



Mr Sean Goodchild Director, Compliance and Enforcement Liquor and Gaming NSW Level 6, 323 Castlereagh Street HAYMARKET NSW 2000 <a href="mailto:sean.goodchild@olgr.nsw.gov.au">sean.goodchild@olgr.nsw.gov.au</a>	Mr Michael Amante c/o Mr Sean Keleher, Solicitor Level 21 133 Castlereagh Street SYDNEY NSW 2000 <a href="mailto:sk@seankeleher.com">sk@seankeleher.com</a>
Ms Margaret Staltaro Director, Restaurant Royale Pty Ltd	The Directors Camco N.S.W. Pty Ltd Lower Ground Suite LGA 140 William Street WOOLLOOMOOLOO NSW 2034

10 October 2016

Dear Sir/Madam

**Notice of Final Decision with Reasons on Complaint under Part 9 of the *Liquor Act 2007* in relation to Mr Michael Amante, Close Associate, “Dreamgirls”, Potts Point**

At its meeting of 28 September 2016 the Independent Liquor and Gaming Authority finalised the disciplinary complaint made on 22 March 2016 under Part 9 of the *Liquor Act 2007* (Act) by a delegate of the Secretary of the Department of Justice.

The complaint concerned Mr Michael Amante in his role as a close associate of the licensed premises known as “Dreamgirls” trading at B 77 Darlinghurst Road, Potts Point 2011.

The Authority has decided pursuant to section 141(2)(j) of the Act to disqualify Mr Amante from being a close associate of a licensee or the approved manager of any licensed premises in New South Wales, for life. The Authority has also decided pursuant to section 141(2)(k) of the Act to disqualify Mr Amante from holding a licence with respect to any licensed premises in New South Wales for life.

The Authority has further ordered, pursuant to section 141(2)(l)(i) of that Act, that Mr Amante pay the Secretary’s costs in carrying out the relevant investigation under section 138 of the Act in the sum of \$14, 060.00.

Enclosed is a statement of reasons for the Authority’s decision. Rights to seek review of this decision by the New South Wales Civil and Administrative Tribunal are detailed at the end of that document.

Yours faithfully

Philip Crawford

**Chairperson**

for and on behalf of the **Independent Liquor and Gaming Authority**

## STATEMENT OF REASONS

### INTRODUCTION

1. On 22 March 2016, the Independent Liquor and Gaming Authority (**Authority**) received a disciplinary complaint dated 22 March 2016 (**Complaint**) from Mr Anthony Keon, the (then) Director of Compliance and Enforcement of Liquor and Gaming New South Wales (**LGNSW**) in his capacity as a delegate of the Secretary of the NSW Department of Justice.
2. The Complaint is made under Part 9 of the *Liquor Act 2007* (**Act**) against Mr Michael Amante, a close associate (**Close Associate**) of Mr David Lakepa, the former licensee (**Former Licensee**) of the on-premises licensed venue formerly known as "Dreamgirls", located at B 77 Darlinghurst Road, Potts Point (**Premises**).
3. The Authority notes that a separate but related complaint has been made against Mr David Lakepa, the Former Licensee of the Premises. This letter sets out the Authority's findings on the Complaint against Mr Amante.

### BACKGROUND

4. The Complaint was made by the (then) Director of Compliance and Enforcement of Liquor and Gaming NSW (**LGNSW**), Mr Anthony Keon (**Complainant**) in his capacity as a delegate of the Secretary of the Department of Justice (**Secretary**).
5. The letter of complaint (**Complaint Letter**) is accompanied by the standard disciplinary complaint form, both of which are signed by the Complainant and dated 22 March 2016. Accompanying the Complaint Letter is a Brief of Evidence prepared by LGNSW compliance staff comprising some 15 Exhibits amounting to **282** pages of evidence or other material in support of the Complaint (**Complaint Material**).
6. By way of background, the Authority is satisfied, on the basis of the Complaint Material and its licensing records, that the following persons were on the record as holding the licence for the Premises during the relevant period of time spanned by the allegations in this Complaint:
  - Mr Amante *personally* held the licence as a provisional licensee from the time that Royal Restaurant Pty Ltd (a company that he owns and directs) acquired the *Dreamgirls* business in **November 2008**. Mr Amante held the licence until on or about **31 March 2011** when the Authority determined that it was unable to confirm Mr Amante's provisional approval, on probity grounds, as discussed below.
  - While Mr Amante's company remained the business owner of *Dreamgirls*, Ms Ngawai Smith was appointed by the business as the licensee of the Premises from approximately **1 April 2011** until **28 May 2014**.
  - Mr David Lakepa was then appointed as the licensee for the Premises from **29 May 2014**. He was the last licensee on the record up until and beyond the date of this Complaint (22 March 2016). However, as discussed below, Mr Lakepa in fact abandoned that role on or about 23 December 2015.

### THE GROUND OF COMPLAINT

7. The Complaint Letter specifies a single ground of complaint (**Ground**) based upon the statutory ground available under section 139(3)(j) of the Act. It alleges:

*That the close associate, Mr Michael Amante, is not a fit and proper person to be a close associate of a licensee.*

8. The Complainant further alleges that:

*...Mr Amante is a close associate, within the meaning of section 5 of the Gaming and Liquor Administration Act 2007, by virtue of his position as business manager, as well as his role in the operations and management of the venue. As the sole director of Royal Restaurant Pty Ltd, Mr Amante is a person interested in the business and in the conduct or profits of the business.*

9. The Complaint Letter makes a number of specific allegations in support of the Ground. These allegations, and the Authority's findings, are set out in detail below.

### **Disciplinary Action Sought by Complainant**

10. The Complainant closes the Complaint Letter with the following submission on what disciplinary action the Authority should take if the Ground of Complaint is established:
- (i) Pursuant to section 141(2)(c) of the Act, order the Close Associate, Mr Amante, to pay a monetary penalty "proportionate with the level of harm" and that provides a "general and specific deterrent".
  - (ii) Pursuant to section 141(2)(k) of the Act, disqualify the Close Associate, Mr Amante, from holding a liquor licence "for life".
  - (iii) Pursuant to section 141(2)(j) of the Act, disqualify the Close Associate, Mr Amante, from being a close associate of a licensee or the manager of licensed premises "for life".
  - (iv) Pursuant to section 141(2)(l) of the Act, order the Close Associate, Mr Amante, to pay the amount of any costs incurred by the Secretary in carrying out any investigation or inquiry under section 138 in relation to the Close Associate. [The Authority notes that those costs are not quantified or specified in the Complaint Letter.]

### **Concluding Advice from Complainant – Licence Surrendered**

11. In addition to the specific allegations set out in support of the Ground of Complaint that are discussed below, the Complainant advises that at the time of this Complaint LGNSW is pursuing a prosecution against Mr Amante for alleged offences against section 7(1) of the Act regarding the sale of liquor without a licence and offences against section 8 of the Act regarding the keeping and use of an unlicensed premises for the purpose of selling liquor – matters that were allegedly detected on 19 December 2015.
12. The Complainant advises that Court Attendance Notices in those matters are "likely to be issued shortly" and the Authority will be kept updated as to the outcome of the prosecution.

13. The Complainant further notes that an application to surrender the liquor licence for the Premises was filed by Mr Amante on or about 23 February 2016 and that this licence surrender was accepted by an Authority delegate on 9 March 2016. As a consequence, the Premises is no longer licensed and the Complainant submits that any order for cancellation of the licence would now be redundant.
14. The Complainant further submits that the fact that the licence has now been surrendered does not detract from the seriousness of the matters specified in this Complaint, which the Complainant submits “requires strong personal disciplinary action” to be taken against Mr Amante personally.

### **Exhibits to the Complaint**

15. Briefly, the Complaint Material includes the following Exhibits:
  - **Exhibit 1** – *OneGov* licence record for the Premises as at 25 February 2016
  - **Exhibit 2** – ASIC extract for Royal Restaurant Pty Ltd as at 25 February 2016
  - **Exhibit 3** – Letter from the (then) Casino, Liquor and Gaming Control Authority dated 15 March 2011 concerning an application to transfer the licence to Mr Amante and National Police Certificate for Mr Amante dated 5 March 2011
  - **Exhibit 4** – Photographs of the Premises and the Level 1 area taken by LGNSW Compliance Officers on 19 December 2015
  - **Exhibit 5** – Short Term Closure Order in respect of the *Dreamgirls* business issued by Deputy Registrar Reid dated 20 December 2015
  - **Exhibit 6** – Authority decision to issue a Long Term Closure Order in respect of the *Dreamgirls* business dated 31 January 2016
  - **Exhibit 7** – NSW Police Criminal History – Bail Report and associated NSW Police *Facts Sheets* for Mr Amante accessed on 2 February 2016
  - **Exhibit 8** – LGNSW Compliance History for Mr Amante printed on 10 December 2015
  - **Exhibit 9** – “Three Strikes History” for the Premises (undated)
  - **Exhibit 10** – Statement of Particulars submitted with the Short Term Closure Order dated 20 December 2015
  - **Exhibit 11** – Statement of NSW Police Undercover Operative dated 18 December 2015
  - **Exhibit 12** – Transcript of LGNSW interview with Mr Michael Amante dated 27 January 2016
  - **Exhibit 13** – Witness Statement by Ms Aoife Keenan in the matter of *Operation Speakeasy – NSW Office of Liquor, Gaming and Racing v Dreamgirls* dated 2 February 2016

- **Exhibit 14** – Transcript of LGNSW interview with Ms Aoife Keenan dated 2 February 2016
- **Exhibit 15** – NSW Police Property Seizure/Exhibit Form dated 19 December 2015.

## CONSULTATION

### Show Cause Notice and Invitation to Make Submissions

16. On 22 April 2016, the Authority sent a Show Cause Notice via email to Mr Amante, inviting him, pursuant to section 140(1) of the Act, to show cause as to why disciplinary action should not be taken against him on the Ground of Complaint. The Show Cause Notice was accompanied by the Complaint Letter and the entire Complaint Material.
17. On that date, for the purposes of section 140(3) of the Act, the Authority also sent letters to the following parties inviting them to make written submissions on the Complaint:
  - Ms Margaret Staltaro, whose own company, Restaurant Royale Pty Ltd had contracted to acquire the *Dreamgirls* business on or about 30 July 2015 and who was apparently involved with the business until on or about 4 February 2016 – the Authority having made findings to that effect in the Long Term Closure Decision dated 31 January 2016 on the basis of information from her solicitor that is recorded in that decision; and
  - Camco N.S.W. Pty Ltd – the corporate premises owner of the freehold in the Premises

(all of the above are referred to collectively as the **Respondents**).

### Submission from Mr Amante via Mr Sean Keleher, Solicitor – 20 May 2016

18. At 4:58pm on 20 May 2016, Mr Amante provided a submission letter through his solicitor, Mr Sean Keleher, addressing the merits of the Complaint. Briefly, Mr Amante submits that the Authority should exercise its discretion, pursuant to section 141(1) of the Act, to *make no orders* in response to the Complaint for the following reasons:
  - Mr Amante is not a licensee, close associate of a licensee or manager of any licensed premises at this time.
  - In the future, Mr Amante has no ability to attain those positions [licensee, close associate of a licensee or manager of a licensed premises] without first satisfying the Authority that he is a fit and proper person to hold that position.
  - The nature of the disciplinary provisions in Part 9 of the Act is “entirely protective, not punitive”. Accordingly, no further protection can be offered to the public by making the orders sought by the Complainant.
  - Mr Amante has made “significant reforms” to his personal and professional life which the Authority is “bound” to take into account and which ought to satisfy the Authority that Mr Amante is genuine in ensuring that no further action of the type which is contrary to behaving as a fit and proper person will occur in the future.

- Mr Amante has suffered “significant financial losses and penalties” as a result of the actions that are the subject of this Complaint.

19. Attached to this submission from Mr Keleher is a letter of reference dated 11 April 2016 from Mr Anthony Saleh, General Manager of the Intercontinental Hotel, Double Bay. Mr Keleher submits that this letter was “tendered in Mr Amante’s plea in mitigation on the contraventions of sections 7(1) and 8(1)(d) of the Act” that were detected on 19 December 2015.
20. Briefly, this letter states that Mr Amante has been a “trusted employee” of the hotel since 21 December 2015 and that Mr Amante “has proven to be reliable, courteous, flexible and patient with all of our guests receiving many an excellent review”. The letter states that Mr Amante “has physically expressed sincere remorse for his actions”, that Mr Amante is a “valued employee, perfectly suited for hospitality” and that he is currently shortlisted for the position of Night Manager at the Intercontinental Hotel, Double Bay.

### **Direct Submission from Mr Amante – 20 May 2016**

21. At 5:29pm on 20 May 2016, Mr Amante personally emailed a further submission from his telephone directly to the Authority’s General Counsel. The full text of that email is extracted below (errors in original):

*Dear Mr Wilson,*

*Thank you for giving me the chance to write a submission to defend myself against what the director of OLGR wants to impose on me. Sorry I have left it to the last minute. My lawyer Sean Keleher is writing one on my behalf but I looked over it earlier this morning before he had completed it, and like all lawyers it sounded like a whole lot of legal jargon that no body can understand so I thought perhaps I should explaining a little bit about myself and try to defend myself against; first the allegations made against me from Anthony Keon*

*Secondly; my bad track record as the licensee and owner of Dreamgirls and thirdly, my criminal history which sounds terrible but is no where near as bad as it sounds. This I hope I can convince you of with the actual facts of my charges(in brief of course). I employed David Lakepa as my licensee as i was left in the lurch by my previous licensee Ngawai Smith, who went on holidays back to New Zealand and basically never returned after falling in love, falling pregnant and deciding she was going to stay in New Zealand and going to have her child and raise it there.*

*After trying to convince the police that she was coming back, and she did make a few guest appearances here and there, I had to replace her as the police were getting fed up with her not being in the venue.*

*Mind you David Lakepa by now was an approved manager but when the time came around for him to be an approved high risk manager he wasn't. My fault I didn't read the info forwarded to me from Ngawai and subsequently on the first night that you needed the new approved manager I didn't have one. Therefore incurring our first strike.*

*After realizing Ngawai wasn't coming back I approached David and asked him would he mind taking over as licensee knowing full well he had a clean criminal history and met all the requirements . OLGR and the police approved him and he remained the licensee until mid 2015 when I was forced to sack him and try to employ another licensee but OLGR never approved the new person I had put forward to them so officially David was still the licensee right up until the surrender of the licence.*

*As you know I set up a bar on the first floor of the building in which we rent, yes I knew it was illegal but it wasn't illegal for us to be up there, only to serve and probably consume*

liquor. For this I take full responsibility and have subsequently been fined over 7000 dollars along with the licensee of which both fines I am going to have to pay. Anthony Keon says that the venue staff were selling drugs, he doesn't say the dancers were but the staff.

In total two girls were caught with cocaine one has since been charged with ongoing supply and the other one got off with a section 10.

Im not sure what led to the intel that we were some big cocaine supplying club that required 45 armed swat like police officers to raid the club on the 19th Dec but we weren't. Perhaps me getting caught with 8.6 grams of cocaine on November 2015 triggered something Im not sure. But Mr Wilson we are a strip club in Kingscross, these girls aren't secretaries or librarians and our customers are from all walks of life, so I think it will be foolish to not assume that some drugs went on. It was not sold by me or by any of the management, Im not saying that I didn't know a few of the girls used cocaine all Im saying is that it was never sold by anyone including the licensee or myself or any of the managers.

Now back to this bar I set up on the first floor, Mr Wilson we only used this floor for hour plus private shows and for it to work customers needed a drink or they would never go up there and book an hour show or even consider extending. I started using this part of the building simply so that we could boost business and keep the girls happy, the lockout laws really hurt us as they did everyone but stripclubs even more so. At no time were they in danger nor did we have any problems the 7 months it was in operation. I had cameras installed in every room and there was an intercom system put in place for a few reasons. Yes as OLG like to point out so that dancers could order drinks but also for their safety.

Now dreamgirls yes has a poor record of breaches and strikes.

On the same night two guards weren't wearing their identifying numbers, I mean I know this is serious but I was fined 1100 dollars for both incidences. Also on another night in sept 2012 four girls forgot to put their undies back on after finishing their stage show. I mean how serious is this crime ! we are a strip club and it wasn't as if they came off stage and wandered into the crowd nude, they simply went to the change room and got dressed. Whichever compliance officer witnessed this on the night simply gave us a caution.

We did however receive a fine for this in September of 2014 when on the same night a few girls got a bit too friendly with customers around the stage and we were fined for audience participation as well as our RSA marshal not wearing his rsa vest after midnight.

There are a few other minor breaches of which im sure you are aware of eg, two guards on the footpath at once.

But the two serious offences which deeply regret are letting the in a minor in and employing an under age dancer 7 years ago. The underage kid sneaking in I have no excuse for, well I do, but im not going to make you listen to my sobstory. As for employing the under age girl ,again I have an excuse for and a pretty good one but im running out of time to get this to you. As it is already after 5pm

As for my own personal criminal record I agree it does not look the best. The drink driving charges, one is 20 years ago and one was in 2002. The one in 2002 goes with a string of charges and THE only Reason I lied to the police about my identity was because I had a good job at Qantas which I was afraid of losing.

This firearm charge I realize looks terrible on paper but MrWilson it was just an air rifle and the ammunition was simply these tiny pellets no bigger than half a finger nail. I have run out of time but there is more I wish to tell you if I could just have a tiny extension after you have the chance to read this

## Further Direct Submissions from Mr Amante – 23 May 2016

22. At 3:02pm on 23 May 2016, Mr Amante personally emailed a late further submission directly to the Authority's General Counsel. The full text of that email is extracted below (errors in original):

*Good after Mr Wilson,*

*Firstly let me apologize for taking so long to get this submission in i.e. the last minute on Friday and now, officially late. The reason being was because I wasn't going to write one but then I had a good look over what Anthony Keon had written about me on his behalf, using words like " violence and honesty and integrity.*

*Point 42 of Anthony Keon's submission on my character states that my criminal history is of a most serious and concerning nature, including dishonesty, violence and drug offences . I agree I haven't been the most law abiding citizen in my 25 years of being an adult. Two drink driving charges, one high range but this was 14 years ago Mr Wilson and the other one was 20 years ago. As for the firearm charge, it was an air rifle not an AK 47, I shot my wife in the backside with it from two metres away while she was wearing jeans and all she did was go "ahhhhh". If you really want to know the truth it wasn't even me who shot the damn thing off my verandah accidentally into the toilet window of a Korean bbq restaurant that was adjacent to our block of flats in Potts point. It was a girlfriend of my wife's who wanted to have a go. Neither the less I took the blame and spent 55 days over Christmas and New Years and my sons birthday in Silverwater correctional centre ( maximum security)*

*But anyway back to where Anthony Keon states I'm violent or my charges are that of a violent nature.*

*Offensive behavior, drink driving, BB gun and yes the latest charge of possession with cocaine, however stupid on my behalf, I do not deem as violent charges nor does Mr Malcolm Desland my psychologist. Or perhaps Anthony Keon is still getting me mixed up with the other Michael Amante floating around who does however have a huge history of criminal convictions and are of a serious nature eg this Bloke broke into someone's house with a weapon with intent.*

*You may or may not be aware Mr Wilson but Anthony Keon published, up loaded or whatever you call it this character with the same name as me his criminal record on the OLGR website for the whole world to see ,instead of mine. That's right put someone else's criminal record on the Internet and said it was me. Even after he was made aware of his mistake, did he take it down. No. Did he offer me an apology No. It's probably still up there I couldn't be bothered looking but I did have a few people say to me " Mick did you really do a home invasion"*

*Even the police eg Peter Mullins was shocked when he read it and Donna Murphy must of been thinking, how did I approve this guy to own a liquor licence. Anthony Keon want to use words like honesty and integrity. Is it an integral part of his organization for compliance officers, sorry senior compliance officers to flout their powers to break their own laws that they are suppose to be enforcing.*

*On two separate occasions one of his Senior compliance officers put me in an awkward position. The first time I was shocked to say the least. This officer, senior, turned up to my venue's door and asked the security could I come up and see him. Security came down and said OLGR want to see you upstairs, I said ok, I had a quick look around the club to make sure everything was in order and then i proceeded upstairs. When I got to the entrance at 210am post lockout laws post operational scanners so ergo Latin for therefore illegal to let anyone in other than staff , police and OLGR officers I was confused as to why this senior compliance officer hadn't just shown his badge or*



*whatever and just walked in. This was of course until about 10 seconds ,after saying hello to the OLGR officer as to his real purpose of seeing me and it wasn't of an official nature Mr Wilson I can assure you.*

*Sorry I will re cap that it wasn't until after he asked me could he come in did I realize what he meant. He said "can we come in" (he was with a friend not sure if he worked for OLGR or not I'd never seen him before), I shrugged my shoulders and said " of course you can" then he gave me a look and the penny dropped. He wasn't coming in on official business he was asking to come and have a drink and watch the shows etc with his mate because it was after 130am and he knew he was breaking his own laws he was suppose to enforce.*

*Mr Wilson I had two choices, say no and risk the chance of this guy getting " pissed off" and having him punish me with breaches and fines in the future for things that we may of got a warning for instead or say yes and have him " be a friend" so to speak, because the one time I had dealt with him before he was very through and professional and a " by the book kind of guy". So for me to see him ask me could he come in with his friend after lockouts was a shock to say the least.*

*As it turned out I let him in he had a good time with his friend. He even broke another law and asked for drinks after 3am which I obliged.  
I'd open the packet of biscuits now might as well eat them all.*

*The next time he "flouted" his powers was 6 weeks after the first incident. This time he was with a group of friends one of them being a girl which he called his " girlfriend". Again I was summoned to the door where I was met by the same senior compliance officer and he asked " can we come in" I said sure( it was well before 130am) so I was thinking, what's the problem this time. Then he pulls me aside and says his " girlfriend" has no ID. It was clear she was over 18 but there was a little thing on the door called a scanner and by law ,a law OLGR officers are suppose to enforce it says everyone must be scanned after 9pm 7 days a week. So here I am Mr Wilson Again faced with the same dilemma, catch 22 ,double edged sword whatever you call it. Do I say no and refuse her entry or do I break the law and let them in.*

*( obviously they weren't going to come in if she couldn't get in). So again I broke the law and let him and his friends in including his " girlfriend " minus her ID.*

*So I have one question for Anthony Keon who wants to judge me on integrity and honesty and my character. Are you in charge of an honestly run organization where your SENIOR compliance officers abuse their powers to break the laws they are suppose to enforce ? Mr Wilson I have over 15 people that will testify to both incidents including shield security guards, the two sprukers that were working the door that night, the licencee and nearly every dancer that worked both nights and if I try real hard I might even be able to find the usb I used to download the footage from both nights. I'd like not to have to do this as I don't want this man to loose his job and I won't give Anthony Keon the satisfaction as to which one of his employees is the person in question. He has already informed me through my lawyer he wants to know who it was.*

*He wants to call me dishonest because I lied to the police for the simple reason that I didn't want to loose the best job I'd ever had, as I told you in the first part of my submission that I sent on Friday, which you only probably read today. Again sorry for submitting it so late.*

*He knows nothing about my character. Does he know what job I performed at Qantas for the last 2 years of my 6 years there, NO. I assisted physically and mentally handicap people on and off the planes. Wheeled them downstairs to collect their luggage and either put them in a cab or find whoever it was picking them up.*

*Does he know I work in my son's school canteen in a voluntary basis. ( of which I will forward you an email) Does he know I've coached two junior rugby league teams all voluntarily.*

*Mr Wilson when I took over Dreamgirls in 2007 they had 6 dancers at the height of the clubs success just before the lockouts were introduced do you know how many dancers I had, over 80. Yes 80. Does he have any idea what it's like to run a strip club with 80 girls from all over the world. Yes sorry some of their English isn't the best and yes they are going to walk to the change room in the nude instead of getting dressed in front of the whole crowd of cheering men who just paid to see her take it off.*

*Like or loath the business I ending up running it wasn't by choice. Besides all my fines and breaches I did a good job I think hence the reason at the height of our success we had 80 dancers. They didn't work there because I was dishonest or lacked integrity. They worked there because, as most of them say "I'm the best boss they ever had"*

*On this I'll leave you Mr Wilson to make your decision as to whether I should be barred from ever working in a place where alcohol is sold or given another monetary penalty or made to pay the costs of carrying out this investigation.*

*I will however send you two more emails. One from the lady who organizes the canteen rosters and 20 or so dancers phone numbers who worked for me over the years in case you want to call them and ask how they would describe my Character, level of integrity and above all else honesty.*

*Regard  
Michael Amante  
Sent from my iPhone*

23. At 3:03pm on 23 May 2016, Mr Amante sent three further emails to the Authority's General Counsel, evidencing a chain of email correspondence between himself and the Tuckshop Convenor at the Knox Grammar School in Wahroonga during July 2015.

24. In those emails Mr Amante advises the Knox Grammar Tuckshop Convenor that he has a son in year 8 at Knox Grammar and that:

*...if you are struggling to find volunteers I don't mind helping out. As long as I'm not the only father on hand and their are [sic] others that volunteer.*

25. The emails between Mr Amante and the Tuckshop Convenor indicate that Mr Amante was then rostered on to volunteer at the Knox Grammar School tuckshop on 22 July 2015, 31 August 2015 and 30 November 2015.

26. At 3:21pm on 23 May 2016, Mr Amante sent another email to the Authority's General Counsel, also apparently in support of his good character.

27. This email provides the first names only and personal mobile telephone numbers for a number of former staff (apparently strippers) employed by the *Dreamgirls* business, including "Courtney", "Megan", "Mariah", "Alice", "Chelsea", "Leila", "Nicole", "Charlie", "Brandy", "Gia", "Holly", "Lizzie", "Mia", "Rocky", "Sabrina", "Sophie", "Phoenix" and "Sammy".

28. Mr Amante then states to the Authority's General Counsel (errors in original):

*This is just a few of my former employees (dancers) and some still work there. If you would like some waitresses numbers too please let me know Feel free to call any of them (of which I've prompted none) to ask what they think about my honesty and integrity.*

### **No Submissions from Restaurant Royale Pty Ltd or Camco N.S.W. Pty Ltd**

29. No submissions were made by either of these potentially interested parties.

## ADDITIONAL COMPLAINT MATERIAL PROVIDED ON 27 MAY 2016

30. On 23 May 2016 the Authority's General Counsel emailed the Complainant referring to the requirements of *Authority Guideline 5* and seeking further or better documentation of the outcome of the alleged contraventions of licensing legislation that were referred to at paragraph 51 of the Complaint Letter. General Counsel noted that while the Complaint Letter had referred to an LGNSW interview with Mr Lakepa dated 5 February 2016, no transcript of that interview had been provided.
31. On 27 May 2016, the Complainant provided the Authority with 12 further bundles of material in support of the Complaint (**Additional Material**) including Compliance Notices, Penalty Notices, SDRO business records and *JusticeLink* records of Court outcomes. Briefly, the Additional Material comprises:
  32. **Attachment A** – Transcript of interview between LGNSW inspectors and the Former Licensee, Mr David Lakepa dated 5 February 2016.
  33. **Attachment B** – this is an amended paragraph 51 of the initial Complaint Letter, amending and correcting certain information that was previously provided in the initial Complaint Letter with regard to licensing breaches allegedly detected on the Premises since Royal Restaurant Pty Ltd became the business owner of *Dreamgirls* on or about 14 November 2008.
  34. **Attachment C** – Compliance Notice/Warning Letter reference number I12/0014485 dated 1 February 2013 issued by OLGR Senior Compliance Officer Ms Sarina Wise to Ms Ngawai Smith, then licensee of the Premises, in respect of three breaches of licence condition numbered “260” on the licence requiring entertainers to leave the stage area wearing at least a G string. These contraventions were allegedly detected by OLGR inspectors on 2 December 2012.
  35. Attachment C also includes a copy of an undated letter from Mr Mark Bessant, OLGR A/Manager Investigations to Ms Smith in respect of alleged breaches of condition “290” on the licence requiring all licensed security personnel to wear identifying numbers and condition “300” requiring that security personnel must not perform any security activity unless wearing their identifying number. Both of these breaches were detected by OLGR officers on 30 September 2012. Ms Smith was issued with two Penalty Notices numbered 3050198030 and 3050198021 respectively in the sum of **\$1,100** for each breach.
  36. Attachment C also includes a letter dated 28 February 2014 from Mr Peter Freeman, OLGR Manager Investigations, sent to Ms Smith in respect of the following further alleged breaches of legislation detected by OLGR officers on 31 January 2014:
    - *Licensee fail to comply with conditions of licence* (CCTV systems to be maintained on subject premises), contrary to section 11(2) of the Act and clause 53H(d)(iii) of the *Liquor Regulation 2008*. OLGR issued the (then) licensee with Penalty Notice number 3050198508 in the amount of **\$1,100** in respect of this breach.
    - *Licensee fail to comply with conditions of licence* (Condition “290” requiring all licensed security personnel to wear identifying numbers while performing security duties), contrary to section 11(2) of the Act. OLGR issued the (then) licensee with Penalty Notice number 3050198480 in the amount of **\$1,100** in respect of this breach.

- *Licensee fail to comply with conditions of licence* [stated to be a breach of Condition "340" on the licence record for the Premises. The Authority notes that the licence record as at 25 February 2016 does not contain a condition numbered "340" but this condition apparently stated, at the time of the breach: "Security guards shall wear a uniform to clearly identify that they are working at "Xtreme" (the subject premises). The name "Xtreme" on the uniform of the security guards shall be capable of being read from a distance of five (5) metres". The Authority notes that the requirements of the previous Condition "340" have been subsumed by the current Condition "3010" on the licence]. OLGR issued the (then) licensee with Penalty Notice number 3050198499 in the amount of **\$1,100** in respect of this breach.

**37.** Attachment C also includes a second letter dated 14 October 2014 from Mr Peter Freeman, OLGR Manager Investigations, to the Former Licensee, Mr David Lakepa, in respect of the following further alleged breaches of legislation detected by OLGR officers on 7 September 2014:

- *Licensee fail to comply with conditions of licence* (any person carrying out RSA duties must, while carrying out those duties, wear clothing that identifies the person as an RSA Marshal), contrary to section 11(2) of the Act and clause 53G of the Regulation. OLGR issued the Former Licensee with Penalty Notice number 3081391601 in the amount of **\$1,100** in respect of this breach.
- *Licensee fail to comply with conditions of licence* (Condition "240" prohibiting audience participation in the entertainment provided on the Premises), contrary to section 11(2) of the Act. OLGR issued the Former Licensee with Penalty Notice number 3081391620 in the amount of **\$1,100** in respect of this breach.
- *Licensee fail to comply with conditions of licence* (Condition "260" requiring entertainers to leave the stage area wearing at least a G string), contrary to section 11(2) of the Act. OLGR issued the Former Licensee with Penalty Notice number 3081391610 in the amount of **\$1,100** in respect of this breach.
- *Licensee fail to comply with conditions of licence* (Condition "340" requiring security guards to wear a uniform clearly identifying that they are working at "Xtreme"), contrary to section 11(2) of the Act. OLGR issued the Former Licensee with a Compliance Notice/Warning in relation to this breach.
- *Person refuse or fail to comply with a requirement made by an inspector* (CCTV footage not provided by the due date), contrary to section 34(1) of the *Gaming and Liquor Administration Act 2007*. OLGR issued the Former Licensee with a Compliance Notice/Warning in relation to this breach.

**38. Attachment D – JusticeLink** Court records of the following convictions for licensing offences arising from the conduct of the *Dreamgirls* business from September 2014 to December 2015:

- On 7 September 2014, an offence of *Licensee fail to comply with condition of licence* (clause 53G of the Regulation – requirement for an RSA Marshal) was detected on the Premises. The Former Licensee, Mr David Lakepa, was convicted of this offence on 21 September 2015. Mr Lakepa subsequently lodged an appeal to the District Court. The appeal was dismissed on 18 February 2016 and Mr Lakepa was ordered to pay a fine of **\$1,650** and professional costs of **\$1,500** to LGNSW.
- On 19 December 2015, an offence of selling liquor while not authorised to do so by the licence, contrary to section 7(1) of the Act, was detected on the Premises. Mr Michael Amante pleaded guilty to this offence at the Downing Centre Local Court on 17 May 2016 and was convicted and ordered to pay a fine of **\$3,000**.
- On 19 December 2015, an offence of assisting at premises kept open or used to sell liquor without a licence, contrary to section 8 of the Act, was detected on the Premises. Mr Michael

Amante pleaded guilty to this offence at the Downing Centre Local Court on 17 May 2016 and was convicted and ordered to pay a fine of **\$4,000** and professional costs of **\$1,500** to LGNSW.

39. **Attachment E** – this is an additional paragraph “51A” to the Complaint Letter that the Complainant purports to insert into the Complaint Letter as it was initially filed on 22 March 2016.
40. The paragraph contains a table sourced from the NSW State Debt Recovery Office (**SDRO**) which sets out the *payment status* of all Penalty Notices issued by NSW Police in respect of the Premises during such times when Mr Amante had some level of involvement in the *Dreamgirls* business as licensee and/or business owner. This table specifies 24 Penalty Notices dating from 11 October 2008 to 25 August 2014.
41. **Attachment F** – 12 Penalty Notices issued by NSW Police to Mr Michael Amante personally in respect of the operation of the Premises from October 2008 to September 2010.
42. **Attachment G** – 14 further Penalty Notices issued by NSW Police or OLGR to Ms Ngawai Smith, the former licensee, arising from the operation of the business while Mr Amante was the business owner. They date from June 2011 to January 2014.
43. **Attachment H** – 6 further Penalty Notices issued by NSW Police or OLGR to the Former Licensee, Mr David Lakepa, in respect of the Premises while Mr Amante was the business owner, dating from July 2014 to September 2014.
44. **Attachment I** – Email from the NSW State Debt Recovery Office attaching three separate spreadsheets for Mr Michael Amante, Ms Ngawai Smith and Mr David Lakepa, listing all offences against licensing legislation for which Penalty Notices were issued and the outcomes (if defended) or payment status of those Notices.
45. **Attachment J** – SDRO spreadsheet listing the payment status of **12** Penalty Notices issued to Mr Michael Amante in respect of licensing offences. Relevantly, all 12 infringement notices have been *paid*, one of which was subject to an Enforcement Order.
46. **Attachment K** – SDRO spreadsheet listing the payment status of **14** Penalty Notices issued to Ms Ngawai Smith in respect of licensing offences. Relevantly, all 14 infringement notices have been *paid*, all of which were subject to Enforcement Orders.
47. **Attachment L** – SDRO spreadsheet listing the payment status of **6** Penalty Notices issued to Mr David Lakepa in respect of licensing offences. 5 of those notices have been *paid*, while Mr Lakepa elected to defend the remaining infringement notice at Court. The *JusticeLink* record for those Court proceedings at Attachment D of the Additional Material discloses that Mr Lakepa’s appeal to the District Court against his conviction for the offence of *Licensee fail to comply with condition of licence* (clause 53G of the Regulation – requirement for an RSA Marshal) was *dismissed* on 18 February 2016. Mr Lakepa was ordered to pay a fine of **\$1,650** and professional costs of **\$1,500** to LGNSW.

#### **RESPONSE FROM MR AMANTE TO ADDITIONAL MATERIAL DATED 3 JUNE 2016**

48. On 27 May 2016 the Additional Material was sent to Mr Keleher and Mr Amante was given 7 days to provide any evidence or submissions in response to this material.

49. On 3 June 2016, Mr Amante provided a 5-page submission letter through his solicitor, Mr Keleher. Briefly, Mr Amante relies upon his earlier submissions of 20 and 23 May 2016 but makes the following additional contentions and observations:
50. On the Authority's power to make an order pursuant to section 141(2)(c) of the Act, Mr Amante submits that the Complaint Material served by the Complainant (including the Additional Material provided on 27 May 2016) "confirms" that the Complainant clearly identifies "the events of 19 December 2015" as the basis of this Complaint.
51. Mr Amante submits that it is open to the Authority to impose a *monetary penalty* upon a former licensee in circumstances where the subject matter of a disciplinary complaint relates to the period in which the former licensee was the licensee of the relevant premises. However, he submits that it is not open to the Authority to impose a monetary penalty in this case, by reason that Mr Amante was not the *licensee* of the Premises at the relevant time.
52. Mr Amante submits that the Additional Material served by the Complainant on 27 May 2016 "clearly indicates" that monetary penalties have already been imposed and paid for those incidents that did occur during Mr Amante's tenure as licensee.
53. On the Authority's power to make an order pursuant to sections 141(2)(j) and 141(2)(k) of the Act, Mr Amante notes that the Complaint Letter (as amended by the Additional Material served by the Complainant on 27 May 2016) provides a detailed history of the venue's legislative compliance from 2008 to the present.
54. Mr Amante notes that clause 2 of *Authority Guideline 5* in relation to disciplinary complaints states:

*The Authority considers that its disciplinary powers under Part 9 are directed towards bringing to order some identified "fault" or "laxity" (which may not necessarily rise to the level of negligence or criminality) on the part of the respondent that it is in the public interest to remedy.*
55. Mr Amante notes that the Premises is located within the Kings Cross Precinct as defined by section 4A and Schedule 2 to the Act. The venue was designated a "high risk venue" within the meaning of the Act.
56. Mr Amante submits that the "special trading rules" that are imposed by the legislation upon high risk venues are there for the purpose of "making venues, neighbourhoods and transport safer". He submits that a close examination of the Complaint Material indicates that there were *no* offences relating to the operation of the licensed business "involving intoxication or violence" from 2008 to date.
57. Mr Amante concedes that some offences did occur during the time of his involvement with the *Dreamgirls* business, but the Authority "ought to place considerable weight" on the fact that the "overall objective" of "ensuring safety" was "maintained" by the business from 2008 to date in the context of a high risk venue that is located within the Kings Cross Precinct.
58. On the Additional Material served on 27 May 2016, Mr Amante further submits that, to the extent that recorded offences concern Mr Amante personally, he has *already paid the penalties* imposed by the relevant prosecuting authority.

59. Mr Amante submits that no further disciplinary action is necessary at this time to protect the public interest. He concludes with the submission that the “bans” recommended by the Complainant at paragraph 77 of the Complaint Letter pursuant to sections 141(2)(j) and 141(2)(k) of the Act ought not be imposed in this case.
60. On the Authority's power under section 141(2)(l) of the Act to order that a respondent to a disciplinary complaint pay the costs of the Secretary's investigation preceding the Complaint under section 138 of the Act, Mr Amante refers to clause 2 of *Authority Guideline 5*.
61. Mr Amante submits that those events that are the subject of this Complaint and outlined in paragraphs 29 to 41 of the Complaint Letter were the subject of prosecutions for offences against sections 7(1) and 8(1) of the Act.
62. Mr Amante advises that he pleaded guilty “at the earliest opportunity” to those offences and was ordered by Downing Centre Local Court on 17 May 2016 to pay a total of \$7,000 in fines plus professional costs to OLGR of \$1,500.
63. Mr Amante submits that he has already been “penalised” with respect to the events that are the subject of this Complaint and that this “ought to be determinative” when the Authority determines this Complaint.
64. Mr Amante concludes that it is appropriate for the Authority to exercise its discretion under section 141(1) of the Act to make “no orders” in response to the Complaint.

## LEGISLATION

### Disciplinary Provisions

65. In determining this Complaint, the Authority has considered the provisions contained in Part 9 of the Act, which state (in so far as relevant) as follows:

#### 139 Grounds for making complaint

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

....

  - (j) *that the close associate is not a fit and proper person to be a close associate of a licensee,*

#### 141 Disciplinary powers of Authority

- (1) *The Authority may deal with and determine a complaint that is made to it under this Part.*

....

- (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) ....
  - (k) *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,*
  - (l) *disqualify the close associate from holding a licence for such period as the Authority thinks fit,*
  - (m) *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,*
- (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) ...

**66.** In determining this disciplinary complaint, as when making any decision under the Act, the Authority will consider the objects and considerations that are prescribed by section 3 of the Act, which states as follows:

### **3 Objects of Act**

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



## FINDINGS

67. The Authority makes the following findings on the civil standard of proof, mindful of its duty to take care when fact finding in a disciplinary context, pursuant to the principle enunciated by the High Court of Australia in *Briginshaw v Briginshaw* (1938) 60 CLR 336 in which Dixon J stated:

*The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved.*

### Fitness and Propriety at General Law

68. It is well established at common law that to be “fit and proper” for the purposes of licensing 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.
69. In *Hughes & Vale Pty Limited v NSW (No 2)* (1955) 93 CLR 127, the High Court of Australia held that:

*"Fit" (or "idoneus") with respect to an office is said to involve three things, honesty knowledge and ability: "honesty to execute it truly, without malice, affection or partiality; knowledge to know what he ought duly to do; and ability as well in estate as in body, that he may intend and execute his office, when need is, diligently, and not for impotency or poverty neglect it..."*

70. In *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, the High Court of Australia 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.*

71. Section 139(3)(i) refers to section 45(5A) of the Act, which states:

(5A) *Without limiting subsection (3)(a), in determining whether an applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, the Authority is to consider whether the applicant:*

- (a) *is of good repute, having regard to character, honesty and integrity, and*
- (b) *is competent to carry on that business or activity.*

## Mr Amante as a Close Associate

72. Relevantly to this Complaint, the Authority notes that a “close associate” within the meaning of section 5(1) of the *Gaming and Liquor Administration Act 2007* (**GALA Act**) is defined as follows:

*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.*

73. The GALA Act provides in section 4 that the “gaming and liquor legislation” includes the *Liquor Act 2007*. “Relevant financial interest” is defined in section 5(2) of the GALA Act as follows:

**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).*

74. “Relevant position” is defined in section 5(2) of the GALA Act as follows:

**relevant position** means:

- (a) *the position of director, manager or secretary, or*
- (b) *any other position, however designated, if it is an executive position.*

75. “Relevant power” is defined in section 5(2) of the GALA Act as follows:

**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.*

76. The Authority is satisfied, as submitted by the Complainant at paragraph 22 of the Complaint Letter, that Mr Amante was a close associate of the former licence for the Premises, within the meaning of section 5 of the *Gaming and Liquor Administration Act 2007*, by virtue of his position as business manager, as well as his role in the operations and management of the venue. He held a relevant financial interest and relevant position in the business.

77. The Authority is satisfied that Mr Amante, as the sole director of Royal Restaurant Pty Ltd, was a close associate of the licensed business operating on the Premises from November 2008, when he acquired the business and personally acted as its first licensee.
78. As detailed in information provided to the Authority by Ms Staltaro’s solicitor Mr Dion Manca, summarised in the Long Term Closure Decision, on or about 30 July 2015 Mr Amante’s company Royal Restaurant Pty Ltd entered into a contract to sell the *Dreamgirls* business to Ms Staltaro’s company, Restaurant Royale Pty Ltd.
79. Notwithstanding the exchange of this contract, which was conditional upon Ms Staltaro’s appointment of her nominee as a licensee of the Premises (a transfer that did not ultimately eventuate), the Authority is satisfied that Mr Amante continued to exercise sufficient influence over the day to day operation of the business to remain a “close associate” of the licensee during the latter half of 2015, including around the time of the Police and LGNSW raids on 19 December 2015. The Authority is satisfied that Mr Amante continued to exercise managerial and executive power during this period, notwithstanding Ms Staltaro’s involvement.
80. The indicia of Mr Amante’s ongoing status as a close associate, notwithstanding the contract for sale of the business to Restaurant Royale Pty Ltd, are as follows. First, Mr Amante’s company, Royal Restaurant Pty Ltd, continued to be recorded as the owner of the licensed business during the latter part of 2015, as evidenced by the *OneGov* licence record for the Premises as at 25 February 2016 (**Exhibit 1**).
81. Second, Mr Amante’s ongoing directorship of Royal Restaurant Pty Ltd is established by the ASIC Company Extract for Royal Restaurant Pty Ltd as at 25 February 2016 (**Exhibit 2**).
82. Third, page 3 of the transcript of the LGNSW interview with Mr Amante dated 27 January 2016 (**Amante Interview**) which is **Exhibit 12** records the following exchange:
- MR FOWLER: Michael, what we might just start with – there’s a few points that we need to cover off. Can you explain what your role currently is with Dreamgirls?*
- MR AMANTE: Yeah. Sure. I’m the owner, and about late April/late May, I sort of stopped going in and working nights - - -*
83. Fourth, as established by the *JusticeLink* records of Court outcomes provided by the Complainant (**Attachment D** of the Additional Material) Mr Amante was convicted in the Downing Centre Local Court on 17 May 2016 for the commission of offences against section 7 and 8 of the Act in matters arising from the unlawful operation of the *Dreamgirls* business on non-licensed premises on Level 1 of 77 Darlinghurst Road, Potts Point.
84. Fifth, it was Mr Amante who made an application to the Authority to surrender the licence on or about 23 February 2016.
85. Mr Amante’s solicitor, Mr Keleher has submitted that this Complaint is concerned with the raids of 19 December 2015. The Authority accepts that the events of 19 December 2015 form one part of the matters specified in the Complaint.

86. However, there are numerous other licensing matters arising during the course of Mr Amante's involvement as the business owner of *Dreamgirls*, along with matters going to Mr Amante's personal criminal history, which form part of this Complaint.

### Specific Allegations in Complaint

#### Paragraphs 23 to 28 of the Complaint Letter – Mr Amante's Role as Business Owner

87. The Complainant made a number of discrete factual allegations that are described in the Complaint Letter as "elements" of the Complaint.
88. The Authority is satisfied, as contended at paragraph 23 of the Complaint Letter, that Mr David Lakepa was the licensee on the record for this venue, which operated with an on-premises (public entertainment venue) licence. Mr Lakepa remained the licensee on the record from 29 May 2014 until 9 March 2016 (at which time the licence was surrendered).
89. The Authority makes these findings on the basis of the *OneGov* licence record for the Premises as at 25 February 2016 (**Exhibit 1**) and paragraph 2 of the Statement of Particulars submitted with the Short Term Closure Application dated 20 December 2015 (**Exhibit 10**).
90. The Authority is satisfied, as contended at paragraph 23 of the Complaint Letter, that the business owner of *Dreamgirls* is a company, Royal Restaurant Pty Ltd. The Authority is satisfied that Mr Amante acted in the role of director and owner of Royal Restaurant Pty Ltd.
91. This finding is made on the basis of Authority licensing records and the Statement of Particulars submitted with the Short Term Closure Application dated 20 December 2015 (**Exhibit 10**). The Authority further notes page 3 of the transcript of the Amante Interview (**Exhibit 12**), which records the following exchange:
- MR FOWLER: Michael, what we might just start with – there's a few points that we need to cover off. Can you explain what your role currently is with Dreamgirls?*
- MR AMANTE: Yeah. Sure. I'm the owner, and about late April/late May, I sort of stopped going in and working nights - - -*
92. The Authority is satisfied, as contended by the Complainant at paragraph 25 of the Complaint Letter, that Mr Amante was the sole director of Royal Restaurant Pty Ltd.
93. The Authority makes this finding on the basis of the ASIC Company Extract for Royal Restaurant Pty Ltd as at 25 February 2016 (**Exhibit 2**) and paragraph 2 of the Statement of Particulars submitted with the Short Term Closure Application dated 20 December 2015 (**Exhibit 10**).
94. The Authority is satisfied, as contended by the Complainant at paragraph 26 of the Complaint Letter, that Mr Amante employed Mr Lakepa as licensee of the business conducted on the Premises from 29 May 2014.
95. The Authority makes this finding on the basis of the *OneGov* licence record for the Premises as at 25 February 2016 which records Mr Lakepa's appointment as licensee from 29 May 2014 (**Exhibit 1**) and page 4 of the transcript of the LGNSW interview with

Mr David Lakepa dated 5 February 2016 (**Lakepa Interview**) which is provided at **Attachment A** of the Additional Material and records the following exchange:

*MR FOWLER: Okay. I'm going to show you a document. That's a copy of a liquor licence for Dreamgirls. It's liquor licence LIQO624013611. David, do you agree that the heading on the documents says that the liquor licence details are recorded as at the 5<sup>th</sup> of February 2016?*

*MR LAKEPA: Yes.*

*MR FOWLER: Okay. David, do you agree that the start date for you being licensee was the 29<sup>th</sup> of May 2014?*

*MR LAKEPA: Yes.*

*MR FOWLER: All right. And are you still the licensee?*

*MR LAKEPA: Apparently.*

- 96.** The Authority is satisfied, as submitted at paragraph 27 of the Complaint Letter, that by virtue of his position as director of the corporate business owner, as well as employer of Mr Lakepa, Mr Amante was a “close associate” of the Former Licensee, Mr David Lakepa.
- 97.** The Authority makes this finding, having considered the definition of “close associate” in section 5 of the GALA Act. The Authority further notes the extract from page 3 of the Amante Interview which is **Exhibit 12** to the Complaint, extracted above, where Mr Amante confirms his status as the business owner at the time of that interview dated 27 January 2016.
- 98.** Paragraph 28 of the Complaint Letter alleges that Mr Amante is not a fit and proper person to be the close associate of a licensee.
- 99.** The Complainant further alleges that Mr Amante is not of good repute, having regard to character, honesty and integrity and is not competent to carry on the business or activity of a licensed premises.
- 100.** These are conclusions to be drawn on the basis of the more specific allegations made in the Complaint. The Authority is satisfied, on the basis of the findings specified below, that Mr Amante is not a fit and proper person to be the close associate of any licensed business in New South Wales and that he is not of good repute, having regard to character, honesty and integrity and is not competent to carry on the business or activity of a licensed premises.
- 101.** To the extent that the Authority relies upon the events of December 2015, the Authority is satisfied that Mr Amante continued to play a role with the business conducted on the Premises sufficient to warrant his ongoing characterisation as a “close associate” of the licence at that time.
- 102.** There is information before the Authority in the form of the Long Term Closure Decision dated 31 January 2016 (**Exhibit 6**) which recorded submissions from Ms Staltaro’s solicitor, Mr Dion Manca, that on or about 30 July 2015 Ms Staltaro’s company Restaurant Royale Pty Ltd had contracted to acquire the *Dreamgirls* business from Royal Restaurant Pty Ltd.

**103.** Nevertheless, the Authority is satisfied that Mr Amante remained a person with a sufficient *influence* over the affairs of the business to continue to qualify as a “close associate” during the latter half of 2015.

**104.** The Authority makes this finding on the basis of the following evidence or material:

- Witness Statement by Ms Aoife Keenan in the matter of *Operation Speakeasy – NSW Office of Liquor, Gaming and Racing v Dreamgirls* dated 2 February 2016 (**Exhibit 13**);
- Transcript of the interview between LGNSW inspectors and Ms Aoife Keenan dated 2 February 2016 (**Exhibit 14**); and
- Transcript of the interview between LGNSW inspectors and Mr David Lakepa dated 5 February 2016 (**Attachment A** of the Additional Material).

**105.** Notably, as indicated in the Additional Material, since the making of this Complaint Mr Amante pleaded guilty to two offences against section 7 and 8 of the Act on 17 May 2016. These prosecutions were noted in the initial Complaint Letter and are recorded in **Attachment D** of the Additional Material provided on 27 May 2016.

*Paragraphs 29 to 41 of the Complaint Letter – Police Raids of 19 December 2015*

**106.** The Authority is satisfied, as contended at paragraph 29 of the Complaint Letter, that at about 11:00pm on Saturday 19 December 2015 OLGR inspectors participated in a joint operation with NSW Police involving the execution of search warrants at each of the four floors of the building located at 77 Darlinghurst Road, Potts Point.

**107.** The Authority makes this finding on the basis of the Short Term Closure Order issued against the Premises dated 20 December 2015 (**Exhibit 5**) and paragraphs 20 to 21 of the Statement of Particulars submitted with the Short Term Closure Application dated 20 December 2015 (**Exhibit 10**).

**108.** The Authority is further satisfied, as contended at paragraph 29, that the *Dreamgirls* Premises occupies the basement level of the building located at 77 Darlinghurst Road, Potts Point and is authorised to sell or supply liquor on this floor under liquor licence number LIQO624013611.

**109.** The Authority makes this finding on the basis of the description of the Premises at paragraph 9 of the Complaint Letter, the *OneGov* record of the licence for the Premises as at 25 February 2016 which indicates that the Premises is located at the basement level “B” of the street address specified on the licence (**Exhibit 1**) and paragraphs 1 to 3 of the Statement of Particulars submitted with the Short Term Closure Application dated 20 December 2015 (**Exhibit 10**).

**110.** The Authority notes, however, that an application to surrender the licence for the Premises was filed by Mr Amante on or about 23 February 2016 indicating that he remained responsible for the licensed business at the time of surrender. This surrender was accepted by an Authority delegate on 9 March 2016. As a result, the basement level of the building located at 77 Darlinghurst Road, Potts Point is no longer a licensed premises at the time of this decision.

111. The Authority is satisfied, as contended at paragraph 30 of the Complaint Letter, that the execution of the search warrant was the culmination of covert investigations undertaken by undercover operatives attached to the NSW Police Force identifying substantial evidence of prohibited drug supply and use in the venue; together with the operation of an unlawful bar on Level 1 of the building.
112. The Authority makes this finding on the basis of paragraph 6 of the Statement of Particulars submitted with the Short Term Closure Application dated 20 December 2015 (**Exhibit 10**) and paragraphs 3 to 29 of the Statement of an NSW Police Undercover Operative dated 18 December 2015 (**Exhibit 11**).
113. The Complainant contends, at paragraph 31 of the Complaint Letter, that at about 11:45pm on Saturday 19 December 2015 Kings Cross Police executed a search warrant at the venue. The Complainant further contends that within an illegal bar operating on Level 1 of the building, Police located four patrons and four employees of the licensed business. The patrons admitted to purchasing alcohol in the illegal bar and paid for the alcohol via an EFTPOS machine set up at the bar.
114. The Authority accepts these contentions on the basis of paragraphs 20 to 21 of the Statement of Particulars submitted with the Short Term Closure Application dated 20 December 2015 (**Exhibit 10**), paragraphs 6 to 21 of the Witness Statement by a waitress, Ms Keenan in the matter of *Operation Speakeasy – NSW Office of Liquor, Gaming and Racing v Dreamgirls* dated 2 February 2016 (**Exhibit 13**) and pages 6 to 13 of the transcript of the interview between LGNSW inspectors and Ms Keenan dated 2 February 2016 (**Exhibit 14**).
115. The Authority is satisfied, as also alleged at paragraph 31, that Police located a cupboard stocked with alcohol in the Level 1 bar at the time that area was searched on 19 December 2015.
116. The Authority makes these findings on the basis of paragraphs 20 to 21 of the Statement of Particulars submitted with the Short Term Closure Application dated 20 December 2015 (**Exhibit 10**), paragraphs 6 to 21 of the Witness Statement by Ms Keenan in the matter of *Operation Speakeasy – NSW Office of Liquor, Gaming and Racing v Dreamgirls* dated 2 February 2016 (**Exhibit 13**), pages 6 to 13 of the transcript of the interview between LGNSW inspectors and Ms Keenan dated 2 February 2016 (**Exhibit 14**) and the NSW Police Property Seizure/Exhibit Form dated 19 December 2015 (**Exhibit 15**).
117. The Authority is further satisfied, as alleged at paragraph 31, that Police located one small resealable plastic bag containing white powder on the floor in the rear private room of the illegal bar, and that a drug detection dog indicated the presence of illegal drugs in two further private dance rooms within the illegal bar area on Level 1.
118. The Authority makes these findings on the basis of paragraphs 20 to 21 of the Statement of Particulars submitted with the Short Term Closure Application dated 20 December 2015 (**Exhibit 10**) and the NSW Police Property Seizure/Exhibit Form dated 19 December 2015 (**Exhibit 15**).
119. On the allegation in paragraphs 32 and 33 of the Complaint Letter that Mr Amante provided “full and frank admissions” during a record of interview under caution with OLGR inspectors on 27 January 2016 (**Amante Interview**) with regard to whether he

was aware of the illegality of the Level 1 bar area, the Authority notes that page 6 of the transcript of the Amante Interview records the following exchange:

*MR FOWLER: Okay. You just said a minute ago that upstairs was exposed. What did you mean – what do you mean by that?*

*MR AMANTE: Like, you know, it was no longer a secret.*

*MR FOWLER: Okay. So why was it previously a secret?*

*MR AMANTE: Because I knew we weren't supposed to be up there.*

*MR FOWLER: Okay.*

*MR AMANTE: Well, I knew it was licensed.*

*MR FOWLER: Okay.*

*MR AMANTE: I don't know – I don't think there's any – I don't know about the – I don't know of any problem with the girls going up there, but I don't think there's alcohol supposed to be up there.*

**120.** The Authority is satisfied that this exchange indicates that Mr Amante was aware that liquor was not supposed to be sold or supplied in the Level 1 area and that the *Dreamgirls* licensed business was not supposed to be operating in that part of the building.

**121.** The Authority makes this finding on the basis of the Complaint Letter and page 6 of the Amante Interview (**Exhibit 12**).

**122.** The Authority is also satisfied, as alleged by the Complainant at paragraph 34 of the Complaint Letter, that Mr Amante made the following statement on the reason for establishing this Level 1 unlicensed bar:

*To make money, I suppose, to do something to counteract or beat or get over, get away, whatever you want to say, the lockouts.*

**123.** The Authority makes this finding on the basis of the Complaint Letter and page 6 of the Amante Interview (**Exhibit 12**).

**124.** The Authority is satisfied, as alleged at paragraph 35 of the Complaint Letter, that Mr Amante made the following statements on who made decisions in relation to the *Dreamgirls* business when Mr Lakepa was installed as licensee:

*MR MILLER: I am just curious as to – all right. Realistically, how much control did Kepa have in the running of Dreamgirls?*

*MR AMANTE: When it was – when it was opened? When I – yeah, a fair bit. When you put him in – yeah, a fair bit, yeah.*

*MR MILLER: Like, to make decisions and – like, if - - -*

*MR AMANTE: It depends. I would make the decisions, I suppose. I would make most of them, but - - -*

**125.** The Authority makes this finding on the basis of the Complaint Letter and page 49 of the Amante Interview (**Exhibit 12**).



126. The Complainant contends, at paragraph 36 of the Complaint Letter, that on 2 February 2016, an interview was conducted with Ms Keenan, a waitress discovered serving liquor in the unlicensed area on Level 1 at the time of the Police raids on 19 December 2015 (**Keenan Interview**).
127. The Authority is satisfied, as alleged at paragraph 36, that during the Keenan Interview, Ms Keenan made the following statements as to how she became an employee of the *Dreamgirls* business:

MR FOWLER: *Aoife, when did you start working at Dream .....*

MS KEENAN: *I don't know the date. I know it would be about three years ago - - -*

MR FOWLER: *Yep.*

MS KEENAN: *- - - on – just doing Saturdays, like I told you.*

MR FOWLER: *Just Saturdays?*

MS KEENAN: *Yeah. Whenever they had shifts.*

MR FOWLER: *Yeah. And was that on a regular basis?*

MS KEENAN: *No. Like, I moved to Darwin, like I told you, for seven months.*

MR FOWLER: *Yep.*

MS KEENAN: *Do I repeat this? And then whenever Michael had shifts, we'd – I'd go in, and it was just now and again, whenever – I had another job in General .....* so it was just whenever we had – I actually used to work on the door doing the tickets.

MR FOWLER: *Okay.*

MS KEENAN: *Yeah.*

MR FOWLER: *And who first employed you?*

MS KEENAN: *Michael.*

MR FOWLER: *Michael.*

MS KEENAN: *Yeah.*

MR FOWLER: *And when you say Michael, do you mean Michael Armanti [sic]?*

MS KEENAN: *Yeah.*

MR FOWLER: *Yep. And what was involved in the employment basis?*

MS KEENAN: *I just came in and he just told me what, exactly what to do, and off I went and did it.*

MR FOWLER: *Okay. So was there an interview process?*

MS KEENAN: *Not really, no. He just has a quick chat, really. He makes his mind up really sharpish. Well, no, he'd give you a trial shift. I suppose there's a trial shift, yeah.*

MR FOWLER: *Yep. Okay. And how long ago was that?*

MS KEENAN: *About three years ago. I have no idea.*

**128.** The Authority makes this finding on the basis of pages 3 to 4 of the transcript of the Keenan Interview (**Exhibit 14**).

**129.** The Authority is satisfied, as alleged at paragraph 37 of the Complaint Letter, that during the Keenan Interview, Ms Keenan made full and frank admissions as to her role as a waitress supplying liquor to patrons in the Level 1 area, as evidenced by the following passages at pages 11 to 14 of Exhibit 14:

MR FOWLER: *And how many times during a normal shift do you think you would have averaged going up upstairs?*

MS KEENAN: *God. It would depend. Like, if it's quiet – like, because the Cross is really quiet at the moment, so you could go a few times, and then if it was busy, you'd go maybe 10 times more.*

MR FOWLER: *Okay.*

MS KEENAN: *It just depends, really.*

MR FOWLER: *Yeah.*

MS KEENAN: *I'm just floating around downstairs serving drinks, and then if they say, go up and serve a drink.*

MR FOWLER: *Okay. And are you the only waitress that goes upstairs?*

MS KEENAN: *Well, I'm only there Thursdays and Fridays, so I actually don't know during the week. It's – I don't think it's open during the week. I don't know.*

MR FOWLER: *Is it open on Thursdays?*

MS KEENAN: *Yeah. Yeah. Sorry. We open Monday, Thursday and Friday, because Thursday's considered the weekend. It's busy on a Thursday. Everybody – all the businessmen come in on Thursday. They mustn't go in to work on Fridays.*

MR FOWLER: *I was about to say, I don't get weekends on Fridays.*

MS KEENAN: *Casual Fridays. They have that in the back of their mind.*

MR MILLER: *Just going back to one of the things you mentioned - - -*

MS KEENAN: *Yeah.*

MR MILLER: *- - - you said Michael set it up.*

MS KEENAN: *Yeah.*

MR MILLER: *The bar or the shack.*

MS KEENAN: *Yeah, the shack.*

MR MILLER: *The alcohol shack. But you also mentioned earlier that he hadn't been there much over the last six months or so?*

MS KEENAN: *Yeah.*

MR MILLER: *So - - -*

MS KEENAN: *I think ..... terrible.*

MR MILLER: *So who was setting it up in that six months?*

MS KEENAN: *He would be in during the day. So he'd just set it up during the day. Just have stuff there.*

MR FOWLER: *Okay.*

...

MR FOWLER: *Okay. So who would it be that tells you to go upstairs most of the time?*

MS KEENAN: *Kepa or Hopa.*

MR FOWLER: *Kepa. Or Hopa.*

MS KEENAN: *Or Hopa. Yeah. Whoever's literally closest to the buzzer. There's no real rule, it's just - - -*

**130.** The Authority is satisfied, as alleged at paragraph 38 of the Complaint Letter, that during the Keenan Interview, Ms Keenan stated that she viewed *Mr Amante* as the “boss”, as he had employed her and because he was really “clued in” on the workings of the business and the customers. Notably, Ms Keenan made the following statements at pages 18 to 19 of Exhibit 14:

MR MILLER: *Okay, if you had to say who are the bosses at Dreamgirls, you had to pick them out of everyone working there - - -*

MS KEENAN: *.....*

MR MILLER: *- - - who do you think are the bosses?*

MS KEENAN: *Well, Michael was, because that's who hired me and who I, like, looked up to. He was – you know, he was really clued in as to how to keep business, and customers – people come in and are like, where's Michael, and they love him, so he was my boss, but then in the last – I found ..... six months, he wasn't really there, so Kepa, yeah. But Kepa's really easygoing and chill, and, like, he – you wouldn't be scared of Kep the way you're scared of Michael, so – but Kepa. Yeah, Kepa's our boss. Kepa's who I text my roster to and - - -*

MR FOWLER: *Yeah.*

MS KEENAN: *- - - that's it. But again, it wasn't – it wasn't an environment where he'd be, like ..... shout, do this, do that. It was just really laidback.*

**131.** The Complainant contends, at paragraph 39 of the Complaint Letter, that on 2 February 2016, a witness statement was obtained from Ms Keenan in the matter of *Operation Speakeasy – NSW Office of Liquor, Gaming and Racing v Dreamgirls (Keenan Statement)*. This statement is in evidence before the Authority (**Exhibit 13**).

**132.** The Authority is also satisfied, as alleged at paragraph 39, that Ms Keenan stated that Mr Amante employed her at the venue, that Mr Amante told her to keep the Level 1 bar area “hush hush” and that she received directions from Mr Amante to attend Level 1 to serve drinks to patrons.

**133.** The Authority notes the following relevant paragraphs of the Keenan Statement:

3. *I was employed by Michael AMANTE at Dreamgirls, Kings Cross as a casual waitress for the last 3 years. During that time I worked mostly on Thursday and Friday nights, though this was not regular shifts every week. My regular time of working was between 9:30pm and 3:00am.*
- ...
17. *I have never been told that Level 1 of the building was not licensed for the purpose of selling alcohol. I have never been told that the supply and sale of alcohol to customers on this floor was illegal.*
18. *I have been told to keep the Level 1 hush hush as it was for certain customers, like regulars, or it was too busy downstairs. I was told to keep it hush hush by Michael.*
19. *On numerous occasions in the last year, I have been asked to go to Level 1 to serve alcohol by Michael, Kepa and Hopa. Each time they have asked me to go up there was to sell alcohol. I know that Level 1 is also used by the dancers and other employees to go to for a cigarette, but I don't smoke, so I had no other reason for going up there except to serve alcohol.*
20. *The first time I was sent to Level 1 to serve alcohol was about a year ago. During each shift that I have worked at Dreamgirls since that date up until 19 December 2015 I would guess that I have served alcohol on the first floor during most shifts.*
21. *If Michael was not there on the night, I took direction from Kepa or Hopa. Whilst working on Level 1, I have seen Michael, Kepa and Hopa. Sometimes Gian went upstairs to collect glasses.*

**134.** The Authority makes these findings on the basis of paragraphs 3 and 17 to 21 of the Keenan Statement (**Exhibit 13**).

**135.** The Complainant contends at paragraph 40 of the Complaint Letter that on 5 February 2016 Mr Lakepa was interviewed under caution by OLGR inspectors (**Lakepa Interview**). A transcript of the Lakepa Interview is provided at Attachment A of the Additional Material.

**136.** The Authority is satisfied, as alleged at paragraph 40, that during the Lakepa Interview, Mr Lakepa informed OLGR inspectors that he was aware of liquor sales on Level 1 and he knew that this area was unlicensed and these liquor sales were unlawful. This is evidenced by the following passage:

*MR FOWLER: ... What's – what's the licence status of Level 1, David? Do you know?*

*MR LAKEPA: No.*

*MR FOWLER: Do you know whether there's a liquor licence for that premises?*

*MR LAKEPA: Oh, I don't think so.*

*MR FOWLER: Was there – was there any liquor sales on Level 1 that you're aware of?*

MR LAKEPA: *Yeah. Waitress sold, yes.*

**137.** The Authority makes these findings on the basis of page 13 of the Lakepa Interview transcript (**Attachment A** of the Additional Material).

**138.** The Authority is satisfied, as alleged at paragraph 40 of the Complaint Letter, that during the Lakepa Interview when Mr Lakepa was asked why he, as licensee, failed to prevent the above activities occurring, Mr Lakepa stated that he acted under the direction of the business owner, *Mr Amante*, for fear of losing his job. This is evidenced by the following passage at page 14 of the transcript:

MR MILLER: *Okay. As, I suppose, the licensee of Dreamgirls, did you have any role in setting up Level 1?*

MR LAKEPA: *No. No way.*

MR FOWLER: *Do you know who set Level 1 up?*

MR LAKEPA: *Michael sets it up.*

MR FOWLER: *Okay. How long ago did he start setting up?*

MR LAKEPA: *Oh, I don't know, man. It's probably a few months.*

MR FOWLER: *Okay. Do you know why he set it up?*

MR LAKEPA: *He says he wanted extra money.*

MR FOWLER: *Do you know what – what was involved in him setting it up?*

MR LAKEPA: *Yep. He put up – put up lounges, put a fridge up there and that was it. Put a EFTPOS machine up there.*

MR FOWLER: *What about liquor?*

MR LAKEPA: *Yeah. He – he set the bar up there as well.*

MR FOWLER: *Yep. And you had no involvement in that?*

MR LAKEPA: *No – oh, I had no choice. He was – he was my boss. I had to do what my boss said, otherwise I'd lose my job.*

**139.** The Authority is satisfied, as alleged by the Complainant at paragraph 41 of the Complaint Letter, that during the Lakepa Interview when Mr Lakepa was asked to provide his understanding of the role of a licensee, Mr Lakepa made the following statements at pages 5 to 6 of the Lakepa Interview:

MR FOWLER: *Yep. Did anyone give you instructions on – on what to do during your time at Dreamgirls?*

MR LAKEPA: *Only Mick.*

MR FOWLER: *Mick. So that's Michael – when – when you - - -*

MR LAKEPA: *Only I call him Mikey.*

MR FOWLER: *Yeah. So – so – I'll clarify that, Michael. If you want to use the name Mick, because that's what you know him by, that's fine, but we'll just agree that any time you use the word – the name Mick - - -*

MR LAKEPA: *Yep.*

MR FOWLER: *- - - that relates to Michael Amante.*

MR LAKEPA: *Yep. Yep.*

MR FOWLER: *Okay.*

MR MILLER: *Just – what's your understanding of the role of a licensee?*

MR LAKEPA: *I didn't even know much until recently. I was just employed by Mick – by Michael, and then I was just told what to do and that was it.*

MR MILLER: *So what were you told to do?*

MR LAKEPA: *Just put my name on the door.*

MR MILLER: *Anything else?*

MR LAKEPA: *Oh, just turn up to work and look after the club.*

**140.** The Authority is satisfied, as alleged at paragraph 41 of the Complaint Letter, that during the Lakepa Interview when Mr Lakepa was asked why he allowed the Level 1 bar to operate, Mr Lakepa made the following statements at pages 43 to 44 of the Lakepa Interview transcript:

MR FOWLER: *Okay. So, based upon what you've just told me there, did you know that liquor was being sold upstairs?*

MR LAKEPA: *Yes.*

MR FOWLER: *Did you arrange for a waitress to go upstairs to serve that liquor?*

MR LAKEPA: *Yes.*

MR FOWLER: *Were you aware that there was a facility upstairs to conduct financial transactions for the liquor?*

MR LAKEPA: *Yes.*

MR FOWLER: *Okay. Were you aware that upstairs was not licensed?*

MR LAKEPA: *Yes.*

MR FOWLER: *Okay. And just, again, why did you allow that to happen?*

MR LAKEPA: *Oh, I had no power to stop it. I was being told by my boss to let it happen.*

**141.** The Authority is satisfied, as alleged at paragraph 41 of the Complaint Letter, that during the Lakepa Interview when Mr Lakepa was asked about whether he had any control over the *Dreamgirls* business, Mr Lakepa made the following statements at page 15 of the transcript:

MR MILLER: *So who had control at Dreamgirls?*

MR LAKEPA: Oh, Michael would be the – the master – master there.

MR MILLER: But you were the licensee?

MR LAKEPA: Yes. On the book, yes, I'm – I'm the – I'm the guy to take the hit. Yeah.

MR MILLER: But did you have any control of what happened at Dreamgirls?

MR LAKEPA: No.

Paragraphs 42 to 49 of the Complaint Letter – Mr Amante's Personal Criminal History

142. The Complainant submits, at paragraph 42 of the Complaint Letter, that Mr Amante has a “significant criminal history” that is recorded under Criminal Names Index number 15467244 and those convictions are of a “most serious and concerning” nature, including dishonesty, violence and drug offences.
143. There are several convictions against Mr Amante personally that are specified in paragraphs 43, 44, 45 and 46 of the Complaint Letter. These were recorded between 1994 and 2003 which, while factually established on the Court records provided by the Complainant, may not be taken account when assessing Mr Amante's fitness and propriety by reason that they are spent convictions pursuant to the operation of Part 2 of the *Criminal Records Act 1991*. They should not have formed part of this Complaint.
144. The Authority is satisfied, as alleged by the Complainant at paragraph 47 of the Complaint Letter, that on 21 October 2009, Mr Amante was convicted at Downing Centre Local Court for the offence of failing to comply with a condition on a liquor licence contrary to section 11(2) of the Act when he employed a stripper at *Dreamgirls* who was under the age of 18 (16 years old) and allowed her entry into the venue on two occasions. Mr Amante was fined a total of **\$1,400** and ordered to pay Court costs of \$76 in respect of these contraventions.
145. While not an official Court record, the Authority makes this finding on the basis of the Complaint Letter and the *NSW Police Criminal History – Bail Report* and associated *NSW Police Facts Sheets* for Mr Amante, accessed on 2 February 2016, which includes the *NSW Police Facts Sheet* for Charge number H37799446 (**Exhibit 7**).
146. The Authority is satisfied, as alleged by the Complainant at paragraph 48 of the Complaint Letter, that on 23 September 2011, Mr Amante was convicted at Downing Centre Local Court of possessing a prohibited drug (cannabis), not keeping a firearm safely, possessing ammunition without holding a permit, buying a firearm without holding a permit to acquire, firing a firearm in or near a public place and possessing an unauthorised firearm.
147. The Authority is satisfied that the facts of these matters include Mr Amante purchasing an air rifle off the street and using it to shoot a projectile through a neighbour's bathroom window. During execution of a search warrant at Mr Amante's address Police located this firearm, ammunition and 0.69 grams of cannabis. Mr Amante was fined a total of **\$600**, ordered to pay Court costs of \$243 and ordered to perform 100 hours of community service in respect of these offences.

148. While not an official Court record, the Authority makes these findings on the basis of the Complaint Letter and the NSW Police Criminal History – Bail Report and associated NSW Police *Facts Sheets* for Mr Amante accessed on 2 February 2016, which includes the NSW Police *Facts Sheet* for Charge number H44718982 (**Exhibit 7**).
149. The Authority has considered the material provided by the Complainant with regard to the allegation that in November 2015, Mr Amante was charged with possess prohibited drug and supply prohibited drug (indictable quantity).
150. The material provided by the Complainant indicates that the matter arose from a search conducted on Mr Amante’s vehicle on 19 November 2015 after he was pulled over in Kings Cross. Police allegedly detected 12 resealable plastic bags of cocaine (over 11 grams, thus a deemed supply) in Mr Amante’s possession with an estimated street value of around \$6,000.
151. The Complainant has provided a NSW Police Criminal History – Bail Report recording the charge and NSW Police Prosecution *Facts Sheets* summarising the alleged facts for Charge number H61280180 (**Exhibit 7**).
152. However, the Authority notes that this matter is before the Courts and no evidence or advice of a Court outcome has been provided by the Complainant. The Authority does not have statements of evidence regarding the alleged seizure nor certification that the substance detected during the search is in fact a prohibited drug. Given the gravity of this particular allegation and the limited material before it, the Authority is not satisfied that there is sufficient evidence to make an adverse finding against Mr Amante on this matter.

Paragraphs 50 to 53 of the Complaint Letter – OLGR Penalty Notices Issued to the Business

153. The Authority is satisfied, as alleged at paragraph 50 of the Complaint Letter, that Royal Restaurant Pty Ltd has been the business owner of *Dreamgirls* since 14 November 2008 and that Mr Amante is the director of Royal Restaurant Pty Ltd.
154. The Authority makes these findings on the basis of the *OneGov* licence record for the Premises as at 25 February 2016 (**Exhibit 1**), the ASIC Company Extract for Royal Restaurant Pty Ltd as at 25 February 2016 (**Exhibit 2**) and page 3 of the transcript of the Amante Interview (**Exhibit 12**).
155. Whether Royal Restaurant Pty Ltd has operated the business on the Premises for the entirety of the period from 2008 to the date of Complaint is complicated by the apparent contract for sale of the business, entered into around 30 July 2015, whereby Restaurant Royale Pty Ltd agreed to acquire the *Dreamgirls* business under the direction of Ms Margaret Staltaro.
156. However, pursuant to its findings above, the Authority is satisfied that Mr Amante continued to be a “close associate” of the licence, notwithstanding the exchange of contracts for the sale of the business.
157. Paragraph 51 of the Complaint Letter makes the submission that since Royal Restaurant Pty Ltd took possession of *Dreamgirls*, there has been a “regular pattern” of offences against the *Liquor Act* occurring at the venue.



158. These offences are set out in a table provided at paragraph 51 of the Complaint Letter and in the LGNSW *Compliance Detail Report* for Mr Amante as printed on 10 December 2015 (**Exhibit 8**).
159. The Authority notes that in the Additional Material dated 27 May 2016, the Complainant provided an amended version of the offence summary table that was set out at paragraph 51 of the Complaint Letter (**Amended Offence Summary Table**). This amended version corrects certain typographical errors and dates from the initial Complaint.
160. Section 150 of the Act provides that when a Penalty Notice is paid, the offence that is the subject of that Notice is deemed to have been committed for the purposes of a disciplinary complaint made under Part 9 of the Act.
161. There is an issue as to whether the Authority should accept the allegation, noted as “Offence 1” in the Complaint Letter and Amended Offence Summary Table, that the alleged offence of *Licensee fail to comply with condition of licence* was detected on 29 March 2009 resulting in the issue of a Compliance Notice (a written warning) to the then licensee (Mr Amante).
162. When pressed to provide further evidence of this matter the Complainant states in its submission of 27 May 2016 that it has not been able to locate this Compliance Notice and is unable to provide any further detail as to the nature of the offence in question. Given the lack of specificity as to the alleged regulatory non-compliance and the absence of the Compliance Notice, the Authority is not satisfied that it can make an adverse finding on this matter.
163. The Authority is satisfied that “Offence 2” in the Amended Offence Summary Table, being the offence of *Licensee fail to comply with condition of licence* – regarding a condition requiring that security personnel wear identifying numbers when performing security duties – was detected by OLGR officers on 30 September 2012 and that Penalty Notice number 3050198021 was issued to the then licensee, Ms Ngawai Smith in respect of the offence.
164. The Authority makes this finding on the basis of the undated letter from Mr Mark Bessant, OLGR A/Manager Investigations to Ms Smith in respect of a breach of Condition “290” on the licence for the Premises detected on 30 September 2012 (**Bessant Letter**) (provided at **Attachment C** of the Additional Material) and Penalty Notice number 3050198021 (**Attachment G** of the Additional Material).
165. The Authority is satisfied that “Offence 3” in the Amended Offence Summary Table of *Licensee fail to comply with condition of licence* – regarding a condition requiring that no security personnel may perform any security activity unless wearing their identifying number – was detected by OLGR officers on 30 September 2012 and Penalty Notice number 3050198030 was issued to Ms Smith in respect of the offence.
166. The Authority makes this finding on the basis of the Bessant Letter (**Attachment C** of the Additional Material) and Penalty Notice number 3050198021 (**Attachment G** of the Additional Material).
167. The Authority is satisfied that “Offence 4” in the Amended Offence Summary Table of *Licensee fail to comply with condition of licence* – regarding a condition requiring that entertainers leave the stage area wearing at least a G string – was detected by OLGR

officers on 2 December 2012 and Compliance Notice number I12/0014485 was issued to the then licensee, Ms Smith in respect of the offence.

168. The Authority is satisfied that “Offence 5” in the Amended Offence Summary Table of *Licensee fail to comply with condition of licence* – regarding a condition requiring that entertainers leave the stage area wearing at least a G string – was detected by OLGR officers on 2 December 2012 and Compliance Notice number I12/0014485 was issued to the then licensee, Ms Smith in respect of the offence.
169. The Authority is satisfied that “Offence 6” in the Amended Offence Summary Table of *Licensee fail to comply with condition of licence* – regarding a condition requiring that entertainers leave the stage area wearing at least a G string – was detected by OLGR officers on 2 December 2012 and Compliance Notice number I12/0014485 was issued to the then licensee, Ms Smith in respect of this matter.
170. The Authority makes these findings on Offences 4, 5 and 6 on the basis of the Compliance Notice/Warning Letter reference number I12/0014485 dated 1 February 2013 issued by OLGR Senior Compliance Officer Sarina Wise to Ms Smith in respect of three breaches of Condition “260” on the licence detected by OLGR Inspectors on 2 December 2012 (**Attachment C** of the Additional Material).
171. The Authority notes that “Offence 7” in the Amended Offence Summary Table is a duplicate of the alleged contravention of legislation identified in Offence 6 above. In the Complainant’s submission of 27 May 2016 the Complainant advises that it no longer relies on Offence 7 as a separate adverse incident in support of the Complaint.
172. The Authority is satisfied that “Offence 8” in the Amended Offence Summary Table of *Licensee fail to comply with condition of licence* – regarding a condition requiring that no more than 1 security guard is to be outside the premises on the footpath at any one time – was detected by OLGR officers on 31 January 2014 and Penalty Notice number 3050198499 was issued to the then licensee Ms Smith in respect of the offence.
173. The Authority makes these findings on the basis of the letter dated 28 February 2014 from Mr Peter Freeman, OLGR Manager Investigations (**Freeman Letter**) to the then licensee, Ms Smith, in respect of a breach of Condition “340” on the licence (provided at **Attachment C** of the Additional Material) and Penalty Notice number 3050198499 issued by OLGR to Ms Smith in respect of a breach of that condition, detected by OLGR officers on 31 January 2014 (**Attachment G** of the Additional Material).
174. The Authority is satisfied that “Offence 9” in the Amended Offence Summary Table of *Licensee fail to comply with condition of licence* – regarding a condition requiring that no security personnel are to perform any security activity unless wearing their identifying number – was detected by OLGR officers on 31 January 2014 and Penalty Notice number 3050198480 was issued to the then licensee Ms Smith in respect of the offence.
175. The Authority makes these findings on the basis of the Freeman Letter (**Attachment C** of the Additional Material) and Penalty Notice number 3050198480 issued by OLGR to Ms Smith in respect of a breach of that condition, detected by OLGR officers on 31 January 2014 (**Attachment G** of the Additional Material).
176. The Authority is satisfied that “Offence 10” in the Amended Offence Summary Table of *Licensee fail to comply with condition of licence* – regarding a condition requiring that CCTV systems be maintained on subject premises pursuant to clause 53H of the

Regulation – was detected by OLGR officers on 31 January 2014 and that Penalty Notice number 3050198508 was issued to the then licensee, Ms Smith in respect of the offence.

177. The Authority makes these findings on the basis of the Freeman Letter (**Attachment C** of the Additional Material) and Penalty Notice number 3050198508 issued by OLGR to Ms Smith in respect of a breach of that condition, detected by OLGR officers on 31 January 2014 (**Attachment G** of the Additional Material).
178. The Authority notes that Offences 11, 12 and 13 in the Amended Offence Summary Table, which were also mentioned in the initial Complaint as filed on 22 March 2016, concern offences in respect of which Penalty Notices were issued by NSW Police, not OLGR/LGNSW. These matters are discussed below in the section on Authority Findings on Penalty Notices issued to Mr Lakepa in respect of the venue.
179. The Authority is satisfied that “Offence 14” in the Amended Offence Summary Table of *Licensee fail to comply with condition of licence* – regarding a condition requiring that entertainers leave the stage area wearing at least a G string – was detected by OLGR officers on 7 September 2014 and Penalty Notice number 3081391610 was issued to the then licensee Mr David Lakepa in respect of the offence.
180. The Authority makes these findings on the basis of a letter dated 14 October 2014 from Mr Peter Freeman, OLGR Manager Investigations (the **Second Freeman Letter**) to the Former Licensee, Mr David Lakepa, in respect of a breach of Condition “260” on the licence detected by OLGR officers on 7 September 2014 (provided at **Attachment C** of the Additional Material) and Penalty Notice number 3081391610 issued by OLGR to Mr David Lakepa in respect of a breach of that condition, detected by OLGR officers on 7 September 2014 (**Attachment H** of the Additional Material).
181. The Authority is satisfied that “Offence 15” in the Amended Offence Summary Table of *Licensee fail to comply with condition of licence* – regarding a condition prohibiting audience participation in the live performances – was detected by OLGR officers on 7 September 2014 and that Penalty Notice number 3081391620 was issued to Mr David Lakepa in respect of the offence.
182. The Authority makes these findings on the basis of the Second Freeman Letter in respect of a breach of Condition “240” on the licence detected by OLGR officers on 7 September 2014 (provided at **Attachment C** of the Additional Material) and Penalty Notice number 3081391610 issued by OLGR to Mr David Lakepa in respect of that breach (**Attachment H** of the Additional Material).
183. The Authority is satisfied that “Offence 16” in the Amended Offence Summary Table of *Licensee fail to comply with condition of licence* – regarding a requirement of clause 53G of the Regulation that any person carrying out RSA duties must wear clothing that identifies the person as an RSA Marshal while carrying out those duties – was detected by OLGR officers on 7 September 2014 and Penalty Notice number 3081391601 was issued to Mr David Lakepa in respect of the offence.
184. The Authority is further satisfied that Mr Lakepa was convicted of this offence at Downing Centre Local Court, following which Mr Lakepa lodged an appeal to the District Court of New South Wales. That appeal was dismissed on 18 February 2016. Mr Lakepa was ordered to pay a fine of **\$1,650** and professional costs of **\$1,500** to OLGR.

185. The Authority makes these findings on the basis of the *JusticeLink* records of Court outcomes provided by the Complainant (**Attachment D** of the Additional Material) and Penalty Notice number 3081391601 issued by OLGR to Mr David Lakepa in respect of a breach of that condition, detected on 7 September 2014 (**Attachment H** of the Additional Material).
186. The Authority is satisfied that “Offence 17” in the Amended Offence Summary Table of *Person sell or supply liquor when not authorised to do so under a licence* contrary to section 7(1) of the Act was detected by OLGR officers on 19 December 2015 and that Mr Amante pleaded guilty to this offence at the Downing Centre Local Court on 17 May 2016 and was ordered to pay a fine of **\$3,000**.
187. The Authority makes these findings on the basis of the *JusticeLink* records of Court outcomes provided by the Complainant (**Attachment D** of the Additional Material).
188. The Authority notes that this alleged offence was referred to in paragraph 78 of the initial Complaint Letter; however *documentation* of the Court outcome was provided by the Complainant in the Additional Material dated 27 May 2016 as the Court proceedings were only finalised during May 2016.
189. The Authority is satisfied that “Offence 18” in the Amended Offence Summary Table of *Assist at premises open/used to sell liquor without a licence* contrary to section 8 of the Act was detected by OLGR officers on 19 December 2015 and that Mr Amante pleaded guilty to this offence at the Downing Centre Local Court on 17 May 2016 and was ordered to pay a fine of **\$4,000** and professional costs of **\$1,500** to OLGR.
190. The Authority makes these findings on the basis of the *JusticeLink* records of Court outcomes provided by the Complainant (**Attachment D** of the Additional Material).
191. The Authority notes that this offence was referred to at paragraph 78 of the initial Complaint Letter; however *documentation* of the Court outcome was provided by the Complainant in the Additional Material dated 27 May 2016 as the Court proceedings were only finalised during May 2016.

*Certain Additional Material Not Considered – Police Penalty Notices*

192. The Complainant has provided, in its further submission of 27 May 2016, an additional paragraph “51A” that is proposed to be read with the initial Complaint Letter. Paragraph 51A comprises a table which sets out further details and particulars of offences detected in relation to the Premises that have proceeded by way of Penalty Notices, based on business records provided to LGNSW by the State Debt Recovery Office (**SDRO Offence Summary Table**).
193. This table provides information on the current status of Penalty Notices issued against three former licensees of the Premises – Mr Michael Amante, Ms Ngawai Smith and Mr David Lakepa.
194. However, the majority of the offences noted in the SDRO Offence Summary Table were not referred to at all in the original Complaint that was filed on 22 March 2016. This calls into question whether these additional matters should now be considered by the Authority when making findings on the Ground of Complaint.

- 195.** Briefly, the scheme for taking disciplinary action in Part 9 imposes the following minimum statutory requirements:
- (a) There must be an eligible complainant (the Secretary, Police Commissioner or a Council) – section 139(1);
  - (b) The complaint must be made to the Authority – section 139(1);
  - (c) The complaint must be made in writing – section 139(2);
  - (d) The complaint must “specify” the “grounds” – section 139(2);
  - (e) Those grounds must be grounds available under the Act – section 139(3);
  - (f) The Authority may then (in its discretion) show cause on the complaint – section 140(1);
  - (g) The Authority must also consult with other interested persons – section 140(3);
  - (h) The Authority must then have regard to any submissions made in response to its show cause notice when determining the complaint – section 140(5);
  - (i) If a ground (that is, a ground specified in the complaint) is established, the Authority may (in its discretion) consider taking the disciplinary action available under the Act – section 141(2).
- 196.** *Authority Guideline 5* requires that disciplinary complainants provide documentation of Court outcomes and Penalty Notices in support of complaints made under Part 9 of the Act. This Complaint was not supported by such documentation with respect to some of the allegations that support the Ground of Complaint as specified in the initial Complaint Letter. That evidence was furnished as part of the Additional Material provided by the Complainant on 27 May 2016 in response to a request by the Authority.
- 197.** In the Authority’s view, it is in the public interest to correct errors in the matters previously specified in a complaint, and provide further or better evidence as to matters specified in a complaint in response to a request from the Authority. It is not, however, appropriate to introduce *new allegations* at a late stage of the process.
- 198.** There may be new developments that arise between the making of a complaint and the determination of the matter (for example, a Court outcome may have been reached with respect to an allegation that was specified in the initial complaint) but as a general rule, adverse matters that could have been specified in a complaint but were omitted, should not be introduced to bolster the grounds of a complaint once a Show Cause Notice has been issued.
- 199.** To do so would be contrary to the public interest in the efficient disposition of these matters, noting in particular the Ministerial Direction requiring the Authority to finalise Part 9 disciplinary complaints within a period of 6 months.
- 200.** In the Authority’s view, the appropriate course, should a complainant wish to introduce entirely new matters that were overlooked at the time of filing a complaint, is to withdraw and remake the complaint or, less desirably, file a supplementary complaint.
- 201.** Given the element of additional costs and unfairness to the respondent from having to make multiple responses to the insertion of “new” matters (mainly Penalty Notices issued by NSW Police) that were not mentioned in the initial Complaint, the Authority does not propose to have regard to:
- Offences 1 to 12 of the SDRO Offence Summary Table, which relate to Penalty Notices issued by NSW Police to Mr Michael Amante in respect of the *Dreamgirls* licensed business, none of which were specified in the initial Complaint Letter.

- Offences 13 to 21 of the SDRO Offence Summary Table, which relate to Penalty Notices issued by NSW Police to Ms Ngawai Smith in respect of the *Dreamgirls* licensed business, none of which were specified in the initial Complaint Letter.

Consideration of NSW Police Penalty Notices issued to Mr Lakepa

- 202.** “Offence 22” in the SDRO Offence Summary Table concerns NSW Police Penalty Notice number 4924255683 issued to Mr Lakepa as the responsible licensee for the Premises, in the amount of **\$1,100**, in respect of an offence detected on 27 July 2014 of *Supply liquor to minor on licensed premises* contrary to section 117(2) of the Act. This matter was noted in the initial Complaint and has been taken into account.
- 203.** The Authority is satisfied that this Penalty Notice was paid by Mr Lakepa. The Authority makes this finding on the basis of NSW Police Penalty Notice number 4924255683 issued to Mr Lakepa in respect of that offence (**Attachment H** of the Additional Material) and the SDRO spreadsheet of information provided to LGNSW listing the payment status of the Penalty Notices issued to Mr Lakepa in respect of licensing offences (**Attachment L** of the Additional Material).
- 204.** “Offence 23” in the SDRO Offence Summary Table relates to NSW Police Penalty Notice number 4924255692 issued to Mr Lakepa, in the amount of **\$1,100**, in respect of an offence detected on 27 July 2014 of *Licensee fail to comply with conditions of licence – minor permitted to enter licensed premises without having his identification scanned onto the venue’s patron ID scanner*, contrary to section 116AC of the Act. This matter was noted in the initial Complaint and has been taken into account.
- 205.** The Authority is satisfied that this Penalty Notice was paid by Mr Lakepa. The Authority makes this finding on the basis of NSW Police Penalty Notice number 4924255692 issued to Mr Lakepa in respect of that offence (**Attachment H** of the Additional Material) and the SDRO spreadsheet listing the payment status of the Penalty Notices issued to Mr Lakepa in respect of licensing offences (**Attachment L** of the Additional Material).
- 206.** “Offence 24” in the SDRO Offence Summary Table concerns NSW Police Penalty Notice number 4924255701 issued to Mr Lakepa, in the amount of **\$1,100**, in respect of an offence detected on 25 August 2014 of *Licensee fail to comply with conditions of licence – Condition “480”* requiring that the time and date must automatically be recorded on all videotapes/DVDs/CDs of CCTV footage when recording and that any tape/DVD/CD is to be handed to Police upon request. This matter was noted in the initial Complaint and has been taken into account.
- 207.** The Authority is satisfied that this Penalty Notice was paid by Mr Lakepa. The Authority makes this finding on the basis of NSW Police Penalty Notice number 4924255701 issued to Mr Lakepa in respect of that offence (**Attachment H** of the Additional Material) and the SDRO spreadsheet listing the payment status of the Penalty Notices issued to Mr Lakepa in respect of licensing offences (**Attachment L** of the Additional Material).

Paragraph 53 of the Complaint Letter – “Strike” Offences

- 208.** Paragraph 53 of the Complaint Letter makes the submission that a number of the offences listed in the Amended Offence Summary Table and the SDRO Offence Summary Table are prescribed offences for the purposes of the “Three Strikes” disciplinary scheme contained in Part 9A of the Act.

**209.** While the commission of prescribed offences may be a further relevant point that is adverse to an assessment of the licensed business, this submission adds little to the fact that numerous offences have been established by the Complainant at times when Mr Amante was sole director of the corporate business owner.

Paragraphs 54 to 69 of the Complaint Letter – Drugs on the Premises

**210.** The Authority notes, with regard to the allegations as to Mr Amante tolerating drug possession, use and supply on the Premises, that the Complainant has not provided the same level of supporting evidence that may be expected in order to establish these serious matters in the context of a disciplinary complaint.

**211.** For example, many of the allegations as to prohibited drugs on the Premises rely upon evidence of what was seen or heard on the Premises by undercover Police. However, the only statement of evidence from Police that is furnished in support of *this* Complaint is that of an undercover operative dated 18 December 2015. That statement concerns observations of the Premises made on 17 December 2015 *only*.

**212.** There is also a document in the Complaint Material recording the seizure of prohibited drugs on 19 December 2015. However, there is only one photograph of prohibited drugs seized on *12 December 2015* in evidence.

**213.** The Authority notes that, at pages 5 to 6 of the Amante Interview, Mr Amante does not admit permitting the use or supply of prohibited drugs on the Premises during the following exchange:

*MR FOWLER: Okay. Okay. Michael, you're obviously aware about the events of 19 December in relation to the Police search warrant.*

*MR AMANTE: Yeah, not heaps. I mean, I know what happened. Police went upstairs, Police went downstairs, searched customers, I suppose looked for drugs upstairs, looked for drugs downstairs in customers, found a few girls with some cocaine deals. That's all I know, I suppose, and I suppose upstairs was exposed when the Police raided upstairs. Other than that, that's all I know. And I'm familiar with the two girls – I think it was only two to my knowledge – that got – were found with cocaine on them.*

**214.** Mr Amante also makes the following statements in his direct submission to the Authority's General Counsel of 20 May 2016 (errors in original):

*But Mr Wilson we are a strip club in Kingscross, these girls aren't secretarys or librarians and our customers are from all walks of life, so I think it will be foolish to not assume that some drugs went on. It was no sold by me or by any of the management, Im not saying that I didn't know a few of the girls used cocaine all Im saying is that it was never sold by anyone including the licencee or myself or any of the managers.*

**215.** The Complainant apparently relies heavily upon the Authority's Long Term Closure Decision of 31 January 2016 without submitting the evidence upon which that decision was made.

**216.** While the Authority is satisfied that a Short Term Closure Order and Long Term Closure Order was issued against the licensed business and this is a factor of some weight when assessing Mr Amante's fitness as a close associate, this Complaint is a separate matter

to the Closure Applications from 2015. The allegations made against Mr Amante must be established on the evidence and material before the Authority in support of *this* Complaint.

217. As for the available evidence pertaining to prohibited drugs on the Premises, the contemporaneous Statement of Particulars provided in support of that Application is before the Authority at **Exhibit 10** to the Complaint. This Statement of Particulars provides information, furnished by a senior Police officer, Superintendent Michael Fitzgerald of Kings Cross Police to a judicial officer with specific allegations about Police observations. The Authority notes that this Application was verified by a sworn statutory declaration signed by Superintendent Fitzgerald.
218. Paragraph 54 of the Complaint Letter alleges that during the time when Mr Amante had “control” of the venue as a close associate, he has “cultivated, or at the very least tolerated”, an environment where drug use and supply were allowed to flourish. This, it is submitted, manifested in an environment within the venue and within the unlawful bar on Level 1 where there was open drug use by patrons and staff, and where staff supplied drugs to patrons.
219. The Authority is satisfied, as alleged at paragraph 55 of the Complaint Letter, that in response to intelligence of drug use and supply occurring at the venue, an operation was in fact conducted by NSW Police in December 2015 which confirmed the intelligence reports and found drug use and supply occurring at the venue and in the Level 1 bar.
220. The Authority makes this finding on the basis of the photographs of the Premises and the Level 1 area taken by LGNSW Compliance Officers on 19 December 2015 which evidence the use of this area (**Exhibit 4**) and paragraphs 20 to 21 of the Statement of Particulars submitted with the Short Term Closure Application dated 20 December 2015 (**Exhibit 10**).
221. The Authority is satisfied, as alleged at paragraph 56 of the Complaint Letter, that at about 11:00pm on Saturday 19 December 2015, OLGR inspectors participated in a joint operation with NSW Police involving the execution of search warrants at each of the four floors of the building located at 77 Darlinghurst Road, Potts Point. The Complainant contends that *Dreamgirls* occupies the basement level of this building and is authorised to sell/supply liquor on this floor under liquor licence number LIQO624013611.
222. The Authority makes this finding on the basis of paragraphs 1 to 3 of the Statement of Particulars submitted with the Short Term Closure Application dated 20 December 2015 (**Exhibit 10**), while the address and basement location of the licensed premises is recorded on the *OneGov* licence record for the Premises as at 25 February 2016 (**Exhibit 1**).
223. The Authority is satisfied, as alleged at paragraph 57 of the Complaint Letter, that the execution of the search warrant was the culmination of covert investigations undertaken by undercover operatives attached to the NSW Police Force identifying substantial evidence of prohibited drug supply and use in the venue; together with the operation of an unlawful bar on Level 1 of the building.
224. The Authority makes these findings on the basis of the photographs of the layout of the Premises and the Level 1 area taken by LGNSW Compliance Officers on 19 December 2015 (**Exhibit 4**) and paragraphs 20 to 21 of the Statement of Particulars submitted with the Short Term Closure Application dated 20 December 2015 (**Exhibit 10**).



- 225.** The Authority is satisfied, as alleged at paragraph 58 of the Complaint Letter, that on Friday 11 December 2015 undercover Police officers (the **UC**) entered the Premises. Liquor was purchased from the bar and the UC booked a 10-minute private dance with an Asian stripper at a cost of \$70. During conversation the stripper told the UC a 1-hour private dance upstairs could be purchased at a cost of \$400.
- 226.** The Authority makes these findings on the basis of paragraph 7 of the Statement of Particulars submitted with the Short Term Closure Application dated 20 December 2015 (**Exhibit 10**).
- 227.** The Authority is satisfied, as alleged at paragraph 59 of the Complaint Letter, that at 11:20pm the UC overheard a stripper say to another patron, “You can snort coke off my tits”.
- 228.** The Authority makes these findings on the basis of paragraph 8 of the Statement of Particulars submitted with the Short Term Closure Application dated 20 December 2015 (**Exhibit 10**).
- 229.** The Authority is satisfied, as alleged at paragraph 60 of the Complaint Letter, that at 11:53pm the UC negotiated to buy 1 gram of cocaine from a stripper named “Charlotte” for \$350. “Charlotte” walked into the shower room and returned to where the UC was sitting. “Charlotte” leant over the UC and said, “Hey, so nice to see you again” and at the same time placed a small resealable plastic bag containing white powder into the UC’s hand.
- 230.** The Authority makes these findings on the basis of the photographs of the Premises and the Level 1 area taken by LGNSW Compliance Officers on 19 December 2015, which includes a photograph from the Kings Cross Drug Unit of the drugs supplied by “Charlotte” on 11 December 2015 (**Exhibit 4**) and paragraphs 9 to 10 of the Statement of Particulars submitted with the Short Term Closure Application dated 20 December 2015 (**Exhibit 10**).
- 231.** The Authority is satisfied, as alleged at paragraph 61 of the Complaint Letter, that about 1 minute later Police conducting surveillance inside the Premises walked into the toilet and observed three strippers, including “Charlotte”, openly snorting cocaine off their fingers which they were seen dipping into a small resealable plastic bag. One of the strippers offered the cocaine to the surveillance officer.
- 232.** The Authority makes these findings on the basis of paragraph 11 of the Statement of Particulars submitted with the Short Term Closure Application dated 20 December 2015 (**Exhibit 10**).
- 233.** The Authority is satisfied, as alleged at paragraph 62 of the Complaint Letter, that on Thursday 17 December 2015 the UC entered the Premises at 10:50pm. The UC asked a female hostess how much it cost for a private show. The female gave the UC a price list and told him that he could choose a female who would “take you upstairs”. She also stated, “You can drink and smoke and whatever up there”.
- 234.** The Authority makes these findings on the basis of the photographs of the Premises and the Level 1 area taken by LGNSW Compliance Officers on 19 December 2015 (**Exhibit 4**), paragraph 12 of the Statement of Particulars submitted with the Short Term Closure Application dated 20 December 2015 (**Exhibit 10**) and paragraph 9 of the

Statement of an NSW Police Undercover Operative dated 18 December 2015  
(**Exhibit 11**).

- 235.** The Authority is satisfied, as alleged at paragraph 63 of the Complaint Letter, that the UC engaged a stripper named “Ash” and they walked into a room at the rear of the Premises. “Ash” removed her clothing and the UC asked “Ash” for “blow”, a slang word for cocaine. “Ash” said it was “three hundred and fifty dollars”. The UC agreed to the price and “Ash” indicated that she would source it after the show. When the show finished “Ash” said she would come and see the UC regarding the cocaine.
- 236.** The Authority makes these findings on the basis of paragraphs 13 to 14 of the Statement of Particulars submitted with the Short Term Closure Application dated 20 December 2015 (**Exhibit 10**) and paragraphs 11 to 15 of the Statement of an NSW Police Undercover Operative dated 18 December 2015 (**Exhibit 11**).
- 237.** The Authority is satisfied, as alleged at paragraph 64 of the Complaint Letter, that the UC engaged a stripper who introduced herself as “Katie”. At 1:10am the UC followed “Katie” up the stairs. When the private show was complete and upon leaving the room the UC saw a large male, who was not wearing a shirt, bending over with a driver’s licence in his right hand. The male was making a line of white powder on the table and leaning in with his head, snorting a line of cocaine through his nostrils.
- 238.** The Authority makes these findings on the basis of paragraphs 15 to 19 of the Statement of Particulars submitted with the Short Term Closure Application dated 20 December 2015 (**Exhibit 10**) and paragraphs 18 to 28 of the Statement of an NSW Police Undercover Operative dated 18 December 2015 (**Exhibit 11**).
- 239.** The Authority is satisfied, as alleged at paragraph 65 of the Complaint Letter, that the UC also saw a number of naked females dancing around the table with a number of males, some of whom appeared intoxicated. The UC saw one female who was clearly drug affected; she was naked, her complexion was pale, her head was slumped back and she was dancing with her arms raised but her hands limp at the wrists. Her mouth was slightly open and her eyes were partially closed.
- 240.** The Authority makes these findings on the basis of paragraph 19 of the Statement of Particulars submitted with the Short Term Closure Application dated 20 December 2015 (**Exhibit 10**) and paragraph 29 of the Statement of an NSW Police Undercover Operative dated 18 December 2015 (**Exhibit 11**).
- 241.** The Authority is satisfied, as alleged at paragraph 66 of the Complaint Letter, that during the search warrant executed on 19 December 2015 there were 11 detections of drugs on the Premises and in the Level 1 area.
- 242.** The Authority makes this finding on the basis of paragraphs 20 to 21 of the Statement of Particulars submitted with the Short Term Closure Application dated 20 December 2015 (**Exhibit 10**) and the NSW Police Property Seizure/Exhibit Form dated 19 December 2015 (**Exhibit 15**).
- 243.** The Authority is satisfied, as alleged at paragraph 67 of the Complaint Letter, that the relative ease by which the UC were able to buy drugs by means of a “cold buy” – that is, without an introduction by persons known to the seller – suggests that drug use and sale was common practice at the venue.

- 244.** The Authority draws this inference on the basis of the information provided by Police of patrons and staff openly engaging in drug use and the volume of drugs detected at the venue on the night of the search warrant on 19 December 2015, as apparent from the Statement of Particulars submitted with the Short Term Closure Application dated 20 December 2015 (**Exhibit 10**), the Statement of an NSW Police Undercover Operative dated 18 December 2015 (**Exhibit 11**) and the NSW Police Property Seizure/Exhibit Form dated 19 December 2015 (**Exhibit 15**).
- 245.** The Authority is satisfied, on the balance of probabilities, that the contention made in paragraph 67 of the Complaint Letter is established. The Complainant here alleges that it is “inconceivable” that Mr Amante did not know about a culture of drug use and sale at the venue – yet he did “nothing” to prevent it.
- 246.** The Authority is satisfied that this inference may be drawn from the extent of patron and staff drug conduct detected by Police on 19 December 2015 and the lack of positive evidence from Mr Amante as to what controls were in place and implemented to minimise the risk of the commission of offences against section 74 of the Act, but there is insufficient direct evidence before the Authority in support of this Complaint to be satisfied that Mr Amante “permitted” the use and supply of prohibited drugs on the Premises on 19 December 2015.
- 247.** The Authority is satisfied, as alleged at paragraph 68 of the Complaint Letter, that on 13 January 2016 OLGR officers attended the venue when Mr Amante was present and that despite OLGR warning Mr Amante that they would be attending, officers still detected a resealable plastic bag containing drug residue on the *Dreamgirls* premises.
- 248.** However, the Authority notes that the only information relied upon in this regard is the allegation in the Complaint Letter itself and an apparent reliance upon paragraph 306 of the Long Term Closure Decision dated 31 January 2016 (**Exhibit 6**).
- 249.** That is, the Complainant has not submitted supporting evidence of this incident but apparently relies on the Authority’s previous finding in this regard made in the context of a previous decision.
- 250.** In these circumstances, the Authority is not satisfied that this further incident (finding a plastic bag with drug residue in the shower area used by the strippers) is proven or that in any event it would warrant finding that Mr Amante had permitted that conduct. The Authority does not accept the submission that this relatively minor incident demonstrates Mr Amante’s “nonchalance” towards drug use and drug sale on the Premises.
- 251.** Paragraph 69 of the Complaint Letter alleges that Mr Amante’s “concerning” attitude toward the use and supply of drugs is exemplified by the events of 19 November 2015, when Mr Amante’s vehicle was searched after he was pulled over in Kings Cross. It is alleged that this search found 12 resealable plastic bags of cocaine (over 11 grams, thus a deemed supply) in Mr Amante’s possession, with an estimated street value of around \$6,000.
- 252.** This is a serious allegation and the Authority does not have before it statements of evidence from the officers involved, or expert analysis certifying the substance to be a prohibited drug. This matter is currently before the Court and the Authority notes that the Complainant has not provided an update as to the outcome of these proceedings in the Additional Material of 27 May 2016.

- 253.** In these circumstances, the Authority is not satisfied that there is sufficient evidence to make an adverse finding with regard to this matter, on the limited material before it.
- 254.** The Authority has considered cumulatively the Authority's satisfaction as to:
- (a) **2** non-spent convictions that have been recorded against Mr Amante in relation to his personal conduct from 2009 to 2011;
  - (b) **3** convictions recorded against Mr Amante and Mr Lakepa arising from the operation of the *Dreamgirls* licensed business from 2014 to 2015 in matters that proceeded to Court; and
  - (c) **10** Penalty Notices issued against Ms Smith and Mr Lakepa arising from the operation of the *Dreamgirls* licensed business from 2012 to 2015 that were paid and therefore deemed to have been committed for the purposes of Part 9 of the Act.
- 255.** The Authority has had regard to Mr Amante's written reference, provided by his current employer, the General Manager of the Intercontinental Hotel at Double Bay, dated 11 April 2016.
- 256.** The Authority accepts that Mr Amante's recent work for the Intercontinental Hotel has been positive, but the weight that may be provided to this reference is limited by the relatively short period that Mr Amante has been employed in this role.
- 257.** The Authority accepts Mr Amante's email evidence indicating that he has volunteered at the school canteen on a total of 3 days at Knox Grammar, a private boys' school in Sydney. While this conduct evidences a very modest degree of community spirit (noting that his son attends the school) it is insufficient to displace Mr Amante's troubling personal history (including a firearms offence) and the substantial record of licensing offences (convictions and Penalty Notices) detected by law enforcement during the period in which he was a close associate of *Dreamgirls*.
- 258.** The Authority accepts Mr Amante's submission that the offences relied upon by the Complainant pertaining to the operation of this business do not disclose a history of offences involving intoxication or violence on the Premises.
- 259.** However, the offences that the Authority *has* found indicate that this business was unable to comply with the additional legislative requirements and licence conditions imposed upon a high risk venue of this kind.
- 260.** Licensing contraventions have resulted in numerous convictions or penalty notices over a prolonged period of time - particularly Mr Lakepa's tenure as licensee. Mr Lakepa was plainly unable to operate the venue within the requirements of the legislation and Mr Amante, as business owner, shares responsibility for the appointment and maintenance of Mr Lakepa in his role.
- 261.** In his direct submissions, Mr Amante has alluded to the inherent difficulties in running this type of (adult entertainment) venue. He has made submissions to the effect that he has been a good employer, referring the Authority to the mobile phone numbers of numerous strippers who were employed at *Dreamgirls*.

- 262.** While it may well be that Mr Amante was a good employer and that it is difficult to operate a high risk venue given the culture of such licensed premises, it was Mr Amante's choice to own and operate a business of this kind. In the absence of substantial positive evidence from his staff, the Authority is unable to give any weight to his contention that he was a good employer. It is not a sufficient response to the Complainant's submission that Mr Amante lacks the competence to be a close associate to provide the Authority with a list of phone numbers of his former employees.
- 263.** The Short Term Closure Order issued by the Local Court in December 2015 and the Long Term Closure Order issued by the Authority in January 2016 underscore the substantial threat to the public interest that arose from the manner in which the *Dreamgirls* business was only recently conducted.
- 264.** With regard to section 45(5A) of the Act the Authority is satisfied, on the basis of the found convictions and Penalty Notices and having regard to his submissions in reply, that Mr Amante is **not** a fit and proper person to be a close associate of a liquor licensee, in that he is not of good repute, having regard to the evidence going to his character and integrity and competence to carry on this business or activity. The Authority is otherwise satisfied that Mr Amante has **not** demonstrated the honesty, knowledge and ability expected of a close associate of a licensee.
- 265.** The Authority notes with concern the allegations made by Mr Amante alluding to potentially corrupt conduct on the part of an unnamed senior investigator within the compliance section of LGNSW. The Authority has referred those matters to the Department for appropriate action and will observe any relevant obligations under the *Independent Commission Against Corruption Act 1988*.

## **FINAL SUBMISSIONS ON DISCIPLINARY ACTION**

- 266.** On 18 July 2016 the Authority sent a detailed letter notifying its findings on the Grounds of Complaint to the parties, inviting them to provide any final submissions or evidence confined to the question of what, if any, disciplinary action should be taken in light of those findings.
- 267.** On 25 July 2016 Mr Paul Drohan, Manager Compliance, LGNSW sent a submission to the Authority which provides a breakdown of the Complainant's costs on the investigation and referring to the Complainant's previous position in the initial Complaint Letter dated 22 March 2016. The Complainant's position is that the Authority should:
- Pursuant to section 141(2)(c) of the Act, order Mr Amante to pay a monetary penalty proportionate with the level of harm and that provides a general and specific deterrent (the quantum is not specified);
  - Pursuant to section 141(2)(k) of the Act disqualify Mr Amante from holding a licence for life;
  - Pursuant to section 141(2)(j) of the Act disqualify Mr Amante from being a close associate of a licensee or the manager of licensed premises for life;
  - Pursuant to section 141(2)(l) of the Act order Mr Amante to pay the costs of carrying out the investigation under section 138 of the Act (specified at \$18,278.14).
- 268.** On 1 August 2016 Mr Amante's solicitor, Mr Sean Keleher, made a final submission to the Authority. Very briefly, he submits that the Authority should exercise its discretion under section 141(1) to take no disciplinary action for the following reasons:

- Mr Amante relies on his previous submissions dated 20 May 2016 and 3 June 2016.
- Mr Amante is not a licensee, close associate or approved manager of licensed premises
- The total costs (\$18,278.14) incurred by the Secretary in carrying out the investigation should be “ignored” because Mr Amante made guilty plea at the earliest opportunity to related matters before the Courts for which he was ordered to pay \$7,000 plus costs of \$15000 with 50% to be paid to the Complainant;
- The investigation costs specified in the Complainant’s schedule incurred between 22 January 2016 and 2 February 2016 relate to interviews voluntarily attended by Mr Amante and his employee Ms Keenan;
- There is significant overlap between the costs claimed on the investigation for this Complaint and the costs sought against Mr David Lakepa, former licensee of Dreamgirls;
- Costs are significantly inflated by “on Costs @ 30%” factor for which no substantiation is provided.
- Mr Amante has already been “penalised” with respect to events which are the subject of this Complaint and this ought to be determinative when the Authority exercises its discretion on this Complaint.
- Mr Amante and the DPP have agreed that the street value of cocaine found in Amante’s possession on 19 November 2015 was \$2,500 not \$6,000 as noted in paragraph 153 of the Findings Letter.
- Mr Amante remains employed as a concierge with the Intercontinental Hotel Group and is committed to “rehabilitation” and turning his life around following the events of late 2015.

**269.** No submissions were made by the other parties consulted on the Complaint.

## **DECISION ON DISCIPLINARY ACTION**

**270.** The Authority has given further consideration to this matter with the benefit of a final round of submissions from the Complainant and Mr Amante.

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

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

**272.** 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.

**273.** 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.*

**274.** 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.*

- 275.** The Authority further notes that when determining the nature of the appropriate disciplinary action, the conduct of the respondent to a complaint *up until its final determination* is relevant and should be taken into account: *Sydney Aussie Rules Social Club Ltd v Superintendent of Licences* (SC (NSW) Grove J, No. 16845 of 1990, unreported BC9101830).
- 276.** An issue of statutory construction arises in that while Mr Amante was clearly a close associate of the licence at the time of the conduct that is the subject of this Complaint, he is not, as submitted through his solicitor, a licensee, approved manager or a close associate of any liquor licence at the time of this decision. The Authority notes that *Dreamgirls* is no longer a licensed premises because Mr Amante has surrendered the licence.
- 277.** Accepting Mr Amante’s advice, given through his solicitor, that he is not a close associate of any licensed premises at this time, the most harmonious and coherent construction of the Act is to read the expression “close associate” in section 138(1)(c) and the chapeaux to sections 139(1) and 141(2) as including a “close associate” of a licensee *at the time the conduct which is the subject of a complaint occurred*. That construction accords with the scheme and purpose of Part 9 of the Act and avoids absurd results, whereby (for example) a close associate may drift in and out of the regulatory scheme by strategically divesting or reacquiring a relevant business interest at different times.
- 278.** The serious compliance failures committed by the licensed business while Mr Amante owned and effectively ran that business culminated in Police drug raids in December 2015, followed by the Authority closing the venue for 6 months under section 84 of the Act during January 2016.
- 279.** Importantly, the Authority is satisfied that Mr Amante appointed and permitted Mr David Lakepa to remain on the record as the licensee in name only. Any licensed business owner who permits a licensee to be appointed to that role without actually exercising control over the premises undermines the integrity of the licensing scheme provided by the Act and has no place in the industry.
- 280.** On the basis of the multiple compliance failures attributed to the Premises while Mr Amante was a close associate and the significant number of licensing and other convictions recorded against Mr Amante personally, including a recent conviction for possession of cocaine (which the Authority accepts, as contended by Mr Amante, had a street value of \$2500) the Authority has no confidence that Mr Amante should be entrusted with a liquor licence, nor permitted to occupy a position of influence over a liquor licence in New South Wales.

- 281.** Mr Amante has provided little by way of positive evidence demonstrating that he satisfies the common law criteria of knowledge, honesty and ability to demonstrate that he is a fit and proper person to hold a licence and little positive evidence as to his reputation, character or competence to be a close associate of a licence.
- 282.** While the Authority accepts that a high risk venue poses particular challenges, that is a business model that Mr Amante has chosen to pursue. He has referred the Authority to his former employees, apparently by way of personal or professional references, without providing evidence from them. The Authority accepts that Mr Amante has volunteered on a few occasions at the canteen at the Knox Grammar school but gives little weight to that evidence.
- 283.** While the Authority accepts that Mr Amante has recently commenced working for a major accommodation hotel and has been provided a positive account of that work from his employer, the overwhelming weight of evidence and material satisfies the Authority that that Mr Amante poses a substantial threat to the public interest in respect of the Act. The Authority cannot presently foresee a situation whereby it would give its imprimatur to Mr Amante to occupy a regulated position under the Act.
- 284.** In those circumstances the Authority is satisfied that Mr Amante should be disqualified *for life* from holding a licence, acting as an approved manager or serving as a close associate of a licence with respect to any licensed premises in New South Wales.
- 285.** The Authority has considered all of the submissions made by Mr Amante on the costs sought by the Complainant and has determined that the costs on the investigation should be paid without the 30% “on costs” figure.
- 286.** The Authority is otherwise satisfied that the breakdown of costs specified by the Complainant are properly attributed to the investigation into Mr Amante. The Authority does not accept that Mr Amante having been ordered to pay Court costs for the conduct of separate criminal proceedings diminishes the public interest in him paying the Department’s costs on this administrative action, noting that the Complainant has been successful in establishing its case against him and having regard to all of the facts and circumstances of this Complaint.
- 287.** The Authority does not consider that an order that Mr Amante pay a monetary penalty would serve any additional protective purpose in light of the Authority’s decision to disqualify him from the industry for life and noting the fines that were recently ordered against him by the Local Court.

## **ORDERS**

- 288.** The Authority takes the following disciplinary action, effective from the date of this letter:
- (i) Pursuant to section 141(2)(j) of the Act, Mr Michael Amante is disqualified from being a close associate or the approved manager of any licensed premises in New South Wales, for life.
  - (ii) Pursuant to section 141(2)(k) of the Act, Mr Michael Amante is disqualified from holding a licence in New South Wales, for life.



- (iii) Pursuant to section 141(2)(l)(i) of the Act, Mr Michael Amante is ordered to pay, within 28 days, the sum of \$14, 060.00 to the New South Wales Department of Justice, for the Secretary's costs on carrying out the relevant investigation or inquiry.

## **REVIEW RIGHTS**

- 289.** 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 disciplinary action is taken by the Authority under Part 9 of Act. An application for review should be made within 28 days of the date of notification of this decision.
- 290.** Please visit the NCAT website at [www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au) or contact the NCAT Registry at Level 9, John Maddison Tower, 86-90 Goulburn Street, Sydney for further information.

Decision Date: 28 September 2016

Philip Crawford  
**Chairperson**