had any control he states that Mr Bensley was open to the conversation if he wanted to have a conversation about something or if he didn't agree with something or didn't believe that it was going to fit the venue. Mr Wheeler states that he definitely felt comfortable enough to speak to Bensley on those matters. However, Mr Wheeler then states that Mr Bensley "definitely, he probably ruled with an iron fist, he was probably a bit of a autocratic ruler but he wasn't autocratic in terms of, if I

believe that I could make a difference by offering something different to what he had. Then he was definitely willing to listen. At the end of the day he might decide that I was wrong and is still going to go down that direction that he has put forward. But he would definitely I think, he would take on board whatever you had to say”.

163. The Complainant cites further examples of a lack of licensee control over expenditure as including: a request from Ms Watts to Mr Bensley dated 27 January 2017 (Exhibit E39) to advise on a \$200 CCTV invoice (“CCTV Email Correspondence”); a statement by Ms Watts regarding promotional activity and expenditure at question 270 of the Watts Interview that everything above \$500 went up to Morgan (noted above) and a statement by Mr Wheeler at questions 291 to 292 of the Wheeler Interview (discussed above) that “*Morgan Bensley definitely did micromanage his businesses... He was probably a bit of an autocratic ruler*”.
164. The Complainant also refers to Mr Wyeth’s statements at questions 30 to 31 of the Wyeth interview where Mr Wyeth explains that Mr Bensley had financial control, that the venue managers reported to Mr Bensley, that Mr Bensley was “micromanaging” them and they had targets they had to meet and report on every week. Mr Wyeth also states that any large decision would have to go through Mr Bensley who would either “kick it up to the state manager or, or he’d be able to give approval”.
165. In the ALH Submission the company submits that the *Liquor Act 2007* (NSW) provides that it is the *licensee* (i.e. not the business owner) who is responsible at all relevant times for the personal supervision and management of the conduct of a licensed business. ALH contend that relations between Mr Bensley, Mr Wyeth and Ms Watts were conducted upon that basis and that compliance with NSW laws was a matter for the licensees.
166. The Authority accepts the proposition that legislative compliance is primarily the responsibility of the licensee, but also accepts the Complainant’s submissions on the evidence, which establishes that the licensees Wyeth and Watts had a lack of real control over relevant significant business expenditure.
167. While it may be expected that a business owner seeks to control capital and operational expenditure at a licensed business, to the extent that expenditure includes the provision of free liquor, in potential contravention of the liquor Prohibition, this impinges upon the licensee’s ability to ensure compliance with the Prohibition. It is relevant to the Grounds of this Complaint that the business owner, ALH, and management staff like Mr Bensley had knowledge of the provision of free liquor to gaming machine patrons at the Venues.
168. The Authority accepts that the alleged conduct specified in paragraph 14 of the Complaint Letter occurred, on the evidence cited, regarding Mr Bensley’s role in approving compliance related expenditure, including such matters as CCTV and matters pertaining to the free liquor program. The Authority accepts Mr Wyeth’s evidence that Mr Bensley had financial control and micromanaged the Venues and that Mr Wyeth could not make larger expenditure decisions.

Complainant's Contentions Regarding Emails from Bensley to ALH Hotel Managers

169. At paragraph 15 of the Complaint Letter it is contended, on the basis of Mr Wyeth's statements at question 64 of the Wyeth Interview (discussed below), that **Mr Bensley would regularly email, 2-3 times per week, all hoteliers under his supervision - commenting on their performance and providing instructions as to how their operations were to be conducted.**
170. These emails (evidenced by Bensley Group Emails and the specific emails at Exhibits E24 to E38) were usually "group" emails, sent to managers of QLD and NSW hotels.
171. The Authority accepts these contentions on the basis of those emails and the exchange at questions 64 to 67 of the Wyeth Interview where Mr Wyeth accepts that there was constant reviewing of performance by Bensley with up to three emails per week addressing targets, which included gaming targets. Mr Wyeth accepts that when Mr Bensley was sending these emails, his intention was to push gaming machine operations. Mr Wyeth states that even when the media reports were published the practice of collecting information on customers and entering their data into the Google drive didn't change, instead it was "business as usual". Mr Wyeth states that the business was still performing "mystery shopper" exercises in the gaming rooms. This was justified to them on the basis that gaming represents eighty per cent of business revenue, so eighty per cent of staff time should focus upon it. Mr Wyeth told investigators that: "most definitely those, those complimentary soft drinks and coffees and those gaming shouts were in effort to increase turnover of gaming machines, a hundred per cent".
172. The Complainant further contends that **these emails were also sent to Mr Bensley's supervisors in ALH** (for example, Mr Stephen Clarke, the QLD State Manager, as indicated by Exhibits E24 to E38, and Mr Dan Casey, the QLD Gaming Manager, as indicated by Exhibits E24 to E34). These emails **would frequently contain "inappropriate directions" for hotels operating under the NSW licensing regime, including Westtower and South Tweed.**
173. In paragraph 15 the Complainant cites the following extracts from emails sent by Mr Bensley to ALH staff, which are in evidence at Exhibits E24 to E35 and E37 to E38:

Bensley 3 March 2017 Email:

"My directive to Venue Managers was clear and concise. The daily gaming briefing sheets were to include AM and PM targets and document each shifts AM and PM's performance VS target...To be clear gaming is our number one driver my top priority. We simply must have the best staff who achieve the greatest outcomes in our gaming rooms and we must be monitoring them daily rewarding the performers and cutting loose the ones 'GOING THROUGH THE MOTIONS'".

"South Tweed- No results, good comments"

"Westtower- NOTHING at all Zero Zilch"

"I strongly suggest not limiting your daily targets to the minimum ones I have set on the template."

Bensley 4 July 2017 Email:

he "want[ed] to see" "VIP liquor [sic] targets and results by shift" ... "It's about passion for and honouring our core business" and referenced "Coffee/Soft" & "Liquor shouts" figure summaries of the 3 July 2017 gaming daily briefing sheets.

Email from Mr Bensley dated 6 July 2017 (Exhibit E26 of the Complaint Material) ("Bensley 6 July 2017 Email"):

"The Brick- If you refuse to listen life will send you The Brick... It's out of options you won't listen....". "Wednesday was The Feather. Today is The Paper cut. Tomorrow The Brick".

Email from Mr Bensley dated 14 July 2017 (Exhibit E27 of the Complaint Material) ("Bensley 14 July 2017 Email"):

"There will be more money in the Gaming Market today than any day so far this year. The Question is HOW MUCH OF IT WILL YOU HUSTLE" and referenced VIP shouts of \$77.30 for South Tweed and \$101.50 for Westower. "Gaming is up 20.5% WOW... This is a result of our focus and hard work. Keep pushing we can be 20% on Monday. Focus on limiting customers' opportunities to leave".

Email from Mr Bensley dated 17 July 2017 relating to the "Week 3 Wrap" (Exhibit E28 of the Complaint Material) ("Bensley 17 July 2017 Email"):

"the \$100 Club. Congratulations to ... and Rachel [Watts] for beating our gaming records for the second week running. An outstanding achievement you will both have your second \$100 tomorrow...I'll triple the \$100 if you can go three weeks running?"

"For the next six weeks gaming must be our primary focus"

"Comp drinks. Shouts are good make sure we are targeting the right people"

VIP shouts of \$438.50 for Westower and \$601 for South Tweed were referenced.

Email from Mr Bensley dated 19 July 2017 (Exhibit E29 of the Complaint Material) ("Bensley 19 July 2017 Email"):

"Team Westower knowone [sic] is bigger than the team" referencing an incomplete gaming daily briefing sheet. \$90 in VIP Shouts are also recorded for Westower.

Email from Mr Bensley dated 22 July 2017 (Exhibit E30 of the Complaint Material) ("Bensley 22 July 2017 Email"):

"...and Rachel [Watts] please sharp up your games please" referencing gaming daily briefing sheets (as per context and format of prior emails).

Email from Mr Bensley dated 27 July 2017 (Exhibit E31 of the Complaint Material) ("Bensley 27 July 2017 Email"):

“... and Andrew [Wyeth] some improvement required please”, referencing gaming daily briefing sheets (as per context and format of prior emails) and VIP Shouts of \$70.10 for South Tweed and \$81.50 for Westtower.

Email from Mr Bensley dated 28 July 2017 (Exhibit E32 of the Complaint Material) (“Bensley 28 July 2017 Email”):

Mr Bensley told his managers to “shout the entire room every hour” and “double the staff incentive for gaming record (usually \$50 to each gaming attendant, this week \$100)”.

Email from Mr Bensley dated 31 July 2017 (Exhibit E33 of the Complaint Material) (“Bensley 31 July 2017 Email”):

email subject line “Week 5, You’re either IN, or IN the way”, under the heading of “Gaming”, “I know I’m pushing hard but I want every one of you to get a healthy quarterly bonus come week 12 that’s not too far away now”.

Also a “repeat business tool...Printable patron reward increases as they attend more” referring to a 5 day “VIP Venue Voucher” of \$5 per day, increasing to \$10 on day 3, \$15 on day 4 and \$20 on day 5.

Under the heading “Gaming Briefing Sheets”, “South Tweed, Excellent detail in brief sheet. Staff worked the room with shouts and good management presence...” and “Westtower, clear targets. Clear direction...”

Email from Mr Bensley dated 4 September 2017 (Exhibit E34 of the Complaint Material) (“Bensley 4 September 2017 Email”):

During the end of month email wrap “gaming it is vital we get out fast this week be ruthless”

When later referring to the VIP shouts for Week 10 on page 3 “South Tweed, \$830.39”, “Westtower, \$764.60”.

Email from Mr Bensley dated 11 September 2017 under the heading “Gaming – Comp Drinks & VIP Shouts” at page 2 (Exhibit E35 of the Complaint Material) (“Bensley 11 September 2017 Email”):

“This is a service we offer others don’t. Do your staff sing about it? They should”.

Email from Mr Bensley dated 27 November 2017 during the Week 22 Wrap – under the heading “Gaming VIP Shouts & Comp Drinks” at page 5 (Exhibit E37 of the Complaint Material) (“Bensley 27 November 2017 Email”):

“South Tweed too low”, referring to the lowest VIP shouts of \$307.60 at South Tweed.

Email from Mr Bensley dated 7 May 2018, during the Week 45 Wrap under the heading “Gaming Liquor Shouts” at page 2 (Exhibit E38 of the Complaint Material) (“Bensley 7 May 2018 Email”):

“These are capped at \$700 per week for now”, “I was told less (\$400) but fought for a slower decrease please budget your allowance daily”, “\$700 per pub max starting this week”.

174. The Authority finds that the Complainant has generally cited statements from these emails correctly (save for a few typographical errors) and is satisfied this evidence establishes Mr Bensley's encouragement, if not direction, that free liquor be supplied to patrons at the Venues and this includes an explicit focus upon gaming machine players.
175. At paragraph 15(xv) of the Complaint Letter, the Complaint contends that **the "VIP Shouts" ceased being included in Mr Bensley's "weekly wrap" report in Week 51, at about 18 June 2018**. The Complainant does not specify any evidence in support of this observation, but the Authority observes that the latest email from Mr Bensley that it has before it is in Exhibit E38 and contains the date, *7 May 2018*.
176. At paragraph 16 it is contended that **Mr Bensley's emails would usually refer to information provided to him by the hotels in gaming daily briefing sheets and spreadsheets that recorded, among other matters, the value of "gaming shouts" given out on a particular day**. The Authority accepts this observation on the basis of the various emails from Mr Bensley extracted as Exhibits to the Complaint (specifically Exhibits E24 to E29 and E31 to E38) and the Westtower Briefing Sheets, South Tweed Briefing Sheets and the Gaming Shouts Spreadsheet.
177. The Complainant also refers to Mr Wyeth's statements at questions 63 to 64 and 102 of the Wyeth Interview (discussed above) and Mr Wheeler's statements at questions 208 to 217 of the Wheeler Interview (discussed above) in support of the contention that **Mr Bensley would criticise his managers when they did not give out enough free liquor**. The Authority accepts this observation on the evidence cited by the Complainant.
178. Finally, the Complainant contends in paragraph 16 that in the **Bensley 20 November 2017 Email, under the heading "Gaming VIP Shouts & Comp Drinks" for the Week 21 Wrap, are the words: "Grant \$92?"**. This is a reference to Mr Grant Wheeler, then licensee of South Tweed with the "\$92" meaning the amount of VIP Shouts provided. The Authority accepts this evidence and infers that Mr Bensley was here questioning the adequacy of Mr Wheeler's provision of complimentary liquor shouts to Gaming VIP players.

Complainant Contentions on Interviews with ALH Staff

179. At paragraph 17 of the Complaint Letter the Complainant refers to all of the L&GNSW interviews with ALH hotel staff and management and submits that **the main difference between the accounts given by different ALH employees on the provision of free liquor is one of "form and not substance or fact"**.
180. The Complainant contends that **one group of ALH employees considered that there was enough separation between a patron's gambling and the provision of free alcohol to all patrons, whereas another perceived that this initiative was, in substance, a means of providing free alcoholic drinks to gaming machine patrons**. The Authority accepts this characterisation of the evidence of ALH staff in response to questioning by

L&GNSW inspectors. Both groups accept that the free liquor actually was being provided to patrons of the Venues.

181. The Complainant then contends at paragraph 17(i), that **Mr Bensley's oversight of the Venues and his approach to clause 55 of the 2010 Regulation "shaped the context of operations" at the Venues**. Both licensees (Wyeth and Watts) reported to Bensley, and all staff reported on the targets set by Bensley via the Gaming Daily Briefing Sheets. The Complainant here relies on the evidence from Mr Wyeth at question 47 of the Wyeth Interview (discussed above).
182. The Authority accepts Mr Wyeth's evidence that it was Mr Bensley who set the targets for the supply of free liquor to patrons. In the Wyeth and Watts Interviews, both licensees indicate that they reported to Mr Bensley. Furthermore, as noted in the various Bensley emails and the Westtower Briefing Sheets and South Tweed Briefing Sheets, ALH staff (including Wyeth and Watts) were required to report on the targets set by Mr Bensley.
183. At paragraph 17(i), the Complainant contends that **Mr Bensley had an "apparent perception" that if free drinks were *not physically taken* to the gaming machine customer, the supply of the liquor was not an inducement. Mr Bensley noted that the purpose of the practice was to provide free alcoholic drinks to gaming patrons to reward them for their custom and encourage them to return**. The Complainant here relies upon Mr Bensley's statements at questions 137 to 140 and 144 to 161 of the Bensley Interview
184. The Authority notes the following key statements made by Mr Bensley during this exchange:
 - Bensley accepts the proposition that there was a discussion about providing free drinks.
 - Bensley states that the Venue Managers were fairly confident that while it had to be different, there was a way in which they could give liquor to people who had been in the gaming rooms, in a "different sort of scenario".
 - When asked if the intention behind these discussions was to work out a way to provide liquor to gaming patrons, Mr Bensley stated: "Yeah, I suppose so. You know, the – the intention in the Greater program – that's what it was – and the feedback was, 'Listen, if we're going to do something like that, this is the way that we're going to have to do it to be compliant'".
 - Bensley describes the original discussion around the supply of liquor to gaming players in terms of: "'Can we?' 'Yes, we can'" and "We can't do it in the room, we can't target people, we can't do it for someone every time they come" and "We can't – we can't make a habit of it, we can't make an expectation. It's got to be somebody who is already going to have a drink". Mr Bensley described the proposal in terms of supplying free liquor across the drivers of the business, with the practice being "fair and equitable".
 - When asked whether the original discussion was centred around how you could provide free liquor to gaming patrons Mr Bensley stated "Similar, yeah. Income. The – the – the general – the beginning was,

‘This is something that, you know, like, this is a – a sheet that’s got these numbers on it. If you want to do it, this is where you put the numbers on it, and then I’ll’ – you know, then there was some conversation. I can’t remember whether that was them coming to me. It wouldn’t have been me going to them. They’ve said, ‘Hey, this is what’ – you know.”

- When asked whether the offering of free drinks was to reward gaming patrons Mr Bensley conceded this, stating: “I suppose so. You could put it that way”.
- When shown the NSW Gaming Policy and Procedure and inspectors pointed out the Rules of Gaming (in particular ALH’s policy on the supply of liquor to gaming patrons), Mr Bensley stated: “Yeah. I think that the confusion for me comes around that word ‘inducement’. And that’s where some of the grey area around, what can you do within the realms – you know, because that is not a clear, you know, rule or regulation”.
- When asked whether these ALH policies and procedures were consulted, Mr Bensley stated “Well, I believe it would’ve been by the managers. Oh personally I do. But where these, but again, I would just come back to say with this, there was some confusion around the ‘inducement to gamble’”.
- Mr Bensley also told inspectors that in his opinion the word “inducement” is confusing.
- When asked whether he felt that the Venues had an issue by providing free liquor to gaming patrons, Bensley stated “It’s – regulation can be difficult. The fact that you can take a tea or a coffee to a machine, and we – you know, you can give some food but not other food. It becomes difficult to navigate. So sometimes these things – it’s written one way, but it’s really hard to get a really clear definition of – of what’s black and what’s white. And that word really confuses me and everybody else around what you can and can’t do”.

185. The Authority accepts that Mr Bensley’s answers to questions 137 to 140 and 144 to 161 indicate some perception, on his part, that so long as liquor was not actually taken to players in the gaming room, there was no inducement.
186. While Mr Bensley claims that the law was a “grey area”, the Authority notes his acknowledgement, in the above exchange, that the purpose of providing free liquor to patrons of his venues, including the gaming patrons, was to reward them and keep them returning to the Venue.
187. At paragraph 17(ii) of the Complaint Letter, the Complainant quotes question 87 of the Wyeth Interview, noting that Mr Wyeth told L&GNSW that *“if any other company, if a staff member gave a free drink away you would, they’d be out the door”*, but with ALH, **gaming staff had the authority to give away free alcohol up to a certain amount and would need manager approval to go above that.**
188. The Complainant further cites Mr Wyeth’s statements at question 132 of that interview (discussed above) contending that **this discretion was usually exercised in favour of those patrons who were gambling at higher stakes.** Furthermore, the Complainant notes Mr Wyeth’s statement at question 82 that Westower, as distinct from South Tweed, had “the type of customers you’d, you’d want to keep them in there”. The Complainant here refers to extracts of questions 83, 85 and 86 (discussed above) and question 132 of the Wyeth

Statement (also discussed above) to establish that there was a licensee “discretion” to provide free drinks to those patrons who were gambling at higher stakes.

189. The Authority accepts that paragraph 17(ii) provides a fair and accurate account of Mr Wyeth’s evidence, which establishes that gaming staff *were* required to give away free liquor and there was some discretion on the part of licensees that usually prioritized higher stakes gamblers.
190. At paragraph 17(iii) the Complainant refers to questions 67 to 68 of the Wyeth Interview and contends that **Mr Bensley viewed the “gaming shouts” as tools to raise revenue and keep people gaming longer.**
191. At questions 67 to 68, Mr Wyeth agrees that the intention behind Mr Bensley’s emails was to push gaming with the complimentary gaming shouts an effort to increase turnover of gaming machines. In response to the question about what feedback Bensley would provide if they were not tracking well in gaming, Mr Wyeth stated that Bensley “would send an email out asking what we’re going to, to turn that around. What, what have we got in place to, to raise that, to, to, to raise the turnover. Managers on the floor in the room, complimentary drinks, complimentary coffees, gaming shouts, all those things were tools to, to raise the, raise revenue, keep bums on seats longer, keep people in the room longer, keep them pushing the button”.
192. The Complainant also refers to questions 94 to 96 and 167 of the Wyeth Interview, where Mr Wyeth **describes “almost a predatory culture” within the Venues he worked at with Bensley “quite relentless” in his dealings with his venue managers.**
193. The Authority accepts that during this exchange, Mr Wyeth states that the incentives created a “predatory culture” with the customers obviously liking it, being the centre of attention. Mr Wyeth states that Mr Bensley was “quite relentless” to his venue managers on achieving the targets and this was “filtered down” with the staff members becoming quite relentless as well. When asked where the predatory culture came from, Wyeth stated that “it’s definitely filtered down from a level higher than, than Morgan”. Mr Wyeth stated that he wasn’t aware of the habits of other portfolios, but that those gaming briefing sheets would be used state-wide and they were showcased/described in the ALH yearly conference at Lone Star. Mr Wyeth stated that the “whole state gets together and, and that was one of the sessions on how to, how to achieve targets and how to use the, the gaming briefing sheet”. When asked whether his reference to a predatory culture is in respect of gaming, Mr Wyeth states “It’s probably purely gaming”. Wyeth agrees that there are targets for bars and food but states that “if you don’t achieve those targets it’s, it’s almost explainable”. In Wyeth’s opinion, the “focus seems to be on, on gaming and, and then when you have mystery shops being undertaken, after everything that, that’s happened, you have mystery shops that are just confined to the, to the gaming room you, you, that’s an indication of, of what, what they considered the core of their business to be”.

194. The Authority accepts this account of Mr Wyeth's evidence and accepts his admissions regarding the *purpose* of providing free liquor to gaming machine patrons. These admissions are credible and against Mr Wyeth's interests and are borne out by the emails from Mr Bensley that are quoted in paragraph 15 of the Complaint Letter, as noted above.
195. At paragraph 17(iv) the Complainant refers to questions 42 to 55 and 87 to 88 of the Absolom Interview (discussed above) where Mr Absolom, who had the role of "manager" of South Tweed, indicated that **customers were selected for free drinks on the basis of their level of gaming machine stakes.**
196. The Complainant specifies Mr Absolom's statements at question 52 and 53 of the Absolom Interview, which are as follows:
- Q52: *Was any criteria given for who could get the drinks or - - -*
A: *Ah, VIPs in general mainly. 'Cause they're the big spenders - - -*
- Q53: *Ah hmm.*
A: *- - - ah, the, if any, if you walk past, they said, if you ever see anyone playing \$2.50 or more – given them a free drink. And if they want a drink – they can have it.*
197. The Authority accepts this evidence, which corroborates Mr Wyeth's account of free liquor being supplied to patrons at the two Venues, with a particular focus upon gaming machine VIPs, or patrons playing at higher stakes.
198. At paragraph 17(v), the Complainant refers to questions 71 to 73 of the Benson Interview, where Mr Danial Benson, a staff member at South Tweed, describes one staff meeting where staff were instructed that \$100 per shift needed to be given away in free drinks to *gaming patrons* and questions 72 and 73 where he stated that staff would "get in trouble" if they didn't spend the \$100, with this policy only applying to gaming machines.
199. The Authority notes the exchange at questions 71 to 73 of the Benson Interview where Mr Benson stated that the provision of free liquor to gaming patrons started at a meeting one day when they were told that they have a hundred dollars for the morning shift and a hundred for the night shift. Mr Benson stated that they would "get in trouble" if they "didn't get rid of the whole hundred dollars" but that they were allowed to give away more than a hundred "if it looked like keeping that person there". Benson clarified, that was only in relation to the "pokie machines", it "didn't happen for TAB, it didn't happen for Keno".
200. The Authority accepts these contentions on the evidence cited by the Complainant. It further establishes that staff of the Venues *were required* to give away a set target of *free liquor* (and specifically to gaming machine patrons) during each shift *and were penalized for not meeting those targets*. Moreover, if exceeding the target amount would keep a patron on the premises, staff were allowed to give away more free liquor than the fixed target.
201. At paragraph 17(vi) the Complainant refers to statements made at question 87 of the Hislop Interview (discussed above) where this assistant manager (at South Tweed) stated that free drinks were provided to gaming patrons, but she

“never shouted people *because* they were in gaming”. At questions 88 and 89 of the Hislop Interview (discussed above) Ms Hislop concedes that there was a *gaming specific spreadsheet*, and a *gaming specific incentive*. Referring to the concessions made by Mr Hislop at paragraphs 248 to 249 of the Hislop Interview (discussed above) the Complainant contends **these “manager’s shouts” were “probably” for “predominantly gaming customers”**.

202. **The Authority accepts this account of Ms Hislop’s position, on the basis of questions 87 to 89 and 248 to 249 of the Hislop Interview** (discussed above). The Authority accepts that paragraph 17(vi) provides an accurate and fair reflection of Ms Hislop’s statements.
203. At paragraph 17(vii), the Complainant refers to the statements made during the Wheeler Interview by Mr Grant Wheeler, the licensee of South Tweed from 9 November 2017 to 3 October 2019. The Complainant contends that Mr Wheeler told L&GNSW (at questions 172 to 173 and 177 to 180) that while free drinks were given to gaming patrons, they weren’t just provided for gaming inducement but as a loyalty reward because these persons were regulars or locals.
204. The exchange between Mr Wheeler and L&GNSW inspectors at questions 172 to 173 and 177 to 180 concerned the intent behind the provision of free liquor to gaming patrons. Mr Wheeler told inspectors that complimentary drinks would have been given to “customers in the venue, if they were in the gaming room” but they “weren’t given out for um, gambling inducement”. On Mr Wheeler’s account, they were given out “because they were a regular in the hotel or because they were a local”. Mr Wheeler states that the intention behind giving anyone complimentary drinks was to “reward ah, loyalty to the venue”. Mr Wheeler also told inspectors that he would discourage use of the expression “gaming’ patrons” because he believed “they were just patrons of the hotel”.
205. Mr Wheeler also told inspectors that “a lot of the patrons who would receive drinks may or may, like may have played the gaming machines at the time but they are also regulars of the hotel, outside of the room as well”. However, when asked if they had any “purely gaming regulars” Mr Wheeler accepted this. When asked if those patrons would be given free alcohol, Mr Wheeler stated that they “may have been” but that it wouldn’t have been to induce them to gamble but to reward them for being a “regular patron” and “spending money at our hotel”.
206. Mr Wheeler also told inspectors that “it wasn’t an inducement for them to spend more money at our hotel” but “rewarding loyalty”. According to Mr Wheeler, encouraging repeat patronage is “a goal or a target of any business” and that “[y]ou need to be um, encouraging repeat business, and encouraging customers to continue to come back to, you know, visit your venue”.
207. The Authority accepts this account of Mr Wheeler’s evidence and notes that while Mr Wheeler maintains that the free liquor was a reward for “regular patrons” he also concedes that at least some of these regulars were there *purely for gambling*.

208. At paragraph 17(viii) the Complainant refers to statements made by Ms Watts, the current licensee of Westtower, at questions 165 to 166 and 231 to 232 of the Watts Interview to the effect that there was a “general practice” of providing free alcoholic drinks to patrons but this was “not specific to” gaming machine patrons.
209. The Authority notes that at this exchange, Ms Watts agreed that free or discounted liquor was offered and when explaining how that worked stated “If we’re shouting a patron a drink it would be as they come to the bar, we’ll be like ‘oh no, that one’s on us’. Yeah, try and make it so that it’s not the same group of patrons that would get, say, shouted a drink each time. ‘Cause they’re all, they’re all regulars and they all frequent all the areas of the hotel but we don’t play favourites, that you like this table, so this table will get, get a drink when they come in. Just, you know, make them all feel special once a week or whatever”. Ms Watts agrees that it is possible for gaming staff or staff of the venue to provide a drink and get the manager to ring it up later.
210. The Authority finds that paragraph 17(viii) provides a fair and accurate account of Ms Watts’ statements. Her position is that the practice of providing free liquor was not “specific to” gaming patrons.
211. Finally, at paragraph 17(ix) the Complainant notes questions 93 to 95 of the Crouch Interview where Mr Brad Crouch, a shift manager at Westtower, told L&GNSW that while free liquor was offered to *all patrons* of the hotel from time to time, including gaming patrons it was not “targeted” at gaming patrons
212. The Authority notes that Mr Crouch here told interviewers that he would often use the manager’s shouts to shout tables and issue free drink cards to address food complaints. Mr Crouch stated that there was “nothing that actually targets gaming as such” but “where we’d have our regulars, I would do a drink for a patron, I would do a drink for his wife, his wife, or vice versa, may have been in gaming, but they were never targeted for them to stay in gaming”. When pressed whether free drinks were offered to gaming patrons from time to time, Mr Crouch stated “Well, they were – they – they were offered to patrons – like, if a – if a customer came out, yeah, we had the ability to shout them a drink, but it was never – never targeted that way” before eventually conceding that “[i]t was possible”.
213. The Authority accepts the Complainant’s description of Mr Crouch’s evidence.
214. In conclusion, the Authority accepts that some ALH staff interviewed by L&GNSW (Mr Wyeth, Mr Absalom and Mr Benson) had no difficulty accepting the proposition that gaming machine patrons were targeted for the supply of free liquor, whereas some staff, such as Ms Hislop, Mr Crouch and Ms Watts, maintained that the practice was not *specific* to gaming machine patrons, but formed part of a broader loyalty program.
215. Mr Wheeler takes the position that while free liquor service was a reward for *all* regulars; some regulars were only there for gaming machines.

216. The Authority accepts the Complainant's contention that notwithstanding differing staff accounts of the *intent* behind the practice, all acknowledge that free liquor *was in fact provided to gaming machine patrons* at the Venues.

FINDINGS ON GROUNDS OF COMPLAINT

217. Paragraphs 26 to 94 of the Complaint Letter specify the Particulars of the four Grounds of Complaint, which incorporate by reference the contentions made in the Background, Common Facts and Key Documents section of the Complaint.
218. The Complainant refers to the statutory objections and contentions in section 3 of the Act:

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.*
219. In paragraphs 19 to 24 of the Complaint Letter, the Applicant provides some detailed submissions on the objects and considerations in section 3 of the Act, emphasizing the centrality of harm minimisation in the decision making of the Authority, licensees and other persons exercising functions under the Act.
220. The Authority makes the following findings on the Particulars of the Complaint briefly addressing, where appropriate, the position taken by the Respondents.

Ground 1: Section 129(3)(a)(i) and/or (ii): (i) That the licensee has contravened a provision of the Act or the regulations and/or (ii) has failed to comply with any requirement under the Act or the regulations that relates to the licensee.

221. Ground 1 is based on section 129(3)(a)(i) and/or (ii) of the Act which 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*
 - (ii) *has failed to comply with any requirement under this Act or the regulations that relates to the licensee, or*

222. The Authority notes that section 127(1) defines a "licensee" to mean a hotelier, a club, or the holder of a gaming-related licence. Section 4 of the Act defines an "hotelier" as having the same meaning as the *Liquor Act 2007* (NSW), which means the holder of a hotel licence under that Act. Pursuant to section

127(2)(a) of the Act, reference to a “licensee” in Part 8 of the Act includes a *former* licensee.

223. The Authority accepts the Complainant’s submission in paragraph 26 of the Complaint Letter that clause 55 sits within Part 3, Division 4 of the 2010 Regulation. This Part is entitled “*Responsible gambling practices and other harm minimisation measures*” while the title to Division 4 is “*Miscellaneous harm minimisation measures*”. The Authority accepts the Complainant’s submission that clause 55 is a harm minimisation measure.

Relevant legislative provision

224. Ground 1 is based on an alleged contravention and or failure to comply with clause 55 of the 2010 Regulation, which has been extracted above.
225. In making its findings on Ground 1, the Authority has considered the ALH Submissions on how clause 55 should be interpreted. In summary, ALH argues:
- Ground 1 can only be made out if there have been “contraventions” of clause 55, rather than “failures to comply”.
 - The Complaint is founded on a mis-construction of clause 55. The question of whether clause 55 has been *contravened* “requires a consideration of the particular circumstances in which an offer or supply, that is said to constitute a contravention, occurs”.
 - The Complainant has adduced no evidence as to the *effect of any particular offer and supply* and thus no evidence of any contravention of clause 55.
 - The Complainant’s approach is explicable only on the basis of a construction of clause 55 that *treats an offer or supply as necessarily and without more establishing, an inducement*. Clause 55 cannot be so construed.
 - In the absence of evidence on the circumstances of any *particular offer or supply*, Ground 1 and consequently Grounds 3, 4 and 5 cannot be found to apply in respect of Mr Wyeth and Ms Watts.
226. In the Complainant Reply, the Complainant counters that there can plainly be a failure to comply with a prohibition by doing the thing that is prohibited and ALH’s submission on construction “goes nowhere” because this Complaint has also been couched in terms of a “contravention” of clause 55. The Complainant contends that ALH’s submissions are “an elaborate straw man” whereby ALH has engaged in “re-phrasing the complaint in its own, tendentious, language” in an attempt to “distract attention from the absence of any substantive answer to the complaint”.
227. The Complainant further submits it is *not necessary to trace each and every one of the numerous supplies of a free shout of liquor to a specific identified gambling patron who then gives evidence that yes he/she was induced* by the free liquor to play or play frequently the gaming machines at the venue. ALH’s suggestion to the contrary is a “reflection of the straw-man tactic”.
228. The Authority prefers the Complainant’s construction of the Prohibition. Although this Complaint has not been drafted in a manner that particularises the circumstances of each and every alleged inducement, the Authority is

satisfied, from its below findings, that there is sufficient evidence or material to establish that a system was in place whereby a significant amount of free liquor was provided to many gaming patrons as an inducement to play, or play longer, the gaming machines at both Venues, over some months.

Ground 1(a) - Andrew James Wyeth

Particular 1 – Breach of clause 55 of the 2010 Regulation at Westtower from 14 August 2015 to 10 May 2017

229. At paragraph 27 of the Complaint Letter the Complainant contends that, by reference to the “facts set out above, as well as the evidence provided, including the record of interview with Andrew James Wyeth” (especially questions 56 onwards; 87 to 88; 92 to 94; 109 to 111, 153 and 165), that Mr Wyeth offered or supplied, or caused or permitted to be offered or supplied, free liquor as an inducement to play, or to play frequently, approved gaming machines at the Westtower Tavern.

Period of alleged breach

230. A search of the OneGov licencing system for individuals at Westtower that is provided at Exhibit E02 establishes that Mr Wyeth was the licensee between 14 August 2015 and 10 May 2017.
231. As found above, the alleged system had been operating since around June 2016 at Westtower.
232. The Authority finds that the alleged breach by Mr Wyeth of clause 55 in respect of Westtower occurred from approximately June 2016 to 10 May 2017, when Mr Wyeth ceased as licensee.

The offer or supply of liquor as an inducement

233. The Complainant extracts at paragraph 27 of the Complaint Letter the exchange at questions 56 to 62 and 110 to 111 of the Wyeth Interview. The Authority notes that during this exchange Mr Wyeth: confirms that the Venues failed to adhere to the requirement to not provide free alcoholic drinks as an inducement to gamble; stated that although complimentary liquor shouts were phrased as an all of venue shout they were centred around gaming; stated that complimentary liquor shouts started when Wyeth was halfway through his time at Westtower, applying to all hotels in the Gold Coast portfolio; stated that Mr Bensley implemented the practice; and confirmed that the free liquor was an inducement.
234. Para 28 of the Complaint Letter refers to the Wyeth Interview “in its entirety” while specifically citing Wyeth’s answers at questions 42 to 102. The Complainant contends that Mr Wyeth accepts and admits conduct in breach of this regulation, explains the matter, gives facts and circumstances surrounding this matter and provides details of the role played by Mr Bensley. The Authority accepts this characterisation of Mr Wyeth’s evidence.
235. Mr Wyeth’s admissions in these parts of his interview are as follows:

- When asked at question 43 what kind of pressure was there to achieve gaming results, Wyeth described it as “Quite intensive” and “quite relentless” with the results “published in, in the weekly wrap”.
- At question 44, Wyeth describes how the “gaming results” were “reported daily” with the “wrap” going out “once a week”. [The Authority understands that “gaming results” means staff performance against Mr Bensley’s targets to provide liquor to gaming patrons].
- At question 45, Wyeth states that Bensley would comment on Mr Wyeth’s gaming performance “up to three times a week”.
- At question 47, Wyeth states that it was “Morgan” [Bensley] who would “set the targets”.
- At questions 53 to 56 it is clear that L&GNSW inspectors had shown Wyeth the ALH document *Gaming Policies and Procedures in NSW* and the section entitled *Rules of Gaming*. When asked at question 58 if South Tweed and Westtower were adhering to the stated rule that venue staff and managers are not to offer, or provide or cause, or cause or permit free alcoholic drinks as an inducement to gamble Mr Wyeth stated “No”.
- At question 59, Wyeth explains how the complimentary liquor shouts were “centred around the gaming room”.
- At question 63, Wyeth states that “Later in my time at South Tweed I had a visitor from, it was the licensing sergeant and he told me that it could be regarded as an inducement and, and then I, I ceased doing it for, for the larger part. I just, I made sure that it was a all of venue thing. It wasn’t focussed towards gaming at all. And as a result my gaming shouts, the amount that I put in there was quite low and I, one time I received an email on, on why I’d only shouted \$11.00 worth of drinks, so, yeah”.
- At question 67, Wyeth states “most definitely those, those complimentary soft drinks and coffees and those gaming shouts were in effort to increase turnover of gaming machines, a hundred per cent”.
- At question 68, Wyeth states that “[m]anagers on the floor in the room, complimentary drinks, complimentary coffees, gaming shouts, all those things were tools to, to raise the, raise revenue, keep bums on seats longer, keep people in the room longer, keep them pushing the button”.
- At question 69, Wyeth clarifies that a reference to “gaming shouts” (in his response to question 68), is a reference to “free liquor”.
- At question 86, Wyeth states that at Westtower staff were told that “if you see a \$5.00 hitter” (which the Authority assumes means a gaming machine player who makes \$5 bets) “then absolutely look after them”. At question 87, Wyeth clarified how ALH staff were authorised to do this in that “gaming staff had, I suppose, authority to, to give away drinks up to a certain amount and then they would need approval from the manager to go higher, I guess”.
- At question 88, when asked whether staff ever rewarded for good gaming performance with vouchers, Wyeth stated “Yeah, we had incentives in place” adding at question 89 “We were given gift cards, Woolworths gift cards or, yeah, they were mainly rewarded in gift cards. We might have, they might receive, you know, a dinner at, at another venue or something like that but it was, the main payment would be in a gift card”.
- At question 101, on the question of when the provision of free liquor shouts commenced, Mr Wyeth stated “I would say from memory maybe six months into my time at Westtower that became a thing that was scrutinised”. At question 102 he adds: “It’s always something that they, they offered but, yeah, about six months into my time at Westtower it was something that was managed, you know. On a daily basis you would put

it into a, a, a Google drive sheet and depending on what your total was it'd either come up green or come up red. Obviously you had to answer to, if you had a day that was in red, on why that was".

- At questions 103 and 104, Wyeth clarifies that free liquor was being provided throughout his "whole time" at Westtower, in some form, to "gaming patrons" and this took place "at the bar".
- At question 105, when asked whether it was his understanding that the free liquor program was provided for gaming, Mr Wyeth states that "It might have been called a all of venue promotion or all of venue initiative but it was centred around the gaming room and, and the rationale behind that is gaming represents eighty per cent of our business so that's, that's the justification that they, they had and still have in relation to mystery shops and that sort of thing".

236. The Authority further notes the following further admissions at questions 152 to 165:

- At question 152, Wyeth contends that the "perception" was that if staff did not take liquor to the customer *in* the gaming room than it wasn't an inducement. If the customer got the drink *at the bar* then it was an "all of venue promotion". When asked at question 153 "But you were only providing it to gaming patrons?" Mr Wyeth replied "Yeah".
- At question 156, Wyeth claims that "everything that the company does is to distance themselves from, from any penalties" and that "maybe" the reason why the company doesn't hold the liquor licence, but uses individuals, is "because that individual person being the licensee is responsible for, for anything that comes up despite the fact that he or she might not be there at the time".
- At question 161, Wyeth states that the ALH operations managers are "not accountable...it's almost like they can't be linked to, to anything". He adds that "ALH it's pretty controlled on, on the direction and ninety-day plans and, and you submit those and then your operations manager reviews it and tells you which direction he wants to go. You've got, you know, things like your daily targets, your weekly targets that, that is a form of micromanaging the business and again taking all that control out of the venue managers hands. Just business managers, caretakers".
- At question 165 when asked about how many conversations Wyeth had around matters of legislative compliance at either venue, or the fact he was operating a NSW venue while answering to a QLD manager Wyeth states: "Not, there wasn't many conversations regarding compliance. It was, it might be a off the cuff comment like in regards to gaming snacks, taking out hot, hot foods to, to patrons at the machines, might be a comment like, oh, you can't do that in New South Wales. That's all that was, was said in regards to compliance. Now I found it unusual that New South Wales hotels were run by people that were focussing on what, what you can do in Queensland and that's the, that's probably the mentality as well. It's not what you can't do, as what can we do and what, what can we do to get around this".

237. The Authority finds that paragraph 28 of the Complaint is established. Mr Wyeth was involved in meeting targets, set for him by Mr Bensley, regarding the provision of free liquor. These "gaming shouts" were centred around the gaming room and *designed to keep people gambling for longer*, even if the drinks were actually supplied to gaming patrons from the bar area of Westtower,

not within the gaming room. Mr Wyeth's statements during his interview, reinforced by paragraphs 4 and 6 of the Wyeth Statement, establish that as licensee he engaged in conduct that breached the then clause 55 of the 2010 Regulation.

238. At paragraph 29 the Complainant contends that it is "particularly relevant" that Mr Wyeth was previously employed as the assistant manager at the Dublin Docks Tavern, another ALH venue in the Gold Coast, QLD for 8 months before becoming the hotel manager at Westtower. The Authority accepts this on the basis of question 22 of the Wyeth Interview where Mr Wyeth states:

"I was assistant manager at Dublin Docks Tavern and I was transferred to the Westtower Tavern in Ballina as a hotel manager and then transferred to South Tweed Tavern as a hotel manager".

239. The Complainant further contends that Mr Bensley oversaw the ALH Gold Coast and the Northern NSW portfolio of hotels, including the Dublin Docks, and was Mr Wyeth's Operations Manager during the entire period that Wyeth was at those venues. The Authority accepts this on the basis of question 29 of the Wyeth Interview (discussed above), where he confirms that Bensley was his operations manager during the entire period.
240. The Complainant also contends that this prior working relationship further explains the "transition of inappropriate QLD practices" into NSW venues by Mr Bensley and Mr Wyeth.
241. Paragraph 29 of the Complaint extracts the exchange at questions 69 and 149 of the Bensley Interview. The Authority notes that Mr Bensley made these statements, albeit at question 64 (not question 69) and question 139 (not question 149) of his interview and they relate to whether staff from QLD come down to the Venues and the original suggestion as to how free drinks to gaming could be provided in NSW.
242. At paragraph 29, the Complainant then extracts questions 98 to 102 of the Wyeth Interview which concerned policies around internal correspondence and memos and when liquor shouts commenced.
243. Mr Wyeth describes "continuing correspondence" surrounding the supply of free liquor as "something that got managed on a regular basis where there was quit[e] a lot of follow up in regards to gaming targets and that was done by email". On the question of when this practice commenced, Mr Wyeth identifies it as:

"just prior to.. leaving Dublin Docks we started to get these, these targets and chunking down these targets. I'm sure they were there for some time but I, it only became visible to me towards the end of my time at, at Dublin Docks. And remember I was only an assistant. I was only with the company for eight months at that stage. After I left Dublin Docks and went to Westtower it became, they used the word 'chunking' to break down weekly targets into daily targets and those targets would then, were shared with the, the staff. And come to think of it turnover targets were shared with the staff when I was at Dublin Docks as well". However Mr Wyeth then clarifies that the free liquor shouts commenced "from memory maybe six months into my time at Westtower that became a thing that was scrutinised" and that it was "always something that they, they offered but,

yeah, about six months into my time at Westtower it was something that was managed, you know”.

244. The Authority accepts that the (QLD based) Mr Bensley encouraged practices with regard to the supply of free liquor to gaming machine players that were inappropriate in NSW, by reason of clause 55 of the 2010 Regulation. The Authority accepts the inference that such practices likely transitioned or spilled over from Mr Wyeth working in QLD and Mr Bensley’s approach to the oversight of ALH QLD venues.
245. The Authority further accepts the contention at paragraph 30 of the Complaint Letter that, the Gaming Shouts Spreadsheet indicates that during the 2017/2018 financial year, **\$30,797.33** of free alcohol was provided to gaming patrons at Westtower – although the Authority calculates that it was \$30,799.33.
246. The Complainant contends that the figure is supported by similar POS data, albeit obtained over a shorter period. While the POS “manager’s shout” data is divided into categories, the staff records of interview indicate the selection was *primarily utilised to record free liquor provided to gaming patrons*, which corresponds closely with the Gaming Shouts Spreadsheet. The Complainant further refers to paragraph 11(ii) of the Complaint Letter in support of these contentions.
247. The Authority’s findings on paragraph 11(ii) of the Complainant Letter regarding the POS Records are set out above. The Authority accepts these contentions as to what the Gaming Shouts Spreadsheet and POS data disclose. This much is evident from documents and the explanations provided at questions 88 to 92 of the Absolom Interview (discussed above), questions 248 to 249 of the Hislop Interview (discussed above), question 93 of the Crouch Interview (discussed above) and questions 209 to 258 of the Watts Interview.
248. The Complainant refers in paragraph 27 of the Complaint Letter to the “facts set out above, as well as the evidence provided” which the Authority notes include the matters specified in paragraphs 1 to 17 under the headings “Background”, “Facts of the complaint”, “Key documents relied on”, “A system operating from at least 2015 to 2018”, “Processes at the venues”, “Details of some emails” and “L&GNSW interviews”.
249. The Authority finds that this material, in combination with the above extracts from the Wyeth Interview, establish that complimentary liquor shouts were provided to gaming patrons at Westtower while Mr Wyeth was licensee and that this reflected a practice of targeting gaming machine patrons for the supply of free liquor, that Mr Bensley required of all hotel managers under his supervision, including the Venues that are the subject of this Complaint.

Particular 2 – Breach of clause 55 of the 2010 Regulation at South Tweed from 9 May 2017 to 8 November 2017

250. At paragraph 31 the Complainant refers to the “facts set out above, as well as the evidence provided, including the record of interview with Andrew James Wyeth” (especially question 57 onwards and questions 87-88; 93 to 94; 109 to 111, 153 and 165) and contends that Mr Wyeth offered or supplied, or caused

or permitted to be offered or supplied, free liquor as an inducement to play, or to play frequently approved gaming machines at South Tweed.

Period of alleged breach

- 251. The extract from the search of the OneGov licencing system for individuals at South Tweed at Exhibit E04 establishes that Mr Wyeth held the role of licensee at South Tweed between **9 May 2017** and **8 November 2017**.
- 252. As noted above, the Authority is satisfied that the alleged system was operating from around June 2016 at South Tweed.
- 253. The Authority finds that the alleged breach by Mr Wyeth of clause 55 at South Tweed occurred between 9 May 2017 when Wyeth commenced as licensee and 8 November 2017 when Mr Wyeth ceased in that role.

The offer or supply of liquor as an inducement

- 254. The Authority has provided its assessment of the key statements made by Mr Wyeth at questions 42 to 102 and 152 to 165 of the Wyeth Interview in its findings on Ground 1(a) Particular 1, above.
- 255. The Authority accepts the contention at paragraph 32 of the Complaint Letter that the *Gaming Shouts Spreadsheet* establishes that during the 2017/2018 financial year, **\$16,486.43** of free alcohol was provided to gaming patrons at South Tweed – although the Authority calculates \$16,488.43.
- 256. The Complainant contends that the figure is supported by similar POS data, albeit over a shorter period. While the POS “manager’s shout” data is divided into categories, the staff records of interview indicate the selection was primarily utilised to record free liquor provided to gaming patrons, which corresponds closely with the Gaming Shouts Spreadsheet. The Complainant here refers to paragraph 11(ii) of the Complaint Letter.
- 257. The Authority’s findings on paragraph 11(ii) of the Complainant Letter regarding the POS Records are set out above. Paragraph 32 is established, having regard to the Gaming Shouts Spreadsheet, POS Records, questions 88 to 92 of the Absalom Interview (discussed above), questions 248 to 249 of the Hislop Interview (discussed above), question 93 of the Crouch Interview (also discussed above) and questions 209 to 258 of the Watts Interview.
- 258. At paragraph 33 the Complainant refers to Mr Wyeth’s statement that he largely reduced the provision of gaming shouts at South Tweed following a visit from a NSW Police Licensing Sergeant in late 2017. The Authority accepts this contention noting Mr Wyeth’s statement at question 63 of the Wyeth Interview (discussed above).
- 259. At paragraph 34 of the Complaint Letter the Complainant refers to paragraph **19** of the Complaint Letter in relation to the Wyeth Interview and the other matters detailed in that paragraph. The Authority considers that the Complainant here intended to cross reference paragraph **17(ii)** of the Complaint Letter.
- 260. At paragraph 35, the Complainant invites the Authority to conclude that all the facts, matters and circumstances contained in the Complaint show a “course of

conduct” and a “system of procedures, processes, management actions and activities” whereby, from about 2015 to 2018, complimentary liquor was supplied to gambling patrons at the Venues to induce them to gamble.

- 261. The Authority refers to its findings above, and the evidence and material establishing its findings on paragraphs 1 to 17 of the Complaint Letter.
- 262. Paragraph 35 is established, noting that the Authority has found that the system was operating from around June 2016.
- 263. The Complainant’s reference in paragraph 31 to the “facts set out above, as well as the evidence provided” incorporates the matters specified in paragraphs 1 to 17 of the Complaint Letter”.
- 264. This material, in combination with the extracts from the Wyeth Interview cited in Ground 1(a) Particular 1 above, establish that complimentary liquor shouts *were* provided to gaming patrons at South Tweed while Mr Wyeth was licensee and that this reflected a practice of targeting gaming machine patrons for the supply of free liquor that Mr Bensley had required of the hotel managers under this supervision, including the Venues that are the subject of this Complaint.

Ground 1(b) - Rachel Maree Watts

Particular 1 – Breach of clause 55 of the 2010 Regulation at South Tweed from 31 July 2015 to 5 May 2017

- 265. Paragraph 36 of the Complaint Letter refers to the “facts set out above, as well as the evidence provided, including the interview with Rachel Maree Watts” (especially questions 208 to 212, 295 to 296 and 311 to 312) and contends that as the hotelier (that is, the licensee of a hotel), Ms Watts offered or supplied, or caused or permitted to be offered or supplied, free liquor as an inducement to play, or to play frequently approved gaming machines at South Tweed.

Period of alleged breach

- 266. The extract from the search of the OneGov licensing system for individuals at South Tweed at Exhibit E04 establishes that Ms Watts held the role of licensee at South Tweed between **31 July 2015** and **8 May 2017**.
- 267. Noting the Authority’s finding that the alleged system has been operating since around June 2016 at South Tweed, the Authority is satisfied that the alleged breach by Ms Watts of clause 55 occurred at South Tweed from around June 2016 (when the system commenced) and 8 May 2017 when Ms Watts ceased as licensee at South Tweed.

The offer or supply of liquor as an inducement

- 268. The Complainant relies upon questions 208 to 212, 295 to 296 and 311 to 312 of the Watts Interview in support of the alleged offering, supplying or permitting the offer or supply of free liquor to induce play, or frequent play of gaming machines at South Tweed.
- 269. The Authority notes that Ms Watts made the following statements at questions 290 to 298 and 311 to 312 of her interview:

- At question 290, Ms Watts answered “no” when questioned “Do you guys still have the practice of providing customer shouts and stuff like that?”.
 - At question 291, Ms Watts clarifies that “we weren’t, we’re not allowed to have a, yeah we don’t have a budget that we’re allowed to spend X amount a day anymore”.
 - At question 292, Ms Watts states that “they said from the top no more...it’s not like I’ve got a discretionary budget of that amount to spend so much anymore”.
 - At question 298, when asked “Who advised you it was to stop?” Ms Watts replied “Morgan [Bensley] would have”.
 - At question 311, when asked to explain if it was “normal” to give “about \$4000 worth of shouts a month”, Ms Watts answered, at question 312: “That is a, that is our higher peak trading time so we are trading a lot more at that time and to be honest, around Christmas time, yeah I did shout our patrons a lot. If they come in every week for a meal then around Christmas time we said, ‘look guys, you come in here every Friday then yeah, your food and your drinks are on me’, that kind of thing for one of their days”.
270. At paragraph 37 of the Complaint Letter the Complainant provides the excerpt of questions 208 to 212 of the Watts Interview where Ms Watts discusses the Gaming Daily Briefing Sheets. The Authority notes that Ms Watts explains the difference between “comp drinks” and “customer shouts” before stating with respect to customer shouts that she knew they weren’t allowed to be targeting gaming patrons, so she told her managers to “use it to shout people in the venue”. Ms Watts told inspectors that there was a daily budget to provide people liquor in the venue. Ms Watts states that she shouldn’t have written this information on the gaming sheet “because it looks like that’s where it’s been”.
271. The Authority accepts the Complainant’s contention at paragraph 38 of the Complaint Letter that the above exchanges from the Watts Interview demonstrates that a budget *was* allocated for the supply of complimentary liquor at South Tweed and this complimentary liquor *was documented on gaming sheets* and ALH staff were told to use the complimentary liquor.
272. The Complainant here describes Ms Watts as having a “relentless” operations manager in Mr Bensley, who consistently, by his emails and the like, insisted that *gaming patrons have the benefit of complimentary liquor*. The Authority notes that Ms Watts does not describe him in this matter but this description of Bensley is supported by questions 43, 94 and 96 of the Wyeth Interview. The Authority accepts that this was the case.
273. At paragraph 39 the Complainant refers to the four pages of the Watts Interview that follow question 212 (questions 213 to 266) where Ms Watts explains the “system” by which this program of complimentary liquor shouts were implemented.
274. Ms Watts makes the following statements between questions 213 and 266 of her interview:
- At question 214, on the matter of who may authorise customer shouts, Ms Watts states “generally the managers will do it. Like I said, I’ll, I could

say 'shout that table of guys beers today' and then try and get someone else on the next day".

- At questions 215 and 216, Ms Watts states that "the managers on duty" are allowed to approve customer shouts.
- At question 217, Ms Watts answers "Yeah" to the question "Can the bar staff suggest someone" for a customer shout.
- At question 218, when asked if there is "a system in place that the managers need to do anything to make it happen" Ms Watts states "I guess they just need to sign off on it".
- At question 219, when asked whether customer shouts are "done throughout the day or at specific times" Ms Watts responded "No, I've very much said don't make it a specific time because then those boys are going to think that if they're here at 6 o'clock on a Thursday that they get a free drink. You know, don't make an expectation of any of that because then it does become that, just - - -".
- At question 231, when asked "is it possible for your gaming staff or staff of the venue to provide someone a drink and then get the manager to ring it up later", Ms Watts responded "Yes".
- At question 238, when asked "Why are there targets around the comp drinks", Ms Watts responded "I think it was just to see if they were actually on the floor and talking to the customers and such things. It's, you know, it's not, doesn't actually show whether it's, you know, I think it just shows that they're actually offering and doing that thing. I mean, to be honest, most of them come through the bar and get their free soft drink that way anyway, so".
- At question 240, when asked whether there is "any requirement or criteria on the who, what, when" of customer shouts, Ms Watts states: "Only that I said, the who, make sure it's not the same people or persons that get shouted consistently and don't make it, don't make it a pattern".
- At question 242 when asked how she communicated that requirement to her staff, Ms Watts states: "I'd probably, yeah, I was probably verbalising that with them. The managers knew that but I'd, sort of, I guess, say to them 'oh those boys have been in yesterday, they didn't get one so, we'll shout them a drink today'".
- At questions 234 and 244 when asked if there is a reason why the customer shouts are on the gaming briefing sheet, Ms Watts responds "I, only, I guess 'cause it's what we're allowed to spend X amount of dollars and I wasn't, yeah".
- At question 245, when asked whether it is possible there could have been "confusion with the staff" about "who, what, when of that customer shout" Ms Watts states "I guess it could be".
- At question 265, when asked if there is such "such thing as a high roller register" Ms Watts replies "Yep".
At question 266, when asked if she knows what that is, Ms Watts states: "it's not something I've ever used because I didn't – I know it's something that they used in some of the venues but it's not something that I wanted to adopt because it's not my approach to gaming".

275. The Complainant contends at paragraph 39 of the Complaint Letter that an analysis of this evidence shows that there was "really no system" in place by which staff would seek "approval" to supply free liquor to patrons, but free liquor was supplied and there was a targeting of gaming machine patrons that Mr Bensley required and kept insisting upon. Gaming staff were able to provide

anyone a drink and to the extent that there was any approval process, this was only verbalised. Further, Ms Watts conceded that there could have been confusion as to the who, what, when of the customer shout process.

276. The Authority accepts these contentions, noting that at paragraph 36 the Complainant also refers to the “facts set out above, as well as the evidence provided” which incorporates the matters specified in paragraphs 1 to 17 of the Complaint Letter.
277. This material, in combination with the above extracts from the Watts Interview, establish that complimentary liquor shouts were actually provided to gaming patrons at South Tweed while Ms Watts was licensee and that this reflected a practice of targeting gaming machine patrons for the supply of free liquor that Mr Bensley had required of *all* of his managers, including the Venues that are the subject of this Complaint.
278. Paragraph 40 of the Complainant Letter makes the legal submission that clause 55 of the 2010 Regulation is of “wide import” and includes Ms Watts permitting the offering or supplying of free liquor as an inducement to play, or to play frequently approved gaming machines at South Tweed. The Complainant here refers to the common law concept of “permission” by reference to the High Court of Australia’s judgement in ***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”*
279. The Complainant further submits that “inducement” is defined in the *Australian Concise Oxford Dictionary* (3rd Edition, Oxford University Press, 2001) as:
- “an attraction that leads one on”.*
280. While “*induce*” is defined as:
- “to prevail upon; to persuade; to give rise to”*
281. The Complainant also submits that “Inducements” can also be described by alternative words such as:
- *incentive, attraction, encouragement, temptation, incitement, stimulus, bait, lure, pull, draw, spur, goad, impetus, motivation, provocation, reward; and*
 - Informally, as a carrot or a sweetener.
282. The Authority accepts this analysis of what the concepts of “permission” and “inducement” entail within the Prohibition.
283. At paragraph 41 the Complainant invites the conclusion that, on the balance of probabilities, these elements are satisfied. The Authority’s findings that inducements by way of free liquor to gaming machine players were offered are set out below.

284. At paragraph 42, the Complainant contends that Ms Watts **“knew or at least had reason to anticipate or suspect” that free liquor was being supplied at her licensed premises as an *inducement***. Mr Bensley *required* Ms Watts, in the venues that she managed, to provide liquor as an inducement to gaming patrons. She listed the complimentary liquor in the Daily Gaming Sheets, or at the very least, she knew this was being done. There was a clear connection between the provision of free liquor and in increasing gambling activity. It was a management imperative. It was what the boss, Mr Bensley demanded.
285. The Authority finds, on the basis of questions 165 to 166 and 209 to 211 of the Watts Interview that Ms Watts was aware that there were daily targets for providing free liquor to patrons. The Authority also accepts, on the basis of questions 209 and 372, that she gave some verbal instructions to staff to shout *patrons generally*.
286. The Authority nevertheless finds, on the basis of the emails from Mr Bensley (extracts outlined above), the *Gaming Shouts Spreadsheets*, the *POS Records* and the concessions made by Ms Watts that gaming machine patrons were in fact provided with free liquor and that Ms Watts *knew or at least had reason to anticipate or suspect* that free liquor was being supplied at South Tweed, whilst she was the licensee, *as an inducement to gamble*.
287. At paragraph 43 the Complainant makes a number of contentions, and the Authority finds as follows. First, that Mr Bensley’s emails and associated management demands about the supply of free liquor at his hotels was “relentless”, as established by Exhibits E24 to 29 and E31 to 38 and questions 43, 94 and 96 of the Wyeth Interview.
288. Second, that Ms Watts appeared to know that she should not target gaming patrons with free liquor, as established by question 209 of her interview.
289. Third, that Ms Watts had the power, as licensee, to not provide liquor shouts as an inducement to gaming patrons and a duty under the 2010 Regulation to stop it. The Authority accepts this submission on the basis of Ms Watts’ statutory responsibility for the conduct of the licensed premises under section 91 of the *Liquor Act 2007* (NSW) and the requirement to hold a Responsible Conduct of Gambling Certificate pursuant to clause 57 of the 2019 Regulation (previously clause 59 of the 2010 Regulation).
290. Fourth, that Ms Watts nevertheless *followed management demands* and did not institute any real system, procedures or policies to prevent the supply of free liquor to gaming patrons as an inducement. This is established by Ms Watts’ responses to questions 213 to 266 of her interview.
291. Finally, that any “system” of implementing the liquor shouts that Ms Watts claims was in place at her venues *did not actually stop the practice of supplying liquor to gaming patrons* and to the extent that there was a system it was “confused, ad hoc, slack, verbal and extremely vague”. This is established by Ms Watts responses to questions 213 to 266 of her interview.
292. The Authority accepts the Complainant’s contention that any advice provided by Ms Watts to staff about supplying free liquor to patrons was primarily

communicated verbally (see in particular question 242 of her interview) and that, per Ms Watts' concession, at question 245 of her interview, that staff may have been confused about the process of providing free liquor to gaming machine patrons.

293. At paragraph 44 of the Complaint Letter the Complainant contends that staff such as Mr Benson, Mr Absolom and Mr Wyeth "certainly and clearly" stated that the free liquor *was being supplied to gaming patrons as an inducement* at their Venues. This is established by the relevant statements made in their respective interviews, as detailed above.
294. At paragraph 45 of the Complaint Letter, the Complainant contends, and the Authority accepts, that Ms Watts was previously employed at the Broadbeach Tavern (being an ALH venue in the Gold Coast, QLD) noting Ms Watts' description of her prior work at questions 27 and 78 of the Watts Interview.
295. The Complainant further contends, and the Authority accepts, that Mr Bensley oversaw the ALH Gold Coast and Northern NSW portfolio, including the Broadbeach Tavern, and was operations manager during the period that Ms Watts was at all of those venues. This is established by the Table of Staff and Roles indicating that Mr Bensley was State Operations Manager of Westtower and South Tweed from 2014/2015 to October 2018 and on the basis of questions 96 to 102 of the Bensley Interview.
296. The Authority accepts the Complainant's additional contention that this pre-existing employment relationship explains the "transition" of "inappropriate" QLD practices into NSW venues by Mr Bensley and Ms Watts. This finding is made on the basis of the exchanges, extracted at paragraph 45 of the Complaint Letter – being questions 64 and 139 of the Bensley Interview (albeit the Complainant refers to them as questions 69 and 149) and questions 182 and 209 of the Watts Interview (discussed above).
297. The Authority accepts the Complainant's contention, at paragraph 46 of the Complaint Letter, that the Gaming Shouts Spreadsheet indicates that during the 2017/2018 financial year, approximately **\$16,486.43** (the Authority calculates \$16,488.43) of free alcohol was provided to gaming patrons at South Tweed.
298. The Complainant submits that the figure is supported by similar POS data, albeit over a shorter period. While the POS "manager's shout" data is divided into categories, the staff records of interview indicate the selection was primarily utilised to record free liquor provided to gaming patrons, which corresponds fairly closely with the Gaming Shouts Spreadsheet. The Complainant refers to paragraph "10(iv)" of the Complaint Letter in support of these contentions. The Authority assumes that this was intended to refer to paragraph 11(ii) of the Complaint Letter, with the Authority's findings on this outlined above.
299. The Authority accepts this account of the Gaming Shouts Spreadsheet (Exhibit E16) and POS Records (Exhibit E17) as explained by questions 88 to 92 of the Absolom Interview (discussed above), questions 248 to 249 of the Hislop

Interview (discussed above), question 93 of the Crouch Interview (discussed above) and questions 209 to 258 of the Watts Interview.

Particular 2 – Breach of clause 55 of the 2010 Regulation at Westower from 11 May 2017 to the time of lodging the Complaint

300. At paragraph 47 of the Complaint Letter, the Complainant refers to the “facts set out above, as well as the evidence provided”, including the Watts Interview (especially questions 208 to 212, 295 to 296 and 311 to 312), and specifically the material set out in support of Ground 1(b) Particular 1. The Complainant contends that Ms Watts offered or supplied, or caused or permitted to be offered or supplied, free liquor as an inducement to play, or to play frequently approved gaming machines at Westower.

Period of alleged breach

301. The extract from the search of the OneGov licensing system for individuals at Westower at Exhibit E02 establishes that Ms Watts was the licensee at Westower from 11 May 2017 and continued in that role at the date of the search, which was 14 March 2019.
302. As noted above, the Authority has found that the alleged system has been operating since around June 2016 at Westower.
303. The Authority is satisfied that the alleged breach by Ms Watts of clause 55 occurred at Westower from 11 May 2017 (when Ms Watts commenced the role as licensee) and ceased around June 2018 (when the system ceased).

The offer or supply of liquor as an inducement

304. The Authority has set out what it considers to be the key statements made by Ms Watt during the Watts Interview in Ground 1(b) Particular 1 above.
305. At paragraph 48, the Complainant contends, and the Authority accepts, that the Gaming Shouts Spreadsheet establishes that during the 2017/2018 financial year approximately \$30,797.33 (the Authority calculates \$30,799.33) of free alcohol was provided to gaming patrons at Westower Tavern.
306. The Complainant contends that the figure is supported by similar POS data, albeit provided in respect of a shorter period. While the POS “manager’s shout” data is divided into categories, the staff records of interview indicate the selection was primarily utilised to record free liquor provided to gaming patrons, which corresponds fairly closely with the Gaming Shouts Spreadsheet. The Complainant refers to paragraph 11(ii) in support of these contentions, with the Authority making findings on that paragraph above.
307. The Authority accepts this analysis of the Gaming Shouts Spreadsheet and POS Records as discussed under Ground 1(b) above.
308. The Complainant makes the submission at paragraph 49, that in the context of Mr Bensley’s, Mr Wyeth’s and Ms Watts’ statements regarding the provision of liquor to “reward” gaming patrons and encourage their return, along with the Gaming Daily Briefing Sheets, Gaming Shouts Spreadsheet, POS Records and Bensley emails, the Authority should be satisfied on the balance of probabilities that this Ground is established in relation to both Mr Wyeth and Ms Watts.

309. At paragraph 50 the Complainant refers to and relies upon all the facts, matters and circumstances contended in the Complaint Letter and submits that it shows a “course of conduct” and a “system of procedures, processes, management actions and activities” whereby, **from about 2015 to 2018, complimentary liquor was supplied to gambling patrons at these venues to induce them to gamble.**
310. The Authority refers to its findings above, particularly on paragraphs 1 to 17 of the Complaint Letter
311. The Authority accepts the submissions at paragraphs 49 and 50 on the basis of the evidence and material cited by the Complainant, save for the Authority’s finding that the system was in place in a more honed manner at the Venues from around June 2016.

The ALH Submission

312. In the ALH Submission, ALH submit that the Complaint should be “dismissed” on the basis that neither Grounds 1 or 2 are made out and Grounds 3, 4 and 5 must “necessarily fail” due to them being premised upon one or both of Grounds 1 and 2. If Ground 1 fails, so does the rest of the Complaint.
313. ALH describes the “essence” of the Complainant’s case as:
- From about 31 July 2015 onwards South Tweed provided complimentary alcoholic drinks to some patrons.
 - From about 14 August 2015 onwards, Westower provided complimentary alcoholic drinks to some patrons.
 - In about March 2017 Mr Bensley introduced a “system” at each venue which included a per day “target” of either \$100 or \$150 per day (noting there is some conflict in the evidence about this figure) for expenditure on the provision of complimentary alcoholic drinks, and a requirement for reporting performance against “target” daily expenditure for complimentary alcoholic refreshments.
 - This “system” was discontinued in about June 2018.
314. ALH submits that it is not apparent from the Complaint or the evidence why the allegations against Ms Watts are formulated for a period that extends *beyond June 2018*.
315. ALH further submit that, in respect of the alleged targeting of gaming machine players, the Complainant contends that between Weeks 2 to 51 of the 2017/18 financial year (seemingly Monday 3 July 2017 to Sunday 23 June 2018):
- South Tweed provided complimentary alcoholic refreshments to a value of, or in the order of \$16,486.43.
 - Westower similarly provided to a value of, or in the order of \$30,797.33.
316. ALH submits that the Complainant seeks the Authority to infer from this “targeting” of gaming machine players that each alleged provision of complimentary alcohol in Grounds 1 and 2 was an “inducement” to play, or play frequently, the gaming machines in the hotel - or that supply of free liquor encouraged or was likely to encourage the misuse or abuse of gambling activities in the hotel.

317. ALH further submits that the Grounds, as specified, do not allege inducement on the basis of any “particular conduct” on a “particular occasion or occasions” and there are significant legal and factual difficulties with this approach. ALH submits that the Complainant’s own case indicates that during Weeks 2 to 51 in the 2017 financial year, even if the target was \$100 per day, neither Venue actually expended the target amount (356 days x \$100 = \$35,600) – and this was especially so at South Tweed.
318. ALH contends that these targets were “perhaps not pursued with quite the vigour or focus” that the Complainant suggests.
319. In describing the Complainant’s case, ALH notes the Complainant’s contentions that the conduct occurred by reason of ALH placing the Venues under the oversight of Mr Bensley, a manager with no NSW experience. That is, there was indifference to compliance with the NSW regulatory regime.
320. ALH submits that the *Liquor Act 2007* (NSW) contains “no *absolute prohibition* on a hotel providing complimentary alcoholic refreshments to its patrons”. ALH characterises the Complainant’s approach to clause 55 as requiring a hotel to “segregate and treat differently” those of its patrons who have played, are playing or might from time to time in the future play, an approved gaming machine and the practical difficulties with this suggest that this is unlikely to be the intended effect of clause 55.
321. ALH submit its conduct should be considered in the context of legislation that regulates the conduct of gaming in hotels. The legislative scheme “expressly permits” hotels to “encourage” gaming machine activity through the use of player reward schemes and the provision of promotional prizes.
322. ALH submits that the “promotion” of a venue as a place for gaming is a “legitimate objective of a hotel business” and is not, *of itself* a foundation for taking disciplinary action. ALH submit that the questioning by L&GNSW inspectors was premised upon an incorrect view that having a “managerial focus” on gaming is “illegitimate”.
323. ALH submit that there is a difference between the *promotion* of a venue as a *place for gaming and other activity*, and the *inducing of a patron to play gaming machines* by the *provision of free alcohol*. Only the latter amounts to a proscribed inducement.
324. Whether certain conduct amounts to an inducement to play, or play frequently, is a question of fact that is “context specific” and, on the evidence presented by the Complainant, could not be inferred as “systemic”. ALH contend that the evidence suggests that the provision of free drinks at the Venues “did not affect or enhance gaming revenue”.
325. ALH submit that there is a real difference between the *promotion to individuals of a venue as a place where they may play gaming machines when they have decided to so play* and *inducing patrons on the premises to play poker machines when they would otherwise have not done so*. Clause 55 is directed to the latter, but not the former situation. The “object and effect” of the ALH “Greater” programme was the former, not the latter type of conduct.

326. ALH contends that as a factual matter, the system in place at the Venues *did not target patrons engaged playing of gaming machines* and *did not induce them to do so*. The system was introduced so as to conform to the requirements of clause 55.
327. ALH further submits that the documents relied upon by the Complainant do not tend to prove its case and for the most part take the matter of Ground 1 (or Ground 2) “nowhere”.

ALH Submissions on the “Objective Context” in Which Free Liquor was Supplied

328. ALH submits that it is important to consider the conduct impugned in the contexts in which it occurred. ALH advises by reference to Attachments 3 and 4 of its submission (the Drinks Served Table and Monthly Gaming Revenue Table) that:
- In the 2017/2018 financial year, South Tweed:
 - Traded 7 days a week (other than on Good Friday and Christmas Day), 14 hours a day on Monday to Saturday (10:00 am to midnight) and 12 hours on Sunday (10:00 am to 10:00 pm).
 - Had an average daily non-gaming turnover of \$2,698.00.
 - On average served 375.1 individual drinks per trading day.
 - The cost of a schooner was about \$5.80.
 - In the 2017/2018 financial year, Westtower:
 - Traded 7 days a week (other than on Good Friday and Christmas Day), 15 ½ hours a day on Monday to Saturday (10:00 am to 1:30 am) and 14 hours on Sunday (10:00 am to midnight).
 - Had an average daily non-gaming turnover of \$5,683.00.
 - On average served 538.9 individual drinks per trading day.
 - The cost of a schooner was about \$5.80.
329. ALH submits that the Complainant’s alleged level of spending on complimentary alcoholic refreshments (\$16,486.43 at South Tweed and \$30,797.33 at Westtower), between weeks 2 to 51 of the 2017/2018 financial year, was incurred at the rate of **\$45.41** per trading day at South Tweed (approximately 8.1 schooners per day) and **\$84.84** per trading day at Westtower (approximately 15.2 schooners per day). ALH submits that the “scale of provision impugned” by the Complainant was “too modest to permit inferences” that there had been a “targeting” of gaming machine players, or that the supply of complimentary alcohol was an “inducement” to play, or play frequently, the gaming machines or had otherwise encouraged or was likely to encourage the misuse or abuse of gambling at the Venues.
330. In response to the Complainant’s assertion at paragraph 42 of the Complaint Letter (under Ground 1(b) Particular 1) that there was a “clear connection” between the provision of free liquor and an increase in gambling activity, ALH submits that the evidence does not include any material directed to establishing *an increase in gambling* at either Venue in the relevant period or an association between gaming and free drinks.
331. ALH make the alternative submission that an increase in gambling activities may occur other than by reason that free drinks induced an individual to play or play more frequently. For example, an individual might have transferred his

custom to a venue because it affords her or him “a more hospitable environment”.

332. ALH submits that the terms of this Complaint subsume a view that *any* provision of complimentary alcoholic refreshments to patrons who may have played an approved gaming machine amounts to “targeting” those players – and it is a “striking feature” of this Complaint that “no attempt has been made to establish any effect of the supposed inducements”.
333. In an apparent reference to the Monthly Gaming Revenue Table at Attachment 4 to the ALH Submission, ALH submit that the average monthly gaming revenue (net payouts to customers and tax) for the 2017/2018 financial year was **\$97,508.00** for South Tweed and **\$96,312.00** for Westtower and for the 2018 to 2019 financial year was **\$101,197.00** for South Tweed and **\$126,592.00** for Westtower.
334. After noting that the “systemic” provision of complimentary alcoholic refreshments for gaming patrons was “discontinued in June 2018”, ALH submits that a comparison of the above figures *precludes* a conclusion that the provision of free liquor *had any effect*, let alone the “systemic” effect contended by the Complainant.
335. ALH submits that the “steps” of the Complainant’s case, being the provision of complimentary drinks targeted to players of gaming machines and the inference that the free alcohol (as asserted in Grounds 1 and 2) on every such provision was an “inducement” to play or play frequently approved gaming machines in the hotel, or encouraged or was likely to encourage the misuse or abuse of gambling activities in the hotel, “are not established”.
336. ALH acknowledges that its use of average takings [by reference to daily non-gaming turnover, drinks served per day and monthly average gaming revenue] has a “capacity to mask particular conduct in respect of a particular customer or particular customers”. Nevertheless, the “difficulty” for the Complainant is that “such evidence would be evidence about particular ‘contravening’ conduct on particular occasion or occasions, but it would not be evidence of the systemic effect of a or the ‘system’”.

ALH Account of Free Liquor Supply at the Venues

337. According to ALH, the Act “contemplates” that a hotel patron may, and often will, consume alcohol in association with her or his playing of poker machine. Gaming Machines can only be made available in hotel or club premises and are commonly approved for placement in areas containing bars. ALH submit that the object of clause 55 is to preclude a licensee *affecting a patron’s decision to play or stop playing poker machines by the provision of free alcohol*. It is not a “no alcohol” provision and therefore the provision of free alcohol “cannot, of itself, be a proscribed inducement”.
338. ALH contend that the way in which free alcohol was provided to the patrons of the Venues, including those who had played, were playing or might play gaming machines was “consistent with the object and terms” of clause 55 *but if*

the provision of liquor was inconsistent with this clause it “did not occur in *disregard* of its object”.

339. ALH submits that in about March 2017 Mr Bensley introduced a “system”, sometimes referred to as the “Greater” program, with the object of making hotels in his “area” the venues of choice for their patrons. This was a “whole of venue” drive that included the introduction of Daily Sheets - the intention of which was to *focus the licensees of hotels, and others on enhancing engagement with and service to patrons and enhancing the amenity of the premises generally*. ALH submits that this system “was not deployed in the venues the subject of this Complaint without regard to NSW Compliance responsibilities”.
340. ALH contends that Mr Bensley’s intention was that the objectives of the “Greater” program would be achieved by “enhancing” the hotel’s performance across all of the “drivers” of hotel businesses - being bars, food, accommodation and gaming. Mr Bensley was “conscious of the importance of gaming activity to the financial performance of venues” for which he was responsible and “wished to enhance their performance” on that “driver”. ALH submit that this objective was “legitimate” and provides “no basis for the condemnation of him, Mr Wyeth or Ms Watts”.
341. According to ALH, the issue is whether “a red line” being the “admonition” in clause 55, was crossed. Although Mr Wyeth described Mr Bensley as “relentless”, Mr Wyeth also acknowledged that the experience had made him a better manager (per question 112 of the Wyeth Interview).
342. ALH submits that Mr Bensley did not “quantify revenue objectives” and contends that the targets that he specified about gaming and other drivers of the business were about “doing better in the current period than an earlier corresponding period” which was usually the previous year (noting questions 101, 107 and 109 of the Watts Interview).
343. ALH also refer to question 134 of the Wyeth Interview where Mr Wyeth described these targets as “not unreasonable; they were achievable”. ALH submit that there is no evidence that Mr Bensley *focused* on gaming as a driver to the exclusion of the other segments of the hotel’s business and contend that there was “equal focus and discipline” on all of the drivers evident from the Weekly Wrap emails (Exhibits E28, E33, E35, E36, E37 and E38).
344. ALH refer to questions 145 to 150 of the Bensley Interview and Mr Bensley’s description of the “system”. In response to question 145 when asked “So if you’re providing free liquor to a person that’s a gamer, you know, what was the intention behind that, for them specifically”, ALH argue that the inspectors never clarified what they mean by a “gamer”.
345. ALH note question 123 of the Wyeth Interview, where Mr Wyeth gave evidence that gaming patrons at both Venues, especially Westtower, used other facilities like the bar and bistro, whereas South Tweed would have solely gambling patrons who might go to the bar a couple of times.

346. ALH further submits that the inspector's proposition at question 147 of the Bensley Interview that liquor was supplied "to keep them coming back?" is evidence of the Complainant's understanding that, the supply of liquor, without more, is a proscribed inducement.
347. ALH refer to questions 149 and 150 of the Bensley Interview as conveying an "apparent acceptance" by the inspectors of Mr Bensley's description of the "Greater" program as a "whole of venue" drive.
348. ALH contends that Mr Wyeth's statements in questions 56 to 59 of the Wyeth Interview, that:

"we would, in the public bar we would be shouting drinks to, to other customers but they were rung up on the gaming till and put through as a gaming shout and reported as, through the Google drive, as a gaming shout"

indicate that the complimentary alcoholic refreshment figures for weeks 2 to 51 of the 2017/2018 financial year (\$16,486.43 for South Tweed and \$30,797.33 for Westtower) *overstate* the quantum of free drinks provided to patrons in gambling rooms because they were *also provided to other customers* yet still reported as "gaming shouts".

349. ALH submit that the following features of the "system" described by Messrs Bensley and Wyeth *tell against* characterising the provision of free liquor as "proscribed inducements":
- The free drinks were provided to good regulars to enhance loyalty to the venue;
 - The provision was to all classes of the hotel's patrons;
 - There was no tray service to machines for alcoholic refreshments;
 - Those drinks were offered to and supplied only to those patrons who had already decided to consume alcohol;
 - The obtaining of free drinks was irregular and thus not in any sense of the phrase "targeted" as an inducement to play etc. (and in any event of small value); and
 - Free drinks were available only if and after a patron had broken her or his play and unprompted approached a bar for a drink.
350. ALH further note that at questions 142, 145, 166, 209 and 240 of the Watts Interview, Ms Watts described the system as having the following features:
- There was no tray service to the gambling room;
 - A free drink was offered only to a patron who had already decided to consume alcohol, left her or his machine, and approached a bar to obtain it;
 - It was a whole of venue thing and not limited to patrons playing machines and the provision of free drinks was irregular;
 - "... I said ... make sure it's not the same people or persons that get shouted consistently and don't make it pattern."
351. Finally, by reference to Mr Wyeth's statements at questions 72 and 86 of his interview, that the purpose of the initiative was *keeping customers from going to another venue*, ALH argue that such a result, if achieved, "changes where an

individual plays gaming machines and uses the other facilities of a hotel, not whether he or she plays”.

352. ALH conclude that the examples given by Mr Wyeth illustrate the distinction between *promotion of a venue as a place for gaming and other activity* and the *inducing of a patron to play gaming machines by the provision of free alcohol*.

Complainant’s Submission in Reply

353. In the Complainant Reply, the Complainant relies on and repeats all the facts, matters and circumstances raised in the Complaint Letter and maintains that the Grounds of Complaint are established.
354. The Complainant makes the introductory legal submission that the Grounds of Complaint as specified in relation to *both* sections 129(3)(a)(i) and 129(3)(a)(ii) need to be considered, assessed and analysed in accordance with the facts, matters and circumstances as set out in the disciplinary Complaint.
355. The Complainant’s key reply submissions are as follows:

- Whether or not the Venues actually reached their revenue “targets” is an “entirely irrelevant” to whether a contravention has been established.
- Proof of a “systemic effect” is not in any way necessary to establish a contravention of clause 55.
- ALH has no response to the Complaint as it has been made. Rather, the company re-casts the Complaint in terms that it feels it can answer on a technical, but not substantive basis.
- ALH attempts to “minimize the seriousness” of the alleged conduct by reciting a large number of “irrelevant trading metrics”.
- ALH points out that an increase in gaming activity may derive from a range of different factors, without grappling with the point that a breach of clause 55 need only involve the *offering* of an inducement, and *does not require the inducement to have been successful* (let alone be proved to have been successful).
- ALH fails to grapple with the “more than sufficient evidence” that underpins this Complaint.
- Mr Wyeth, being no longer employed by ALH, is a witness whose evidence can be accepted as untainted by any ongoing loyalty or commitment to ALH. He is uniquely placed to “tell it like it is”. The Wyeth Submission contains further important statements and admissions.
- The Bensley emails are simply saying: give free liquor shouts in the gaming room, this will lead to more gaming machine play and more money will be made by ALH. Free liquor will induce more play, ergo more money.
- In the Wyeth Submission, Mr Wyeth states that he was given “very little room to move” as a hotel manager. In the Complaint there are references to Mr Bensley being “relentless”, “micromanaging” and “autocratic”. These are ALH management directives to give free liquor shouts that will induce persons to play gaming machines or play them more so ALH will make more money. These directions were given by a “relentless and autocratic” operations manager and were followed by Mr Wyeth and Ms Watts. This encapsulates the alleged clause 55 contraventions.
- This evidence (and more) “completely answers” ALH’s refrain that the “mere” provision of free liquor to customers who happen to play gaming machines is permissible.

- While AHL's submission that mere provision of free liquor to customers who happen to play gaming machines may be accepted as a matter of principle – the evidence provided in support of the Complaint demonstrates that there *was a specific focus on providing free drinks to gaming patrons for the purpose of encouraging them to gamble longer and more*. They were *treated differently to non-gaming patrons* at the ALH venues. They were targeted, and they were offered inducements to gamble.
- There was clearly a system in operation, with the systematic production of accounting sheets and e-mails (2 to 3 times a week). There was clearly a targeting of persons playing gaming machines. Mr Bensley was operating and enforcing this system. The fact that this system may not have been implemented to the full extent that Mr Bensley would have liked does not mean that the system did not exist. It just means that the contravening conduct might have been even worse than it was.
- The L&GNSW records of interview of Mr Wyeth, Mr Bensley and Ms Watts establish a "desire to subvert the intentions of the NSW Gaming Machines legislation". There was a *desire to not comply* with the NSW regulatory regime.
- The practices and procedures implemented at other ALH venues in the Sydney area (Exhibit 19) were specified as "*do not provide free drinks in the gaming room because it is considered an inducement*". The Complainant contends that the Venues the subject of this Complaint *should not provide free liquor to gaming patrons*. It should not be done.

Complainant Reply on ALH Figures for Free Liquor

356. On ALH's analysis of yearly free liquor expenditure at about \$35,600 for each venue, with further analysis down to an approximation of schooners of beer per day, the Complainant submits that these figures are approximations that do not reflect with any exactitude the actual amount of free liquor provided to gaming machine players at the Venues.
357. On ALH's critique regarding the inspectors' reference to "gamers", the Complainant submits that "gamers" means "a player of gaming machines at the venue" and the witnesses interviewed by L&GNSW "knew" what "gamers" meant. The expression is used frequently in ALH documentation and the witnesses were interviewed in the presence of lawyers who had no problem with the expression.
358. The Complainant further contends that the analysis of income post inducements (when the system had ceased at these Venues) for the financial year 2018/2019 is "flawed".
359. On ALH's submissions on the various factors that may increase trade at a hotel, the Complainant submits that it is apparent, in all the circumstances, that creating a more "hospitable" environment (by providing free drinks to these patrons) would increase gambling – with gambling constituting about 80% of the two Venues' revenue.
360. The Complainant submits that the provision of free liquor to gaming patrons was not some form of "charitable, platonic gesture" with no expectation of a return through increased gambling. Rather, the liquor was supplied to

“influence the decisions of gamblers to attend the venue and play gaming machines”. This attempt to increase the frequency of gaming was the “core premise” upon which Wyeth (and Bensley) attempted to drive gaming at the Venues.

- 361. The Complainant submits that, to have any usefulness, trade figures from *prior to the commencement of the conduct* would need to be assessed against trade derived during the conduct and after the conduct.
- 362. The Complainant submits there are a “myriad” of factors that may influence overall takings from one year to the next - from better food, cheaper/different alcohol, nicer staff, a change in competing venues, a change in entertainment offerings, the conduct of events, the general economy and the weather – and these factors would have to be discounted.
- 363. The Complainant submits that Mr Bensley's approach was to look for an “immediate impact”, as per his email entitled: “Focus on limiting customers' opportunities to leave”. Noting Mr Wyeth's description of the intent behind free liquor provision (at question 68 of his interview) to “keep bums on seats”, this practice was intended to achieve an “immediate” lift in sales.
- 364. On the level of infractions established on the evidence, the Complainant submits that “at the very least” it amounts to \$47,000 worth of free liquor provided to gaming machine players and this is a “significant” amount.

Complainant Reply on Numbers of Free Schooners Per Day

- 365. The Complainant submits that the numbers of free schooners supplied, on the basis of the ALH Submission, amount to 2,940 schooners at South Tweed and 5,518 schooners at Westtower over the relevant period. The Complainant submits that this establishes a “targeted inducement program”.
- 366. The Complainant submits that it is “conceivable” that these inducements operated from between 1 to 8 patrons per day at South Tweed and from 1 to 15 patrons per day at Westtower. Noting Mr Bensley's relentless directives to “shout the gaming room”, the provision of this many schooners may be considered as an inducement to gaming machine players.
- 367. The Complainant submits that there is uncertainty with the ALH estimates in that they do not account for free liquor that was “not rung up” or written off as “wastage” (noting Mr Bensley's statement at question 161 of the Bensley Interview). The Complainant submits that there is “poor segregation” between the provision of free soft drinks, coffee and liquor in the Venue records.
- 368. The Complainant submits that the conduct in evidence occurred over the course of at least 363 days (per year) and each of those days, at each Venue, should be found to be a “contravention in its own right”.

Authority Conclusions on Ground 1

- 369. The Authority does not accept the ALH submission that the scale of free liquor was too modest to permit adverse inferences. A single instance of the *offering* or supplying of free liquor as an inducement - or the causing or permitting of

free liquor to be offered or supplied as an inducement, is sufficient to establish a breach of clause 55.

370. Although specific instances of inducements have not been specified in the particulars of Ground 1, there is sufficient evidence or material to satisfy the Authority that a system was in place, at both Venues, from around June 2016 to around June 2018 whereby free liquor was targeted at gaming patrons with the intention of keeping them playing gaming machines at the Venues.
371. The Authority accepts the submission made by ALH that increases in gambling may result from factors other than the provision of free drinks. However, the focus of Ground 1 is whether the hoteliers, Wyeth and Watts, offered or supplied, or caused or permitted 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.
372. The Authority accepts the submission in the Complainant Reply that the inducement need not be successful for a contravention of clause 55 to be established.
373. The Authority accepts ALH's submission that clause 55 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.
374. The Authority is satisfied that the program of supplying free liquor at the Venues operated for a prolonged period of time and did have a focus upon gaming machine patrons and keeping those patrons gambling for longer, even if free liquor was supplied to gaming patrons from the bar area, not within the gaming room and supplied to non-gaming machine patrons as well.
375. The evidence and material before the Authority establishes that clause 55 was breached repeatedly and consistently at the Venues from around June 2016 to around June 2018, irrespective of whether Mr Bensley was also ensuring that targets were being met in respect of other drivers of the business.
376. On the basis of its findings on paragraphs 1 to 17 and the matters specified in Ground 1 of the Complainant Letter, the Authority finds that the following matters, as summarised by the Complainant at paragraph 51 of the Complaint Letter, are established in respect of both licensees at both Venues:
 - a) there were "targets" of free alcoholic drinks to be given to gaming patrons;
 - b) staff were encouraged to ensure that they gave away the full value of the target in free drinks, and were criticized if they did not do so;
 - c) while drinks were not delivered to a patron at a gaming machine, when the patron approached the bar to collect their drink, it would be recorded as a "gaming" shout, and not as part of the general hotel shout;
 - d) it was perceived and intended that by providing gaming patrons with free drinks, they would enjoy playing gaming machines at the taverns more, and would thus either play longer, or be more likely to return in the future to play.

- e) decisions as to which patrons would be rewarded with free alcoholic drinks were made on the basis of the gaming habits of the particular customer (and, especially, the amount that they would gamble).
377. On the basis of its above findings the Authority accepts the Complainant's conclusion, at paragraph 52 of the Complaint Letter, that free liquor was supplied at the Venues for the purpose, or with the effect of, persuading or influencing a person to play the Venues' gaming machines. There was an express targeting of gaming machine patrons (or a particularly desirable subset of them) with the intention of encouraging them to play more, or to return to play again.
378. As contended at paragraph 53 of the Complaint Letter, there is an express prohibition against the use of free alcohol as an inducement to play a hotel's gaming machines and this was breached repeatedly at the two Venues.
379. The Authority is satisfied that Ground 1(a) Particular 1, Ground 1(a) Particular 2, Ground 1(b) Particular 1 and Ground 1(b) Particular 2 have been established.
380. Ground 1 is established in respect of section 129(a)(i) and section 129(a)(ii). The Authority finds the licensees, Mr Wyeth and Ms Watts, to have contravened clause 55 of the 2010 Regulation, which also amounted to a failure to comply with a requirement under the 2010 Regulation that related to the licensee.

Ground 2: Section 129(3)(b): That the hotelier [i.e. hotel licensee] has engaged in conduct that has encouraged, or is likely to encourage, the misuse and abuse of gambling activities in the hotel concerned

381. Ground 2 is based in on section 129(3)(b) of the Act which 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,*

382. In reaching the decision below on Ground 2, the Authority has taken into consideration the Complainant's preliminary discussion on what conduct falls within section 129(3)(b) of the Act in light of the objects of the Act. The Complainant's submissions in this regard include the following.
383. The Complainant contends at paragraph 54 of the Complaint Letter that the term "engaged in conduct" is not defined in the Act or the *Interpretation Act 1987* (NSW). However, in looking at the meaning of the term, it is useful to consider there is a legislated definition under section 193H(3) of the *Crimes Act 1900* (NSW) which relevantly defines "engage in conduct" to mean to "do an act" or "to omit to perform an act".
384. The Complainant then contends at paragraph 55 that "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 defined in the Oxford dictionary as “to promote” or “to assist”. It also defines “**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.

385. At paragraph 56, the Complainant contends that whilst no guidance is provided in the Act to define gambling misuse and abuse, it may be possible to derive some assistance from similar disciplinary complaint provisions found under section 139(3)(f) of the *Liquor Act 2007* (NSW), which provides that conduct likely to encourage the misuse and abuse of liquor includes binge drinking or excessive consumption. Therefore, the *Liquor Act 2007* (NSW) identifies both binge and excessive consumption activity as indicators of misuse and abuse.
386. Applying a similar approach under the Act, the Complainant contends at paragraph 57 of the Complaint Letter that it may be possible to infer that a reference to misuse and abuse can include situations where the conduct of the hotel has encouraged a player to engage in excessive gambling (consumption), or has encouraged binge behaviour.
387. The Complainant then contends at paragraph 58 of the Complaint Letter that the Cambridge dictionary defines the term “binge” as “an occasion when an activity is done in an extreme way, especially eating, drinking, or spending money”. It is defined in the Oxford dictionary as “a spree; to indulge in uncontrolled eating, drinking etc”.
388. By reference to section 3(1)(a) of the Act at paragraph 59 of the Complaint Letter, which states the objects of the Act are “to minimise harm associated with the misuse and abuse of gambling activities”, the Complainant contends that a “fundamental imperative” to the Act and the disciplinary complaint provisions are to prohibit misuse and abuse of gambling activities.
389. It is submitted at paragraph 60 of the Complaint Letter that the provision of free alcohol as an inducement to use gaming machines is conduct that is likely to encourage the misuse and abuse of gaming machines i.e. gambling activities. The Complainant contends that that “danger of misuse and abuse of gaming machines is evident from the existence of the prohibition in regulation 55”. The imperative of “minimising harm associated with the misuse and abuse of gambling activities” is “enshrined” as one of the objects of the Act at section 3(1)(a).
390. Furthermore, at paragraph 61 the Complainant contends that it should be remembered that both alcohol and gambling have addictive qualities. They are a dangerous combination. When combined they can exacerbate harm and increase problems. At the very least, alcohol is likely to inhibit a person’s rational decision-making, and may itself be addictive such that to meet the addiction a person will be encouraged to undertake another potentially harmful activity (namely, gambling). Plus here the issue is not limited to conduct that has encouraged - it is also conduct that is likely to encourage the misuse and abuse of gaming machines, whether or not such an effect was actually experienced.

391. The Complainant specifically refers to and relies on the material provided under Ground 1 above in support of Ground 2. The complainant also refers to and relies on the material provided above under the heading “Background” and following. The Complainant also says this ground is further supported as follows.

Ground 2(a) – Andrew James Wyeth

Particular 1 – Breach of clause 55 of the 2010 Regulation at Westower

392. The Complainant submits at paragraph 63 of the Complaint Letter that the material set out at “Ground 1(a) – Particular 1” also applies to this Particular.

Particular 2 – Breach of clause 55 of the 2010 Regulation at South Tweed

393. The Complainant submits at paragraph 64 that the material set out at “Ground 1(a) – Particular 2” also applies to this Particular.

Ground 2(b) – Rachel Maree Watts

Particular 1 – Breach of clause 55 of the 2010 Regulation at South Tweed

394. The Complainant submits at paragraph 65 of the Complaint Letter that the material set out at “Ground 1(b) – Particular 1” also applies to this Particular.

Particular 2 – Breach of clause 55 of the 2010 Regulation at Westower Tavern

395. According to the Complainant at paragraph 66 of the Complaint Letter, the material set out at “Ground 1(b) – Particular 2” also applies to this Particular.

ALH’s Submission

396. In the ALH Submission, ALH contends that the conduct relied upon under Grounds 1 and 2 is “wholly the same”, the Complainant’s case is that the supposed “inducements” are the “misuse and abuse” for the subject of Ground 2. ALH’s submission is that it follows that:

- if there were no inducements as alleged there was for the purposes of Ground 2 no misuse and abuse: and
- if there were inducements as alleged then the conduct impugned under Ground 2 will have been, as it must be, dealt with under Ground 1; the latter is the more specific provision concerned with conduct being contravening inducements.

397. It is then submitted by ALH that Ground 2 adds nothing to the Complaint with its inclusion being “otiose”. For these reasons, ALH submits that it cannot be found to apply in relation to either Mr Wyeth or Ms Watts.

398. ALH concludes by stating that Ground 2 “is not available” because it does not allege any misuse and abuse other than the proscribed “inducements” the subject of Ground 1.

399. In the Complainant Reply, the Complainant does not accept ALH’s position and submits that Ground 2 is a separate Ground that needs to be considered on its merits.

Authority’s Conclusion on Ground 2

400. At Ground 1(a) Particular 1 and Ground 1(a) Particular 2 above, the Authority has found that Mr Wyeth breached clause 55 of the 2010 Regulation whilst licensee of Westtower and South Tweed.
401. The Authority has found at Ground 1(b) Particular 1 and Ground 1(b) Particular 2 above, that Ms Watts breached clause 55 of the 2010 Regulation whilst licensee of South Tweed and Westtower.
402. In making findings on this Ground, the Authority accepts the Complainant's preliminary discussion on conduct that falls within section 129(3)(b) of the Act and the objects of the Act. The Authority further notes its findings on Ground 1 above and the contentions advanced in paragraphs 1 to 17 of the Complaint Letter.
403. The Authority does not accept the ALH submission that there is no alleged "misuse or abuse" of gambling activities evident from the Complaint. The Authority considers that the targeted and systemic provision of free alcohol to gaming machine players at the Venues over a prolonged period of time is conduct that is likely to encourage the misuse and abuse of gaming machines.
404. The Authority is satisfied that Ground 2(a) Particular 1, Ground 2(a) Particular 2, Ground 2(b) Particular 1 and Ground 2(b) Particular 2 are all established.
405. Ground 2 is established. The Authority considers that hoteliers, Ms Watts and Mr Wyeth, engaged in conduct that has encouraged, or is likely to encourage, the misuse and abuse of gambling activities at Westtower and South Tweed.

Ground 3: Section 129(3)(g): That the close associate is not a fit and proper person to be a close associate of a hotelier.

406. Ground 3 is based on section 129(3)(g) of the Act and alleges that close associate, Mr Morgan Bensley, is not a fit and proper person to be a close associate of a hotelier.
407. Section 129(3)(g) 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 -*
- ...
- (g) *that the close associate is not a fit and proper person to be a close associate of a hotelier or gaming-related licensee*

408. The Complainant submits at paragraph 67 that Ground 3 refers to and relies on the material provided under Grounds 1 and 2 above. The Complainant also refers to and relies on the material provided above under the heading "Background".

Fitness and Propriety at General Law

409. 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.

410. 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 – *Clearihan v Registrar of Motor Vehicle Dealers in the ACT* (1994) 117 FLR 455
411. 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.

Particulars of Ground 3

Bensley as a Close associate

412. The Authority notes that section 127(1) of the Act defines a “close associate” to mean a close associate of a hotelier or gaming-related licensee. Section 4 of the Act defines a close associate to mean a close associate within the meaning of the *Gaming and Liquor Administration Act 2007* (NSW).
413. At paragraph 68 of the Complaint Letter, the Complainant refers to this definition of “close associate” in relation to Ground 3 of the Complaint. Section 5 of the *Gaming and Liquor Administration Act 2007* (NSW) states:

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.

- 414. The Complainant contends at paragraph 69 that Mr Bensley satisfies the second and third limb of section 5 in that he exercised a relevant power and/or held a relevant position.
- 415. At paragraph 70 the Complainant specifies, in relation to Westtower and South Tweed that Mr Bensley held a relevant position from about 2014/2015 through his role as an ALH State Operations Manager, with the two Venues under his management (in addition to 15 other QLD hotels). The Complainant relies upon questions 97 to 101 of the Bensley Interview.
- 416. The Authority notes that at question 26 of the Bensley Interview, Mr Bensley states that he has been the Operations Manager “for the last six, seven years” and at question 100, Mr Bensley answered in the affirmative to the question “And you have – what, pretty much every venue between Ballina and Harbour Town?”. This evidence, combined with the Table of Staff Roles, satisfies the Authority that Mr Bensley held the role of State Operations Manager in relation to these two Venues since around 2014/2015 and the Authority accepts that amounted to a “relevant position” to be a close associate of the licence of both Venues.
- 417. At paragraph 70 of the Complaint Letter it is contended that Mr Bensley managed the businesses at the Venues and had the power to participate in directorial, managerial or executive decisions for them. Specifically, he had the power to approve expenditure, appoint staff and make other operational decisions on behalf of ALH.
- 418. The Complainant refers to, and the Authority accepts, that the following evidence and material supports this contention:
 - Questions 30 to 31 of the Wyeth Interview (discussed above);
 - Question 270 of the Watts Interview (discussed above);
 - Question 292 of the Wheeler Interview (discussed above);

- Email from Ms Watts to Mr Bensley dated 14 June 2017 seeking approval for an air-conditioning quote (Exhibit E40 of the Complaint Material) (“Watts 14 June 2017 Email”);
- Email from Ms Watts to Mr Bensley dated 15 December 2017 seeking approval for an apprentice at Westtower (Exhibit E43 of the Complaint Material) (“Watts 15 December 2017 Email”);
- Email from Ms Watts to Mr Bensley dated 10 August 2017 seeking approval for a menu (Exhibit E41 of the Complaint Material) (“Watts 10 August 2017 Email”).
- Question 103 of the Benson Interview where Mr Benson (nightshift bar attendant at South Tweed) said that “all this reporting goes upstairs, and it goes to Mr Morgan”. The Authority considers Mr Benson to be referring to the reporting of the provision of free liquor and details of regulars in the managerial documents.
- Question 73 of the Hislop Interview, when asked to whom she reports Ms Hislop (bartender and assistant manager at South Tweed) told inspectors “Morgan, the Area Manager”.
- Question 87 of the Wheeler Interview, where the Complainant contends that Mr Wheeler states that the daily gaming briefing sheets were filled in on Morgan’s instructions. The Authority notes that at question 87, Mr Wheeler is recorded as stating “that instruction was from Morgan” in response to the question by staff in relation to the daily gaming briefing sheets “But when you say, you were instructed to run it” “was that an instruction, who was that instruction from?”.
- Questions 291 of the Wheeler Interview, where Mr Wheeler told inspectors that Mr Bensley “definitely did micromanage his businesses”.
- The emails set out under the “Details of some emails” section of the Complaint Letter (discussed above) demonstrate the power and control that Mr Bensley exercised over the two Venues. Mr Bensley set targets, threatened staff who did not perform and rewarded staff who did perform.

419. At paragraph 70 of the Complainant Letter the Complainant refers to Mr Wyeth’s description of Mr Bensley’s control of the businesses at questions 30 to 36 of the Wyeth Interview. The Authority notes that Mr Wyeth told inspectors that Bensley had financial control and was “micromanaging” in his approach. Mr Wyeth explains that he had targets to meet and report on which were collated with Bensley providing a wrap on how everyone did. Mr Wyeth confirms that all large decisions had to go to Morgan and with regards to control there was “some allowances” but “there was obviously quite a few guidelines and limited opportunity to, to, to steer the hotel in the direction you wanted to”. Mr Wyeth confirms that targets were “controlled by the operations manager” and that he didn’t have much control over what was offered, how it was or how it was given to people.

420. The Authority is satisfied, on the evidence and material specified in paragraph 70 of the Complaint Letter, that Mr Bensley held a relevant position and relevant power and was a “close associate” of the hoteliers at Westtower and South Tweed for the purposes of the section 5 of the *Gaming and Liquor Administration Act 2007* (NSW). He held this status throughout the time that he acted as State Operations Manager at the two Venues between 2014/2015 and October 2018.

421. The Complainant submits at paragraph 71 of the Complaint Letter that Mr Bensley's emails would usually make reference to the information provided to him by the hotels in "Gaming Daily Briefing Sheets" and the Google Drive Spreadsheets that recorded, amongst other matters, the value of "gaming shouts" given in a particular day. The "Gaming Daily Briefing Sheets" made reference to a "target" value of "customer shouts" which are the same as "gaming shouts" in that they refer to *complimentary alcoholic drinks given to gaming patrons*. The "target" was usually \$50 for the "AM shift" and \$100 for the "PM shift". The spreadsheet would then record the actual value of complimentary alcoholic drinks provided. It was this information that enabled Mr Bensley to criticise his hotel managers when they did not give out enough free drinks.
422. The Authority accepts that was the case, on the basis of its findings above in relation to paragraphs 1 to 17 of the Complaint Letter.
423. The Complainant observes at paragraph 81 that Mr Bensley has apparently ceased to be the Operations Manager in relation to the Venues. The Complainant submits that this does not impact the Complaint, which focuses upon his conduct while in that role.

Fitness and Propriety

424. At paragraph 72 of the Complaint Letter it is submitted that in order to be fit and proper as a close associate to manage a *hotel* licensed business that has gaming machine entitlements and is subject to further regulatory requirements for the keeping of gaming machines, a close associate must have the requisite knowledge of the Act (or Acts) under which he or she is operating as a close associate (see generally: *Ex Parte Meagher* (1919) 36 WN 175 and *Sakellis v Police* (1968) 88 WN (Pt1) NSW) 541).
425. Generally, when considering a person's fitness to exercise particular functions under the (gaming machines) Act, an objective assessment of common law principles of *honesty, knowledge and ability* must be conducted and applied to the person in question.
426. The Complainant cites *Hughes & Vale Pty Ltd v NSW (No 2)* (1955) 93 CLR 127 (a copy of which has been provided at Exhibit E18) whilst also referring to *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321; 94 ALR 11 and *Cmr for Australian Capital Territory Revenue v Alphaone Pty Ltd* (1994) 49 FCR 576; 127 ALR 699.
427. At paragraph 73, the Complainant submits that the matters outlined in this Complaint demonstrate that Mr Bensley *does not have the honesty, knowledge and ability* required of him to enable him to discharge his duties consistently with the functions and responsibilities imposed upon him, and the operations that he supervises, under the Act. The Complainant submits that the result of Mr Bensley's oversight of Westtower and South Tweed demonstrates that he is not a fit and proper person to be a close associate of a NSW licensed hotel. The Authority's findings on Mr Bensley's honesty, knowledge and ability are outlined below.

428. The Complainant, at paragraph 74 of the Complaint Letter, refers generally to the conduct of Mr Bensley as set out elsewhere in the Complaint and contends that Mr Bensley was relentless in his management of these two Venues and his desire and instructions that complimentary liquor be provided in particular to gaming patrons.
429. The Complainant contends that Mr Bensley set targets in this regard, wanted the targets performed and implemented performance targets and reward schemes to incentivise staff to issue complimentary liquor and to achieve suitable gambling turnover at the venues.
430. The Authority refers to its findings specified above in relation to the particulars of Grounds 1 and 2 and the background contentions in paragraphs 1 to 17 of the Complaint Letter, which establish that Mr Bensley implemented and relentlessly pushed his staff to achieve the targets that he set for providing free liquor to gaming machine patrons.

Particular 1

431. The Complainant contends at paragraph 75 of the Complaint letter that it was *Mr Bensley's decision* to implement the "program" at the hotels that involved the targeted provision of free alcohol to gaming patrons. The Authority accepts this on the basis of the Bensley 3 March 2017 Email and question 62 of the Wyeth Interview [discussed above].
432. The Complainant further contends at paragraph 75, and the Authority accepts, that licensees within the ALH Group hold little control over expenditure within the business which is evidenced by:
- Question 30 of the Wyeth Interview [discussed above],
 - Question 270 of the Watts Interview [discussed above]
 - Question 292 of the Wheeler Interview [discussed above] where Mr Wheeler states "...in terms of...spending money...They were all very micro[managerial]".
 - The example of a licensee [Ms Watts] forwarding to Mr Bensley a \$200 CCTV invoice which he responds with "Dont pay" (evidenced by the CCTV Email Correspondence).
433. Referring to paragraph 13 of the Complaint Letter, the Complainant contends that promotional activity and expenditure on the scale apparent from the daily free liquor targets would have been approved by Mr Bensley and the licensees had limited autonomy in this regard.
434. The Authority accepts, on the evidence and material cited in paragraph 75 (and the Authority's findings on paragraph 13 of the Complaint Letter) that Mr Bensley implemented the targeted provision of free alcohol to gaming patrons at the Venues, with targets approved by Mr Bensley. The licensees had very little autonomy over this expenditure.

Particular 2

435. The Complainant contends at paragraph 76 of the Complaint Letter that Mr Bensley was aware that there were regulatory differences between QLD and

NSW but does not appear to have made any significant or diligent inquiry into the nature of those differences. The Complainant here refers to questions 52, 139 to 140 and 142 of the Bensley Interview.

436. The Authority accepts this contention, noting that questions 139 to 142 have been discussed above and at questions 50 to 52, Mr Bensley advised that he *didn't* have NSW Responsible Service of Alcohol or Responsible Conduct of Gambling training but claims to possess a “macro” understanding of NSW regulations – which the Authority accepts as a concession that he was only aware of NSW legislative requirements with regard to the operation of gaming machines in hotels at a very high level. When asked at question 52 about how he can “add value” to the NSW hotels from a regulatory standpoint, Mr Bensley told inspectors that “I’m not oblivious to them. But – but just as far as that and regulations are concerned, we, it’s around conversations and there’s other support structures in place”.

Particular 3

437. At paragraph 77 of the Complaint Letter it is contended that Mr Bensley was prepared to act in circumstances where he found the applicable regulatory regime “confusing”, without making any significant or diligent inquiry in order to clarify the operation of the relevant regime. The Complainant here relies upon questions 159 to 161 of the Bensley Interview and questions 107 and 161 to 165 of the Wyeth Interview.
438. The Authority accepts this contention on the basis of questions 159 to 161 of the Bensley Interview (discussed above) in which Mr Bensley admits to confusion as to the meaning of “inducement” and states that the regulations can be difficult.
439. The contention is further supported from the exchange at question 107 and 161 to 165 of the Wyeth Interview. When asked if anyone ever raised concerns with Mr Bensley, Mr Wyeth stated “Yeah, I, I, I said something to Morgan when I got approached by the licensing sergeant and didn’t receive too much push back from Morgan. I guess because of his limited knowledge of New South Wales legislation he just seemed to be we will keep on doing what we’re doing until we’re told we can’t do it anymore. That seems to be the, it’s a very reactive company”. Mr Wyeth further stated that the operations managers are “not accountable” as it’s “almost like they can’t be linked to, to anything”.
440. Mr Wyeth also told inspectors that at ALH “it was pretty controlled on, on the direction and ninety day plans and, and you submit those and then your operations manager reviews it and tells you which direction he wants to go”. He describes the daily targets and weekly targets as a “form of micromanaging the business and again taking all that control out of the venue managers hands”.
441. Mr Wyeth describes the role of ALH State Managers like Mr Bensley as “business managers, caretakers” while the licensees like himself remains “responsible”. If one of the venues isn’t doing what it’s supposed to with regard to turnover, the state manager will take it “quite seriously” because he’s got the national process manager or the CEO he has to report to.

442. The Authority further notes that during this exchange, Mr Wyeth told inspectors that if you are on the twenty lowest performing venues, you will “go on a list and your operations manager will spend some intensive time with you”. The inspectors, after noting that the operations manager takes responsibility for “ostensibly poor gaming”, ask whether the operations manager takes responsibility for compliance, to which Mr Wyeth told investigators “yeah, it should do”. However, when asked how many times Mr Wyeth had conversations around legislative compliance while at Westtower and South Tweed, Mr Wyeth told inspectors:

“Not, there wasn’t many conversations regarding compliance. It was, it might be a off the cuff comment like in regards to gaming snacks, taking out hot, hot foods to, to patrons at the machines, might be a comment like, oh, you can’t do that in New South Wales. That’s all that was, was said in regards to compliance. Now I found it unusual that New South Wales hotels were run by people that were focussing on what, what you can do in Queensland and that’s the, that’s probably the mentality as well. It’s not what you can’t do, as what can we do and what, what can we do to get around this”.

443. The Authority accepts the Complainant’s observation that Mr Bensley does not indicate during his interview that he had sought the assistance of the ALH NSW Compliance Team in relation to the two (NSW) Venues, including with respect to the provision of free liquor to gaming patrons. Both Venues were under the arm of the ALH QLD compliance team. The Complainant here relies upon questions 35 to 40 of the Bensley Interview.
444. The Authority notes that at this section of his interview, Mr Bensley referred to there being “frameworks” for when things have to go beyond him and “different approval processes for different things”. Mr Bensley gave inspectors the example of “something of a compliance nature” and states “[t]hat may pass through me and then on to a compliance department or up to my boss”.
445. However, when asked how a reported compliance issue would be handled with regard to the two (NSW) Venues, Mr Bensley stated: “It would depend on what it was. It’s a really important question”. When pressed on this matter Mr Bensley stated “Oh, there is a New South Wales Compliance Team, and there’s a – there’s a Queensland Compliance Team. For a period of time, these hotels were overseen by a Queensland/New South Wales Compliance Team”, “One team would do both states and across both states. Recently, some of the auditing function had been passed on to a New South Wales Compliance Team”. When asked when that changed, Bensley responded “I think that’s just changed, probably in the last six months” but he wasn’t part of that decision process.

Particular 4

446. At paragraph 78 of the Complaint Letter it is contended that Mr Bensley was prepared to make “formalistic distinctions” for the purposes of “circumventing a regulatory requirement” (clause 55 of the 2010 Regulation). The Complainant here refers to questions 137 to 140 and 144 to 161 of the Bensley Interview (discussed above), while emphasising the exchange at 139, 140 and 144

(which relates to the initial discussions of how the provision of free liquor to gaming patrons could be provided in NSW).

447. The Authority accepts this characterisation of Mr Bensley's approach to clause 55 on the basis of this evidence.

Particular 5

448. At paragraph 79 of the Complaint Letter it is contended that Mr Bensley does not possess the *minimum level of knowledge* regarding the applicable regulatory regime in NSW that should be expected of a person with such operational oversight and control as was displayed over Westtower and South Tweed.
449. Mr Bensley's level of control over the two Venues has been established earlier in this Ground. The Authority is satisfied that Mr Bensley lacked the minimum level of knowledge on the basis of the following findings.
450. At paragraph 80 the Complainant specifies that despite overseeing the operation of two NSW venues Mr Bensley did not hold a NSW Responsible Service of Alcohol or Responsible Conduct of Gambling certification. The Complainant refers to question 50 of the Bensley Interview, which has been discussed above.
451. The Authority notes that Mr Bensley admits not having NSW certificates, claims to have a "macro" understanding of the NSW legislation but finds the meaning of "inducement" to be "confusing".
452. At paragraph 81 the Complainant contends that Mr Bensley was prepared to devise and aggressively implement a scheme for the provision of free alcohol to gaming patrons without any apparent consideration of the potential harm to patrons, their families and the community generally that may result; that he was motivated solely to find a "justification" to enable him to provide free alcohol to gaming patrons, in the belief that doing so would increase gaming turnover and revenue and that he had no regard to the statutory objects in section 3 of the Act and there was no consideration to the requirement to minimise harm associated with the misuse and abuse of gambling activities or to foster responsible conduct in relation to gambling. The Authority accepts these contentions on the basis of the evidence relied upon by the Complainant in Ground 3.

ALH's Submissions Pertaining to Mr Bensley

453. In the ALH Submission the company makes a number of contentions or submissions in response to the Complaint, which touch upon Mr Bensley's role and the approach taken to licensing compliance at the Venues.
454. On Mr Bensley's role with regard to NSW licensing compliance, ALH contend (by reference to questions 132 to 135 and 142 of the Bensley Interview) that, as "relentless" as Mr Bensley may have been, he conducted himself:

"on the basis that' NSW Compliance' was a matter for the licensees, to whose judgment on such matters he had to defer"

455. The Authority notes that at questions 132 to 135 of the Bensley Interview, Mr Bensley stated with regard to the service of liquor that “the Hotel Manager makes the decision on what the day-to-day operations happens within the hotel, around a direction”. When questioned about compliance, Mr Bensley added that it’s “very heavily in their contract. It’s very heavily in the terms and conditions of their employment. They’re there to understand their local laws, and they’re there to comply with the local laws. And they’re not to take any instruction that overrides any local laws or by-laws, or regulation”.
456. When presented with the example of the proposed introduction of a business practice that is possible in QLD into a NSW venue, with the licensee hesitant about legislative requirements, Mr Bensley told inspectors that the “process generally would – it would depend on – on the situation and how passionate I was about wanting to do – about wanting to push the – the argument. But generally, that would play out in me saying, ‘Listen, this is something that we’re doing. You know, we’re thinking about doing that in your hotel.’ ‘No, we can’t do that, X Y Z.’ ‘No worries. Well, what can we do? Let me know what you can do.’ ‘O.K., well, we can do it this way.’ ‘O.K., well, let’s do it that way. Off we go”.
457. At question 142 of the Bensley Interview the inspectors asked “So the Venue Managers then decided, ‘This is how we can make this happen” and Bensley responded “This is – yeah, if we want to be part of this – what’s going on. If they weren’t – you know, and there could be no problem with them saying, *carte blanche*, ‘Not happen”.
458. On the approach taken by L&GNSW inspectors to clause 55 requirement, ALH submits that questions 137, 138, 140, 141, 142 and 143 of the Bensley Interview reveal they were operating on the “subsumed premise” that to “*provide liquor to gaming patrons*” [the words used by the inspectors at question 138 of the Bensley interview] *was, without more*, a contravention of clause 55. ALH also refers to question 336 of the Hislop Interview, where the inspector misstated the effect of clause 55 as set out in the ALH NSW Gaming Policy and Procedure NSW.
459. The Authority notes that question 336 of the Hislop Interview, inspectors asked Ms Hislop “That policy says don’t provide free liquor to gaming patrons. So why were you providing free liquor to gaming patrons?”.
460. On Mr Bensley’s knowledge of clause 55, ALH refer to the exchange at question 141 of the Bensley Interview and submit that Mr Wyeth, Ms Watts and Mr Bensley were all “conscious of the strictures in cl.55” and “seeking to conduct the businesses in conformity with them and NSW requirements more generally”. ALH further submit that these exchanges “prove both a knowledge of, and a desire and intention to comply with” the NSW regulatory regime.
461. On the question of Ms Watts’ state of mind with respect to regulatory compliance, ALH submits, by reference to questions 303 and 304 of the Watts Interview, that Ms Watts “consciously and conscientiously believed” that she *was not doing anything wrong*, although her confidence was “somewhat shaken” by the parliamentary statement made by Mr Andrew Wilkie MP:

Q303: *Yeah so, when, so when you were told that you couldn't do it anymore, was anything said to you that, you know, you need to get rid of it because of X?*

A: *No, but I obviously was all over that whole media furore and things so I, yeah(1.15.42) all over, then stamp it out all over.....(1.15.48) I didn't think - - -*

Q304: *What do you - - -*

A: *- - - that we were doing the wrong thing until yep.*

462. On the statement made by Mr Wyeth at question 63 of the Wyeth Interview that he did not recall having any discussion with Mr Bensley about how the “Greater” program should be implemented, ALH notes that Mr Wyeth was interviewed on 31 October 2018 and Mr Bensley had been interviewed on 24 August 2018. ALH submits that Mr Wyeth’s “non-recollection” is not evidence that such discussions did not occur and submits that Mr Wyeth should have been tested on his recollection by inspectors.

463. ALH further submits that there is some evidence that Mr Wyeth’s recollection may not be correct. Mr Wyeth was at South Tweed from about May to around the end of October or early November 2017. At some point during that period he was approached by a licensing sergeant querying whether the provision of complimentary alcoholic refreshment could be regarded as an inducement. Mr Wyeth’s response was to cease providing the liquor and making sure that it was an “all of venue” thing, not focused towards gaming at all (questions 63 and 109 of the Wyeth Interview).

464. ALH contend that Mr Wyeth’s reference to the phrase “all of venue” initiative reflect the way Mr Bensley and Ms Watts describe the “Greater” program and this use of language “strongly suggests” that there *had* been some discussions between him and Mr Bensley (and possibly Ms Watts) on implementation of the program, one aspect of which included the daily reporting of certain activities.

465. Noting that question 63 of the Wyeth Interview is discussed above, the Authority has considered Mr Wyeth’s statements at question 109 of the Wyeth interview which state:

Q109: *You said the licensing sergeant, you - - -*

A: *Yeah.*

Q109: *- - - had a discussion. How did that all come about?*

A: *Well at South Tweed he came in and he said, it was quite an informal discussion, he said I've heard some rumours that if you want free drinks you, you come to the South Tweed and play in the gaming room. And he said, and I said, look it's an all of venue initiative and he just answered, he just answered no well just make sure it's not an inducement to, to gamble and make sure it is an all of venue promotion not something that's centred around the gaming room.*

466. On the issue arising from question 107 of the Wyeth Interview, whether Mr Wyeth had ever raised concerns with Mr Bensley about the provision of free liquor and Mr Wyeth citing his passing on concerns raised by a licensing sergeant about the practice (with Mr Bensley giving Mr Wyeth no push back notwithstanding this advice), ALH claim that:

- What is “likely to have been reported” by Wyeth to Bensley, was that, on the basis of Wyeth’s assurance that the Program was an “all of venue

thing” Police were “unconcerned” about the provision of complimentary liquor to patrons, including gaming machine players.

- There would have to have been no reason for Mr Bensley to “push back” against implementing a “whole of venue” approach as this was Mr Bensley’s conception of the “Greater” program.

467. ALH submit that this evidence does not establish that Mr Bensley was “indifferent to” or “trying to sneak around” matters of NSW Compliance.

468. In response to Mr Wyeth’s statements to the effect that the Venues were *centred around gaming*, ALH submit that:

- While Mr Wyeth does hold this opinion, gaming is an “important part of the business of these venues”.
- The “system” of providing free liquor to patrons was concerned with improving the performance of the venues with regard to gaming and “all other drivers”.
- The importance to a particular business will vary from hotel to hotel as it did between South Tweed and Westtower.
- The promotion of gaming activity is a legitimate aspect of a hotel business.

469. On the *degree of knowledge* demonstrated by Mr Bensley, ALH submits that there is, in the interviews, evidence of both Mr Wyeth and Ms Watts being conscious of the need to comply with the NSW regulatory requirements (citing questions 71 and 171 of the Wyeth Interview and questions 65 to 67, 85, 99 and 284 of the Watts Interview). ALH also refers to Mr Bensley’s observations in questions 141 to 143 of the Bensley Interview (discussed above).

470. The Authority notes that at questions 71 and 171 of the Wyeth Interview, Wyeth discusses the other things offered to gaming patrons (such as “snacks” which were provided “quite regularly, especially late night after 9.00pm”) and his personal enquiries regarding compliance stating:

Yeah. So the, there’s quite a lot of difference in regards to gaming promotions in Queensland versus New South Wales. So it was how can we run a gaming promo in New South Wales. And I took it upon myself to contact Bill from, from New South Wales. The communication lines between these two venues and the New South Wales operations team wasn’t a thing. I took it upon myself to contact someone in, in New South Wales that’d be the gaming guru at the time and he gave me a list of acceptable promotions that I could run in my, my room. And the perception I got from him was that it’s totally different in New South Wales with ALH. They, they’ve, it’s, it seems to be a different culture and the way that the New South Wales operation team run their venues seems to be a little bit, a lot different to the way it was done at South Tweed and Westtower.

471. The Authority further notes that at questions 65 to 67, 85, 99 and 284 of the Watts Interview, Ms Watts: agrees that the policies come through from NSW but she reports to QLD; states that “they have promotions in Queensland and we’re not part of them because, although we’re part of their portfolio we’re not included in their promotions”; answers “Yep” to the question of whether she feels like she has a good understanding of the legislation; when asked whether the state gaming manager has anything to do with the business states “Not, not

particularly. I've spoken to the national gaming manager and the New South Wales, I can pick up the phone to him"; and when asked how often, she states "I guess it depends on what's going on and, but they're always available for me to pick up the phone, same as Andrew in the New South Wales office is available if I've got a question".

472. In the Complainant Reply, the Complainant does not accept ALH's position and submits that Ground 3 is a separate Ground that needs to be considered on its merits.

Authority's Conclusions on Ground 3

473. On the basis of the Authority's findings on the Complainant's Common Facts and the specific contentions in support of this Ground, the Authority finds that while the licensees (Wyeth and Watts) held legal responsibility for licensing matters at the Venues, Mr Bensley exercised significant control over operational matters.
474. Through his relentless pressure upon staff to achieve targets for the supply of free liquor to gaming patrons Mr Bensley compromised Mr Wyeth and Ms Watts in their duty to ensure compliance with clause 55 of the 2010 Regulation.
475. The Authority is satisfied, on the evidence provided by Mr Wyeth at questions 107 to 109 of the Wyeth Interview that Mr Bensley was made aware of Police concerns that the provision of free liquor to patrons should not provide an inducement for gaming machine play. The Authority does not accept ALH's speculation as to what Mr Wyeth "is likely to have reported" to Mr Bensley about the level of Police concerns. Police inquiries should have been a red flag to Mr Bensley.
476. ALH have not provided any evidence regarding the positive steps that Mr Bensley undertook to ensure that, when performing his role as operations manager, the instructions he was giving his licensee/venue managers complied with legislative requirements. The email correspondence provided in the various Exhibits to the Complaint (Exhibits E24 to E47) indicate that directions/instructions flowed from Mr Bensley to the licensees and not the other way around.
477. Given his role as State Operations Manager, Mr Bensley was a close associate of the licence for Westtower and South Tweed. He was required to be a fit and proper person to be a close associate of each hotelier. This means holding the degree of *honesty, knowledge and ability* reasonably expected for operation of hotels that keep gaming machines in NSW.
478. The Authority finds that Mr Bensley did not possess sufficient knowledge of nor the ability or diligence to comply with, important statutory requirements in respect of gaming machines. He did not demonstrate a sufficient knowledge of clause 55 or the overarching statutory objects and considerations to which a person in his position should have regard under section 3 of the Act.
479. The mischief to which clause 55 is directed is not engaged by selling liquor to patrons who are using gaming machines. It is the provision of free liquor, as an

inducement to gaming machine players to play, or play longer that is proscribed.

480. Mr Bensley's emails to his licensees demonstrate a focus on incentivising or inducing gaming machine play through the supply of *free* liquor at the venues for which he was responsible. There were no countermeasures or meaningful procedures, other than supplying the liquor in the bar area, to ensure that free liquor would not become an inducement to play or play machines longer at these two Venues. When considered in an objective manner, the purpose of the targeting of gaming machine players was the apparent intent of extracting *more gaming machine revenue* from them.
481. In his interviews with L&GNSW Inspectors, Mr Bensley has sought to characterise the incentivisation of gaming machine players within a "whole of venue" business development initiative, but this is betrayed by the clear targeting of gaming machine players that is apparent from his emails to venue managers/licensees.
482. There was an element of dishonesty in this characterisation, given the blatant focus upon incentivising gaming machine players, particularly higher stakes players, to keep playing gaming machines at the Venues. This is accompanied by a clear lack of knowledge and diligence with regard to regulatory compliance with clause 55 of the 2010 Regulation and the objects and considerations in section 3 of the Act that should inform Mr Bensley's approach to clause 55. Clause 55 is not a requirement to be "avoided".
483. Mr Bensley, or any business development manager responsible for hotels in NSW, may implement a wide array of loyalty initiatives that do not involve supplying free liquor to gaming machine players. A prudent business development manager would ring fence this risk and ensure that staff had very clear guidance to avoid targeting these patrons with free liquor. No such compliance measures were in place, because it became a focus of the "Greater" program to induce gaming machine players to play and play longer.
484. The Authority is satisfied, on its findings in respect of Grounds 1 and 2, paragraphs 1 to 17 of the Complaint Letter and its additional findings on Ground 3, that there is sufficient evidence or material to establish a lack of honesty, knowledge and ability to act as a close associate of the hoteliers of these two Venues.
485. Ground 3 Particulars 1 to 5 have all been established.
486. Ground 3 is established. The Authority finds that Mr Bensley is not a fit and proper person to be a close associate of a hotelier.

Ground 4: Section 129(3)(h): That the close associate knew or ought 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.

487. Ground 4 is based on section 129(3)(h) which 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,*

488. At paragraph 82 of the Complaint Letter the Complainant states that Ground 4 refers to and relies upon the material provided in support of Grounds 1, 2 and 3 and the material relied upon under the “Background” section of the Complaint Letter.

489. The Complainant makes the following further contentions:

Ground 4(a) – Morgan John Bensley

Particular 1 – Mr Bensley *knew or ought reasonably to have known* that the hotelier was engaging or likely to engage in conduct of the kind to which the Complaint relates

490. At paragraph 83 the Complainant contends that, in relation to both Venues, Mr Bensley was aware of the conduct the subject of this Complaint as he was directing and monitoring the conduct at the two venues. The Complainant cites questions 30 to 36 and question 43 of the Wyeth Interview (discussed above) and questions 290 and 292 of the Wheeler Interview (questions 291 to 292 are discussed above) in support of this contention.

491. In Ground 3 above, the Authority was satisfied that Mr Bensley met the definition of a close associate.

492. The Authority refers to and reiterates its findings above in relation to Grounds 1, 2 and 3 and on paragraphs 1 to 17 of the Complaint Letter in support of its finding that Mr Bensley, in his role as operation manager and as the person pushing staff to reach the targets (set by him) in relation to free liquor to gaming patrons, *knew or ought reasonably to have known that the hotelier was engaging or likely to engage in conduct of the kind to which the Complaint relates.*

Particular 2 – Mr Bensley failed to take all reasonable steps to prevent the licensee from engaging in conduct of the kind to which the complaint relates

493. It is alleged at paragraph 84 of the Complaint Letter that in relation to both Venues, Mr Bensley continued to encourage the conduct.

494. The Authority refers to and reiterates its findings above in relation to Grounds 1, 2 and 3 and on paragraphs 1 to 17 of the Complaint Letter. The Authority in particular notes, as found in Ground 3 above, that Mr Bensley aggressively implement a scheme for the provision of free alcohol to gaming patrons, without any apparent consideration of the potential harm to patrons and failed to make any significant or diligent inquiry in order to clarify the operation of the relevant regime. For these reasons, the Authority is satisfied that Mr Bensley

failed to take all reasonable steps to prevent the licensee from engaging in conduct of the kind to which the Complaint relates.

Ground 4(b) – ALH

Close Associate

495. At paragraph 85 of the Complaint Letter, the Complainant contends that ALH was “clearly” a close associate of the licensees in question. The Complainant contends that ALH satisfies both the “relevant financial interest” limb and the “relevant power” limb of the close associate definition [which the Authority notes is set out above]. It is contended that ALH owns the businesses of South Tweed and Westtower and employed Ms Watts and Mr Wyeth to be the licensees. The Complainant contends that Mr Bensley was the licensees’ immediate boss and had the substantial power and control over the licensees. It is contended that Mr Bensley was exercising this power and control for and on behalf of ALH.
496. On the basis of the OneGov licence records for Westtower (Exhibit E01) and South Tweed (Exhibit E03), which indicate that the corporate business owner and premises owner for both Venues is ALH (since 2008 in respect of Westtower and 2009 in respect of South Tweed), the Authority finds that ALH meets the “financial interest” requirement of a close associate in section 5 of the *Gaming and Liquor Administration Act 2007* (NSW). The Authority is further satisfied that Mr Bensley was exercising power and control over the licensees, *for and on behalf of* ALH, which employed him in a senior managerial role. At question 25 of the Bensley Interview Mr Bensley confirms that he has been with ALH for “roughly fifteen years”. At question 53 Mr Bensley states “ALH do offer that kind of guide with the specific people that can be called if we’re trying to do something or coming up with initiatives to make sure that they’re O.K”. For these reasons the Authority is satisfied that, ALH is a close associate within the meaning of section 5 of the *Gaming and Liquor Administration Act 2007* (NSW).

Particular 1 – ALH knew or ought reasonably to have known that the hotelier was engaging or likely to engage in conduct of the kind to which the complaint relates

497. The Complainant contends at paragraph 86, that ALH knew or ought reasonably to have known of the conduct, or its likelihood, through its officers and agents - including Mr Bensley. Specifically, the Complainant contends that the gaming daily briefing sheets utilised at both of these Venues were showcased in the ALH Yearly Conference for its QLD venues.
498. The Complainant relies upon questions 96 and 120 to 122 of the Wyeth Interview. The Authority notes that question 96 is discussed above. At questions 120 to 122, Mr Wyeth clarifies that the annual “Lone Star” conference is the ALH State conference. It features presentations on “how, how to maximise sales, control expenses, increase labour efficiency, those sort of things”. Mr Wyeth told inspectors that “[e]very venue manager in the State as well as every operations manager, State manager and usually the CEO would, would attend along with, you know, they might have the, the national accommodation guy there. They might have a finance, finance guy there, the

director of finance for the group". Wyeth states that the State of QLD "included South Tweed and Westtower".

499. The Authority accepts the contention in paragraph 86.
500. The Complainant also contends that some forty-seven (47) ALH employees received Mr Bensley's emails, including ALH managers who were more senior than Bensley – being Messrs Clarke and Casey. At paragraph 86 the Complainant contends that the actions and activities of Bensley would have or should have been known to ALH generally.
501. Alternatively, the Complainant submits that a company can only act through the actions of its servants and agents. ALH was acting directly through its employee, servant and agent (Bensley) and was "vicariously responsible" for his actions. The Complainant submits that the actions of Mr Bensley are the actions of ALH and the knowledge possessed by Mr Bensley is the knowledge of ALH.
502. The Authority finds, on the basis of the emails from Mr Bensley (in particular his comments on gaming targets, briefing sheets and liquor shouts evident for example from Exhibits E24 to E34, which were copied to Messrs Clarke and Casey) that the relevant actions and activities of Mr Bensley were known to ALH. The Authority also accepts that ALH is vicariously responsible for Mr Bensley's actions conducted in course of his employment as ALH's State Operations Manager.
503. At paragraph 87 the Complainant contends that by placing these two NSW Venues under the control of a QLD State Operations Manager, ALH knew or ought reasonably to have known that the practices and procedures utilised in QLD may be engaged or likely to be engaged in at the NSW venues, including the offering of alcohol as an inducement to play, or to play frequently, approved gaming machines, with no equivalent prohibition for its QLD hotels. The Complainant here relies upon questions 139 and 156 to 157 of the Bensley Interview.
504. The Authority notes that question 139 and 156 to 157 are discussed above. At question 139 it is discussed how providing free liquor was originally suggested and at questions 156 to 157 Bensley provides his understanding that in QLD "it's within the regulation" to serve liquor to gaming machines but that they "don't do it anymore, obviously". Bensley then states that "there is a – a best practice code that's been agreed upon somewhere that it's not best practice to do so".
505. The Authority accepts this contention on the basis of the evidence cited by the Complainant.
506. At paragraph 88 of the Complaint Letter the Complainant contends and the Authority accepts, that by placing the two (NSW) Venues under the control of a QLD State Operations Manager, ALH knew or ought reasonably to have known of the higher risk of non-compliance with NSW legislation, including clause 55 of the 2010 Regulation, by those two Venues.

507. The Authority accepts that by grouping together the Venues under QLD management there was some risk that QLD practices may be deployed at the NSW premises. As established above, ALH was in any event on notice of Mr Bensley's conduct at the NSW Venues, since a range of ALH staff were informed of his conduct through regular emails from Mr Bensley.
508. The Complainant further contends at paragraph 89 that by *not* placing the two NSW Venues under the control of its NSW Compliance Team, ALH knew or ought reasonably to have known of the higher risk of non-compliance with NSW legislation, including clause 55 of the 2010 Regulation, by those two Venues. The Complainant relies upon questions 36 to 38 of the Bensley Interview (discussed above) in support of this contention. The Authority accepts this contention. There was an inherent compliance risk, given the more exacting requirements in NSW with regard to gaming machine inducements, from not placing the two Venues under the control of its NSW Compliance Team.

Particular 2 – ALH failed to take all reasonable steps to prevent the licensee from engaging in conduct of the kind to which the complaint relates

509. The Complainant contends at paragraph 90 of the Complaint Letter that in relation to both Venues **ALH** failed to take reasonable steps through its agent Mr Bensley - or through Mr Stephen Clarke (QLD State Manager) or Mr Dan Casey (QLD Gaming Manager), who were regularly copied in on Mr Bensley's weekly emails. The Complainant reiterates that Messrs Clarke and Casey were more senior than Mr Bensley and were aware, or should have been aware, of what was going on at the Venues, with some forty-seven (47) ALH employees receiving Mr Bensley's emails. In the alternative, ALH was acting directly through its employee, servant and agent Mr Bensley and is "vicariously responsible" for his actions.
510. The Complainant repeats its submission that a company can only act through the actions of its servants and agents and that the actions, omissions and commissions of Mr Bensley are the actions of ALH.
511. The Authority repeats its findings on Ground 4(b) Particular 1 above that the Bensley emails (in particular Exhibits E24 to E34) that were copied to Messrs Clarke and Casey establish that the actions and activities of Mr Bensley would have been known to ALH. This is further supported by Mr Wyeth's evidence at questions 96 and 120 to 122 of the Wyeth Interview (discussed above). The Authority accepts, that ALH is vicariously responsible for the relevant actions of its State Operations Manager Mr Bensley.
512. At paragraph 91 the Complainant contends that ALH appointed licensees to both Venues who had prior experience in QLD but not NSW licensed venues. The Authority notes on the basis of question 22 of the Wyeth Interview and question 27 of the Watts Interview, that both Watts and Wyeth have prior experience working at QLD licensed venues.
513. At paragraph 92, without citing any evidence in support, the Complainant alleges that ALH's reporting structure placed the NSW Venues under the control of a QLD state manager, while at paragraph 93 it is contended, by

reference to questions 36 to 38 of the Bensley Interview, that ALH failed to place the Venues under the “control” of its NSW Compliance Team and NSW compliance was limited to the completion of a “monthly checklist” sent to ALH’s NSW operations.

- 514. The Authority accepts that ALH placed these Venues under the control of a QLD state manager. Although Mr Bensley makes statements at questions 36 to 38 of his interview (discussed above) regarding the process at these Venues in relation to compliance matters, the Authority finds that the conduct established in Ground 1 is sufficient to support the inference that a NSW Compliance Team was not sufficiently overseeing the conduct at these Venues.
- 515. At paragraph 94 of the Complaint Letter it is alleged that ALH failed to have in place any other reporting and compliance mechanisms to detect and correct the non-compliant conduct identified in the Complaint. Moreover, ALH had Mr Bensley *rewarding* staff for such behaviour if it achieved financial goals.
- 516. The Authority accepts that ALH failed to have adequate reporting and compliance mechanisms in place. Moreover, the Bensley emails indicate that Bensley was actually rewarding ALH staff for behaviour that was in breach of clause 55 of the 2010 Regulation.

ALH’s Submissions

- 517. The Authority notes that in the ALH Submission, ALH contend that very soon after the Wilkie allegations, L&GNSW commenced an investigation into the operations of all 53 ALH hotels in NSW. ALH submits that its own response was “immediate and comprehensive”. In early March 2018, the ALH Board engaged Minter Ellison Lawyers who themselves engaged assistance from Mr Jonathan Forbes, a barrister, and Ernst & Young to investigate the allegations and report to it on the outcome of the review. The report had a substantial focus on operation in QLD but ranged across all jurisdictions in which ALH operates. Minter Ellison provided the report to the ALH Board on 27 July 2018. This report made observations about the provision of free liquor at South Tweed and Westtower and those observations were provided to L&GNSW (Minter Ellison Conclusions and Minter Ellison Methodology).
- 518. ALH submit in the ALH Submission, that the investigations about South Tweed and Westtower appear to have arisen out of those observations. In this matter L&GNSW investigatory interviews were conducted between 23 August 2018 and 16 November 2018.
- 519. In mid-March 2018 ALH management, as distinct from the ALH Board, had retained RG+, a division of the Responsible Gaming Council of Canada to conduct an independent assessment of ALH’s RG policies and initiatives (RG+ Report, Executive Summary, page 1). ALH submit that RG+ reported on 8 August 2018 and in general terms endorsed the responsible gaming practice and approach of ALH, found no deficiencies but did suggest improvements (RG+ Report, Final Summary, page 5).
- 520. ALH submit in the ALH Submission, that the press release issued by L&GNSW on 19 June 2019 outlined that there was “insufficient evidence” to establish the

Wilkie allegations or any other disciplinable conduct, other than as alleged in the Complaint (L&GNSW Press Release).

Complainant's Reply

521. In the Complainant Reply, the Complainant contends that the RG+ Report was organised after the matters concerning this Complaint occurred and the Complaint was made public by Mr Wilkie via his statements in Federal Parliament in February 2018. This exposure occurred after the events happened that are the subject of the disciplinary Complaint and therefore, does not deal with the facts, matters and circumstances that the disciplinary Complaint raises.
522. Instead the Complainant contends that it is a report prepared after the event. It cannot be used to ex post facto provide any determination as to facts, matters and circumstances raised in the disciplinary Complaint. The Complainant contends that none of the facts, matters and circumstances as contained in the disciplinary Complaint seem to be raised in this report. The reports and activity by RG+ are happening after such misconduct has occurred and has been publicly exposed and criticised as wrong. In such a situation and atmosphere it is highly unlikely that such reports and activity will provide any information concerning whether or not the conduct the subject of this disciplinary Complaint happened. Rather it is respectfully submitted they are a reactive response to the situation after the event involving damage control. Such reports and activity after the event do not mean the events in question did not happen.
523. The Complainant further contends that the responsible gambling policies and initiatives may be good on paper - however it all depends what are the operations in practice. It is submitted clearly any such policies and initiatives were not operating in practice here - as the Complaint generally shows. In particular there was a clear failure by ALH not to have a NSW specific regulatory regime operating for these two Venues. Rather ALH were content to adopt the less rigorous QLD standards to these NSW Venues.
524. The Complainant then refers to the Minter Ellison Conclusions and contends that this shows a slackness and laxity in the management of these two Venues in Northern NSW - a use of systems migrated across from the less rigorous QLD jurisdiction. It records in the "Sydney area" a more appropriate conduct in relation to inducements operates - which says:
- 2.1 (e)"free drinks are not provided in the gaming room, and the consistent response in respect of free alcohol in gaming areas was to the effect that:
- (i) provision of free drinks would likely be considered an inducement; and
- (ii) if a patron requested a free drink in the gaming room, staff would inform them that they were not allowed to do that;"
525. The Complainant contends that it is disappointing that the ALH practice and procedures for the "Sydney area" was not implemented and thereby did not occur at these two northern NSW venues. This "Sydney area" practice put simply says to ALH staff, "do not provide free drinks in the gaming room

because it is considered an inducement". This simple straightforward practice should have been followed and enforced for these two Venues.

- 526. The Complainant then contends by reference to the Minter Ellison Methodology that Ernst & Young did not appear to play any role at all relevant to this disciplinary Complaint.
- 527. The Complainant contends that the ALH 2015 Gaming Policies & Procedures document was not adhered to (by reference to questions 56 to 58 of the Wyeth Interview). The Complainant contends that this demonstrates that policy and procedure documents and reports have little utility if they are not implemented, enforced and policed by management.
- 528. The Complainant contends that it should also be remembered ALH is a multi-billion dollar business and that there are more than enough resources to ensure that appropriate policies and procedures are put in place and are managed, supervised, monitored, checked and policed to ensure compliance with the procedures and the law.
- 529. The submissions by ALH in relation to Mr Bensley and NSW compliance have been detailed above in Ground 3.

Authority's Conclusions on Ground 4

- 530. The Authority considers that both ALH and Mr Bensley 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 and failed to take all reasonable steps to prevent the licensees from engaging in conduct of that kind.
- 531. By placing these two NSW Venues under the control of a QLD Operations Manager and not a NSW Operations Manager, ALH should have been aware of the risks associated with compliance due to the differing legislative requirements between the two states.
- 532. Mr Bensley, in his role as operation manager was the person pushing staff to reach the targets (set by him) in relation to free liquor. Mr Bensley aggressively implemented the scheme without any diligent inquiry clarifying the operation of the regime with the relevant legislative requirements.
- 533. Further to this, more senior managers were copied into some of Mr Bensley's email correspondence, making it clear that Mr Bensley's conduct was not being hidden from upper management.
- 534. The Authority does not consider the Minter Ellison Conclusions, the Minter Ellison Methodology nor the RG+ Report to diminish the Authority's findings in relation to ALH and Mr Bensley under this Ground.
- 535. The Authority considers that both ALH and Mr Bensley were aware or ought reasonably to have been aware of the provision of free liquor to gaming patrons and failed to take steps to prevent the conduct.
- 536. The Authority accepts, as contended at paragraph 95 of the Complainant Letter, that the focus of the Complaint is that the operators of both Venues

failed to comply with clause 55 of the 2010 Regulation on a “systemic level” and disciplinary action should follow as a result.

537. The Complainant contends at paragraph 96, and the Authority accepts, that the material demonstrates that the clear objective of venue management and the State Operations Manager was to provide alcohol to patrons in the gaming room in order to continue gambling or to return to gamble. There was an express targeting of gaming patrons (or a particularly desirable sub-set of them) with the intention of encouraging them to play more, or to return to play again. The Complainant contends that the Venue’s operators sought to use all the means at their disposal to do so, including those prohibited by legislation in NSW. It is alleged, and the Authority accepts, that the operators were aware of the legislative requirements concerning inducements and attempted to circumvent those requirements by providing free alcohol from the general bar and not the gaming bar, yet the purpose was the same as outlined by Mr Bensley and recorded accordingly as “VIP shouts” on group emails sent out by him and “gaming shouts” on Google Drive spreadsheets across all 17 venues. In support of this contention, the Complainant refers to questions 154 to 151 [the Authority assumes this to be 154 to 161] of the Wyeth Interview, questions 137 to 140 and 144 to 161 of the Bensley Interview, the Bensley Group Emails [the Authority assumes the reference to E22 in the footnote should have been to E23] and the Gaming Shouts Spreadsheet.
538. The Complainant also notes at paragraph 97 of the Complaint Letter, and the Authority accepts, that Mr Bensley’s emails fail to reference in any detail gambling harm minimisation nor any other construct, which seeks to encourage licensees to act ethically or responsibly in this space.
539. The Complainant contends at paragraph 98 of the Complaint Letter, and the Authority accepts, that the responsibility for the offending conduct continues to flow to ALH as the business owner and operator. ALH knew or ought to have known of the contravening conduct through its officers and agents, including Mr Bensley, as well as Stephen Clarke (ALH State Manager for QLD) and Dan Casey (ALH Gaming Manager for QLD), who were regularly copied in on Mr Bensley’s weekly emails. ALH also failed to implement sufficiently robust internal controls to ensure the conduct did not occur, including via its reporting structure and compliance program.
540. The Complainant submits at paragraph 99, 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. The Complainant contends, and the Authority accepts, that the “prolonged and systemic” nature of the conduct in this instance, including a complete failure of controls, by a sophisticated industry-leading operator strikes at the very core of gaming regulation in NSW and greatly intensifies the potential for harm to the community.
541. The Authority is satisfied that Ground 4(a) Particular 1, Ground 4(a) Particular 2, Ground 4(b) Particular 1 and Ground 4(b) Particular 2 are all established.

542. Ground 4 is established. Close associates, Mr Bensley and ALH, knew or ought 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.

PRELIMINARY SUBMISSIONS ON DISCIPLINARY ACTION

Complainant preliminary submissions

543. At paragraph 100 of the Complaint Letter the Complainant requests the opportunity to make further submissions on the question of appropriate disciplinary action should the Authority find that one or more Grounds are established.
544. However, the Complainant expresses a “preliminary view” that appropriate action may include:
- a) A monetary penalty.
 - b) Reduction in the number of gaming machines at the two hotels either via suspension or modification of the hotel’s authorisation to keep approved gaming machines.
 - c) Disqualification of the licensees for a period that the Authority sees fit.
 - d) Disqualification of the close associate, Morgan Bensley, for a period that the Authority sees fit.
 - e) Reprimand the close associate, ALH (ACN 067 391 511).
 - f) Order that the licensees and/or the close associates Mr Bensley and/or ALH to pay any costs of the Secretary as a result of the investigation giving rise to the Complaint.

ALH’s preliminary submissions

545. In the ALH Submission, ALH contend that if any part of Ground 1 or 2 is established, the objective seriousness of the conduct alleged in those Grounds is “at the lower end of gravity”.
546. ALH submits that such conduct does not merit the orders sought by the Complainant and that *reprimands* are the more appropriate orders to make. ALH make the following submissions in mitigation:
- The Complainant does not allege circumstances of aggravation (section 131(5) of the Act) and in the circumstances, the maximum fine that may be imposed on Mr Wyeth and Ms Watts is \$22,000 (\$110 x 200 penalty units) (section 132(2)(a) of the Act).
 - The contraventions occurred as a result of a “single decision” in respect of each Venue and constitute a “single course of conduct” at each.
 - The scale of the inducements provided over time, considered in the objective context in which they occurred, was “modest”.
 - There is “no evidence of the inducement having had any deleterious consequences for any individual” and there is “nothing in the evidence” to suggest the Venues were “otherwise other than well run”.
 - Ms Watts and Messrs Wyeth and Bensley, and thus ALH itself, were “candid and cooperative” with L&GNSW (notwithstanding that each of those individuals was cautioned before being interviewed).
 - The seriousness of the contravening conduct, “while systemic”, is to be assessed as “at the lower end of gravity”.

- All of the above factors suggest that a fine, if otherwise appropriate, be modest - say \$1,000 for each of Mr Wyeth and Mr Watts.
- There are circumstances suggesting that no fine should be imposed – that is, each of Mr Watts and Messrs Wyeth should be reprimanded, and that Mr Bensley be dealt with similarly.
- The Complainant's concerns about each Venue arise from a "common misunderstanding" of a regulation, rather than "conduct in flagrant ignorance or disregard of it".
- The scope and effect of clause 55 has not previously been the subject of published guidance from L&GNSW or decision by the Authority. The text of the provision is open to differing interpretations.
- Although reaching a "wrong conclusion", Ms Watts and Messrs Wyeth and Bensley "did apply their minds to the requirements of and compliance" with clause 55.
- The circumstances regarding the visit of the licensing sergeant (at South Tweed) is some evidence of the "legitimacy" of the view taken about clause 55, notwithstanding that this view was found to be wrong.
- These circumstances, according to ALH, suggest a non-monetary penalty rather than a fine and that ALH should be "reprimanded but not otherwise sanctioned".
- ALH as business owners operate 53 hotels in NSW, all of which were investigated by L&GNSW (which concerned allegations of personal information being used to keep gaming machine players gambling longer). This Complaint concerns but 2 of the ALH venues and does not concern conduct of the type that led to the wider investigation.
- In respect of the 2 Venues, ALH "self-reported" by disclosing the relevant section of the Minter Ellison report (regarding the provision of free liquor).
- ALH's reaction to the Wilkie allegations was one of engagement – retaining Minter Ellison and RG+ to investigate and report on the matters of concern. It was "open and willing to risk, and accept, criticism".
- In the assessment of RG+, ALH was found to be a responsible operator of hotels with regard to Responsible Conduct of Gambling requirements. The RG+ Report makes positive observations on ALH exceeding the statutory minimum requirements for Responsible Conduct of Gambling in that: "ALH offers all players access to pre-commitment tools in all ALH venues, though pre-commitment is only mandated only in the state of Victoria" (pages 3 and 5 of the RG+ Report).

547. ALH contends without supporting evidence that it has implemented the following management measures in response to the RG+ Report:

- Introduce a new version of its Hotel & Gaming Charter,
- Update its Responsible Service of Gaming Policy,
- Introduce an online reporting system for responsible gaming incidents, it allows for real time reporting, to off premises managers for assessment and assistance, and subsequent pattern analysis,
- Require all staff to complete an online privacy refresher training course,
- Enhance its Responsible Gaming Ambassador program,
- Commission RG+ to proceed with and implement the online staff training proposed,
- Enhance promotion of voluntary pre-commitment and self-exclusion programs,
- Develop an "RG screening process" for gaming promotions,
- Prohibit complimentary alcohol in all gaming rooms,

- Prohibit promotions that contain staff incentives directly linked to increases in gaming turnover,
 - Additional steps to ensure that clocks are visible in all gaming rooms,
 - Realign hotel and management portfolios to ensure that hotels are area and staff managed by individuals in the State where they are located.
548. ALH further submit that an “innovative feature” of its online training program are the Advanced Gaming Workshops that are physically attended by its gaming hosts, venue managers and support office staff. These 3-hour workshops help staff better understand their role in promoting “safe and informed” gambling.
549. ALH advise that this online training system is proprietary, developed by RG+ for ALH on an exclusive basis, at a cost in the order of \$250,000.00. This system is now live across Australia.
550. ALH conclude with the submission that in all of these circumstances it would be *inappropriate* for the Authority to now:
- cancel or suspend the hotel licences,
 - cancel, or suspend or the authorisations to keep approved gaming machines in the hotels.
551. ALH concludes that the appropriate disciplinary response against the company is a reprimand. This will sanction the relevant conduct and provide general deterrence, while fostering compliance. Taking this form of action encourages other venue operators to address regulatory issues and concerns candidly and substantively. More punitive orders would “discourage” other operators from dealing with such matters in the manner that ALH has done.
552. On the issue of the Complainant’s investigation costs, ALH contends that an order against Mr Wyeth and/or Ms Watts would likely “crush them financially”. ALH submits that having regard to how the conduct that is the subject of Ground 1 developed, a cost order against them would be unfair. If a costs order is found to be appropriate, ALH undertakes to pay the reasonable costs of the investigation and the Authority’s costs of taking disciplinary action.
553. The Authority accepts that the company has implemented the measures described above.

Complainant’s Reply on Disciplinary Action

554. In the Complainant Reply, the Complainant refers to the Authority’s usual two-step approach to disciplinary complaints and awaits determination of the Grounds of Complaint before making final submissions on disciplinary action.

FINAL SUBMISSIONS ON DISCIPLINARY ACTION

555. On 5 May 2020 the Authority sent a detailed letter (“Findings Letter”) to the Complainant and Respondents, notifying its findings on the Grounds of Complaint and inviting final written submissions confined to the question of what, if any, disciplinary action it should take on the basis of those findings.

Complainant Final Submission

556. On 12 May 2020, the Complainant provided a ten-page submission on the question of disciplinary action and a one-page summary of the Secretary's costs on the investigation giving rise to the Complaint ("Complainant Final Submission"). After outlining how ALH is the largest operator of gaming machines in the NSW hotel industry (owning **53** hotels in the State, keeping **1393** approved gaming machines and an annual gaming revenue across its NSW operations of approximately **\$230 million**), the Complainant submits that any disciplinary action should be meaningful to provide specific deterrence to the Respondents and general deterrence to others in the industry who may engage in similar conduct.
557. The Complainant submits that licensees play an important role under the Act and the role of the close associates was crucial in this matter, in that the licensees were subject to "business and management imperatives" and pressure from ALH and Mr Bensley
558. The Complainant submits that the conduct of the Respondents established in this matter was at the "higher end of the scale" in terms of seriousness and that, pursuant to section 131(5)(b) of the Act, the Authority should find that there are circumstances of aggravation evident from:
- the seriousness of the conduct;
 - the volume and length of the contravening conduct;
 - the number of individuals involved (licensees, close associates and support staff);
 - the understanding among some staff that Police had flagged this conduct as of concern;
 - the motivation behind the conduct being to drive gaming machine revenue;
 - that the hoteliers' conduct was guided by the acts and omissions by the close associates;
 - that the company ALH took no steps to ensure compliance while delegating responsibility for the Venues to a person (Bensley) with no regulatory experience in NSW;
 - the conduct occurred in venues situated within SA2 statistical areas that are designated, for the purposes of the Local Impact Assessment Scheme as among the lowest 20% of areas in New South Wales if ranked in terms of social and economic disadvantage (being Band 3 areas). This means that both Venues are in areas where the population is least able to afford to gamble, making this demographic more vulnerable and susceptible to the misconduct established in this Complaint;
 - there was a failure of responsible conduct of gambling standards and gambling harm minimisation measures at these Venues, in circumstances where increased vigilance and harm minimisation standards should have been practiced.
 - there was a "relentless" pursuit of money and profits which amounted to preying on people who were socially and economically disadvantaged and vulnerable to that conduct.

559. The Complainant submits that these factors should be taken into account and a clear message of deterrence sent to the Respondents, especially in light of the sophistication resources and substantial position of ALH in the New South Wales gaming machines industry.

560. The Complainant proposes that the Authority make the following orders:

- (1) Pursuant to section 131(2)(a)(ii), impose a monetary penalty on Ms Rachel Watts including circumstances of aggravation;
- (2) Pursuant to Section 131(2)(a)(ii), impose a monetary penalty on Mr Andrew Wyeth including circumstances of aggravation;
- (3) Pursuant to Section 131(2)(c)(ii), cancel or suspend the Westower hotelier's licence (LIQH40004928) for a period the Authority thinks fit;
- (4) Pursuant to Section 131(2)(c)(ii), cancel or suspend the South Tweed hotelier's licence (LIQH400123213) for a period the Authority thinks fit;
- (5) Pursuant to Section 131(2)(c)(iv), disqualify Westower (LIQH40004928) from keeping approved gaming machines for a period the Authority thinks fit;
- (6) Pursuant to Section 131(2)(c)(iv), disqualify South Tweed (LIQH400123213) from keeping approved gaming machines for a period the Authority thinks fit;
- (7) Pursuant to Section 131(2)(c)(iii), cancel, suspend or modify Westower (LIQH400104928) authorisations or approval to keep approved gaming machines (30 Gaming Machine Entitlements ("GMEs"));
- (8) Pursuant to Section 131(2)(c)(iii), cancel, suspend or modify South Tweed (LIQH400123213) authorisations or approval to keep approved gaming machines (26 GMEs);
- (9) Pursuant to Section 131(2)(g), disqualify Mr Morgan Bensley from being a close associate of a licensee for a period the Authority thinks fit;
- (10) Pursuant to Section 131(2)(j), reprimand ALH as a close associate of Westower (LIQH400123213) and South Tweed (LIQH400104928);
- (11) Pursuant to Section 131(2)(i)(i), order Ms Rachel Watts and Mr Andrew Wyeth to pay the costs incurred by the Secretary in conducting the investigation, being \$172,692.44.

561. On the imposition of monetary penalties under proposed orders 1 and 2, the Complainant submits that:

- The conduct of Mr Wyeth and Ms Watts was in all the circumstances at the upper end of seriousness.
- As licensees, Mr Wyeth and Ms Watts were responsible for the obligations under the Act and also the *Liquor Act 2007* (NSW) noting that section 91 of the *Liquor Act 2007* (NSW) provides that licensees are "responsible at all times for personal supervision and management of the conduct of the business of the licensed premises under the licence."

These obligations extend into the gaming room of a hotel licensed premises.

- The Authority's findings in relation to the licensees involve serious infractions that are directly contrary to section 3(1)(a) of the Act. It is irresponsible conduct in relation to gambling.
- Circumstances of aggravation existed which should be taken into account when determining a monetary penalty.
- Mr Wyeth was cooperative and gave full and frank admissions. Ms Watts was less forthcoming in her answers, still works for ALH and is the current licensee of Westtower.
- The disciplinary powers under section 131(2)(a)(i) and (ii) of the Act only enable the imposition of a monetary penalty against the hoteliers, and not the close associates.
- ALH is an enormous corporation backed by Woolworths and the Mathieson Group with enormous resources. ALH has chosen to place individual licensees in charge of the Venues rather than have the company hold the licence and installing approved managers, yet the close associates gave their licensees limited autonomy. Nevertheless, Ms Watts and Mr Wyeth stand responsible.
- It is "open" to ALH to take the same approach with respect to any monetary penalty ordered against Mr Wyeth and/or Ms Watts as it has in undertaking to pay any costs ordered in favour of the Secretary, whereby ALH will pay the costs so as not to crush Mr Wyeth and Ms Watts financially.
- The maximum monetary penalty prescribed by section 131(2)(a)(i) and (ii) of the Act for individuals is 200 penalty units (\$22,000) and with circumstances of aggravation it is 400 penalty units (\$44,000). For corporations it is 500 penalty units (\$55,000) and with circumstances of aggravation it is 1000 penalty units (\$110,000).

562. On the cancellation or suspension of the hotel licences under proposed orders 3 and 4, the Complainant submits that the conduct established by this Complaint is "collectively" at the "highest end" of seriousness when assessed against the relevant provisions of the Act and the potential harms to the community from this conduct. The Authority should consider whether each hotel licence should be cancelled, or alternatively suspended, for such period that the Authority deems fit.

563. On the disqualification of Westtower and South Tweed from keeping gaming machines under proposed orders 5 and 6, the Complainant submits that:

- If the Authority does not consider it appropriate to cancel or suspend the hoteliers' licences the Authority should consider disqualifying the hotels from keeping approved gaming machines for such period as the Authority deems fit.
- The operation of gaming machines in NSW is a "privilege" that requires operators to conduct themselves, their staff and those businesses with respect to the various provisions of the legislation and importantly consider the need for harm minimisation in all decisions being exercised

as a function of that privilege. The Respondents had a blatant disregard for those provisions of the Act and accordingly the privilege to operate gaming machines should be suspended or disqualified for a period no less than six (6) months.

- Central Monitoring System (“CMS”) data indicates that when the Venues are fully operational the gaming machines derive revenue of **\$224,028.50** per month and **\$2,928,342.00** per annum for Westtower and **\$166,190.77** per month and **\$1,994,289.27** per annum for South Tweed.
- Disqualification or suspension of gaming machines at both Venues would potentially equate to a collective reduction in revenue of **\$390,219.27** per month once those Venues resume operation.
- These sanctions will apply to the close associate ALH. It is ALH’s conduct that was the main cause of the misconduct, as set out in the Complaint and as found by the Authority.
- ALH knew or should have known of this system operating over a prolonged period of time that was regularly reported upon and circulated within the ALH group.
- It is tolerably clear that the scheme was at the very least condoned, if not positively developed by ALH at a more senior level. Nobody from ALH has disputed this. Mr Clarke (ALH State Manager for QLD) and Mr Casey (ALH Gaming Manager for QLD) gave no evidence disputing this. In all the circumstances ALH’s conduct is a *serious systemic breach* that completely ignores the objects of the Act.
- There was little or no consideration of gambling harm minimisation demonstrated in management of the Venues while this scheme was underway. The scheme was relentlessly pursued over a prolonged period of time that bespeaks “criminal” conduct that involves an enormous, sophisticated hotel group and gaming machine conglomerate involving billion-dollar organisations (Woolworths and the Bruce Mathieson Group). ALH’s conduct was at a very high level of seriousness, calling for commensurate sanctions that provide general and specific deterrence. A clear message needs to be sent that such conduct will not be tolerated and there has to be compliance with the legislation that seeks to protect the more vulnerable people of NSW.

564. On the cancellation or suspension of gaming machine authorisations at the Venues under proposed orders 7 and 8, the Complainant notes that there are **30** gaming machine entitlements linked to the Westtower licence with **26** linked to South Tweed.

565. The Complainant refers to the CMS data (noted above) regarding the level of revenue that may be foregone should the Authority impose this sanction and repeats and relies upon its submissions in support of proposed orders 5 and 6.

566. On the disqualification of Mr Bensley under proposed order 9, the Complainant submits that:

- Mr Bensley had direct responsibility as the State Operations Manager, on behalf of ALH for the operation of these Venues. His failings exposed the licensees and the greater community to significant potential harms. Whilst

the licensees had some control over their hotels, it was Mr Bensley who implemented, monitored, and managed this program of inducements, and he also relentlessly drove the program to ensure improved financial outcomes under the direction of ALH. The corporate structure of ALH did not afford its licensees with any recourse to challenge Mr Bensley, who was their manager and whose decisions were final. The context of his emails indicates that he sought to drive licensees to achieve business development outcomes while also influencing and making decisions that were specific to each Venue, occasionally in consultation with the licensees.

- As a State Operations Manager responsible for two distinct States, Mr Bensley had an obligation to consult with relevant parties to ensure that his actions were compliant in each jurisdiction.
- The Complainant submits that Mr Bensley be disqualified from being a close associate of a licensee for life.

567. On the proposed reprimand of the corporate close associate ALH under proposed order 10, the Complainant submits that:

- Corporate structures where a licensee has legal responsibility but the corporate structure places relevant decision making in the hands of an area, State or corporate manager, places individual licensees in a precarious situation as they attempt to maintain compliance whilst satisfying those who guide, grade and reward their performance as employees.
- ALH placed control of these two Venues in the hands of a QLD State Operations Manager and that this should have immediately flagged concerns relating to ongoing NSW compliance. It is apparent that various State Managers were aware of the conduct established by this Complaint and at no point does it appear that the issue of compliance was raised. On the contrary, Mr Bensley was rewarded for his efforts and celebrated for achieving results above the expectations of those other State Managers.
- It is apparent that ALH sought only to address the matters raised by this Complaint on an *ex post facto* basis. No apparent effort was made to ensure that policies, procedures, and legislation were followed at the Venues, even though ALH had implemented a unique oversight structure that placed these venues under QLD management.
- ALH should be “severely” reprimanded by the Authority.

568. On the request for an order for payment of the Secretary’s costs on the investigation under proposed order 11, the Complainant refers to its breakdown of costs provided with the Complainant Final Submission and seeks costs in the amount of \$172,692.44 against both Ms Watts and Mr Wyeth.

ALH Final Submission

569. On 2 June 2020, in response to a request for clarification of its preliminary submissions on cost orders from the Authority Secretariat, ALH confirms that:

- Any order that Mr Wyeth and/or Ms Watts bear the costs of the L&GNSW investigation and of these proceedings would very likely crush them financially.
- If the Complaint is sustained and an order for costs is in the opinion of the Authority appropriate, ALH undertakes to pay the “reasonable costs” of the investigation and disciplinary action.

570. ALH advise that it has provided this undertaking because:

- It accepts that its internal administrative arrangements had unfairly exposed Ms Watts to risk of an order for costs of the investigation of their conduct, and
- Having regard to the circumstances surrounding that misconduct did not regard Ms Watts as having “gone off the reservation”.

571. On 2 June 2020 ALH provided a 17 pages legal submission on the question of disciplinary action, accompanied by an extract from sections 12 to 14 of the ALH Submission (which made preliminary submissions on disciplinary action in respect of Ground 1) and two letters from Mr Bruce Mathieson (director and Chief Executive Officer of ALH) dated 2 June 2020 providing character references for Mr Bensley and Ms Watts (“ALH Final Submission”).

572. The ALH Final Submission is made on behalf of Ms Watts, Mr Bensley and ALH. ALH repeats and relies upon the statements made at sections 12 to 14 of the ALH Submission. ALH provide the following submissions on its broader responsibility as a hotelier while making the following concessions on how these two NSW Venues came under QLD supervision:

- South Tweed and Westtower were managed as part of ALH’s QLD operations, seemingly through administrative convenience arising from the fact that the next most northerly ALH hotel in NSW is in Coffs Harbour, which is managed from Sydney. Westtower and South Tweed are in easy reach of the Gold Coast and more conveniently located for the company’s Gold Coast based QLD Area Manager.
- Those administrative arrangements once in place were not thought about again but rolled on without ever being re-considered.
- ALH accept that this convenience was imprudent (due to the risk of regulatory divergence between NSW and QLD not being appreciated within QLD management) and unfair to both the relevant licensees and Gold Coast based area managers (depriving them of the benefit of the NSW Management support, expertise and compliance superintendence).
- Ms Watts and Mr Wyeth were placed at the NSW venues directly from positions of employment in QLD.
- It was unrealistic to expect an area manager to continuously, effectively and comprehensively distinguish between the 15 hotels in QLD and the two in NSW.
- The conduct established by Grounds 1 and 2 was found to involve conduct that contravened a proscription in clause 55 of the 2010 Regulation that was not the subject of any corresponding proscription in QLD.

- There is no evidence suggesting that the operation of the "system" in QLD was in any way problematic or offensive to the norms by which QLD hoteliers are expected to conduct their hotels.
- The conduct the subject of this Complaint occurred because of an "unnoticed inappropriate reporting line" that was borne of convenience.
- ALH does not conduct its hotels irresponsibly and this is "amply established by the evidence".
- This Complaint appears to have arisen from ALH's self-reporting the concerns identified by Minter Ellison following their internal review.
- ALH is a responsible owner and operator of hotels in NSW (and QLD) and such was the conclusion of RG+ review of gaming practices in its report to management.

573. On the socio-economic status of the community in which the Westtower and South Tweed hotels are located and the degree of harm established by the Complaint, ALH submit that:

- At the time this conduct occurred, South Tweed was located in a Band 2 area, not a Band 3 area as alleged by the Complainant.
- The scale of complimentary alcohol supplied at the Venues was modest in the context of their operations, while scale of the business at Westtower was about double that at South Tweed.
- It was not the design of the scheme that drinks were supplied to patrons seated at gaming machines or to patrons who were not otherwise seeking a drink. At South Tweed on a daily average, about 8.1 out of 375.1 individual drinks supplied were complimentary while at Westtower a daily average of 15.2 out of 538.9 individual drinks supplied were complimentary.
- Although the Authority concluded that those free drinks were predominantly provided to patrons playing gaming machines, there is no evidence that the free drinks were targeted at "particular individuals" (eg. no individual was getting 6 out of 8 or 12 of 15 drinks).
- The scale of free liquor supplied does not suggest *actual* harm, and the Complainant does not adduce any evidence of *actual* harm or complaints to that effect from any patron during the relevant period from around June 2016 to June 2018.
- Whatever the socio-economic status of the areas in which the taverns were located, the evidence suggest that the risk of harm was at the lower end of the scale, with no actual harm established.
- On the Complainant's submission that there are circumstances of aggravation, ALH submit that the Complainant did not make this allegation in the initial complaint, which is required by section 131(5) of the Act. ALH note the Authority's findings on this issue and submit that no such complaint was made against Mr Wyeth or Ms Watts, and that the Authority may not take action against ALH or Mr Bensley on the basis that there are circumstances of aggravation either.

574. ALH then proceeds to make submissions on disciplinary action in regards to Ms Watts (at pages 11 to 13), Mr Bensley (at pages 13 to 15) and ALH (at pages 15 to 17). Briefly, with respect to Ms Watts, ALH submits:

- The system as implemented by Mr Wyeth and described by him, and by Messrs Absolom and Benson and Ms Hislop when working under him at South Tweed, is not evidence of the conduct of Ms Watts. The only evidence about Ms Watts' conduct in implementing the system is that given by her.
- The Authority accepted Ms Watts' account of how she conducted her venue and that it was in degree materially different from the way in which Mr Wyeth conducted his venues.
- Ms Watts should be dealt with on the basis that (i) she was conscious of her responsibilities as a licensee, (ii) she was conscious of the strictures in clause 55 of the 2010 Regulation, and other proscriptions in NSW law, and (iii) notwithstanding her failure to achieve compliance with clause 55, she conscientiously endeavoured to do so.
- There is an absence of any history of regulatory issues at Ms Watts' venues.
- The Authority should decline the Complainant's invitation to fix the quantum of any monetary penalty to be paid by Ms Watts on the basis of ALH's presumed capacity and willingness to pay a monetary amount.
- To accept the Complainant's invitation to proceed on that basis would be wrong in principle, because the penalty would not reflect Ms Watts' conduct, and be unfair to her because to the extent that any penalty is greater than it otherwise would be it would suggest her conduct was more egregious than it was.
- The Complainant's submission is also an invitation to misuse and abuse of the power to order monetary penalties, because to proceed as invited would be to use the power for a purpose for which it was not conferred and is otherwise not available, to penalise a close associate.

575. On the question of action against Mr Bensley, ALH submits that:

- The Authority has concluded that Mr Bensley introduced into his NSW venues a system that while unproblematic in QLD ought not to have been introduced into NSW.
- In doing so he relied upon the advice of Mr Wyeth and Ms Watts and was prepared to defer to their judgment.
- It has now been found that their judgment was wrong.
- The finding that Mr Bensley ought to have known Mr Wyeth and Ms Watts were engaging in the conduct it entailed and that he failed to take steps to avoid it is inherent in these circumstances.
- The failure was not a consequence of indifference or disregard of the need for compliance.
- The Authority has accepted that Mr Bensley's relentlessness was expressed across all of the business drivers of his NSW (and other) venues.

- The difference between the way in which the system was implemented by Mr Wyeth compared to Ms Watts is also relevant to the way in which Mr Bensley should be dealt with. There is no evidence that Mr Bensley treated Mr Wyeth different from Ms Watts. If for reasons particular to himself Mr Wyeth implemented the system more egregiously than was intended and did Ms Watts, then that failing is Mr Wyeth's rather than Mr Bensley's.
- Mr Bensley acknowledges that he should have thought more about managing the differences between the NSW and QLD regimes.
- The role given to Mr Bensley was inherently unfair.
- Noting that South Tweed and Westtower have been detached from QLD and the system having been discontinued, disqualification from being a close associate is not necessary to avoid any future contraventions. Disqualification would be inappropriate because what occurred was not the consequence of any deliberate disregard of the requirements for the conduct of NSW hotels but rather an inadequate response to those requirements.
- If the proposed disqualification is a response to Mr Wyeth's conclusion (and others) that Mr Bensley "is not a very pretty personality", then Ms Watts managed the situation better and more effectively than Mr Wyeth. "Personality", of Mr Wyeth or Mr Bensley, is not a consideration relevant to the question of disqualification.
- Where a close associate displays a knowledge of NSW requirements, engages with the NSW licensee about the implementation of a system, in a way that is thought would permit its implementation in conformity with the NSW requirements; but that means of implementation is not compliant, the appropriate response is a reprimand of the close associate rather than a disqualification.
- To guard against the return to "inappropriate area management" of South Tweed and Westtower, ALH accepts that a condition be imposed on the licence that "any ALH manager to whom a licence at the venue is immediately responsible hold NSW RCA/ RCG qualifications".

576. Finally, on the question of action against ALH, the company makes the following submissions:

- It is appropriate for ALH to be reprimanded.
- None of the orders proposed by the Complainant under sections 131(2)(c)(ii), (iv) and (iii) of the Act are appropriate.
- The existence of a system established by Grounds 1 and 2 that was not detected by ALH for a period of 2 years is a serious matter.
- However, the Complainant's submission that the hotel licences were exercised in "blatant disregard" of their responsibilities is not true.
- The Complainant's characterisation of the conduct as at "upper end", "higher end", "highest end" or a "very high level" of seriousness is not a fair description of what occurred. That there were attempts (although ineffective) to comply with clause 55 precludes this characterisation.

- The evidence before the Authority does not suggest lack of *consciousness* or sense of importance, within ALH, in respect of the due exercise of its licences, the keeping of gaming machines or the authorisations and approvals to keep gaming machines. ALH refer to paragraphs 4.11 to 4.15 of the ALH Final Submission (which concern a claimed lack of evidence that the operation of the system in QLD was problematic and evidence that establishes that ALH does not generally conduct its hotels irresponsibly, noting the company's self-reporting of the matters giving rise to the Complaint and the conclusions reached by its consultant in the RG+ review and ALH's responses to the matters revealed by this Complaint. ALH concedes that the conduct was "consciously" undertaken but "atypical" of ALH's wider operations and the non-compliance with the legislation was "inadvertent".
- The circumstances of this Complaint do not warrant any of the orders proposed by the Complainant under sections 131(2)(c)(ii), (iii) and (iv) of the Act.

577. ALH does not contest the Complainant's proposed order for costs on the Secretary's costs on the investigation nor does it contest the quantum of costs sought by the Complainant.

578. The Authority notes that no final submission was received from Mr Wyeth.

Professional reference for Mr Bensley

579. In reaching a decision on disciplinary action, the Authority has had regard to a letter from Mr Bruce Mathieson (director and Chief Executive Officer of ALH) providing professional references and submissions on behalf of Mr Bensley and Ms Watts.

580. Mr Mathieson states that he does not know Mr Bensley other than in his capacity as an ALH employee but submits that:

- Mr Bensley's record is one of a "thoroughly loyal and honest employee of ALH" having been employed for 16 years with an otherwise unblemished record in the hotel industry.
- ALH accepts that it made a mistake in appointing Mr Bensley as its Operations Manager for hotels in both South East QLD and for Northern NSW.
- Mr Bensley's work history shows that the vast majority of his time was spent in QLD, dealing with QLD hotels, QLD governments and QLD licensing laws with little if any exposure to NSW liquor laws. While this arrangement made "perfect commercial sense" ALH accepts that its assessment of the situation, without due regard to the "quite different" licensing laws in NSW and QLD, was a "crucial error".
- The Authority should not look at the Complaint in *isolation* but, rather, have regard to Mr Bensley's "outstanding" work in local communities in that as Operation Manager, he took it upon himself to "mentor" the various licensees under his control and insisted that they all establish a "strong personal relationship" with their local communities.

- Mr Bensley implemented programs that helped fund or part-fund the following local initiatives across the hotels under his supervision:
 - 88 indigenous and low-income rural children learnt how to swim by attending swimming lessons for the year;
 - 20 children who could not afford school uniforms were supplied with brand new uniforms for the school year;
 - 32 children attended school excursions who would have otherwise missed out because they could not afford to go;
 - 44 children attended inter-school sport events who would not otherwise have been able to;
 - A “significant group” of children were supplied with basic school equipment pens, books and other stationery;
 - \$1000 of sporting equipment was purchased for a local school;
 - An entire grade 4 attended a school excursion free of charge;
 - An entire school library was air conditioned;
 - A school chaplain was part funded for one year;
 - Resources were provided for children with disabilities – including 12 African djembe drums, 2 Ibanez Guitars and 18 pairs of maracas;
 - Breakfast was provided to disadvantaged primary school students during 2 terms;
 - An excursion for year four and five students was part-funded;
 - A local mum dying of cancer was provided four-star hotel accommodation for three days to have a holiday with the whole family attending Movie World with transfers; and spa retreat for her and her mother for the day;
 - \$3,000 was paid to purchase a defibrillator for a local school;
 - \$4,000 was spent on bus transport to hospital for terminally ill cancer patients;
 - Pat Rafter was arranged as a guest speaker to help raise funds to rebuild and provide furniture for a local school that burned down;
 - An entire set of playground equipment was provided for a local school;
 - An aspiring local female rugby player was supported for an entire season.

581. Mr Mathieson describes these initiatives as the “true legacy” of Mr Bensley, which gives a “much fairer and more accurate measure” of his character.

582. Mr Mathieson asks the Authority to consider ALH’s admission of its “flawed business decision” in placing NSW hotels under Mr Bensley’s control and that ALH has expressed its corporate contrition.

583. Mr Mathieson concludes that he “personally regret[s]” the situation and asks the Authority to exercise any discretion it may have in Mr Bensley’s favour, having regard not only to his otherwise exemplary record in the hotel industry but also to the wonderful work both he and his ALH staff have done within the local communities.

Professional reference for Ms Watts

584. Mr Mathieson states that he does not know Ms Watts other than in her capacity as an ALH employee but makes the following submissions:

- He is informed that Ms Watts grew up on the Far North Coast of NSW and is well acquainted with the local community and is aware of low-income demographic areas.

- While an ALH licensee, Ms Watts has made a conscious effort to minimise the harm caused by gaming and alcohol in the community
- Ms Watts' commitment to the local community is demonstrated by her fund-raising endeavours as an ALH licensee including raising funds for small schools in the area to pay for low income children to have swimming lessons (over \$5000 in two years), raising \$1000 for a local special needs school and raising \$4000 for the local rural fire service.

585. Mr Mathieson concludes with a request that the Authority give due credit for Ms Watts' work in the community and exercise any discretion it may have to minimise the impact of any penalty upon Ms Watts, because she is of a "demonstrably" fine character and "most unlikely" to re-offend.

586. Mr Mathieson submits that ALH considers itself to be a good corporate citizen, it endeavours to implement and to observe best practice principles throughout its group of hotels.

DECISION ON DISCIPLINARY ACTION

587. In deciding whether any disciplinary action is appropriate the Authority has taken into account all of the statutory objects and considerations in section 3 of the Act, which states:

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.

588. The Authority's disciplinary jurisdiction provided by Part 8 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.

589. 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.

590. 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.

591. 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.

592. While there is no evidence of any other wrongdoing on the part of the two licensees, some personal sanction is warranted given that they were directly responsible for the non-compliance.
593. Unlike the broader provisions in the *Liquor Act 2007* (NSW), the gaming machines legislation does not enable the Authority to impose a monetary penalty upon a close associate or business owner, only the hotelier.
594. The difficulty exposed by this case is that the licensees in question had a practical obligation to follow the directions of their Area Manager and in some respects were left by the company in a position of responsibility without power. They always had the option of resigning rather than follow these directions, but that is a difficult choice when their employer is a dominant force in the NSW and QLD hotel industries, with reduced employment opportunities in the North Coast of NSW.
595. The Authority has taken into account that both Mr Wyeth and Ms Watts cooperated with Departmental inspectors during the investigation and that they both are persons of generally good character with no other regulatory contraventions apparent from the Complaint.
596. Mr Wyeth made frank admissions of wrongdoing while Ms Watts (who remains an employee) maintained the company’s narrative that the inducements were a general business development initiative. Mr Wyeth has demonstrated a prompt and convincing acceptance of personal responsibility and disciplinary action against him has been further discounted on that basis.
597. Both licensees were at relevant times working as hotel managers earning modest salaries. The Authority has taken into account the financial impact that fines would have upon them and that their contravention of the legislation was at the direction of ALH senior management. In the unusual circumstances of

this case the Authority has decided to impose a reduced monetary penalty upon Mr Wyeth of \$1000, and a reduced monetary penalty upon Ms Watts of \$2500.

598. The Authority accepts that Mr Bensley was actively involved in community initiatives and has been employed with ALH for 16 years. The Authority accepts that over his 16 years of prior employment with ALH, Mr Bensley has had an unblemished record within the hotel industry.
599. While not holding direct legal responsibility for the Venues, Mr Bensley was a close associate of the licenses and most culpable for the conduct established by this Complaint. He was the primary driver of the provision of free liquor as an inducement to gaming machine patrons and placed the company's employed licensees in an invidious position.
600. It is no excuse that he did not know of these fundamental responsible conduct of gambling requirements of the Act, given the level of his seniority as a State Area Manager. ALH admits to fault for appointing Mr Bensley to a position of responsibility for the Venues, but Mr Bensley nevertheless shares in that responsibility having accepted an executive, regulated role in respect of a jurisdiction with which he was unfamiliar.
601. Regulatory knowledge is a central pillar of fitness to be a close associate of a licensee. Mr Bensley demonstrated considerable zeal with respect to the promotional scheme involving the supply of free liquor to gaming machine patrons and could have avoided any complaint had he devoted a fraction of that energy to gaining familiarity with the NSW regulatory landscape. Mr Bensley's submissions on deferring to the advice of his licensees is unconvincing. While the licensees advised him of what was happening on the ground in their reports, Mr Bensley was pushing them to supply free liquor, in contravention of the legislation, over a prolonged period of time at both Venues.
602. Accepting that Mr Bensley has been removed from any current involvement with NSW hotels and has now become familiar with this part of the NSW regulatory regime, there is a need to protect the NSW industry and provide general deterrence to others in the industry who may be tempted, under the guise of a business development initiative, to maximise gaming machine income through the provision of unlawful inducements. This is conduct that is contrary to the public interest in respect of the harm minimisation object in section 3(1)(a) of the Act and the harm minimisation consideration in sections 3(2) and (3) of the Act.
603. Notwithstanding his apparently unblemished prior record and general good character Mr Bentley's central role in this matter, having regard to the duration and systemic nature of the non-compliance, requires a substantial regulatory response. The Authority is satisfied that Mr Bensley should be disqualified from being a close associate of a licensee in NSW for a period of five (5) years from the date of this decision.
604. With regard to ALH itself, the Authority accepts that Mr Mathieson has expressed regret that it has fallen short of supporting its employees. ALH's

acceptance of responsibility for the appointment of Mr Bensley is noted, but the company has avoided acceptance of the conduct as an unlawful inducement throughout the course of its extensive and technical legal response to the Show Cause Notice. While that is ALH's prerogative as to how it defends a complaint, the company's limited acceptance of responsibility and late expression of contrition has been assessed in that context.

605. The Authority has given more weight to the improved managerial measures that ALH has voluntarily introduced, following an internal inquiry conducted at the company's initiative by external legal counsel and the self-reporting of issues to the Department. These matters have moderated what may have otherwise been a more severe regulatory response.
606. Nevertheless, the contravention of the legislation established by this Complaint amounted to a systemic failure by the company, instigated by a senior manager and conducted over a period of around two years, at Venues situated in lower income areas – a factor which elevates the risk of adverse social impact from the unlawful inducement of gambling through the provision of free liquor. The conduct continued even after local Police had raised concerns with Mr Wyeth, who passed on those concerns to Mr Bensley. There is evidence that other ALH management were aware of what Mr Bensley was doing in NSW.
607. The Authority accepts ALH's submission that it is not open to find circumstances of aggravation when that allegation was not specified in the original Complaint. Nevertheless, the Authority accepts the Complainant submission that this conduct was at the serious end of the spectrum.
608. There is an obvious temptation for commercial licensed businesses that run highly profitable gaming machines to unlawfully induce patrons to gamble more, to maximise that part of their revenue. While the Authority accepts that ALH has only engaged in this conduct at two of its venues, disciplinary action must provide a sufficient economic impost to serve as general deterrence.
609. Having regard to the information provided by the Complainant on the average monthly gaming machine revenue that was recently derived by the two Venues, while noting that gaming machine operations will have been affected by the ongoing Covid-19 public health crisis, the Authority considers that a proportionate, targeted and Venue specific disciplinary action is to suspend the authorisation to keep gaming machines at both Venues for a period of two weeks, commencing on 7 August 2020. This will underscore the seriousness of this matter and send a signal to other business owners in the industry that this type of conduct will have real economic consequences.
610. In another shortcoming with the legislation, 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 appear reasonable on their face and that ALH has undertaken to pay the costs claimed by the Complainant, the Authority is satisfied that the licensees Mr Wyeth and Ms Watts should be ordered to pay the Secretary's costs on the investigation in the amount sought. This order is made on the proviso that ALH has undertaken to pay those costs.

ORDERS

611. The Authority makes the following orders:

- **Impose** a monetary penalty of **\$1,000** on the hotelier Mr Wyeth, pursuant to section 131(2)(a)(i) of the Act to be paid to the Secretary of the Department of Customer Service within 28 days from the date of this decision.
- **Impose** a monetary penalty of **\$2,500** on the hotelier Ms Watts, pursuant to section 131(2)(a)(i) of the Act to be paid to the Secretary of the Department of Customer Service within 28 days from the date of this decision.
- **Suspend** Westtower's (LIQH400104928) authorisation or approval to keep approved gaming machines (30 Gaming Machine Entitlements) for a period of **two weeks from 7 August 2020**, pursuant to section 131(2)(c)(iii) of the Act.
- **Suspend** South Tweed's (LIQH400123213) authorisation or approval to keep approved gaming machines (26 Gaming Machine Entitlements) for a period of **two weeks from 7 August 2020**, pursuant to section 131(2)(c)(iii) of the Act.
- **Disqualify** Mr Bensley from being a close associate for a period of 5 years, pursuant to section 131(2)(g) of the Act from the date of this decision.
- **Order** the licensees Ms Watts and Mr Wyeth to pay the amount of **\$172,692.44**, being the costs incurred by the Secretary of the Department of Customer Service in carrying out the investigation, pursuant to section 131(2)(i)(i) of the Act. This order is made on the proviso that ALH has undertaken to pay these costs. Costs shall be paid to the Secretary within 28 days from the date of this decision.
- **Issue** ALH with a reprimand as a close associate of Westtower (LIQH400123213) and the South Tweed (LIQH400104928), pursuant to section 131(2)(j) of the Act.

REVIEW RIGHTS

612. 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.

613. 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



Philip Crawford

Chairperson

For and on behalf of the Independent Liquor and Gaming Authority

Schedule A
Complaint Material

Exhibit No.	Exhibit document
Licensing data and staff roles	
E01.	Liquor Licence – Westtower Tavern – 25.03.19
E02.	OneGov Licensing system – Westtower Tavern – Licensees – Historical – 14.03.2019
E03.	Liquor Licence – South Tweed Tavern – 25.03.19
E04.	OneGov licensing system – South Tweed Tavern – Licensees – Historical – 14.03.2019
E05.	Table of staff and roles – Westtower and South Tweed Taverns – ‘Dramatis Personae’
Records of Interview (ROI) - Transcripts	
E06.	Morgan Bensley – 24.08.2018
E07.	Andrew Wyeth – 31.10.2018
E08.	Rachel Watts – 23.08.2018
E09.	Brad Crouch – 23.08.2018
E10.	Grant Wheeler – 16.11.2018
E11.	Mark Absolom – 09.10.2018
E12.	Jordan Hislop – 24.08.2018
E13.	Danial Benson – 9.10.2018
Gaming Data	
E14.	Three Gaming Daily Briefing Sheets – Westtower Tavern (29.5.18, 2.6.18, 4.6.18)
E15.	Gaming Daily Briefing Sheets – South Tweed Tavern (December 2017 – June 2018) (7 files) <i>*(April 2018 not available)</i>
E16.	Gaming Shouts Spreadsheet 2017/2018 Financial Year
E17.	Point of Sale (POS) data for Manager’s Shouts (November 2017 – June 2018) – Westtower Tavern and South Tweed Tavern provided by ALH dated 20 November 2018 *Note this exhibit includes original figures provided by ALH on 20 August 2018, which were subsequently updated following additional explanation from ALH on 20 November 2018. The latest figures provided on 20 November 2018 are the figures the Complainant has relied upon, in accordance with ALH advice (also included in email dated 20 November 2018 within exhibit 17).
Miscellaneous	
E18.	Hughes & Vale Pty Ltd v NSW (No 2) (1955) 93 CLR 127

Exhibit No.	Exhibit document
E19.	'Summary of Investigations and Conclusions' - Minter Ellison 6 July 2018
E20.	'Summary of investigation methodology' - Jonathan Forbes/Minter Ellison 27 July 2018
E21.	Excerpts from Commonwealth House of Representatives Official Hansard for 6 February 2018 (421), 7 February 2018 (545) and 28 February 2018 (2353)
E22.	Articles published in the Sydney Morning Herald: <i>'Do whatever you have to: Woolworths staff rewarded for spying on pokie players'</i> (27/2/18); <i>'Clear breach – watchdogs to probe Woolworths' pokies pubs'</i> (28/2/18) and <i>'Woolworths chairman vows to fix pokies scandal'</i> (1/3/18)
Emails	
E23.	<p>All Morgan Bensley Group Emails (January 2017 - July 2018) (38 files)</p> <ul style="list-style-type: none"> - 2017 (32 files) - 2018 (6 files) <p>These emails are numerous and not all of them were provided by the Complainant or requested by the Authority. Specific emails extracted in the Complaint are given specific exhibit numbers below.</p>
E24.	Email - Bensley to Group - 3 March 2017
E25.	Email - Bensley to Group - 4 July 2017
E26.	Email - Bensley to Group - 6 July 2017
E27.	Email - Bensley to Group - 14 July 2017
E28.	Email - Bensley to Group - 17 July 2017 (2 files)
E29.	Email - Bensley to Group - 19 July 2017
E30.	Email - Bensley to Group - 22 July 2017
E31.	Email - Bensley to Group - 27 July 2017
E32.	Email - Bensley to Group - 28 July 2017
E33.	Email - Bensley to Group - 31 July 2017
E34.	Email - Bensley to Group - 4 September 2017
E35.	Email - Bensley to Group - 11 September 2017
E36.	Email - Bensley to Group - 20 November 2017 (2 files)
E37.	Email - Bensley to Group - 27 November 2017
E38.	Email - Bensley to Group - Week 45 (About 7 May 2018) (2 files)
E39.	Email - Watts to Bensley - disputed 200 dollar invoice - 27 January 2017
E40.	Email - Watts to Bensley - gaming room air-conditioning approval - 14 June 2017
E41.	Email - Watts to Bensley - menu approval - 10 August 2017

Exhibit. No.	Exhibit document
E42.	Email - Bensley to Watts - Missing Gaming Sheets - Westtower - 15 December 2017
E43.	Email - Watts to Bensley - ALH Policy for area manager to approve apprentice hires - 15 December 2017
E44.	Email - NSW Operations requesting completion of ALH compliance checklist - Jan 2017
E45.	Email - NSW Operations requesting completion of ALH compliance checklist - Apr 2017
E46.	Email – Bensley to Group – 27 January 2017
E47.	Email – Bensley to Group – 30 January 2017