



Superintendent Michael Fitzgerald Local Area Commander, Kings Cross LAC 1-15 Elizabeth Bay Road ELIZABETH BAY NSW 2011 fitz1mic@police.nsw.gov.au cc: murp1don@police.nsw.gov.au	Mr Sherin Sylvester Former Approved Manager Glenfield Cellars (private address not published)	Mr Vipin Dhingra Approved Manager Glenfield Cellars (private address not published)
The Directors Dhingra Enterprises Pty Ltd Licensee / Business Owner Glenfield Cellars (private address not published)	Australian Beverage Group Pty Ltd (private address not published)	The Directors Tymwatch Pty Ltd Premises Owner (private address not published)

Via Email and/or Express Post

7 July 2017

Dear Sir/Madam

Notice of Final Decision with Reasons on Complaint under Part 9 of the *Liquor Act 2007* in relation to Mr Sherin Sylvester, Former Approved Manager of Glenfield Cellars, Glenfield

The Independent Liquor and Gaming Authority (Authority) has finalised a disciplinary complaint (Complaint) made under Part 9 of the *Liquor Act 2007* (Act) to the Authority on 24 November 2016.

The Complaint was made by Superintendent Michael Fitzgerald (Complainant) of Kings Cross Local Area Command (LAC) of the New South Wales Police Force (Police) in his capacity as a delegate of the NSW Commissioner of Police.

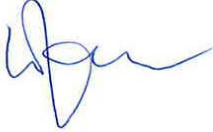
The Complaint concerns Mr Sherin Sylvester, the former approved manager of the packaged liquor licensed premises known as "Glenfield Cellars", currently trading at 78 Railway Parade, Glenfield NSW 2167 (Premises).

The Authority has decided, pursuant to section 141(2)(c)(ii) of the Act, to order Mr Sylvester to pay a monetary penalty in the sum of **\$40,000**, payable to the Independent Liquor and Gaming Authority within 28 days. An invoice will be issued to you shortly with arrangements for payment.

The Authority has also decided, pursuant to section 141(2)(f) of the Act, to disqualify Mr Sylvester from holding a licence, being the approved manager of licensed premises or being the close associate of a licensee, with respect to any licensed premises in New South Wales, for a period of ten (10) years. The period of disqualification commences the day after the date of this letter.

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

A handwritten signature in blue ink, appearing to read 'P. Crawford', written in a cursive style.

Philip Crawford

Chairperson

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

STATEMENT OF REASONS

INTRODUCTION

1. The Independent Liquor and Gaming Authority (Authority) has received a complaint dated 22 November 2016 (Complaint) made by Superintendent Michael Fitzgerald (Complainant) of Kings Cross Local Area Command (LAC) of the New South Wales Police Force (Police) in his capacity as a delegate of the NSW Commissioner of Police.
2. The Complaint is made under Part 9 of the Liquor Act 2007 (Act) in relation to Mr Sherin Sylvester, the former approved manager of the packaged liquor licensed premises known as "Glenfield Cellars", currently trading at 78 Railway Parade, Glenfield NSW 2167 (Premises). The Complaint agitates four grounds that are available under Part 9 of the Act (Grounds) and are discussed below.

Complaint Material

3. The Complaint comprises a 13-page cover letter from the Complainant (Complaint Letter) and a bundle of supporting evidence or material (Complaint Material).
4. The Complaint Material comprises 15 Annexures, including:
 - **Annexure 1:** Copy of an application (undated) made by Mr Vipin Dhingra (the current licensee) to transfer the licence from Australian Beverage Group Pty Ltd to Mr Dhingra's company Dhingra Enterprises Pty Ltd;
 - **Annexure 2:** Email from LGNSW staff to Police dated 16 November 2016 regarding the current licensed business ownership structure for Glenfield Cellars at that time;
 - **Annexure 3:** Australian Securities and Investments Commission (ASIC) Company Extracts for Australian Beverage Group Pty Ltd (the former corporate business owner, of which Mr Sylvester is the sole director);
 - **Annexures 4 and 5:** NSW Police Computerised Operational Policing System (COPS) Report number E58620658 in relation to an incident where Mr Sylvester permitted a patron to consume alcohol on the Premises on 19 June 2015, and the associated Penalty Notice Summary from the NSW State Debt Recovery Office (SDRO) dated 1 September 2016 indicating that this Penalty Notice was paid by Mr Sylvester on 17 August 2015;
 - **Annexure 6:** Email (undated) from a staff member of the then Office of Liquor, Gaming and Racing (now LGNSW) to Detective Sergeant Matt McQueen of NSW Police regarding telephone numbers linked to an investigation of the on-selling of stolen liquor by Mr Sylvester;
 - **Annexure 7:** Internal Police printout number KGXCWTA1:OOAZC providing details of the telephone calls made and received by a mobile telephone number belonging to Mr Sylvester's associate, Mr Sukhninder Pal Singh;
 - **Annexure 8:** *OneGov* licence record in relation to the current licensee of Doonside Cellars (and Mr Sylvester's associate) Mr Sukhninder Pal Singh;

- **Annexure 9:** Police Statement of Facts in the matter of *Police v Sylvester* regarding a prosecution for the sale of stolen liquor by Mr Sylvester which occurred between 23 January 2015 and 13 February 2015 (Charge number H56902522);
 - **Annexure 10:** Certificate of Conviction issued by Campbelltown Local Court dated 19 September 2016 for the conviction of Mr Sylvester for offences against section 188(1) of the *Crimes Act 1900* on 12 January 2015, section 193C(1) of the *Crimes Act 1900* on 13 February 2015, and section 188(1) of the *Crimes Act 1900* on 27 January 2015;
 - **Annexure 11:** Advice of Court Result issued by Liverpool Local Court for the order made against Mr Sylvester on 3 September 2008 regarding an offence of dealing with property suspected of being proceeds of crime, contrary to section 193C(1) of the *Crimes Act 1900*;
 - **Annexure 12:** Police Information Report number I106996596 in relation to Mr Sylvester's alleged sale of stolen liquor on the Premises in 2007;
 - **Annexure 13:** Court Attendance Notice for Charge number H35476716;
 - **Annexure 14:** Police Facts Sheet in relation to charge number H35476716 dated 21 July 2008 regarding the sale of stolen DVD movies from the Premises by Mr Sylvester;
 - **Annexure 15:** audio recording of a Local Court transcript of the sentencing of Mr Sylvester in the matter of *R v Sherin Sylvester* on 7 June 2016 for offences of receiving stolen property and dealing with property suspected of being proceeds of crime.
5. A OneGov liquor licence record obtained by the Authority from Liquor and Gaming NSW (LGNSW) on 24 April 2017 indicates that the licence number LIQP700384867 authorises the sale of liquor by retail in sealed containers on the Premises for consumption *away from* the Premises from 5:00am to 11:00pm on Monday to Saturday and from 10:00am to 10:00pm on Sunday.

Background

6. The Complainant contends, by way of background, that Australian Beverage Group Pty Ltd was the corporate licensee of the Premises from 12 March 2015 until 28 September 2016.
7. An ASIC search obtained by the Authority Secretariat indicates that Mr Sylvester is the sole director of that company and has held that role since 26 February 2014.
8. The Complainant contends that Mr Sylvester was appointed by the former corporate licensee, Australian Beverage Group, to act as the approved manager of the Premises on 12 March 2015. That appointment ceased on 29 January 2016, when Mr Sylvester's wife, Ms Heather Jane McKenzie-Sylvester, was appointed as approved manager.
9. The Complainant contends that on 28 September 2016 the licence to the Premises was transferred to Dhingra Enterprises Pty Ltd (Dhingra) and Mr Vipin Dhingra was appointed as approved manager by this new corporate licensee.

10. According to a submission from Dhingra 's solicitors dated 17 May 2017 (discussed below), Dhingra contracted to acquire the Glenfield Cellars business during June 2016 and commenced occupation of the Premises, pursuant to a registered commercial lease from the corporate Premises Owner, Tymwatch Pty Ltd which commenced on 1 July 2016.
11. The submission from Dhingra 's solicitors indicate that Dhingra remains the corporate licensee and business owner at the time of this decision.
12. The Authority notes that neither Dhingra nor Tymwatch are the subject of any adverse allegations in this Complaint.

Statutory Grounds of Complaint

13. **Ground 1** 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.

14. **Ground 2** is based upon section 139(3)(s) of the Act, which provides:

that the licence has not been exercised in the public interest.

15. **Ground 3(i)** 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).

16. **Ground 3(ii)** 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.

17. **Ground 3(iii)** 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.

18. **Ground 4** is based upon section 139(3)(t) of the Act, which provides:

that the continuation of the licence is not in the public interest.

19. The actual allegations specified in support of Grounds 1-4 of the Complaint Letter are set out in the "findings" section of this letter below.

Complainant Contentions on Mr Sylvester's Fitness and Propriety

20. In relation to the allegations made in Grounds 1 and 2, the Complainant submits that Mr Sylvester has been convicted of an offence under the Act and has also been convicted of serious indictable offences under the *Crimes Act 1900* which relate directly to the exercise of the liquor licence on the Premises.

21. The Complainant contends that Mr Sylvester has permitted the Premises to be used for the sale of stolen goods, which is also designated as a “prescribed offence” under Part 9A of the Act. The Complainant submits that had Mr Sylvester been charged with, and found guilty of, permitting the Premises to be used for the sale of stolen goods, there would *potentially* be multiple “strike” offences pending under Part 9A of the Act.
22. The Complainant submits that in circumstances where “serious criminal offences continue to occur”, the Authority should consider *cancelling the licence now* and disqualifying Mr Sylvester from the liquor industry.
23. In relation to Ground 3, the Complainant contends that Mr Sylvester, as the former approved manager and an ongoing close associate of the licence, has not demonstrated that degree of knowledge of the law, competence, character, honesty or integrity that would be expected of a liquor licensee in New South Wales.
24. The Complainant contends that since becoming the approved manager for the Premises, Mr Sylvester has failed to comply with a “fundamental condition” of the liquor licence, by allowing a patron to consume liquor on a licensed premises and permitted the Premises to be used for the sale of stolen goods over a “prolonged” period of time.
25. The Complainant submits that this course of conduct demonstrates Mr Sylvester’s “inability to adequately supervise and conduct the business of the licensed premises” in accordance with the liquor legislation and in accordance with the “expectations, needs and aspirations” of the community.
26. The Complainant submits that there is a nexus between Mr Sylvester’s close association with this licence and the commission of relevant criminal offences involving dishonesty. The Complainant submits that there is a “factor of aggravation” at play in this case in that the criminal conduct was both “facilitated through and consequential on” Mr Sylvester’s position as approved manager and his financial interest in the licensed business conducted upon the Premises.
27. The Complainant also submits that the offences specified in Grounds 1 and 2 reflect a “general lack of integrity” on the part of Mr Sylvester personally. The Complaint contends that the evidence gathered by Police when taking action against Mr Sylvester for receiving stolen goods and dealing with property suspected of being proceeds of crime offences establishes a “deliberate and concerted deception” that was undertaken over a period of more than 4 weeks. His conduct was organised and premeditated and the stolen liquor at issue in the criminal offences was of considerable value at just over \$48,000.
28. The Complainant contends that Mr Sylvester “sanctioned” these serious offences because it enabled him to purchase stolen liquor at less than half its retail value. He subsequently on-sold the stolen liquor to the public through his own packaged liquor store. The Complainant contends that Mr Sylvester’s associates within the liquor industry provided him with a further opportunity to profit from the stolen property, by on-selling it to other bottle shop operators who were known to him, thus “exacerbating” the extent of the crime.
29. With regard to Mr Sylvester’s *personal* character, the Complainant refers to Police Information Report number I106996596 which indicates that Mr Sylvester was involved

in the commission of previous acts of dishonesty. In April 2007, Police received information that Mr Sylvester and another person were receiving large quantities of alcohol stolen by a third party using fraudulent credit cards, and that taxis were being used to transport the liquor to the Premises and mobile telephones were being used to coordinate the commission of the crime. The Complainant contends that Mr Sylvester's *modus operandi* that was described to Police in 2007 is the same as the method used by Mr Sylvester prior to his arrest in 2015.

30. The Complainant further contends that Mr Sylvester was involved in renting out and/or selling stolen DVD movies as part of a "secondary business" that was operating on the Premises during July 2008. Mr Sylvester was arrested and charged for that conduct and received a 12-month good behaviour bond pursuant to section 10(1)(b) of the *Crimes (Sentencing Procedure) Act 1999*.
31. The Complainant submits that the nature of the convictions recorded against Mr Sylvester and the prior Police intelligence holdings strongly suggest that Mr Sylvester "has a long history of being directly involved in matters of dishonesty".
32. Police submit that the *repetition* of such offences, the nature of the convictions and the circumstances giving rise to those convictions is evidence that Mr Sylvester is not a person of good character.
33. The Complainant further submits that, with the benefit of legal counsel, Mr Sylvester pled guilty to offences involving receiving stolen property and dealing with property suspected of being the proceeds of crime. The Complainant submits that there are "no mitigating circumstances or ambiguities" involved with these convictions and that during sentencing for the 2016 offence, Local Court Magistrate Guy regarded Mr Sylvester's conduct as a "very serious matter" that could, in other circumstances, have led to him being sent to gaol.
34. With regard to Ground 4, the Complainant submits that the manner in which Mr Sylvester has conducted the licensed business on the Premises over a long period of time is not in the public interest when considered against the statutory objects prescribed by section 3 of the Act. The Complainant submits that it is "wholly inconsistent" with the expectations and needs of the community for an approved manager to allow a licensed premises to be used to receive and sell stolen property or to profit from the proceeds of crime.
35. Police submit that by working hand in hand with an "organised criminal group" and providing a means by which that group may dispose of their stolen goods, Mr Sylvester is acting contrary to the statutory objects of the responsible development of the liquor industry and his conduct "undermines the objectives relative to regulation and control of the sale of liquor in the community".
36. Police emphasise the degree of *personal fault* attributable to Mr Sylvester in the offences that are the subject of this Complaint – in that Mr Sylvester was present on the Premises and personally involved in the commission of these offences.

Disciplinary Action Recommended by the Complainant

37. In the Complaint Letter the Complainant recommends that the Authority take the following disciplinary action should the Grounds of Complaint be established:

- i. In respect of Grounds 1, 2 and 3: That the Authority disqualify Mr Sylvester from holding a liquor licence for a period of 5 years.
- ii. In respect of Grounds 1, 2 and 3: That the Authority disqualify Mr Sylvester from being a close associate of a liquor licensee for a period of 5 years.
- iii. In respect of Ground 4: That the Authority cancel, or alternatively, suspend the liquor licence for a period of 12 months to ensure that Mr Sylvester's financial interest in the business of the liquor licence is removed.

PROGRESS OF THE COMPLAINT

Show Cause Notices

38. On 30 January 2017, the Authority Secretariat sent a notice to Mr Sylvester (Show Cause Notice) via Express Post and email enclosing the Complaint Letter and Complaint Material and inviting Mr Sylvester to show cause, by way of written submissions, as to why disciplinary action should not be taken against him on the basis of the Grounds of Complaint.
39. On 30 January 2017, the Authority Secretariat sent similar correspondence via email and Express Post to Dhingra (the current corporate licensee and business owner), Mr Vipin Dhingra (the current approved manager) and Australian Beverage Group Pty Ltd (the former corporate licensee and business owner). A letter was sent via Express Post only to Tymwatch Pty Ltd (the current Premises owner).
40. No response to the Show Cause Notice was received by the Authority from Mr Sylvester, Dhingra or Tymwatch. While Mr Sylvester and Dhingra would later respond to the Authority's findings and make final submissions on the question of disciplinary action, the allegations in the Grounds of Complaint were uncontested.

LEGISLATION

41. Relevantly to this Complaint, section 11 of the Act, which contains general provisions in relation to licence conditions, states as follows:

11 Licence conditions – general provisions

(1) *A licence is subject to:*

- (a) *such conditions as may be imposed, or are taken to have been imposed, by the Authority or the Secretary (whether at the time the licence is granted or at any later time) under this Act, and*
- (b) *such conditions as are imposed by this Act or prescribed by the regulations, and*
- (c) *such other conditions as are authorised to be imposed on the licence under this Act.*

(1A) *Schedule 4 (Special licence conditions for declared premises) has effect. The regulations may amend that Schedule (including, without limitation, by adding or removing any relevant licence under that Schedule).*

(2) *A licensee must comply with any conditions to which the licence is subject.*

Maximum penalty: 100 penalty units or imprisonment for 12 months, or both.

- (3) *For the purposes of this Act, a condition to which a licence is subject includes any provision of this Act that imposes a requirement or restriction (other than as an offence) on or in relation to the licence, licensee or licensed premises concerned.*

Note: *The times during which licensed premises are authorised to trade is an example of such a requirement.*

42. Section 74 of the Act, which sets out provisions in relation to the sale of stolen goods and the possession, use or sale of prohibited drugs on licensed premises, states as follows:

74 Sale of stolen goods and possession, use or sale of drugs on licensed premises

- (1) *A licensee must not permit the licensed premises to be used for the sale of:*
- (a) *any goods that the licensee suspects of being stolen, or*
 - (b) *any substance that the licensee suspects of being a prohibited plant or a prohibited drug.*
- Maximum penalty: 50 penalty units.*
- (2) ...
- (3) *An employee or agent of a licensee or a person (other than the licensee) in charge of licensed premises must not permit the licensed premises to be used for the sale of:*
- (a) *any goods that the employee, agent or person suspects of being stolen, or*
 - (b) *any substance that the employee, agent or person suspects of being a prohibited plant or a prohibited drug.*
- Maximum penalty: 50 penalty units.*
- (4)
- (5) *It is a defence to a prosecution for an offence under this section if it is proved that the goods concerned were not stolen or that the substance concerned was not a prohibited plant or a prohibited drug.*

43. In determining the Complaint, the Authority has also considered relevant provisions of the Act, including the objects and considerations that are prescribed by section 3, 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

44. 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

45. It is well established at common law for the purposes of licensing that to be “fit and proper” a person must have a requisite knowledge of the legislation under which he or she is to be licensed and the obligations and duties imposed thereby: *Ex parte Meagher* (1919) 36 WN 175 and *Sakellis v Police* (1968) 88 WN (Pt 1) (NSW) 541. Being fit and proper normally comprises the three characteristics of “honesty, knowledge and ability”: *Hughes & Vale Pty Ltd v NSW* (No 2) (1955) 93 CLR 127.
46. Where a person has been convicted of offences, the decision maker must consider the circumstances of those convictions and the general reputation of the person apart from the convictions and the likelihood of repetition – *Clearihan v Registrar of Motor Vehicle Dealers in the ACT* (1994) 117 FLR 455.
47. In *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, the High Court of Australia has held that:

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

48. Section 68(4C) of the Act, to which section 139(3)(i) refers, prescribes *non-exhaustive* statutory considerations to which the Authority must have regard when determining the fitness and propriety of a licensee, including whether that person:
- (a) is of good repute, having regard to character, honesty and integrity; and
 - (b) is competent to carry on that business or activity, being the relevant licensed business in question.

Ground 1 – Mr Sylvester has been convicted of an offence under the Act

49. Ground 1, as stated in the Complaint Letter, specifies:

The former manager, Sherin Sylvester, while holding a licence has been convicted of an offence under this Act or regulations or of an offence prescribed by regulations (s139(3)(a) of the Act)

50. The Authority is satisfied, as alleged by the Complainant, that at about 8:25pm on Friday 19 June 2015, Macquarie Fields Police attended the Premises and saw a male patron consuming a can of beer near the counter in clear view of staff, including the approved manager Mr Sylvester.
51. The Authority notes that a packaged liquor licence does not authorise the licensee to sell or supply liquor for consumption *on* the licensed premises, save for an exception in section 29(4) of the Act that authorises packaged liquor licensed premises to sell or supply liquor for consumption on the licensed premises for the purpose of tastings.
52. The Authority is satisfied, as alleged by the Complainant, that Police issued Penalty Notice No. 4927972758 in the amount of \$1,100 against Mr Sylvester for *Licensee fail to comply with conditions of licence*, contrary to section 11(2) of the Act and that SDRO business records provided to the Complainant indicate that this Penalty Notice was paid by Mr Sylvester on 17 August 2015. (The Authority notes that the Complaint letter included a typographical error and referred to Penalty Notice number 4927972768).
53. The Authority makes these findings on the basis of COPS report number E58620658 detailing the events of Friday 19 June 2015 (Annexure 4) and SDRO business records provided to the Complainant indicating that Penalty Notice No. 4927972758 was paid by Mr Sylvester on 17 August 2015 (Annexure 5).
54. Section 150(7) of the Act provides that upon payment of a Penalty Notice, the person who is the subject of that Notice is deemed to have been convicted of the offence to which the Penalty Notice relates, for the purposes of a complaint made under Part 9 of the Act.
55. Ground 1 is established.

Ground 2 – The licence has not been exercised in the public interest

56. Ground 2, as stated in the Complaint Letter, specifies:

That the licence has not been exercised in the public interest within the meaning of s. 139(3)(s) in that, the Manager has permitted the licensed premises to be used for the sale of stolen goods (s. 73(1)(b))

57. The Authority accepts, as contended by the Complainant, that an investigation known as Strike Force *Anjon* was established in November 2014 by the NSW Police Metropolitan Robbery Unit investigating armed robbery offences which occurred at KFC, St Peters and Red Rooster, Chullora. This investigation established that Mr Shovikash Chandra (Chandra) and Mr Kien Ly (Ly) were stealing large amounts of alcohol from retail liquor stores, namely BWS and Dan Murphy's, throughout the Sydney metropolitan area.
58. The Authority is satisfied, as alleged by the Complainant, that on 3 December 2014 Supreme Court warrant number C13545 was issued to investigators to lawfully intercept the mobile telephone service of Mr Shovikash Chandra. Telephone intercepts established that Chandra and Ly were attending Dan Murphy's and BWS liquor stores

to steal large amounts of spirits. Chandra and Ly have committed an estimated 33 offences, taking between four and ten cases of spirits on each occasion.

59. The Authority accepts, as alleged by the Complainant, that between 13 January 2015 and 9 February 2015 Chandra and Ly contacted Mr Sylvester by telephone and made arrangements for Mr Sylvester to purchase the stolen liquor for less than half of its recommended retail value. Police have evidence of 18 occasions where Chandra and Ly attended Glenfield Cellars, Mr Sylvester's home address and the address of a Glenfield Cellars employee in Minto, to sell the stolen liquor to Mr Sylvester or other members of his staff. CCTV and telephone intercepts obtained by investigators revealed that Glenfield Cellars staff, acting on instruction from Mr Sylvester, received the stolen property at the Premises and other locations on multiple occasions.
60. The Authority is satisfied, as alleged by the Complainant, that the telephone intercept captured 52 calls and SMS messages between Mr Chandra and Mr Sylvester, during which the cost, quantity and type of alcohol available for purchase were discussed. Following the purchase of the stolen liquor, CCTV recorded staff placing the alcohol onto shelves within the Premises for resale. The Authority is further satisfied that Mr Sylvester on-sold the stolen liquor to a male driving a white van with NSW registration BU54ER. This van is registered to Paul's Liquor Store Pty Ltd at 11 Hill End Road, Doonside NSW 2767.
61. The Authority is also satisfied, as alleged by the Complainant, that an examination of Mr Sylvester's mobile phone located a number of text messages to a person with a specific telephone number using the pseudonym "Downside Paul". Police records indicate that this phone number is that of Mr Sukhninder Pal Singh, a director of Paul's Liquor Store Pty Ltd and licensee of Doonside Cellars, Doonside. The messages relate to on-selling the stolen liquor obtained by Mr Sylvester to the third party; and describe brands, quantities and costs and confirm orders for the liquor, demands for payment and include Mr Sylvester's bank details.
62. The Authority makes these findings on the basis of an email (undated) from a staff member of the then Office of Liquor, Gaming and Racing (now LGNSW) to Detective Sergeant Matt McQueen regarding telephone numbers linked to the above investigation (Annexure 6); an internal Police printout number KGXCWTA1:OOAZC providing details of the telephone calls made and received by mobile telephone number 0414 962 913 (Annexure 7) and the *OneGov* record in relation to the current licensee of Doonside Cellars, Mr Sukhninder Pal Singh, provided by the Complainant (Annexure 8).
63. The Authority is further satisfied, as alleged by the Complainant, that on 10 February 2015 Chandra and Ly were arrested for stealing six (6) cases of *Chivas Regal* and a case of *Johnny Walker Black Label* from Dan Murphy's, Hurstville. Mr Ly appeared at Burwood Local Court on 17 June 2016 where he was convicted of numerous stealing offences and sentenced to 9 months imprisonment, suspended on entering into a bond pursuant to section 9 of the *Crimes (Sentencing Procedure) Act 1999* for a period of 12 months and accepting the supervision of probation and parole. Mr Chandra appeared at Burwood Local Court on 8 December 2015 where he was convicted and sentenced to 20 months imprisonment.
64. The Authority is satisfied, as alleged by the Complainant, that at about 1:00pm on Friday 13 February 2015, Mr Sylvester was arrested at Glenfield Cellars. Police seized Mr Sylvester's mobile telephone and executed a search warrant on the licensed

Premises. Mr Sylvester confirmed ownership of the telephone but refused to answer any further questions.

65. The Authority is also satisfied that Police examined the CCTV system obtained from Glenfield Cellars which recorded footage from 23 January 2015 to 13 February 2015, which captured the actions of Mr Chandra, Mr Ly and other persons attending the Premises to sell stolen alcohol to Mr Sylvester. The stolen alcohol purchased from Chandra and Ly was not recorded on the X-reports produced by the cash register installed at Glenfield Cellars, nor did Mr Sylvester produce any receipts for any liquor seized from Glenfield Cellars during the Court proceedings.
66. The Authority makes these additional findings on the basis of the uncontested Police Statement of Facts in the matter of *Police v Sylvester* (Charge number H56902522) in relation to the investigation into the on-selling of stolen liquor by Mr Sylvester from Chandra and Ly which occurred between 23 January 2015 and 13 February 2015 (Annexure 9).
67. Whether a liquor licence has been exercised contrary to the public interest involves an assessment of the history of the licence during the tenure of the relevant licensee or approved manager. The Authority is satisfied, on the basis of the above findings, that while acting as approved manager, Mr Sylvester engaged in a repeated pattern of serious criminal offending involving the receipt of stolen liquor products on the Premises to the value of around \$48,000.00. That conduct has been proven to the criminal standard and there is no material before the Authority to find otherwise, or to provide circumstances of mitigation or context for that personal misconduct.
68. Although Mr Sylvester has not been prosecuted for an offence against the Act, this conduct contravenes the prohibition in section 74(1)(a) of the Act against permitting a licensed premises to be used for the sale of any goods that the licensee suspects to be stolen and/or the prohibition in section 74(3)(a) of the Act with respect to an employee or agent of a licensee permitting premises to be used for the sale of any goods that such person suspects to be stolen.
69. On the uncontested evidence or material before it, the Authority is satisfied that Mr Sylvester, as approved manager, knew that the liquor products were stolen and engaged in substantial criminal activity for personal gain, using the liquor store as the vehicle to on-sell the stolen goods.
70. Mr Sylvester's conduct with regard to the stolen liquor directly offends the public interest in respect of compliance with section 74 of the Act and is contrary to the broader statutory object in section 3(1)(a) of the Act – 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.
71. The Authority is satisfied that the licence has not been exercised in the public interest during the time in which Mr Sylvester has been the approved manager and has been associated with the licence.
72. Ground 2 is established.

Ground 3 – Mr Sylvester is not a fit and proper person

73. Ground 3, as stated in the Complaint Letter, specifies:

- i. That the former Manager of the premises, Sherin Sylvester, is not a fit and proper person to be a holder of a licence within the meaning of s. 139(3)(i).
 - ii. That the close associate is not a fit and proper person to be a close associate of a licensee within the meaning of s. 139(3)(j).
 - iii. 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 within the meaning of s. 139(3)(m).
- 74.** The Authority is satisfied, as alleged by the Complainant, that on 7 June 2016 Mr Sylvester appeared at Campbelltown Local Court where he was convicted of one (1) count of the offence of dealing with property suspected of being proceeds of crime contrary to section 193C(1) of the *Crimes Act 1900* and two (2) counts of receiving stolen goods contrary to section 188(1) of the *Crimes Act 1900* in respect of which Mr Sylvester was sentenced to an Intensive Correction Order for a period of 12 months from 7 June 2016 to 6 June 2017. Mr Sylvester was also ordered to pay compensation to Woolworths Ltd in the amount of \$40,000.
- 75.** The Authority makes these findings on the basis of the Certificate of Conviction issued by Campbelltown Local Court for Mr Sylvester dated 19 September 2016 (Annexure 10).
- 76.** The Authority is further satisfied, as alleged by the Complainant, that on 3 September 2008 Mr Sylvester appeared at Liverpool Local Court where he was convicted of one (1) count of dealing with property suspected of being proceeds of crime in respect of which Mr Sylvester was found guilty but without proceeding to conviction and was directed to enter into a good behaviour bond for a period of 12 months pursuant to section 10(1)(b) of the *Crimes (Sentencing Procedure) Act 1999*.
- 77.** The Authority makes the above finding on the basis of the *Advice of Court Result* for the Order made against Mr Sylvester on 3 September 2008 regarding an offence of dealing with property suspected of being proceeds of crime contrary to section 193C(1) of the *Crimes Act 1900* (Annexure 11).
- 78.** Having regard to the common law criteria of honesty, knowledge and ability, Mr Sylvester's 2016 convictions for dealing with property suspected of being proceeds of crime and receiving stolen goods are substantial matters that are adverse to an assessment of Mr Sylvester's honesty and knowledge of statutory requirements and conditions pertaining to a packaged liquor licence.
- 79.** The 2008 conviction for one count of dealing with property suspected of being proceeds of crime is another serious matter that, while now some years old, remains relevant to an assessment of Mr Sylvester's personal honesty and ability as a licensee. It indicates a pattern of dishonest behaviour rather than a once off lapse in judgment.
- 80.** The 2008 conduct and the 2016 conviction is also adverse to an assessment of Mr Sylvester's character and reputation and his competence as an approved manager of a packaged liquor licensed business, for the purposes of the additional statutory criteria prescribed by section 68(4C) of the Act.
- 81.** Noting that the merits of the Complaint have not been contested, the Authority finds that Mr Sylvester is not a person of good character and that he poses a substantial and ongoing threat to the public interest in respect of the Act.

82. The Authority is satisfied, on the basis of its findings on Grounds 1 and 2 and the above additional findings under this Ground 3, that the former approved manager Mr Sylvester is not a fit and proper person to be the manager of licensed premises.
83. Ground 3(i) is established.
84. The Authority is satisfied, on the basis of its findings on Grounds 1 and 2 and the above additional findings under this Ground 3, that having regard to Mr Sylvester's longstanding interest and position in the licensed business at relevant times, Mr Sylvester is not a fit and proper person to be the close associate of a licensee.
85. Ground 3(ii) is established.
86. The Authority is satisfied, on the basis of its findings on Grounds 1 and 2 and the above additional findings under this Ground 3, that having regard to Mr Sylvester's longstanding interest in the licensed business conducted on the Premises at relevant times, Mr Sylvester is not fit and proper to be a person interested in the business, or in the conduct or profits of the business, carried on under the licence.
87. Ground 3(iii) is established.

Ground 4 – The continuation of the licence is not in the public interest

88. Ground 4, as stated in the Complaint Letter specifies:

That the continuation of the licence is not in the public interest (s. 139 (3)(t))

89. The Authority is satisfied, as alleged by the Complainant, that Mr Sylvester was involved in the commission of dishonesty offences prior to his latest arrest in 2015. In April 2007 Police received information that Mr Sylvester and another person were receiving large quantities of alcohol which were stolen by a third party using fraudulent credit cards, and that taxis were used to transport the liquor to the Premises and mobile telephones were used to coordinate the commission of the crime.
90. While that information did not, on the evidence before the Authority, lead to any prosecution or conviction in 2007, the Authority finds this uncontested information to be credible and evidences a similar *modus operandi* to the conduct for which Mr Sylvester was convicted in 2016.
91. The Authority makes the above finding on the basis of Police Information Report number I106996596 in relation to Mr Sylvester (Annexure 12).
92. The Authority is further satisfied, as alleged by the Complainant, that Mr Sylvester was involved in renting out and/or selling stolen DVD movies as part of the secondary business operation of the Premises in July 2008. Upon entering a rear storage room Police observed a number of new DVD movies with an intact locking system consistent with a design used by Woolworths Limited.
93. Mr Sylvester told Police he "sometimes" purchased DVDs from people off the street, and indicated to Police 133 DVDs which he believed had been unlawfully obtained. Mr Sylvester told Police he paid between \$5 and \$10 for these movies, which he acknowledged was well below the recommended retail price, and that he believed the DVDs were "probably stolen". Mr Sylvester was arrested and charged and received a

12-month good behaviour bond pursuant to section 10(1)(b) of the *Crimes (Sentencing Procedure) Act 1999* in respect of this offence.

94. The Authority makes these findings on the basis of the Court Attendance Notice for Charge number H35476716 (Annexure 13) and associated Police Facts Sheet dated 21 July 2008 for the sale of stolen DVD movies by Mr Sylvester (Annexure 14).
95. The Authority has previously notified, in the Findings Letter, that Ground 4 was established on the findings on Grounds 1, 2 and 3 and the additional matters alleged in support of Ground 4.
96. Since the Findings Letter was issued and as detailed below the Complainant has provided new information about the personal circumstances of the married couple who are directors of the corporate Premises owner. The Complainant has withdrawn its submission that the continuation of the license is not in the public interest. The Authority accepts the Complainant's change in position and *does not* find that the continuation of the licence is not in the public interest at the time of this decision.

SUBMISSIONS ON DISCIPLINARY ACTION

97. On 10 May 2017 the Authority Secretariat wrote to the Complainant, Mr Sherin Sylvester, Mr Vipin Dhingra (the current approved manager of Glenfield Cellars), the directors of Dhingra Enterprises Pty Ltd (the current business owner and corporate licensee of Glenfield Cellars), the directors of Australian Beverage Group Pty Ltd (the former corporate business owner of Glenfield Cellars) and the directors of Tymwatch Pty Ltd (the current premises owner of Glenfield Cellars), providing detailed findings on the Grounds of Complaint (Findings Letter).
98. The Authority invited the Complainant to make any final submissions within 7 days thereafter, confined to the question of what, if any disciplinary action should be taken on the basis of the Authority's findings. The other parties were given 14 days to make submission on the question of disciplinary action, with the benefit of the Complainant's submissions.

Final submission from Complainant

99. On 11 May 2017 the Complainant made its final written submission. Briefly, the Complainant submits that the Authority should order, pursuant to section 141(2)(c) of the Act, that Mr Sherin Sylvester pay a monetary penalty "not exceeding 400 penalty units" in light of the "aggravating circumstances (as defined in s.141(7) of the Act" disclosed in the Complaint.
100. The Complainant submits that a higher penalty approaching the maximum is warranted on the basis of the contravention of section 74 of the Act and in light of the number of offences that have been committed, the serious nature of those offences and because the offence is a prescribed offence.
101. The Complainant submits that the conduct of the former approved manager involving multiple prescribed serious offences "paints an alarming picture of mismanagement" of the Premises. This conduct amounts to a "clear threat to the public interest in that there is a potential negative effect on the community confidence in the industry and the regulatory environment".

102. The Complainant further submits that the Authority should order, pursuant to section 141(2)(f) of the Act, that Mr Sherin Sylvester be disqualified from holding a licence, or from being a manager of licensed premises or from being a close associate of a licensee for a period of five (5) years.
103. The Complainant recommends this action on the basis of Mr Sherin Sylvester's "fundamental failures around adequacy of management and compliance culture". The Complainant submits that the likelihood of future contraventions of the Act is probable seeing as previous regulatory action directed at Mr Sherin Sylvester has proven to be "ineffective in changing his attitude to compliance".
104. Finally, the Complainant submits that the Authority order, pursuant to section 141(5) of the Act, that Mr Sherin Sylvester be disqualified from being interested in the conduct or profits of the business carried on under the licence for a period of five (5) years.
105. The Complainant *withdraws* the recommendation made in the Complaint Letter that the Authority cancel the liquor licence under section 141(2)(a) of the Act or suspend the licence under section 141(2)(b) of the Act.
106. The Complainant submits that it is not in the public interest to suspend or cancel the liquor licence in the circumstances whereby the Premises owner is caring for a sick relative and is "genuinely reliant" on the revenue generated by the business of the liquor licence and the value afforded to the property by the addition of the liquor licence.

Final submission from the new licensee and business owner

107. On 17 May 2017, after not previously responding to the Complaint, Dhingra Enterprises Pty Ltd (the current corporate licensee and business owner of Glenfield Cellars) made a written submission in response to the Findings Letter through its legal representative, Mr Babu Chokkappa of CB Jai Lawyers.
108. Briefly, the company contends that a new lease of the Premises was entered into between Dhingra Enterprises Pty Ltd and the premises owner, Tymwatch Pty Ltd, on 1 July 2016 with the lease registered in September 2016. A front page of the registered lease was attached to this submission, specifying a term of four years commencing from 1 July 2016 and terminating on 30 June 2020.
109. Dhingra contend that they entered a contract to purchase the packaged liquor business from Mr Sylvester for a sum of \$570,000 on 6 June 2016. A copy of the first page of the contract for the sale of business was attached to this submission indicating the corresponding purchase amount and date. Dhingra contend that all of the consideration on the contract of sale has been paid.
110. Dhingra further note that at the time of lodging an online application to transfer the liquor licence to it, Dhingra failed to indicate that there would be a change of ownership of the licensed business. Dhingra request that the Authority correct its records to reflect that Dhingra Enterprises Pty Ltd is now the current owner of the licensed business on the Premises.

Final Submission from Mr Sylvester

111. On 17 May 2017 Mr Sylvester made his final written submission. In a two-page letter, Mr Sylvester makes the following submissions in response to the Authority's Findings Letter:

- The infringement notice referred to in the Complaint was the first fine received by Mr Sylvester in relation to licensing in thirteen years as owner/manager.
- Mr Sylvester was charged with 2 offences of receiving and 1 offence of dealing with the suspected proceeds of crime, for which he pleaded guilty and received a sentence of an Intensive Correction Order and \$40,000 Compensation Order. [While Mr Sylvester refers to a period of 18 months, the Certificate of Conviction provided by Police at Annexure 10 of the Complaint indicates that the Intensive-Correction Order is for a period of 12 months].
- Mr Sylvester has worked in the liquor industry in capacities associated with packaged liquor licences for about 20 years during which he has sponsored and supported the local community (including football teams, schools and various other clubs) and received lots of appreciation certificates from these organisations, including New South Wales Police.
- Mr Sylvester has only had two adverse incidents with Police during his life, both of which occurred during his time as owner/manager of Glenfield Cellars. These incidents were "mistakes and errors of judgement".
- Mr Sylvester contends that he does not have any other criminal history and does not smoke, take drugs or have a drinking problem.

112. Mr Sylvester submits that the Authority should not take any action under section 141(2) of the Act by reason that he "paid the price for the above-mentioned events". Mr Sylvester contends that Police seized \$80,000 worth of stock which were purchased lawfully and he had receipts, that he has already paid \$40,000 in legal fees, that he has been ordered to pay \$40,000 compensation to the local Court, that he has lost his income and a business of thirteen years and is performing Court ordered community service one day a week.

113. In this submission, Mr Sylvester also provides a brief history of how he got into the "bottle shop business" with the help of his parents re-mortgaging their home. He advises that he is married to his wife, has a daughter and that his wife is pregnant with their second child. Mr Sylvester submits that he has a mortgage and that his wife only works two days a week as a primary school teacher, that he has never been unemployed since leaving high school and that he is likely to be unemployed if he cannot be associated with the liquor industry.

114. Mr Sylvester submits that he has been punished enough and taking further disciplinary action is "unfair and unjust".

115. Mr Sylvester contends that during his time as a manager/owner of bottleshops he was a "victim of numerous stealing offences" losing thousands in stock with Police rarely getting back to him about stock being recovered or offenders being charged. Mr Sylvester contends that on three occasions he was a victim of serious robberies and has been seriously assaulted on one occasion. Mr Sylvester describes these incidents and contends that:

- Police report E20632039 relates to 21 February 2004 when Mr Sylvester was held at gunpoint at Glenfield Cellars and no person has been charged to this day.
- Police report E39971754 relates to 19 February 2010 when Mr Sylvester was assaulted during a robbery at Chester Hill Liquor and no person has been charged to this day.

- Police report E59355887 relates to 24 March 2015 when Mr Sylvester was held up with a machete at Glenfield Cellars and to this day no one has been charged.
- During 2015 staff at Glenfield Cellars stole approximately \$2,000 a week from daily takings at Glenfield Cellars to the sum of over \$100,000. This was reported to Macquarie Fields Detectives and no funds have been recovered.

116. Mr Sylvester contends that he has been “unfairly targeted” by the Arresting Officer, Mathew McQueen from Strike Force Anjon who threatened him at the beginning of the investigation stating that if Mr Sylvester did not make admissions he would do everything in his power to ruin Mr Sylvester and his business.

117. Mr Sylvester contends that by reason that he exercised his legal right to silence, the arresting officer has “gone to extreme lengths” to see Mr Sylvester fail and not recover.

118. Mr Sylvester questions why the Complaint was made by Kings Cross LAC given that Glenfield Cellars is situated within Macquarie Fields LAC. Mr Sylvester does not agree that the Complainant, Superintendent Michael Fitzgerald of Kings Cross LAC, is acting in his capacity as the delegate of the Commissioner of Police under Part 9 of the Act, and contends that instead this should be the Commander of Macquarie Fields LAC. Mr Sylvester contends that Sergeant Donna Murphy is acting outside her LAC by case managing this Complaint.

119. Mr Sylvester concludes with the submission that over the last twenty years he has only worked in the liquor industry and by imposing the “extreme restrictions” proposed by the Complainant Mr Sylvester will lose his right to work, earn an income and support his family.

No further submissions from others

120. No final submissions were made by Mr Vipin Dhingra (the current approved manager of Glenfield Cellars), the directors of Australian Beverage Group Pty Ltd (Mr Sylvester’s company) and the former corporate business owner of Glenfield Cellars) and the directors of Tymwatch Pty Ltd (the current premises owner of Glenfield Cellars).

DECISION AND REASONS

121. The Authority’s disciplinary jurisdiction provided by Part 9 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.

122. 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.

123. 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.

124. 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.

125. 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).

126. At its Board meeting on 14 June 2017, the Authority gave further consideration to the Complaint and all of the material before it, including the final submissions on disciplinary action from the Complainant, Dhingra Enterprises Pty Ltd (the current corporate licensee and business owner of Glenfield Cellars) and Mr Sylvester.

127. The Authority notes that Mr Sylvester had not made any response to the merits of the Complaint, prior to his submission on disciplinary action dated 17 May 2017.

128. The Authority accepts the Complainant’s submission that this case involves circumstances of aggravation within the meaning of section 141(7) of the Act. Section 141(7) of the Act states:

7 Circumstances of aggravation

For the purposes of this section, circumstances of aggravation exist in relation to a complaint if (and only if) each of the following paragraphs applies:

- (a) the complaint concerns a contravention or alleged contravention of section 73 or 74,
- (b) the complaint alleges that for the reasons specified in the complaint the matter of the complaint is so serious as to warrant the taking of action that is available to the Authority when circumstances of aggravation exist,
- (c) the Authority, in finding that the matter of the complaint has been made out, is of the opinion (having regard to any matter such as the number of contraventions of the Act involved, the seriousness of the contravention involved, the number of people involved in the contravention or the seriousness of the outcome of the contravention, or any other relevant consideration) that the matter of the complaint is so serious as to warrant the taking of action that is available to the Authority when circumstances of aggravation exist.

129. The Authority is satisfied, as discussed in its findings at Ground 2 above, that the Complaint has established a contravention of section 74(1)(a) of the Act.

130. The Authority is satisfied, that for the reasons specified in the Complaint this matter is so serious as to warrant taking action when circumstances of aggravation exist. Mr

Sylvester has been only recently convicted of an offence involving dealing in stolen goods to the substantial value of \$48,000. Mr Sylvester knew that the liquor products were stolen and engaged in this criminal activity, for personal gain, using the facility of his liquor licensed business to commit the crime.

131. A monetary penalty issued under Part 9 of the Act serves a protective rather than punitive purpose. Having regard to this broader purpose, and the seriousness of the matters found against him, the Authority is satisfied that a monetary penalty at the upper end of the scale is appropriate in this case.
132. The Court order that Mr Sylvester pay compensation in the sum of \$40,000 illustrates the financial value of the crime perpetrated by Mr Sylvester. It underscores the scale of the threat posed to the industry by permitting a person who is willing to engage in this level of dishonesty, with respect to the handling of liquor products to have a regulated role in the liquor industry.
133. The maximum monetary penalty provided by section 141(2)(c)(ii) of the Act against an individual in circumstances of aggravation is **400** penalty units (with one penalty unit prescribed by section 17 of the Crimes Sentencing Procedure Act 1999 as \$110.00. That is the penalty sought by the Complainant.
134. The Authority is satisfied that a monetary penalty of **\$40,000** is appropriate to reflect the seriousness of the misconduct established in this Complaint. This is approaching but not at the maximum penalty available in circumstances of aggravation.
135. The Authority's findings on the Grounds of Complaint satisfy the Authority that Mr Sylvester's conduct also warrants a lengthy period of disqualification from holding a regulated position in the liquor industry in New South Wales.
136. The Authority accepts Mr Sylvester's contentions that he has worked in the liquor industry for 20 years and that he has a need to support his family, but it does not follow that he may only reasonably expect to be employed in a regulated role under the Act. There are many employment opportunities in the liquor, hospitality or related industries that do not involve exercising control or influence over a licence. There are many more employment opportunities outside of the liquor industry that a person with extensive retail and business management experience may pursue.
137. The Authority accepts Mr Sylvester's submission that he has paid a substantial price for his criminal conduct. Mr Sylvester was issued with a 12 months intensive correction order that has only recently expired during June 2017. He was also ordered to pay \$40,000 in compensation to Woolworths Pty Ltd and has had \$80,000.00 worth of goods seized by Police during their investigation. These are penal consequences flowing from his criminal conduct.
138. The Authority further accepts that Mr Sylvester spent \$40,000 on legal costs but this was another consequence of his criminal conduct and the mode in which he has elected to agitate his legal position. The Authority accepts that Mr Sylvester pled guilty and has taken this into account when assessing the circumstances of his 2016 conviction.
139. The Authority also accepts Mr Sylvester's contentions that he has provided some degree of community support in the past, but in the absence of any evidence or specification as to the timing and quantum of such support the Authority is unable to give those submissions great weight.

- 140.** The Authority accepts that Mr Sylvester does not have a criminal record other than the matters specified in this Complaint, that he does not smoke, take drugs or have a drinking problem. This submission does not displace the serious concerns as to Mr Sylvester's character and fitness arising from the misconduct alleged in the Grounds of Complaint.
- 141.** The fact that Mr Sylvester was prosecuted during 2008 and 2016 in respect of offences involving stolen goods on the Premises indicates that the more serious 2016 conviction was not an isolated incident. The Authority does not accept Mr Sylvester's characterisation of these two matters as errors of judgment. The Authority accepts the Complainant's submission that it is conduct that involved a degree of organisation and deliberation. The seriousness of the 2016 conviction was underscored by the observations made by the Local Court during sentencing, to the effect that imprisonment was a real possibility.
- 142.** In both cases the Premises provided the venue for dealing in the stolen goods in question, with little apparent regard shown for a liquor licensee's responsibilities under section 74 of the Act. That is, the criminal conduct at issue does not simply indicate a personal failing on the part of Mr Sylvester but was of a kind that was facilitated through Mr Sylvester's control and use of the Premises. This conduct is plainly adverse to an assessment of whether Mr Sylvester should be entrusted with a liquor licence.
- 143.** The Authority has also taken into account Mr Sylvester operating the Premises outside of the authorisation conferred by a packaged liquor licence that was detected by Police during 2015. This further undermines an assessment of Mr Sylvester's ability to comply with licensing legislation.
- 144.** In determining this Complaint, the Authority is concerned with protecting the wider liquor industry and the community in New South Wales. The Complainant has proposed a period of disqualification of five years but looking forward, the Authority finds that the protection of the public interest will be better served by a ten-year period of disqualification under section 141(2)(f) of the Act. The Authority considers that Mr Sylvester should be disqualified from holding a licence, acting as approved manager or being a close associate of a business conducted under a licence, as all of these positions involve significant control or influence over a licenced business.
- 145.** Mr Sylvester has provided no evidence or information that disqualification will prejudice any current role or business interest in the liquor industry in this State. The Authority is satisfied that the period of disqualification should commence without delay.
- 146.** Finally, the Authority notes that in its final submissions the Complainant seeks the disqualification of Mr Sylvester from being a person interested in a licence. Section 141(5) of the Act provides that, in deciding whether to take disciplinary action against a *licensee*, the Authority may take disciplinary action against a person who is interested in the business, or the conduct or profits of a business, carried on under a licence. Section 141(6) of the Act provides that action may include disqualifying the person from being a person interested in the business carried on under a licence, or issuing a reprimand.
- 147.** It is apparent from his shareholding in Australian Beverage Group Pty Ltd and the uncontested information provided in the Complaint that Mr Sylvester was an interested person in respect of the licensed Glenfield Cellars business that was conducted on the

Premises during the time of the events that are the subject of this Complaint. Ownership of that licensed business has since passed to Dhingra Enterprises, which now controls the licence and the business conducted pursuant to it.

- 148.** An issue of statutory construction arises as to whether the power in section 141(6) of the Act is available in cases where the Authority is considering action against an *approved manager*, as distinct from a *licensee*.
- 149.** While several statutory bases for a Part 9 complaint - including sections 139(3)(a) and 139(3)(i) of the Act that are specified in this Complaint - provide a common statutory basis for complaint against either a licensee or (in the alternative) an approved manager, a plain reading of the words in section 141(5) of the Act indicate that the Authority must consider taking action against a *licensee* to contemplate taking action against an *interested person*.
- 150.** It was open to the Complainant to agitate a ground of complaint against the former corporate licensee, Australian Beverage Group Pty Ltd. However, as no such ground was specified, the Authority is unable to consider taking action against the former licensee on the basis of *this* Complaint. The Authority considers that the power to take action under section 141(6) of the Act, in respect of Mr Sylvester, as an interested person, is not available in this instance.

ORDERS

- 151.** The Authority takes the following disciplinary action:
- (i) Pursuant to section 141(2)(c)(ii) of the Act, Mr Sherin Sylvester is ordered to pay a monetary penalty in the sum of **\$40,000**, payable to the Independent Liquor and Gaming Authority within 28 days.
 - (ii) Pursuant to section 141(2)(f) of the Act, that Mr Sherin Sylvester be disqualified from holding a licence, being the approved manager of licensed premises or being the close associate of a licensee, with respect to any licensed premises in New South Wales, for a period of ten (10) years. The period of disqualification commences the day after the date of this letter.

REVIEW RIGHTS

- 152.** 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 the Act. An application for review should be made within 28 days of the date of notification of this decision. 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 for further information.

Yours faithfully



Philip Crawford
Chairperson

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