



| | | |
|--|--|---|
| Mr Sean Goodchild Director of Compliance Liquor and Gaming NSW Level 6, 323 Castlereagh Street SYDNEY NSW 2000 sean.goodchild@olgr.nsw.gov.au | Mr Ken Yardy Solicitor Yardy Legal 497 Elizabeth Street SURRY HILLS NSW 2010 ken@yardy.com.au | Messrs Goran and Voyislav Krstic Business Owner and Premises Owner Royal Hotel, Temora 238 Hoskins Street TEMORA NSW 2666 |
|--|--|---|

27 October 2016

By email and express post

Dear Mr Yardy

Final Decision on Complaint under Part 9 of the *Liquor Act 2007* against Mr Voyislav Krstic and Mr Goran Krstic in Relation to the Royal Hotel, Temora

I am writing to you about a complaint made to the Independent Liquor and Gaming Authority under Part 9 of the *Liquor Act 2007*, by the Director of Compliance and Enforcement of the (then) Office of Liquor, Gaming and Racing (now Liquor and Gaming NSW), Mr Anthony Keon in his capacity as a delegate of the Secretary of the Department of Justice on 18 December 2015. The Complaint was made in relation to your clients, Mr Voyislav Krstic, the licensee, business owner and premises owner of the Royal Hotel, Temora and Mr Goran Krstic, the business owner and premises owner of the Hotel.

The Complaint was considered by the Authority at its meeting on 29 June 2016 and after careful consideration of the Complaint Material and *all* further submissions provided in relation to the Complaint, the Authority decided to take the following disciplinary action:

- (i) Order, under section 141(2)(f) of the Act, that the licensee, Mr Voyislav Krstic, is disqualified from holding a licence or being the approved manager of licensed premises, for a period of 6 months commencing 28 days from the date of this decision.
- (ii) Order, under section 141(2)(k) of the Act, that the close associate, Mr Goran Krstic, is disqualified from holding a licence or being the approved manager of licensed premises for a period of 6 months from the date of this decision.
- (iii) Order, under section 141(2)(l)(i) of the Act, that the licensee, Mr Voyislav Krstic and the close associate, Mr Goran Krstic pay the Secretary of the Department of Justice the amount of \$7,332.92 for costs incurred in carrying out the investigation of this Complaint within 28 days from the date of this decision.

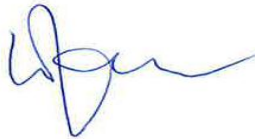
This decision was notified by email on 30 June 2016.

Under section 36C of the *Gaming and Liquor Administration Act 2007*, the Authority is required to publish statements of reasons with respect to those types of decisions

prescribed by clause 6 of the *Gaming and Liquor Administration Regulation 2008*. This letter attaches the statement of reasons for the Authority's decision to take disciplinary action in relation to the Complaint. It has been prepared in the context of a high volume liquor jurisdiction that requires the publication of statements of reasons as soon as practicable.

Please contact the Authority Secretariat via keiren.de.haas@olgr.nsw.gov.au if you have any enquiries about this letter.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Philip Crawford', with a stylized, cursive script.

Philip Crawford
Chairperson

for and on behalf of the Independent Liquor and Gaming Authority

STATEMENT OF REASONS

BACKGROUND

1. On 18 December 2015 the Independent Liquor and Gaming Authority (**Authority**) received a complaint made under Part 9 of the *Liquor Act 2007 (Act)* dated 18 December 2015 (**Complaint**) in relation to Mr Voyislav Krstic (**Licensee**), the licensee, business owner and premises owner of the Royal Hotel, Temora (**Hotel**) and Mr Goran Krstic (**Close Associate**), the business owner and premises owner of the Hotel.
2. The Complaint was made by the Director of Compliance and Enforcement of the (then) Office of Liquor, Gaming and Racing (now Liquor and Gaming NSW, **LGNSW**), Mr Anthony Keon (**Complainant**) in his capacity as a delegate of the Secretary of the Department of Justice (**Secretary**).
3. The Complaint Letter dated 18 December 2015 was accompanied by a substantial Brief of Evidence comprising numerous documents and audio recordings provided by LGNSW in support of the Complaint.
4. Since making this Complaint LGNSW have provided, at the request of the Authority's General Counsel, transcripts of the audio recordings which now form part of the amended Brief of Evidence. That material was also forwarded to the Licensee and Close Associate (together the **Respondents**).

THE COMPLAINT IN SUMMARY

5. The Complaint is made on the basis of the alleged compliance history of both the Licensee and the Close Associate in relation to "some of the most serious offences" available under the Act, as well as a recent alleged sale of takeaway liquor whilst the Hotel licence was suspended.
6. There are five (5) grounds of complaint (**Grounds**) specified in the Complaint Letter that are available under section 139(3) of the Act.

In relation to the Licensee:

7. **Ground One** is based upon section 139(3)(a) of the Act, which provides:

...that the licensee or manager has, while holding a licence or managing licensed premises, been convicted of an offence under this Act or the regulations (or under the former Act) or of an offence prescribed by the regulations.

8. The Complainant has provided a copy of the Licensee's compliance history detailing the outcome of prosecutions against the Licensee and Close Associate for offences against the Act that have proceeded to Court.

9. **Ground Two** is based upon section 139(3)(i) of the Act, which provides:

...that the licensee is not a fit and proper person to be the holder of a licence (whether for the same reason as that set out in section 45(5) or otherwise) or the manager is not a fit and proper person to be the manager of the licensed premises (whether for the same reason as that set out in section 68(4A) or otherwise).

10. The Complainant's allegation as to the Licensee's lack of fitness is based upon the compliance history noted in Ground One, which the Complainant submits indicates

“recidivist behaviour” in respect of some of the most serious contraventions of the Act and the former Act, particularly in respect of the supply of liquor to minors.

11. The Complainant submits that it is “particularly concerning” that a surreptitious sale of liquor occurred on 14 June 2015, during the period in which the venue’s liquor licence was suspended as a result of the supply of liquor to minors. The Complainant submits that the Licensee has exhibited a “deliberate attempt to flout the requirements of the law” in relation to the supply of liquor to minors on 14 June 2015.
12. Furthermore, the Complainant submits that:

...the absence of positive remedial action by the Licensee and Close Associate to rectify any management issues following the suspension of the venue’s licence from 1 June 2015 exhibits a lack of agility and adaptability required to manage a licensed premises in line with the requirements of the Liquor Act 2007.

In relation to the Close Associate:

13. **Ground Three** is based upon section 139(3)(j) of the Act, which provides:

...that the close associate is not a fit and proper person to be a close associate of a licensee.

14. **Ground Four** is based upon section 139(3)(k) of the Act, which provides:

...that a complaint against a licensee under this section has been made and that:

- (i) *the close associate knew or ought reasonably to have known that the licensee was engaging (or was likely to engage) in conduct of the kind to which the complaint relates, and*
- (ii) *the close associate failed to take all reasonable steps to prevent the licensee from engaging in conduct of that kind.*

15. The Complainant relies on the same set of Particulars specified in support of both Grounds Three and Ground Four. Briefly, the Complainant contends that Mr Goran Krstic is a close associate, within the meaning of section 5 of the *Gaming and Liquor Administration Act 2007 (GALA Act)*, by virtue of his position as the business and premises owner, his family relationship with the Licensee (son of the Licensee), and his role in the operations and management of the licensed premises.
16. The Complainant alleges that as a result of the family and business relationship between the Close Associate and Licensee, as well as the presence of both parties at the venue during repeated offending conduct the subject of some of the Grounds of this Complaint, the Close Associate ought reasonably to have known of the conduct in which the Licensee was engaging or likely to engage.
17. The Complainant further alleges that the Close Associate has “failed to take all reasonable steps to prevent the Licensee from being liable for offences, in that a substantial number of the offences referred to in this Complaint have been committed by the Close Associate, with the Licensee being held vicariously liable”.
18. The Complainant has provided a copy of the Licensee’s compliance history detailing the outcome of prosecutions against the Licensee and Close Associate for offences against the Act that have proceeded to Court.

In relation to both the Licensee and the Close Associate:

19. **Ground Five** is based upon section 139(3)(m) of the Act, which provides:

...that a person who is interested in the business, or in the conduct or profits of the business, carried on under the licence is not a fit and proper person to be so interested.

20. The Complainant submits that the Licensee and Close Associate are both owners of the business and the Hotel premises and are the two main persons in charge of the venue's operations. In light of this, the Complainant "holds substantial concerns over the autonomy of the business and its management should the Licensee and Close Associate be disqualified without any further action to restrict their input and oversight into the venue's operation".
21. The Particulars relied upon in support of this Ground are the same as those relied upon in support of Ground Two and Ground Three.
22. There are brief Particulars alleged in support of each of Grounds 1 through 5, which have been summarised above.
23. By way of background, the Complainant notes that the Hotel is a family run business. Both parties have been the joint business owners from at least July 2007.
24. Mr Voyislav Krstic has been the Licensee of the premises since at least July 2007 and the premises owner since March 1996.
25. Mr Goran Krstic (the Licensee's son) has been the premises owner since September 1991.
26. The other business and premises owners are Mr Dragan Krstic and Ms Koviljka Krstic.
27. The Complainant contends that other than the Licensee and Close Associate, the Hotel does not employ any other staff, with both persons "closely involved" in the operations of the venue.
28. Briefly, the Complainant alleges that during his tenure at the venue, the Licensee Mr Voyislav Krstic has contravened the *Liquor Act* on twenty (20) occasions.
29. These alleged contraventions involve some offences of permitting quarrelsome behavior on licensed premises, supplying liquor to minors and permitting the supply of liquor whilst the venue's licence was suspended.
30. The Complainant alleges that Mr Goran Krstic, the Close Associate and son of the Licensee, has contravened the *Liquor Act* on ten (10) occasions.
31. All of these alleged contraventions relate to the unauthorised supply of liquor, including multiple sales to minors, sales during restricted trading days and sales whilst the venue's licence was suspended.
32. The Complainant alleges that in addition to the offending conduct, multiple Police inspections have raised repeated regulatory concerns over the management of the Hotel premises by the Licensee and Close Associate, including deficiencies with regard to RSA practices, regulatory compliance and unsatisfactory engagement with Police.
33. The Complainant refers to LGNSW business records and submissions from NSW Police (provided in the Brief of Evidence) and alleges that both parties have a long history of

non-compliance and demonstrated disregard for NSW liquor laws and regulatory authorities.

34. The Complainant submits that on 28 May 2015, the Secretary of the (then) Department of Trade and Investment determined to suspend the venue's liquor licence for 28 days under section 130C of the Act, effective from 1 June 2015.
35. The operation of section 130C was enlivened following the conviction of Mr Goran Krstic by the Temora Local Court for the offence of "sell liquor to a minor on licensed premises" under section 117(1) of the Act.
36. Following on from the LGNSW decision to suspend the licence, an application was made to the Authority to suspend or revoke the RSA certification for Mr Goran Krstic. On 21 October 2015 the Authority determined to suspend Mr Krstic's RSA certification for a period of 14 days, ending on 5 November 2015.
37. On 28 October 2015, the Licensee and Close Associate were each convicted and fined by the Temora Local Court in relation to the sale of takeaway liquor whilst the venue's liquor licence was suspended. This offence occurred on 14 June 2015, midway through the suspension period imposed by the Secretary.
38. On 29 and 30 October 2015 LGNSW inspectors attended the licensed premises in a covert capacity and made observations in relation to the operation of the venue and the actions of the Licensee and Close Associate.
39. On 31 October 2015 Mr Goran Krstic participated in two recorded interviews with LGNSW inspectors and provided consent for the recordings to be provided to the Authority as part of any disciplinary complaint. The records of interview outline the operation of the licensed premises, the relationship between Mr Goran Krstic and the Licensee, and provide a submission to the Authority on potential disciplinary action in respect of the matters which are the subject of this Complaint.
40. The Complaint contends that on 9 November 2015 Mr Voyislav Krstic declined to participate in a telephone interview. The Complainant notes that the Licensee may require a Serbian interpreter and has difficulties with hearing.
41. Following an initial review of the Complaint, the Authority's General Counsel requested the Complainant to provide transcripts of lengthy sound recordings that accompanied the Complaint Letter.
42. On 18 January 2016 LGNSW provided transcripts of the three sound recordings, all being part recordings of an LGNSW interview with Goran Krstic dated 31 October 2015 conducted on the premises of the Hotel.

Action sought by the Complainant

43. The Complainant requests that the Authority take the following disciplinary action should the Complaint be established:
 - (i) Cancellation of the licence of the Royal Hotel, Temora, LIQH400120494.
 - (ii) Disqualification of Mr Voyislav Krstic from holding a licence, managing a licensed premises or being a close associate of a licensee for such period as the Authority thinks fit.

- (iii) Disqualification of Mr Goran Krstic from holding a licence, managing a licensed premises or being a close associate of a licensee or manager for such period as the Authority thinks fit.
- (iv) Disqualification of Mr Voyislav Krstic from being a person interested in the business, or in the conduct or profits of the business, carried on under a liquor licence for such period as the Authority thinks fit.
- (v) Disqualification of Mr Goran Krstic from being a person interested in the business, or in the conduct or profits of the business, carried on under a liquor licence for such period as the Authority thinks fit.
- (vi) Any other disciplinary action the Authority thinks fit.
- (vii) An order requiring the Licensee and Close Associate 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 Licensee and Close Associate.

44. The Complainant submits that the Licensee and Close Associate have clearly demonstrated that they are not fit and proper persons to be operating a licensed premises and that they have “demonstrated an inappropriate level of knowledge in relation to the operation of a licensed hotel and a pattern of inability to adhere to the requirements of the *Liquor Act 2007* and its prior enactment”.

SUBMISSION FROM RESPONDENTS DATED 25 FEBRUARY 2016

45. On 3 March 2016 the Authority received a one-page letter from the Respondents dated 25 February 2016. The letter provides the following brief submission in the name of Voyislav and Goran Krstic:

We would like to plead our case to allow this family owned and operated business to demonstrate how we have changed our operating procedures from previous compliance breaches. Since being issued with a letter from Troy Bell, my son I Manager has successfully completed Responsible of Service of Alcohol & Gambling course in Wagga Wagga.

We are now receiving help from a Hospitality Consultant on how to conduct and operate a compliant safe I friendly licensed venue. We have had a few visits from Temora Police, which we haven't had any issues since we have been getting advice and education on how to operate correctly.

The Royal Hotel has been in the family for many years and we, like other businesses in the Temora area, have struggled with low trade & patronage over the years with locals preferring to travel to Wagga Wagga for the nightlife. However as we love this area, we have continued the struggle for the love of Temora.

Licensing has been an issue with us in the past and hopefully it stays in the past, now with the advice & guidance from our Hospitality Trainer and Consultant, we are confident that we will be a more successful business with the brighter future.

Some of the changes we will be willing to undertake at our cost to be more compliant are:

- *Arrange meetings with Temora Police Mr Abercombie to provide feedback on compliance.*
- *Hospitality Consultant to provided weekly or fortnightly compliance checks, with regards to assisting us with signage I paperwork & incident registers.*
- *Consultant would stay overnight to observe how we operate on busier trading nights.*

- *Provide hot food while venue is open for trading.*

FINAL SUBMISSIONS ON DISCIPLINARY ACTION

46. The Authority considered the Grounds of Complaint at its board meeting of 27 April 2016 and determined that all five Grounds of Complaint had been established. Those findings are set out in this letter below.
47. On 29 April 2016 the Authority wrote to the parties providing a detailed account of the Authority's findings on the Grounds of Complaint (**Findings Letter**). The Authority invited the Complainant to make any final submissions confined to the question of what, if any, disciplinary action should be taken in light of those findings.
48. The Complainant was requested by the Authority to copy the Respondents when providing any response to the Findings Letter (noting that the Respondents have not provided an email address to the Authority). The Respondents were advised that they would have 16 days from the date of this letter to make any submission confined to the question of what, if any, disciplinary action should be taken.
49. On 6 May 2016 the Complainant provided a brief response to the Findings Letter as follows:

The Complainant does not wish to provide further submissions on disciplinary action and relies on the letter of complaint and material initially provided to the Authority.

Whilst the Authority has already found Ground 3 to be established, the Authority's finding [para79-85] does not refer to the offence of selling liquor to a minor committed by Mr Goran Krstic on 3 January 2015 for which he was convicted on 25 March 2015 and which led to the suspension of the venue's licence under the Minors Scheme. Paragraph 79 is in reference to the offence of 14 June 2015.

This email has not been forwarded to the Respondents as no fresh submissions have been made by Liquor & Gaming NSW.

FURTHER CONSULTATION ON THE COMPLAINT

50. The Authority further considered the merits of this matter at its Board Meeting on 8 June 2016. Noting that the Respondents had not made any response to the Findings Letter, the Authority decided, in principle, to:
 1. *Order, under section 141(2)(f) of the Act, that the licensee, Mr Voyislav Krstic, is disqualified from holding a licence or being the approved manager of licensed premises, for a period of 6 months.*
 2. *Order, under section 141(2)(k) of the Act, that the close associate, Mr Goran Krstic, is disqualified from holding a licence or being the approved manager of licensed premises for a period of 6 months.*

Complainant Submission on Costs dated 8 June 2016

51. However, the Authority was unable to finalise the Complaint at that stage because the Complainant had also sought an order for the Respondents to pay the Secretary's costs on the investigation but had neither specified the quantum nor provided a breakdown of those costs.
52. On 8 June 2016 the Complainant advised the Authority that its costs were in the sum of \$7,332.92 and provided an Excel spreadsheet with a breakdown of those costs.

53. On 16 June 2016 the Authority's General Counsel wrote to the Respondents via Express Post. The Authority noted the two submissions dated 6 May 2016 and 8 June 2016 that had been received by the Authority from the Complainant since the Findings Letter was issued and noted the absence of any further submissions from the Respondent.
54. The Authority's General Counsel placed the Respondents on notice of the Authority's intention to finalise the Complaint at the Authority Board meeting of Wednesday 29 June 2016 and to that end requested the Respondents to provide any final submission, particularly on the question of costs, by no later than Friday 24 June 2016.
55. The Authority's General Counsel advised the Respondents that if the Royal Hotel is to operate during the foreshadowed 6 month period of disqualification it will need to do so under the control of a suitably qualified third party licensee (if the licence is held by a person) or approved manager (if the licence is held by a company) and that any application to transfer the licence to a third party should be brought to the attention of the Authority Board. General Counsel further advised that in the event that a costs order is made, those costs will usually be made payable within 28 days from the final decision of the Authority.

Late Submission from the Respondents dated 24 June 2016

56. On 24 June 2016 after apparently engaging legal representation very late in the process, the Respondents made a submission via Mr Kenneth Yardy of *Yardy Legal* as follows:
 1. *The affected persons are seeking that the proposed six-month "not fit and proper" order be reduced to three months for both of the persons on the basis that the Hotel be voluntarily closed (evidenced in writing) for licensed trading for a period equal of the order (3 months). This would also include the removal of alcohol from the service areas during the time of the licence as well as outdoor signage to confirm the closure period. Whilst this approach would create a greater initial penalty/financial burden on the interests of the hotel, it would allow for a quicker rehabilitation of the premises without the interference of the demands of running the hotel at the same time. It is envisaged that there a number of consultants/service providers would need to be engaged. It would also remove the requirement to engage a manager/leaseholder to operate the hotel for a period. Temora, like most small regional times has some difficulty in obtaining specific business services and adequately trained employees.*
 2. *If the Authority is mindful not to allow the concession as set out in item 1, then perhaps that any order not to commence for at least a period of 28 days from the decision. This would allow for organisation for a manager/lessee to be recruited without effectively closing the hotel until a new manager/licensee was obtained.*
 3. *In relation to costs, our client's operation is one that is not overly financially successful. The financial records are attached for the consideration of the Authority when considering the same. Significantly, the OLGR has in there costs reflected the issues of Country and regional hotels that are disadvantaged in having to pay the costs and travel fees of investigators that city hotels (which are generally better off financially) do not. There is also a 30% "On-costs" fees that has been added that would appear to be sunken costs that the OLGR would have paid anyway and the investigation would have no effect on the payment of those costs. Our suggested offer for costs is \$ 3000. Any significant costs order would impair the ability of the hotel to rehabilitate itself.*
57. In a separate email on that date *Yardy Legal* provided a copy of the financial accounts of the Krstic Family Trust for the year ended 30 June 2015, apparently by way of evidence of the financial position of the business.

LEGISLATION

58. When determining the Complaint, the Authority has considered the following disciplinary powers under section 139 of the Act, including (relevantly):

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

- (3) *If the Authority orders a licensee or manager to pay a monetary penalty under this section and the penalty is not paid within the time specified in the order, the Authority may:*
 - (a) *cancel the licence, or*
 - (b) *suspend the licence until such time as the penalty is paid (or for such other period as the Authority thinks fit).*
- (4) *While a person is disqualified by the Authority from being a close associate of a licensee, the person is conclusively presumed for the purposes of this Act to be a person who is not a fit and proper person to be a close associate of a licensee.*
- (5) **Action against other interested persons**
In deciding whether to take disciplinary action under this section against a licensee in relation to a complaint, the Authority may take disciplinary action against a person who is interested in the business, or in the conduct or profits of the business, carried on under the licence (regardless of whether the Authority takes any disciplinary action under this section against the licensee concerned).
- (6) *If the Authority decides to take disciplinary action against any such interested person, the Authority may do any one or more of the following:*
 - (a) *disqualify the person, for a period commencing on a specified day, from being a person interested in the business, or in the conduct or profits of the business, carried on under a licence,*
 - (b) *reprimand the person.*

...

59. Relevantly to Ground Three of the Complaint, a “close associate” is defined as follows by section 5(1) of the GALA Act:

*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.*

60. Relevantly to Ground Five, section 41 of the Act states:

41 Statement as to interested parties

- (1) *An application for a licence must be accompanied by a written statement, made by a person having knowledge of the facts, specifying:*
 - (a) *that the person has made all reasonable inquiries to ascertain the information required to complete the statement, and*
 - (b) *whether there are any persons (other than financial institutions) who will be interested in the business, or the profits of the business, carried on under the licence, and*
 - (c) *if there are any such persons, their names and dates of birth and, in the case of a proprietary company, the names of the directors and shareholders.*

- (2) *For the purposes of subsection (1), a person is interested in the business, or the profits of the business, carried on under the licence if the person is entitled to receive:*
- (a) *any income derived from the business, or 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*
 - (b) *any rent, profit or other income in connection with the use or occupation of premises on which the business is to be carried on.*
- (3) *The regulations may provide exceptions to this section.*

FINDINGS

61. A disciplinary complaint under Part 9 of the Act is an administrative matter, and findings are made to the civil standard of proof. However, in accordance with the principle enunciated by the High Court of Australia in *Briginshaw v Briginshaw* (1938) 60 CLR 336, the seriousness of the allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are matters that are relevant to deciding whether an allegation has been proved on the balance of probabilities.

Fitness and propriety at general law

62. 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.

63. In *Hughes & Vale Pty Ltd 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..."

64. 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.

65. The Authority is also required by section 45(5A), when considering the fitness of a licensee, to consider whether a person is of good repute, having regard to character, honesty and integrity and is competent to carry on the relevant business activity. The Authority notes that in their brief submissions the Respondents have provided little by way of supporting submissions or evidence with regard to those matters.

Convictions, Orders and Penalty Notices against Mr Voyislav Krstic

66. The Authority is satisfied, on the basis of licensing records for the Hotel, that Mr Voyislav Krstic is the licensee and has held the licence at relevant times.
67. The Authority notes that it does not have before it the type of records specifying Court outcomes that it would usually expect in support of a disciplinary complaint. As noted in *Authority Guideline 5* the Authority prefers the production of certificates of conviction (or online Attorney-General's Department *JusticeLink* records) in respect of matters determined by the Courts. With respect to matters that have proceeded by way of Penalty Notice that have not been defended in Court, the Authority prefers a copy of the Penalty Notice and documentary confirmation of the status of the Penalty Notice from the State Debt Recovery Office (**SDRO**).
68. The Authority notes that, of the **17** matters relied upon in the extract of the Licensee's compliance history provided in the Complaint Material, **12** were dismissed by the Local Court by way of a bond ordered pursuant to section 10(1)(a) of the *Crimes (Sentencing Procedure) Act 1999*. The outcomes of all prosecutions against the Licensee are set out in further detail below.
69. However, noting that none of the matters the subject of the Complaint have been contested by the Respondents, the Authority is satisfied, on the basis of the LGNSW "Compliance Branch Business Records" provided in respect of the Licensee, Mr Voyislav Krstic that on 24 March 2010 in the Temora Local Court the following offences against the Act were found proven to the criminal standard of proof but dismissed without conviction as follows:
- (i) Six (6) counts of the offence of selling liquor to a minor that occurred on 18 September 2009 – dismissed pursuant to section 10 of the *Crimes (Sentencing Procedure) Act 1999*.
 - (ii) Six (6) counts of the offence of allowing a minor to enter or remain in a bar area of a hotel or club that occurred on 18 September 2009 – dismissed pursuant to section 10 of the *Crimes (Sentencing Procedure) Act 1999*.
70. The Authority is further satisfied, on the basis of the uncontested LGNSW Compliance Branch Business Records, that on 29 November 2014 a Penalty Notice number 4925170728 was issued against Voyislav Krstic for the offence of a licensee not displaying a sign with prescribed particulars. The Authority is satisfied, on the balance of probabilities, that this offence was committed on that date.
71. The Authority is further satisfied, on the basis of the uncontested LGNSW Compliance Branch Business Records, that on 3 January 2015 two Penalty Notices numbered 4923638685 and 4923638776 were issued against Voyislav Krstic for the offence of allowing a minor to enter or remain in the bar area of a hotel or club. The Authority is satisfied, on the balance of probabilities, that these offences were committed on that date.
72. The Authority is further satisfied, on the basis of the uncontested LGNSW Compliance Branch Business Records, that on 30 April 2015 a Penalty Notice numbered 3108014508 was issued against Voyislav Krstic for the offence of a licensee/hotelier not holding a recognised RCG certification.
73. The Authority is further satisfied, on the basis of the uncontested LGNSW Compliance Branch Business Records, that on 14 June 2015 Voyislav Krstic committed the offence of

selling liquor without a licence for which he was convicted at the Temora Local Court on 28 October 2015 and fined \$500.

74. The Authority is satisfied, on the basis of those matters that have resulted in a conviction among the matters noted above, that Ground 1 is established against Mr Voyislav Krstic.
75. The Authority considers that the offences in relation to minors are serious matters, but the weight given to those matters has been diminished by reason that they occurred over 6 years ago during 2009.
76. The Authority considers the offence of not displaying a sign required by the legislation to be a further adverse event which reflects upon the Licensee's diligence but is of lesser weight when assessing his fitness to hold a licence, noting that it has not been repeated.
77. The further two incidents of minors on the Premises in January 2015 that have proceeded by way of Penalty Notice are matters involving contravention of the Act that are given greater weight given their relatively recent occurrence. These are matters that reflect adversely upon the diligence of the Licensee.
78. The contravention on 30 April 2015 of the requirement that the licensee hold an RCG certification is of particular concern. This is a fundamental requirement for all licensees and it is of particular concern when an hotelier does not hold this certification, given the increased scope for harm arising from a hotel licensed business the primary purpose of which is the sale of liquor for consumption on and off the hotel premises. This reflects poorly upon the Licensee's ability and knowledge and capacity to observe the most basic requirements of the licensing scheme.
79. The Licensee's conduct on 14 June 2015 in selling liquor without a licence (while the licence was suspended) is a most serious contravention of the Act that goes to the Licensee's honesty, ability and knowledge. This matter is given particular weight and provides substantial support for the conclusion that Mr Voyislav Krstic is not a fit and proper person to hold a licence.
80. The Authority notes that the Licensee has referred to engaging a compliance consultant, and refers to engagement with local Police, but no supporting evidence is provided with regard to those measures. It is difficult to give those unsupported assertions much weight in light of Mr Voyislav Krstic's poor recent compliance record.
81. The Authority is satisfied, on the basis of a cumulative consideration of all of the matters noted above that have resulted in a conviction, or found proven but dismissed by the Court or have resulted in uncontested Penalty Notices being issued, that Mr Voyislav Krstic is not a fit and proper person to hold a licence. These facts and findings satisfy the Authority that he lacks the requisite knowledge and ability to hold a licence. Ground 2 is established.

Convictions, Orders and Penalty Notices against Mr Goran Krstic

82. Turning to Mr Goran Krstic, the Authority is satisfied, on the basis of the uncontested LGNSW Compliance Branch Business Records, that on 10 April 2009 Mr Goran Krstic committed the offence of selling liquor without the authority of a licence. The matter was heard at Temora Local Court on 27 January 2010 when Mr Goran Krstic pleaded guilty and the prosecution was dismissed without conviction, pursuant to section 10(1) of the *Crimes (Sentencing Procedure) Act 1999*.
83. The Authority is further satisfied, on the basis of the uncontested LGNSW Compliance Branch Business Records, that on 18 September 2009 Mr Goran Krstic committed six counts of selling liquor to a minor for which he was found guilty with the matters dismissed

without conviction pursuant to section 10(1) of the *Crimes (Sentencing Procedure) Act 1999*.

84. The Authority is satisfied, on the basis of the uncontested LGNSW Compliance Branch Business Records, that on 29 November 2014 Mr Goran Krstic committed the offence of interfere/cause obstruction/impede the operation of fire doors for which he was convicted at Temora Local Court on 25 March 2015 and received a \$300 fine.
85. The Authority is satisfied, on the basis of the uncontested LGNSW Compliance Branch Business Records, that on 3 January 2015 Mr Goran Krstic committed the offence of selling liquor without a licence for which he was convicted at Temora Local Court on 28 October 2015 and received at \$500 fine.
86. The Authority is satisfied, on the basis of Mr Goran Krstic's ownership of the hotel business and the hotel premises, and the uncontested submissions from Police as to his regular involvement with the Hotel's operations, that he is a close associate of the licence within the meaning of section 5 of the GALA Act and a person interested in the business carried on pursuant to the licence.
87. The Authority notes that, of the **10** matters relied upon in the extract of the Close Associate's compliance history provided in the Complaint Material, **7** were dismissed by the Temora Local Court by way of a bond ordered pursuant to section 10(1)(a) of the *Crimes (Sentencing Procedure) Act 1999*.
88. The offences that occurred in 2009 are all serious, but the weight given to them is diminished by the elapsing of time.
89. The offence from November 2014 in relation to impeding the operation of fire doors does not go to compliance with the liquor legislation but is, in the Authority's view, a matter that is adverse to the skill and knowledge that one would expect to be demonstrated by the owner of a hotel who also plays an active role in its day to day operations.
90. The Authority gives particular weight to the offence of selling liquor without a licence in October 2015. That is a recent contravention of a fundamental requirement of the legislation that reflects poorly upon Mr Goran Krstic's honesty, knowledge and ability as a close associate of a hotel licensee.
91. The Authority is satisfied, on the basis of the uncontested LGNSW Compliance Branch Business Records, that on 3 January 2015 Mr Goran Krstic committed the offence of selling liquor to a minor on licensed premises for which he was convicted at Temora Local Court on 25 March 2015 and received a \$300 fine. Although this matter was omitted from the Findings Letter, the Respondents are now on notice of this matter after it was raised by the Complainant in its final submissions and drawn to their attention in a letter from the Authority's General Counsel dated 16 June 2016.
92. The Authority is satisfied, on the basis of a cumulative consideration of the convictions recorded against Goran Krstic, those offences that have been proven to the criminal standard but dismissed by the Court, and those additional uncontested contraventions of the Act that have resulted in Penalty Notices being issued against Mr Krstic, that Mr Krstic is not a fit and proper person to be a close associate of a licensee. These facts and findings satisfy the Authority that he lacks the requisite knowledge and ability to be a close associate of a liquor licence. Ground 3 is established.
93. Having considered the transcripts of interviews with both Respondents and in the absence of any submissions or evidence in response to Ground 4 contesting the extent of knowledge Mr Goran Krstic had or the steps he took in relation to the matters giving rise to

Grounds 1 and 2 of the Complaint against Voyislav Krstic, the Authority is satisfied, on the material before it, that Ground 4 of the Complaint is also established. That is, a complaint has been made against the Licensee of the Hotel and the Close Associate, Mr Goran Krstic knew or ought reasonably have known that the Licensee was engaging in (or was likely to engage in) conduct of a kind to which this Complaint relates, and that Mr Goran Krstic failed to take all reasonable steps to prevent the Licensee from engaging in conduct of that kind. Ground 4 is established.

94. Having considered the Complaint Material and the limited submissions made on behalf of the Respondents and in the absence of any submissions or evidence in response to Ground 4 contesting the extent of knowledge Mr Goran Krstic had and the steps he took in relation to the matters giving rise to Grounds 1 and 2 of the Complaint against Voyislav Krstic, and noting the Authority's findings with respect to Mr Goran Krstic in his capacity as a close associate of the Hotel under Grounds 3 and 4 of this Complaint, the Authority is also satisfied, on the material before it, that Ground 5 is also established in that Mr Goran Krstic is not fit and proper to be in an person interested in a business conducted pursuant to a licence.
95. The Authority notes that the Close Associate has referred to engaging a compliance consultant, and refers to engagement with local Police, but no supporting evidence has been provided with regard to those measures. It is difficult to give those unsupported assertions much weight in light of Mr Goran Krstic's poor recent compliance record.

FINAL DECISION

96. The Authority gave final consideration to this matter at its Board meeting of 29 June 2016. The Authority had regard to the submissions from the Complainant and the Respondents that post-date the Findings Letter, including the financial records of the Krstic Family Trust for the year ended 30 June 2015.
97. On the material before it, the Authority was minded to disqualify the Licensee and Close Associate for a period of at least 6 months for their respective misconduct. However, having considered the Respondent's proposal to voluntarily close the hotel for 3 months, the Authority communicated via email to *Yardy Legal* on 29 June 2016 that the Authority would consider reducing the disqualification order from 6 months to 3 months should the Licensee, within 48 hours, file a voluntary suspension of the licence specifying a period of 3 months, with any disqualification period to commence at the end of that initial (voluntary) closure period. The Licensee filed that suspension of licence form on 30 June 2016.
98. The Authority has also considered the Respondents' submissions on the Secretary's costs on the investigation that gave rise to this Complaint. Noting that all five Grounds of Complaint have been established and having had regard to the financial accounts of the Krstic Family Trust, the Authority is satisfied that it is in the public interest for the Secretary to recover the entire costs on the investigation that preceded this Complaint, with the Respondents to have until 30 September 2016 (effectively 3 months) to pay those costs.
99. The Authority has directed licensing staff to bring to the attention of the Authority board any future application to transfer the licence to a third party and will carefully consider the probity of any proposed future licensee. The Authority gives notice to the Licensee that processing of any transfer of the licence may be deferred until such time as the costs order is paid.

ORDERS

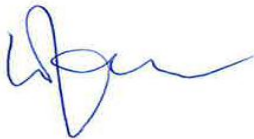
100. The Authority has made the following orders (which were communicated to the Respondents via email dated 30 June 2016):

- (i) Order, under section 141(2)(f) of the Act, that the licensee, Mr Voyislav Krstic, is disqualified from holding a licence or being the approved manager of licensed premises, for a period of 3 months from 30 September 2016.
- (ii) Order, under section 141(2)(k) of the Act, that the close associate, Mr Goran Krstic, is disqualified from holding a licence or being the approved manager of licensed premises for a period of 3 months from 30 September 2016.
- (iii) Order, under section 141(2)(l)(i) of the Act, that licensee, Mr Voyislav Krstic and close associate Mr Goran Krstic pay the Secretary of the Department of Justice the amount of \$7332.92 for costs incurred in carrying out the investigation of this Complaint by 30 September 2016.

REVIEW RIGHTS

- 101. Pursuant to section 144 of the Act, an application for review of this decision may be made to the New South Wales Civil and Administrative Tribunal (**NCAT**) by the Complainant or any person against whom any disciplinary action is taken, no later than 28 days after those parties receive notification of this letter.
- 102. For more information please visit the NCAT website at www.ncat.nsw.gov.au or contact the NCAT Registry at Level 9, John Maddison Tower, 86-90 Goulburn Street, Sydney.

Yours faithfully



Philip Crawford
Chairperson

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