



Superintendent Bob Noble
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(ATTN: Sen Constable Michelle Grinter)
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Boon Wade Tantayakorn
Licensee and Business Owner
Bahn Thai Restaurant
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Mr Eddie Niwat Tantayakorn
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Mr Robert Rorrison
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By email and Express Post

Dear Sir/Madam

**Decision on Grounds of Complaint under Part 9 of the *Liquor Act 2007*
Bahn Thai Restaurant, Wagga Wagga**

INTRODUCTION

1. On 15 July 2015, the Independent Liquor and Gaming Authority (Authority) received a disciplinary complaint dated 7 July 2015 (Complaint) under Part 9 of the *Liquor Act 2007* (Act) made and signed by Superintendent Bob Noble (Complainant) of the Wagga Wagga Local Area Command (LAC) of NSW Police (Police) in his capacity as a delegate of the NSW Commissioner of Police.
2. The Complaint is made in relation to the licensed premises trading as "Bahn Thai Restaurant", located within the Club Motel Wagga complex at 73 Morgan Street, Wagga Wagga (Premises).
3. An on-premises (restaurant) liquor licence number LIQO624003978 attaches to the Premises. The *OneGov* licence record for the Premises as at 4 August 2015 states that the licensed trading hours for the Premises are between 5:00am and 12:00 midnight Monday to Saturday and between 10:00am and 10:00pm on Sunday.
4. The licence record also identifies Boon Wade Tantayakorn as being the licensee (Licensee) of the Premises since 6 November 1992. It identifies the business owner as both Boon Wade Tantayakorn and Eddie Niwat Tantayakorn (Business Owners).
5. A record from the AViiON database maintained by the former Liquor Administration Board discloses that, as of the transition from the former *Liquor Act 1982* to the *Liquor*

Act 2007 on 1 July 2008, the owner of the freehold upon which the Premises is located was recorded as Professional and Industrial Alliance Limited.

6. An address and title search performed by the Authority with Land and Property Information NSW dated 14 August 2015 indicates that there are two folio numbers associated with the street address of 73 Morgan Street, Wagga Wagga, being 1/232499 and 2/396495. The registered proprietor for both of those folios is a company, Interlaken Investments Pty Limited (Premises Owner).

GROUND OF COMPLAINT

7. The Complainant requests the Authority to take disciplinary action in relation to the Premises under Part 9 of the Act.

8. There are two (2) Grounds of Complaint specified in the Complaint Letter that are available under sections 139(3)(s) and 139(3)(t) of the Act.

9. Ground 1 is based on section 139(3)(s) of the Act, which states that:

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

...

(s) *that the licence has not been exercised in the public interest.*

10. Ground 2 is based on section 139(3)(t) of the Act, which states that:

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

...

(t) *that the continuation of the licence is not in the public interest.*

THE COMPLAINT MATERIAL

11. Cover Letter from Detective Inspector Kelly Kortlepel, Commander of the Drug and Alcohol Command of NSW Police to the Authority and the (then) Office of Liquor, Gaming and Racing (now Liquor and Gaming NSW) dated 7 July 2015. This cover letter was sent to the Authority and the Office of Liquor, Gaming and Racing (OLGR) and states that NSW Police strongly support the submission. Attached to this cover letter is the submission from the Complainant seeking the revocation of liquor licence number LIQO624003978. Commander Kortlepel submits that the Complaint contains "evidence of instances that support the revocation of the licence and demonstrates that the licence is not exercised in the public interest".
12. Letter from Senior Constable Michelle Grinter of the Licensing Unit of Wagga Wagga LAC dated 11 May 2015. Senior Constable Grinter advises that "overt audits" were conducted on the Premises in 2009 and 2014 which resulted in an investigation being commenced into the supervision of the Premises by the Licensee. Senior Constable Grinter states that enquiries were made into the Licensee's location, whether the Licensee held a current Responsible Service of Alcohol (RSA) Certificate and the level of supervision the Licensee exercised over the Premises. Senior Constable Grinter advises that at the completion of the investigation, Police "had not been able to identify or locate" the Licensee and that evidence obtained "raised doubts as to the gender of the Licensee and whether that person is still in Australia".
13. Letter from Sergeant NJ Turney, Licensing Supervisor of Wagga Wagga LAC dated 12 May 2015. Sergeant Turney states that the information in the Complaint has been

reviewed prior to being signed by the Wagga Wagga Local Area Commander and that the Premises is "not being supervised and/or controlled" in accordance with the Act. Sergeant Turney supports the revocation of the licence and contends that "the whereabouts of the Licensee are not known"; "that the staff at the Premises have not been supervised or received any instruction or training from the Licensee" and that the Licensee has not been seen in the Premises for a "considerable amount of time".

14. The Complaint Letter is countersigned by the Wagga Wagga Crime Manager on 12 May 2015, the regional Licensing Coordinator of the Southern Region of the Alcohol Licensing and Enforcement Command (ALEC) on 25 May 2015 and the Commander of ALEC at Parramatta Police Headquarters on 27 May 2015.
15. Complaint Letter signed by Superintendent Bob Noble of Wagga Wagga LAC dated 2 July 2015 specifying the two Grounds of Complaint agitated under Part 9 of the Act.
16. The Complaint states that an *on-premises* liquor licence attaches to the Premises and that it has standard trading hours. The licence is subject to two permanent special conditions, being a restriction on seating capacity to 86 persons and a requirement that a sign be permanently affixed to the servery bar that reads "This bar for waiter service only".
17. The Complaint states that the Premises Owner is a corporation, Professional and Industrial Alliance Limited and the Business Owners of the restaurant operating on the Premises are the Licensee, who was appointed to the role on 6 November 1992, and Eddie Niwat Tantayakorn.
18. The Complainant contends that the Premises is located in an area affected by alcohol related crime and anti-social behaviour and this is a result of the number of licensed premises within the area.
19. Ground 1 alleges that "over a considerable period of time" the liquor licence for the Premises has not been exercised in the public interest due to the "inability of Police to locate the Licensee and the total lack of regard for the liquor laws". Police submit that the "community expects a licensee to abide by the liquor laws, the conditions of the liquor licence and the conditions of local government development consent". Police contend that there was a lack of cooperation with Police throughout the investigation and that both the Licensee and the Business Owner have "little regard to adhering with liquor regulations".
20. Ground 2 alleges that the continuation of the licence is not in the public interest and the licence should therefore be revoked. This is based upon what the Complainant describes as evidence that the Licensee is "not a fit and proper person to operate a liquor licence or remain active within the liquor industry".
21. The Complainant contends that Police have made "numerous attempts" to locate and contact the Licensee but have been unsuccessful in doing so. As a result of these enquiries, Police have "strong doubts" as to whether the Licensee is still residing in Australia.
22. The Complainant advises that Police enquiries have revealed no record of the Licensee holding a current Australian driver's licence; being enrolled on the New South Wales electoral roll; holding an Australian Passport; owning property in Queensland; or being recorded on the Department of Immigration and Border Protection database.

23. The Complainant advises that Police have not been able to confirm whether or not the Licensee holds a current RSA Certificate. The Complainant submits that the records held by OLGR are "limited and don't assist" as the most recent document is dated 1995 and "there is no copy of the original liquor application or identification documents" for the Licensee.
24. On the basis of the evidence contained in the Complaint, Police contend that the Licensee is not supervising the Premises as required by the Act.
25. Police contend that:
 - a) the Licensee is not attending the Premises "at least once in a 6 week period"
 - b) certain members of staff thought Mr Ciganek (the manager of the Premises) was the Licensee
 - c) Mr Ciganek thought the Licensee was male
 - d) OLGR records indicate that the Licensee is a female
 - e) the manager, Mr Ciganek identified himself as part owner of the business and thought the licensee was Mr Eddie Tantayakorn.
26. Police contend that the Business Owner, Mr Tantayakorn and manager, Mr Ciganek were not cooperative with the investigation and this also raises concerns as to whether the Premises is being operated in accordance with the Act.
27. In addition to the contended "lack of supervision" and "disregard" for the liquor legislation, Police contend that the contraventions of licensing legislation identified by Police with respect to the licensed business during a covert audit conducted on 17 December 2009 had not been rectified and were once again identified by Police during a further audit conducted on 9 April 2014.
28. Police contend that after making enquiries with another company associated with the property (Professional and Industrial Alliance Limited) and a director of Interlaken Investments Pty Limited, the Licensee has apparently failed to notify OLGR that the Premises was sold to the current Premises Owner, Interlaken Investments Pty Limited during 2003.
29. The Complainant recommends that:
 - a) The Authority declare, pursuant to section 139(3)(s) of the Act, that the licence has not been exercised in the public interest.
 - b) The Authority declare, pursuant to section 139(3)(t) of the Act, that the continuation of the licence is not in the public interest.
 - c) The liquor licence be revoked.
30. The two Grounds of Complaint specified are supported by several annexures numbered 1.1.1 to 2.5. Following is a brief description of each annexure to the Complaint Letter:
31. **Annexure 1.1.1 to the Complaint** – liquor licence record for the Premises as at 16 March 2015 provided by the Complainant. This document discloses that the Bahn Thai Restaurant has an *on-premises* licence effective as of 6 November 1992; that Boon Wade Tantayakorn is the Licensee as of 6 November 1992; that the Premises is located within the Club Motel Wagga complex at 73 Morgan Street, Wagga Wagga; that the business owner is Boon Wade Tantayakorn; and that as of 6 June 1994, the owner of the Premises is Professional and Industrial Alliance Limited, whose registered place of business address is 30 Blake Street, Wagga Wagga.

32. **Annexure 1.1.2 to the Complaint** – OLGR records relating to the Premises. This document is 19 pages long and contains the following documents:
- a) Inspection Request No. 21700 requested by "CT" on 13 November 1996.
 - b) Letter from Mr Jason Barrett of Lowry & Howick Property Consultants to the Liquor Administration Board (LAB) dated 19 April 1995. In this document, Mr Barrett states that the Premises was purchased by Professional and Industrial Alliance Limited on 6 June 1994 and the postal address of that company is c/- Lowry & Howick Real Estate, 57 Baylis Street, Wagga Wagga.
 - c) Letter from Mr Greg Howick of Lowry & Howick Property Consultants to the LAB dated 7 March 1995. In this document, Mr Howick refers to correspondence from the LAB dated 21 February 1995 advising of the non-payment of a late payment penalty in relation to the Premises. Mr Howick informs the LAB that Lowry & Howick Property Consultants is the managing agent for the property which is "now held by Professional and Industrial Alliance Limited" and requests that the LAB alter all records to indicate this. Mr Howick also indicates that the owners of the property are "concerned that the licence will be removed" if non-payment of this penalty notice continues and requests advice as to what rights the owners of the Premises have in ensuring the licence is not removed.
 - d) Letter from Mr J B Kelly, Secretary of the LAB to Mr Greg Howick of Lowry & Howick Property Consultants dated 6 April 1995. In this letter, the Secretary of the LAB requests, for the purpose of updating the LAB's records, that details of the address and mailing address of the purchasers of the Premises and the effective date of purchase be sent to the LAB.
 - e) LAB miscellaneous enquiry as at 6 April 1995. This document outlines the licence details for the Premises and states that the Licensee is Boon Wade Tantayakorn as of 6 November 1992, whose address is 4 Grandview Avenue, Wagga Wagga. It also states that the Licensee was born in Bangkok, Thailand on 1 August 1954 and that the (then) owner of the Premises, as of 6 November 1992, was Renvello Pty Limited.
 - f) Letter from the LAB to the Licensee dated 7 April 1995. In this letter, the LAB advises the Licensee that the Licensee's application for remission of penalty was placed before the LAB on 6 April 1995 and was granted.
 - g) Application to the LAB for Remission of Penalty Liquor Instalment prepared on 25 March 1995. This document indicates that the Licensee has had one previous late payment penalty. The writer contends that the current late payment was due to the employee being "out of town" until 17 January 1995.
 - h) Letter to the LAB from Mr Ronny CK Ng dated 14 February 1995. Mr Ng contends that the late payment occurred as a result of Mr Ng being out of town at the time that his employer, Eddie Tantayakorn, had left a note in the restaurant advising Mr Ng to make the payment by 15 January 1995. Mr Ng contends that he did not get back until 17 January 1995 and paid the instalment straight away which was two days late, incurring a penalty of \$250.17. Mr Ng contends that as a "worker", he cannot afford to pay that sum of money.
 - i) Late Liquor Fee Penalty Invoice dated 18 January 1995 issued by the LAB to the Licensee, indicating that the total amount of the penalty is \$250.17, due and payable on or before 17 February 1995.
 - j) Letter to the Licensee from the LAB dated 28 February 1994. This letter informs the Licensee that the licence fees for the Premises have been varied and provides the procedures available if the Licensee elects to dispute the reassessment.
 - k) Application for Review of a First Liquor Assessment – Application No. 115713.
 - l) Application to the LAB for Remission of Penalty by Mr Eddie Tantayakorn prepared on 7 July 1993. Mr Tantayakorn contends that the late payment was due to an oversight as a result of being preoccupied with the Immigration Department in an

attempt to bring his children to Australia from Thailand. Mr Tantayakorn requests that the penalty be remitted as it was a first offence.

- m) Letter from Mr Eddie Tantayakorn to the LAB dated 16 June 1993. Mr Tantayakorn informs the LAB that the notice of penalty has been received and contends that both he and his wife "run both restaurants in Albury and Wagga Wagga" and have overlooked the notices as there has been a "family problem". Mr Tantayakorn contends that he and his wife have been trying to bring their children over from Thailand and have not been putting their full attention and energy into the business. Mr Tantayakorn informs the Board that this fee has been paid on 8 June 1993 and requests that the penalty be avoided.
 - n) Issue of Licence Number from Court. This document states, *inter alia*, that the Licensee of the Premises is Boon Wade Tantayakorn; that the owners of the business and the licence are the Licensee and Eddie Niwat Tantayakorn; and that Renvello Pty Limited is the owner of the freehold in the Premises. The licence for the Premises also contains special conditions such that the reception area can seat 12 persons (5 at the bar stools, 3 on the 3 seater lounge and 4 at the built-in sofa); that the total seating capacity is 86 persons; and that a sign must be permanently affixed to the servery bar reading "This bar for waiter service only".
 - o) LAB Miscellaneous Enquiry as at 6 November 1992. This document outlines licence details and notes that the licensee of the Premises, as of 6 November 1992, is Boon Wade Tantayakorn, whose address is 4 Grandview Avenue, Wagga Wagga. It states that the Licensee was born in Bangkok, Thailand on 1 August 1954; that the business owners and licence holders are the Licensee and Eddie Niwat Tantayakorn; that the owner of the Premises is Renvello Pty Limited; and that the conditions on the licence are that the reception area can seat 12 persons (five at the bar stools, three on the 3-seater lounge and four at the built-in sofa); that the total seating capacity is 86 persons; and that a sign must be permanently affixed to the servery bar reading "This bar for waiter service only".
 - p) Record showing details of the application for a new liquor licence made by the Licensee on 10 April 1992. This document provides the details of this application and notes that Police and the (then) Director of Liquor and Gaming objected; however the application was granted on 6 November 1992.
33. **Annexure 1.4.1 to the Complaint** – NSW Police Computerised Operational Policing System (COPS) Report number E28861318 – 25 November 2006 detailing a covert audit conducted by NSW Licensing Police. Police contend that they were able to purchase two bottles of *Hahn Light* beer without being required to partake in a meal. Police also allege that the Licensee was not present and Police spoke to the manager, Mr Bob Ciganek. An infringement notice was issued to the Licensee.
34. **Annexure 1.4.2 to the Complaint** – COPS Report number E39690349 – 17 December 2009 detailing a covert audit conducted by NSW Licensing Police. Police contend that the Licensee was not present and Police issued warnings and instructed the manager, Mr Ciganek to rectify these offences. The following offences were detected:
- a) *Breach condition of licence (No RSA Register)*: Police requested that the RSA Register be produced and this was not complied with, in that there was no Register. Police contend that the manager searched through various diaries and other book work in an attempt to locate the RSA Certificates. Police noted that the certificates were scattered throughout a number of books, they were folded in half and were not easily accessible.
 - b) *Breach condition of licence (Not Maintain RSA Register)*: Police requested that the RSA Certificate for the Licensee be produced and contend that the certificate was not able to be produced.

- c) *Breach condition of licence (Not Maintain RSA Register)*: Police requested that the RSA Certificate for the manager, Mr Ciganek who was on duty and involved in the sale and/or supply of alcohol, be produced. Police contend that the RSA Certificate was not able to be produced.
 - d) *Licensee fail to display notice (sale of/supply of/obtain alcohol for a person under 18)*: Police contend that the notice displayed at the bar was the notice required by the *Liquor Act 1982*. Police note that the notice under the *Liquor Act 2007* should have been in place from 1 July 2008. Police further submit that the old notice displayed was obscured by bottles and other items.
35. **Annexure 1.4.3 to the Complaint** – COPS Report number E56935883 – 9 April 2014 detailing a covert audit conducted by NSW Licensing Police. Police submit that the Licensee was not present, so instructions were given to the manager, Mr Ciganek to rectify the following breaches and have the Licensee contact Police at 2:00pm on 10 April 2014. Police note that action is still pending as the Licensee is not able to be located or contacted. Police contend that compliance at the Premises does not seem to have improved since the audit conducted by Police in 2009. The following offences were recorded to have been detected on this occasion:
- a) *Breach condition of licence (No RSA register)*: Police requested that the RSA Register be produced as some staff still held paper certificates, but this was unable to be produced. Police state that the manager, Mr Ciganek searched through papers and other book work in a non-operating chest freezer behind the bar in an attempt to locate the RSA Certificates. Police contend that the certificates were scattered throughout the papers and not readily accessible and that some of the RSA Certificates were of an interim nature and had expired.
 - b) *Breach condition of licence (Not maintain RSA register)*: Police requested that the RSA Certificate for the Licensee be produced. Police contend that the RSA Certificate was not able to be produced.
 - c) *Breach condition of licence (Not maintain RSA register)*: Police state that staff member Kanjana Prasit was on duty and involved in the sale and supply of alcohol. Police requested that her RSA Certificate be produced and contend that the RSA Certificate was not able to be produced.
 - d) *Breach condition of licence (general licence condition)*: Police note a condition on the liquor licence that requires a sign on the servery bar to be permanently affixed reading "This bar for waiter service only". Police note that this condition was approved on 12 October 1992 and contend that there was no sign on or near the servery bar.
 - e) *Licensee fail to display notice (sale of/supply of/obtain alcohol for a person under 18)*: Police contend that the notice displayed at the front door was located on the glass panel to the left of the door and was obscured by a column.
 - f) *Licensee not display sign with prescribed particulars (name of premises sign)*: Police contend that the sign contained the required information, however it was so small that it was difficult to read.
36. **Annexure 2 to the Complaint** – Licensed Premises Evidence Matrix prepared by NSW Police. This 5-page document contains a list of the COPS Reports used as evidence in support of this Complaint. It contains a summary of the incidents, the date and time of the events and the corresponding COPS Report reference numbers.
37. **Annexure 2.1 to the Complaint** – COPS Report number C55505739. This COPS Report contains the following details:

- a) On 16 April 2014 Police attended the Premises to follow up on the overt audit conducted on 9 April 2014 as no contact had been made by Mr Tantayakorn and no RSA Certificate had been produced for the Licensee.
- b) Police state that the Licensee was not present and the manager, Mr Ciganek was spoken with. Police suspect that the Licensee does not hold a current RSA Certificate. For this reason, Mr Ciganek was instructed to stop alcohol sales at the Premises until Police can establish whether the Licensee holds a current RSA Certificate and not to recommence liquor sales until advised by Police. When asked about the supervision of the Premises by the Licensee, Mr Ciganek stated that the Licensee goes for two to three weeks at a time as he has a restaurant in Queensland and lives in Queensland. He was apparently in Thailand at the present time. Police requested a phone number for Mr Tantayakorn and Mr Ciganek claimed he did not have it and would ring Police back.
- c) Police state that checks were performed through the *iASK* system in an effort to locate the Licensee. These enquiries included searches of the NSW Electoral Roll, Department of Immigration and Border Protection, Australian Passports database and Queensland Property enquiry. Police submit that all enquiries came back with no records relating to the Licensee.
- d) On 3 May 2014 Police attended the Premises to follow up on the overt audit conducted on 9 April 2014. Police state that the Licensee was not present and the manager, Mr Ciganek was spoken with. On their previous visits Police requested Mr Ciganek have the Licensee contact Police with regard to his RSA Certificate and other breaches detected. Mr Ciganek had also been meant to supply Police with a contact number for the Licensee, which he had not done.
- e) Police state that the Licensee has not made contact with the Police, nor has any message been left by him or an RSA Certificate produced. Police are unable to establish whether the Licensee is the holder of a current RSA Certificate, but Police submit that they suspect that he is not.
- f) Police submit that Mr Ciganek advised that alcohol has not been sold since the direction was given by Police. BYO notices were displayed at the entrance to the restaurant and a message that alcohol was not being sold at present. The bar and bar area was photographed as there was no notice relating to that licence condition. Police state that Mr Ciganek also mentioned to Police that he is a part owner in the business.
- g) On 4 May 2014 Police state that Mr Ciganek contacted Police to supply them with a mobile number for Mr Tantayakorn. Police state that they called the number and left a message, to contact Senior Constable Steel.
- h) On 9 May 2014 Police state that they called Mr Tantayakorn. Police mentioned that they had tried to make contact and had left a message with Mr Ciganek for Mr Tantayakorn to contact Police. In response to making no contact, Police state that Mr Tantayakorn claimed that Mr Ciganek had not supplied him with a phone number. In response to being asked to supply a copy of his RSA Certificate, Police state that Mr Tantayakorn informed Police that he did not have one as it had expired. Police requested that he supply them with a copy of this expired RSA Certificate. Police allege that Mr Tantayakorn also stated that he was not sure when he would be in Wagga Wagga next as he is moving to Queensland and enquired about transferring the liquor licence to Mr Ciganek.
- i) On 18 June 2014 Police state that they called Mr Tantayakorn and no person answered but a message was left.
- j) On 18 June 2014 Police state that they called the Premises and no person answered but a message was left.

- k) On 29 July 2014 Police state that COPS Reports, RTA and national names checks were conducted on the Licensee and "Ed Tann" in an effort to verify whether or not they are the same person.
- l) On 29 July 2014 Police state that they telephoned Mr Tantayakorn. Police state that neither Mr Tantayakorn nor Mr Ciganek had contacted Police about transferring the liquor licence for the Premises as discussed in May 2014. Police state that Mr Tantayakorn claimed that he was not the licensee and wanted to know the name on the liquor licence. Police state that they read and spelt out the name on the liquor licence (Boon Wade Tantayakorn) to Mr Tantayakorn, who claimed that this person was his ex-wife and that he had had "nothing to do with her for 15 years".
- m) Police requested he spell his name and state his date of birth, to which he replied "Ed Tann", date of birth 5 February 1952. Police requested the date of birth of his ex-wife, to which he replied 1 August 1954. Police submit that Mr Tantayakorn stated that he had not refuted being the licensee during the previous telephone conversation as he was "confused".
- n) On the issue of why Police had not been contacted about transferring the liquor licence as per the conversation in May, Police say Mr Tantayakorn replied that he had passed the message on to Mr Ciganek who stated that he was going to contact his solicitor to handle the matter. When asked whether he was financially involved in the Bahn Thai restaurant at Wagga Wagga, or whether he was a director in the company, Police state that Mr Tantayakorn replied in the negative.
- o) On 29 July 2014 Police contacted OLGR in relation to identification documents on file lodged with the liquor application for the Premises. There are no identification documents on file or any numbers relating to identity documents. There is nothing to indicate the sex of the Licensee or who the premises owner is. The following information was supplied – that the Licensee's date of birth is 1 August 1954 and that the business owner is Eddie Niwat Tantayakorn, whose date of birth is 5 February 1952.
- p) On 28 August 2014 Police attended 4 Grandview Avenue, Turvey Park to ascertain the whereabouts of the Licensee. No one was home and a business card was left requesting Police be contacted. Police note that the mail in the letter box was addressed to a Mr S Murphy and Ms M Southwell. Police also attended neighbouring houses at 2 and 6 Grandview Avenue, however no persons were home.
- q) On 17 September 2014 Police attended 4 Grandview Avenue, Turvey Park, which is the last recorded address noted on the NSW Police COPS database for the Licensee. Police submit that they spoke with the occupant of that house, a Ms K Murphy. Police submit that Ms Murphy provided the Police with Ms M Southwell's mobile phone number.
- r) On 17 September 2014 Police state that they spoke via telephone with Ms M Southwell who stated that she has owned the house for nearly 20 years and none of the tenants had been either Thai or had a name like Boon Wade Tantayakorn.
- s) On 28 September 2014 Police advised that they conducted name checks on the NSW Police COPS database, the National Names system and the NEVDIS system for Boon Wade Tantayakorn, date of birth 1 August 1954, for any recent updates. There were no updates on the COPS database, other than to do with this investigation. There is no record of Boon Wade Tantayakorn holding a driver's licence in any State or Territory of Australia.
- t) On 28 September 2014 Police submit that they called Eddie Tantayakorn to enquire about the whereabouts of the Licensee, but there was no answer and Police left a message on his mobile phone.

- u) On 4 October 2014 Police attended the Premises to interview staff with respect to supervision by the Licensee. Police submit that they interviewed the manager, Mr Ciganek and a staff member, Ms Taron Flanagan.
- v) Police state that the manager, Mr Ciganek was interviewed and that he stated that he was employed by Ronny Ng and has been employed at the restaurant for 10 years. Police state that Mr Ciganek provided the following information – that training days are not held at the Premises; that the Licensee is "Tantayakorn" as no other names were given; that he has met the Licensee; that the Licensee has attended the restaurant "20 times, maybe a bit more"; that the Licensee has been licensee for "about 10 years, maybe more"; that the Licensee last attended the restaurant for staff training "about a year ago if training"; that the Licensee was last present at the restaurant "maybe 3 months ago now, a bit more, more like 4"; and that the Licensee is male.
- w) Police submit that staff member Ms Taron Flanagan was interviewed and that she provided the following information – that she has been employed as a waitress at the Premises for four to five months; that she was employed by Jane Prasit; that no training package or induction was given; that there are no training or staff days; that she thought the licensee was "Bobbie, I can't pronounce his last name, the fella here now" [the Authority notes that this is an apparent reference to the current manager, Mr Ciganek]; and that she replied "no" to having met or seen Boon Wade Tantayakorn.
- x) On 4 October 2014 Police state that they called Eddie Tantayakorn's mobile phone in an attempt to get an address for the Licensee, but there was no answer and Police did not leave a message.
- y) On 28 November 2014 Police submit that they attended the Premises to interview staff with respect to supervision by the Licensee. Police interviewed staff member Kanjana (Jane) Prasit and submit that she provided the following information – that she was employed for four years as the assistant manager; that she was employed by "Bob, the Manager here, Ciganek"; that she replied "Yep, I did First Aid and hospitality and I'm doing accounting through Uni, so that pretty much covers management" when asked about whether she had been given an induction or training package when employment commenced; and that she replied "no, it's a family business, I just got my RSA when I turned 18 and a tax file number as I work 2 jobs" when questioned about whether she was required to sign any documentation that she understood the contents of the training package.
- z) Police state that in response to questions about who the licensee was, Ms Kanjana (Jane) Prasit stated that she "found out the other week because he came in, it was Eddie. Eddie came in and actually told us it was under his wife's name Toon [sic]. I don't know what their last name is". When asked if she had ever seen Boon Wade Tantayakorn at the Premises whilst engaged in her duties, she replied, "Well if it is Eddie, he came here 3 weeks ago". When asked what Eddie did when he attended the restaurant, she replied, "He just looked around and said everything was okay. Bob told him about the whole licence thing. He said that it is not under his name but under Toon's [sic] name. He said he's been trying to get in contact with her. He's not sure if she is still living in Australia, he thought she may have moved back to Thailand, but he's not sure if she's moved back". When questioned about the family business and whether she was a member of the family, she replied that she was "the daughter". When questioned as to the daughter of whom, she replied, "Of Bob, I'm Bob's daughter" (Mr Bob Ciganek).
- aa) On 22 December 2014 Police state that they conducted an *i*ASK request and found no records for an Australian Passport in the name of Boon Wade Tantayakorn or any property owned in Queensland in the name of Boon Wade Tantayakorn.
- bb) On 26 November 2014 Police state that they conducted an *i*ASK request and found no records for a Boon Wade Tantayakorn on the NSW Electoral Roll.

- cc) On 18 January 2015 Police state that they conducted an *iASK* request and found no records for a Boon Wade Tantayakorn at the Department of Immigration and Border Protection.
 - dd) A List of the Actions taken by Police outlining, *inter alia*, all the phone calls made and the description of those phone calls, *iASK* requests and locations attended is also attached to this COPS Report.
38. **Annexure 2.1.1 to the Complaint** – Property owner enquiry in Queensland for Boon Wade Tantayakorn dated 28 April 2015. This two page report contains the results from the *iASK* Application made by Police and provides that "there is no record of the nominated person in QLD and they are not recorded as the owner of any property".
39. **Annexure 2.1.2 to the Complaint** – Australian Passport enquiry for Boon Wade Tantayakorn dated 22 December 2014. This three page report contains the Police request for Department of Foreign Affairs and Trade (DFAT) information to the Passports Office on Boon Wade Tantayakorn and the response that a "search of Australian passports database found no match".
40. **Annexure 2.1.3 to the Complaint** – Department of Immigration and Border Protection enquiry for Boon Wade Tantayakorn dated 29 December 2014. This four page document contains the Police request for information to the Department of Immigration and Border Protection on Boon Wade Tantayakorn and the response that "there is no electronic record" for this person on the Department of Immigration and Border Protection systems.
41. **Annexure 2.1.4 to the Complaint** – NSW Electoral Roll search for Boon Wade Tantayakorn dated 21 November 2014. This document shows that there is "no record found" on the NSW Electoral Roll for Boon Wade Tantayakorn.
42. **Annexure 2.2 to the Complaint** – NSW Police document entitled "Supervision questions" to Ms Taron Flanagan dated 4 October 2014. This four page document contains staff member Ms Flanagan's responses to Police supervision questions dated 4 October 2014. Ms Flanagan contends, *inter alia*, that she is employed at the Premises as a waitress; that she has been employed at the Premises for close to five months; that Ms Prasit employed her as a staff member; that induction training at the Premises involved being shown what to do; that her duties include cleaning up tables, taking orders and taking out orders; that "Bob" (the manager, Mr Ciganek) gives her instructions; that any information is conveyed to employees via text message; that the Premises does not really have training days; and that "Bobbie" is the licensee of the restaurant.
43. Ms Flanagan also answered in the negative to questions of whether she had seen or been given instructions from Boon Wade Tantayakorn.
44. **Annexure 2.3 to the Complaint** – NSW Police document entitled "Supervision questions" to Bob Ciganek dated 4 October 2014. This four page document contains manager Mr Ciganek's responses to Police Supervision questions dated 4 October 2014. Mr Ciganek contends, *inter alia*, that he is the manager of the Premises; that he has been employed at the Premises for 10 years; that he was employed by Ronny Ng; that induction training included being told what to do; and that the Premises does not really have training days as he (Mr Ciganek) tells everyone what they need to do.
45. Mr Ciganek also answered that the licensee is Tantayakorn; that he has met and seen Boon Wade Tantayakorn; that he has seen Boon Wade Tantayakorn maybe more than 20 times; that Tantayakorn has been the licensee for about 10 years; that Tantayakorn

has instructed him to have an RSA Certificate and "go along with the rules of that"; that he attended training about a year ago when Tantayakorn was in attendance; and that Tantayakorn was present at the Premises maybe three or four months ago.

46. **Annexure 2.4 to the Complaint** – NSW Police document entitled "Supervision questions" to Ms Kanjana Prasit dated 28 November 2014. This four page document contains assistant manager Ms Prasit's responses to Police Supervision questions dated 28 November 2014. Ms Prasit contends, *inter alia*, that she is the assistant manager; that she has been employed at the Premises since she was 19 and she is now 23; that Bob Ciganek employed her; that her induction training involved First Aid and hospitality and that she is doing accounting through university; that she has an RSA Certificate; that instructions for her duties included making sure "staff are in place, money in the till", everything is ready, tables are set up and vacuum cleaned; that Bob gives her instructions relating to her duties; that she is given instructions at least twice a week; that she attends staff meetings once a week; that this practice of holding staff meetings has been in place for the past year; and that there are no training days and that she just has to make sure her RSA Certificate and First Aid are up to date.
47. Ms Prasit also contends, *inter alia*, that Eddie came in and told them that the licensee was his wife named "Toon" [sic] on 19 October 2014 and that he was not sure if she was still living in Australia or had moved back to Thailand; that she (Ms Prasit) thought that Boon Wade Tantayakorn was Eddie; that if the licensee is Eddie then he was last on the Premises three weeks ago; and that she (Ms Prasit) is the daughter of Mr Ciganek.
48. **Annexure 2.5 to the Complaint** – Company profile for Interlaken Investments Pty Limited. This document provides the company profile for Interlaken Investments Pty Limited (the current corporate Premises Owner) as of 1 July 2015.

LEGISLATION

49. When determining the Complaint, the Authority has considered the objects and considerations prescribed by Part 9 of the Act. Relevantly, sections 139 through 142 state:

139 Grounds for making complaint

- (1) *A complaint in relation to a licensee, manager or close associate of a licensee may be made to the Authority by any of the following (referred to in this Part as "the complainant"):*
- (a) *the Secretary,*
 - (b) *the Commissioner of Police,*
 - (c) *a person authorised by the regulations to make a complaint under this Part.*
- (2) *A complaint must be in writing and specify the grounds on which it is made.*
- (3) *The grounds on which a complaint in relation to a licensee, manager or close associate may be made are as follows:*
- (a) *that the licensee or manager has, while holding a licence or managing licensed premises, been convicted of an offence under this Act or the regulations (or under the former Act) or of an offence prescribed by the regulations,*
 - (b) *that the licensee or manager has failed to comply with any of the conditions to which the licence is subject,*
 - (c) *that the licensee has failed to comply with any of the conditions to which any authorisation or approval held by the licensee under this Act is subject,*
 - (d) *that the licensee or manager has failed to comply with any other requirement under this Act or the regulations (or under the former Act), relating to the licence or the licensed premises,*
 - (e) *that the licensee or manager has failed to comply with a direction or other requirement of the Authority, the Secretary or the Commissioner of Police under this Act (or of the Secretary or the Commissioner under the former Act),*

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

140 Procedure for taking disciplinary action

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

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

141 Disciplinary powers of Authority

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

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

142 Procedure for implementing disciplinary action

- (1) *If the Authority decides to take disciplinary action against or in relation to a licensee, manager, close associate or other person under this Part, the Authority is required to serve on the licensee, manager, close associate or person a notice informing the person of the Authority's decision.*
- (2) *The notice must include the reasons for the Authority's decision.*
- (2A) *Subsection (2) does not require the Authority to disclose any criminal intelligence.*
- (3) *Any disciplinary action under this Part takes effect when notice of the action is served on the licensee, manager, close associate or person concerned (or on such later date as may be specified in the notice).*
- (4) *The Authority may, by serving a further notice on the licensee, manager, close associate or person concerned, cancel a notice under this section before the notice takes effect.*
- (5) *The Authority is not prevented from taking disciplinary action under this Part merely because the licensee, manager, close associate or person concerned is subject to criminal or civil proceedings that relate to the same matters or incident to which the disciplinary action relates.*
- (6) *If a licensee is disqualified from holding a licence under this Part, the Authority may, on application by:*
 - (a) *the spouse or de facto partner of the licensee, or*

- (b) a member of the family of the licensee who is of or above the age of 18 years, or
 - (c) the owner of the licensed premises, or
 - (d) a person directly or indirectly interested in the business, or the conduct of the business, carried out on the licensed premises,
- transfer the licence to that spouse, de facto partner or member of the family or to some other person approved by the Authority.

50. Part 6 of the Act addresses generally the role and responsibility of a licensee in relation to licensed premises. Relevantly, sections 91 and 92 state:

91 Responsibilities and liabilities in relation to licensed premises

- (1) The following persons are, subject to this Act, responsible at all times for the personal supervision and management of the conduct of the business of the licensed premises under the licence:
 - (a) if the licensee is an individual – the licensee,
 - (b) if the licensee is a corporation – the manager of the licensed premises.
- (1A) An approved manager (as referred to in sections 116A(2)(i) and 116I(2)(i)) is responsible for the personal supervision and management of the conduct of the business of the licensed premises under the licence at the times the manager is required to be present on the licensed premises.
- (2) If an element of an offence under this Act or the regulations is an act or omission by a licensee, the manager of the licensed premises is, while responsible under subsection (1) or (1A), responsible for the offence as though that person were also the licensee and is liable for the offence accordingly.
- (3) This section does not affect any liability of a licensee for a contravention by the licensee of a provision of this Act or the regulations.

92 Control of business conducted on licensed premises

- (1) A licensee or a related corporation of the licensee must not:
 - (a) if the licensee is an individual – allow any person to have the personal supervision and management of the conduct of the business under the licence for a longer continuous period than 6 weeks except with the approval of the Authority, or
 - (b) lease or sublease the right to sell liquor on the licensed premises, or
 - (c) lease or sublease any part of the licensed premises on which liquor is ordinarily sold or supplied for consumption on the premises or on which approved gaming machines are ordinarily kept, used or operated, or
 - (d) lease or sublease any other part of the licensed premises except with the approval of the Authority.

Maximum penalty: 50 penalty units.
- (2) The owner of licensed premises must not:
 - (a) lease or sublease any part of the premises on which liquor is ordinarily sold or supplied for consumption on the premises, or on which an approved gaming machine is ordinarily kept, used or operated, to any person other than the licensee or a related corporation of the licensee, or
 - (b) except with the approval of the Authority, lease or sublease any other part of the licensed premises to any person other than the licensee or a related corporation of the licensee.

Maximum penalty: 50 penalty units.
- (3) This section does not prevent a person who:
 - (a) is the licensee of any premises that are situated in a shopping centre, and
 - (b) is the owner of each of the premises comprising the shopping centre,from leasing or subleasing, with the approval of the Authority, any part of the licensed premises on which liquor is sold or supplied for consumption on the premises.
- (4) The person to whom any such part of the licensed premises is leased or subleased in accordance with subsection (3) is, for the purposes of this Act, taken to be an agent of the licensee.

51. When determining the Complaint, the Authority has also considered the statutory objects and considerations of the Act, which further inform the public interest in respect of the Act, prescribed by section 3 which states:

3 **Objects of Act**

- (1) *The objects of this Act are as follows:*
 - (a) *to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community.*
 - (b) *to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,*
 - (c) *to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.*
- (2) *In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:*
 - (a) *the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),*
 - (b) *the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,*
 - (c) *the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.*

CONSULTATION ON THE COMPLAINT

52. On 31 August 2015, the Authority wrote to the Licensee, Business Owners and Premises Owner pursuant to the consultation requirements in section 140 of the Act, setting out the Grounds of Complaint, listing the Complaint Material and inviting each of these parties to show cause (in the case of the licensee) or make written submissions (in the case of the other respondents) as to why disciplinary action should not be taken on the basis of the Grounds specified in the Complaint. They were also advised of a timetable for making written submissions and informed that the Authority will usually determine disciplinary matters on the papers.

Submission in response to the Show Cause Notice from the Premises Owner, Interlaken Investments Pty Limited, dated 15 September 2015

53. On 15 September 2015, Mr Robert Rorrison, the director of the corporate Premises Owner, provided a very brief submission to the Authority in response to the Show Cause Notice. The full text of that submission is as follows:

In response to the complaint in relation to the Bahn Thai restaurant, I was of the understanding this was a BYO restaurant and has been for some time.

From my position as the owner of the property and also operating the Club Motel it would be advantageous for the restaurant to hold a liquor license [sic] as it would benefit our guests that come and stay over in Wagga Wagga.

Please do not hesitate to contact me if you require any information.

No Submission from the Licensee or Business Owners

54. Neither the Licensee nor the Business Owners provided the Authority with a submission in response to the Show Cause Notice.

FINDINGS ON GROUNDS OF COMPLAINT

Finding on Ground 1

55. Ground 1 is based on section 139(3)(s) of the Act, which provides that the licence has not been exercised in the public interest.
56. The Authority is satisfied, as alleged by the Complainant, that the liquor licence for the Premises has not been exercised in the public interest. The Authority is satisfied that the

Licensee has not been present or actively involved with the supervision of the Premises over a considerable period of time during the period alleged by Police.

57. The Authority makes this finding on the basis of the evidence and material provided by the Complainant and in particular the Licensed Premises Evidence Matrix (Annexure 2 to the Complaint Letter); the property owner enquiry in Queensland for Boon Wade Tantayakorn dated 28 April 2015 (Annexure 2.1.1 to the Complaint Letter); the Australian Passport enquiry for Boon Wade Tantayakorn dated 22 December 2014 (Annexure 2.1.2 to the Complaint Letter); the Department of Immigration and Border Protection enquiry for Boon Wade Tantayakorn dated 29 December 2014 (Annexure 2.1.3 to the Complaint Letter); and the NSW Electoral Roll search for Boon Wade Tantayakorn dated 21 November 2014 (Annexure 2.1.4 to the Complaint Letter).
58. Section 91 of the Act provides that the licensee is responsible at all times for the *personal supervision and management* of the conduct of the business of the licensed premises under a licence. Section 92 requires that a licensee must not allow any person to have the personal supervision and management of the conduct of a licensed business for a longer continuous period than 6 weeks except with the approval of the Authority.
59. The Authority is satisfied, on the basis of the aforementioned evidence and material and on the balance of probabilities, that the Licensee has not been exercising control and management of the licensed business and that the business has been left under the control of a third party or parties for a continuous period of longer than 6 weeks. It is not in the public interest for a licence to be exercised contrary to the requirements of sections 91 and 92 of the Act.
60. The Authority is satisfied that Ground 1 of the Complaint has been established.

Finding on Ground 2

61. Ground 2 is based on section 139(3)(t) of the Act, which provides that the continuation of the licence is not in the public interest.
62. The Authority is satisfied, as alleged by the Complainant, that the inability of Police to locate the Licensee over a period of several months and the absence of any record of the Licensee holding an Australian driver's licence; being enrolled on the NSW electoral roll; holding an Australian Passport; owning property in Queensland; or being recorded on the Department of Immigration and Border Protection database gives rise to "strong doubts" as to whether the Licensee is still residing in Australia.
63. The Authority is further satisfied, as alleged by the Complainant, that the Licensee is not actually supervising the Premises as required by the Act and that the Licensee's absence is further demonstrated by the fact that certain members of staff of the licensed business were under the impression that Mr Ciganek (the manager of the Premises) was the licensee and the confusion among staff and other persons as to the actual identity of the licensee.
64. The Authority is satisfied as to the allegation that Mr Ciganek thought the Licensee was male and yet OLGR records indicate that the Licensee is a female. The Authority is satisfied that the manager, Mr Ciganek identified himself as part owner and was under the impression that the Licensee was Mr Eddie Tantayakorn.
65. The Authority makes these findings on the basis of the NSW Police document entitled "Supervision questions" to Ms Taron Flanagan dated 4 October 2014 (Annexure 2.2 to the Complaint Letter); the NSW Police document entitled "Supervision questions" to Mr Bob Ciganek dated 4 October 2014 (Annexure 2.3 to the Complaint Letter); and the

NSW Police document entitled "Supervision questions" to Ms Kanjana Prasit dated 28 November 2014 (Annexure 2.4 to the Complaint Letter), in addition to the evidence or material provided by the Complainant referred to in the Authority's findings on Ground 1 above.

66. The Authority is further satisfied, as alleged by the Complainant, that the Licensee has demonstrated a "lack of supervision" and "disregard" for the licensing legislation over the period during which the Licensee has been responsible for the conduct of the business operating on the Premises – in that several contraventions of the licensing legislation in relation to breaches of licence conditions pertaining to the maintenance of an RSA Register and the failure to display a prescribed notice identified by Police in a covert audit conducted on 17 December 2009 had not been rectified and were again identified by Police during a further audit conducted on 9 April 2014, more than four years later.
67. The Authority makes this finding on the basis of the contemporaneous information provided in NSW Police COPS Report number E39690349 (Annexure 1.4.2 to the Complaint Letter) and NSW Police COPS Report number E56935883 (Annexure 1.4.3 to the Complaint Letter). The absence of any response from the Licensee and Business Owner to Show Cause Notices in relation to this Complaint further supports an inference that the Licensee is not meaningfully engaged with, let alone exercising control over, the licensed business conducted on the Premises.
68. The Authority is satisfied, as alleged by the Complainant, that in circumstances where the licensed business operating on the Premises has repeatedly failed to comply with the licensing legislation, the Licensee has little apparent continuous connection to the Premises and the Licensee's current whereabouts are unknown, the continuation of the licence is not in the public interest.
69. The Authority has considered the Premises Owner's cursory submissions to the effect that he thought that the restaurant operating on the Premises did so on a BYO basis and that he would prefer that the licence remain attached to the Premises.
70. Those submissions do not address the public interest in the licence remaining operative. Having regard to the statutory objects and considerations prescribed by section 3 of the Act, the Authority is satisfied, on the material before it, that the continuation of the licence is not in the public interest.
71. The fact that the Premises Owner believed that the restaurant operating on the Premises was being conducted on a BYO basis indicates a lack of awareness as to the licensed status of the Premises and suggests that a lack of real prejudice will flow to the Premises Owner should action be taken against the licence.
72. The Authority notes that the Premises Owner or any future tenant could, in any event, apply for a new on-premises licence should they meet the minimum requirements for the grant of an on-premises licence.
73. The Authority is satisfied that Ground 2 of the Complaint has been established.

SUBMISSIONS ON DISCIPLINARY ACTION

74. A detailed letter dated 17 December 2015 (Decision on Grounds) was sent to the Complainant, the Licensee, the Business Owners and the Premises Owner, notifying them of the Authority's findings on the Grounds of Complaint and inviting final written submissions on the question of what, if any, disciplinary action should be taken by the Authority pursuant to section 141 of the Act as a consequence of its findings.

75. Although the Complainant had already made recommendations on disciplinary action in the initial Complaint Letter, the Authority requested any final submissions on disciplinary action within 7 days of the date of the Decision on Grounds. Submissions on disciplinary action from the Licensee, Business Owners and Premises Owner were requested within 7 days thereafter.

Final Submission from the Complainant dated 22 December 2015

76. On 22 December 2015, Acting Sergeant Michelle Grinter of Wagga Wagga Licensing Police provided a brief final submission on disciplinary action on behalf of the Complainant to the Authority via email, which states as follows:

In respect to the Bahn Thai Restaurant complaint, Police have no additional information to submit in regard to the complaint. I also wish to confirm that Police stand by the original application and seek that the associated liquor licence is revoked.

No Submission from the Licensee, Business Owners or Premises Owner

77. No submission was made on behalf of the Licensee, Business Owners or Premises Owner in response to the Decision on Grounds.

DECISION ON DISCIPLINARY ACTION

78. The Authority has considered the Complaint and all of the material before it, including the brief final submission on disciplinary action made on behalf of the Complainant.
79. The Authority notes that the purpose of disciplinary action is protective rather than punitive and when considering disciplinary action the Authority is concerned with the prevention of the occurrence of offences against the Act by reducing the risk posed by the individual licensed premises in question, for the protection of the public.
80. The Authority notes that the Licensee of the Premises, Boon Wade Tantayakorn, and the Business Owner, Eddie Niwat Tantayakorn, failed to provide a response to the Show Cause Notice or the Decision on Grounds and did not engage with the Authority in any way during the course of this Complaint.
81. The Authority notes that the Premises Owner, Mr Robert Rorrison of Interlaken Investments Pty Limited, provided only a very brief submission in relation to the Complaint, indicating his belief that the restaurant operating on the Premises did so on a BYO basis and submitting that he would prefer that the licence remain attached to the Premises.
82. Mr Rorrison did not make any submissions on disciplinary action in response to the Decision on Grounds that was notified to the parties on 17 December 2015. The Authority has considered the premises owner's stated preference for the licence remain attached to the Premises but notes the Premises Owner's mistaken belief that the restaurant was operating on a BYO basis. In the absence of any evidence or submissions demonstrating what, if any prejudice would flow to the premises owner the Authority is not satisfied that the bare request by the Premises Owner that the licence continue presents a sufficient cause for not cancelling the licence.
83. Having considered cumulatively the Authority's findings on the Grounds of Complaint as set out above, and in light of the absence of any final submissions from the Licensee or Business Owner and the apparent absence of the Licensee from the Premises for some

considerable amount of time, it is in the public interest, and an appropriate action for the protection of the public, for the licence to be cancelled.

84. It is clear from the material before the Authority that the Licensee has exercised little control over the licensed business, as evidenced by the detection by NSW Police of numerous breaches of licensing legislation on several occasions over the period from 2006 to 2014, the inability of Police to ascertain the location of the Licensee during recent months or obtain any records indicating that the Licensee is still resident in Australia and the apparent confusion of staff employed by the restaurant business operating on the Premises as to the actual identity of the Licensee.
85. The fact that no submissions have been made by the Licensee or the licensed business in response to the Show Cause Notice or in response to the notification of the Authority's findings on the Grounds of Complaint dated 17 December 2015 underscores the lack of actual involvement or oversight by the Licensee with regard to the affairs of the licensed business conducted on the Premises.
86. The Licensee is not in a position to exercise the degree of control over the licence required of a licensee pursuant to section 91 of the Act. The only appropriate action, for the protection of the public, is for the licence to be cancelled.

ORDER

87. The Authority makes the following order:
 - a) Pursuant to section 141(2)(a) of the Act, the Authority cancels liquor licence number LIQO624003978 in respect of the business currently trading as "Bahn Thai Restaurant", located within the Club Motel Wagga complex at 73 Morgan Street, Wagga Wagga with effect from the date of this decision.

REVIEW RIGHTS

88. Pursuant to section 144 of the Act, an application for review of this decision may be made to the New South Wales Civil and Administrative Tribunal (NCAT) by the Complainant or any person against whom any disciplinary action is taken, no later than 28 days after those parties receive notification of this decision.
89. 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



D B Armati
Deputy Chairperson
for and on behalf of the **Independent Liquor and Gaming Authority**

DATED 02 March 2016