



Mr Sean Goodchild
A/Director of Compliance &
Enforcement
Liquor and Gaming NSW
Level 6, 323 Castlereagh St
SYDNEY NSW 2000

Ms Elizabeth-Anne Purdie
Former Approved Manager
Velvet Underground
[private address not
published]

Mr Michael Tsoukatos
Business Owner
Velvet Underground
64A Clarence Street
SYDNEY NSW 2000

Xtreme Enterprises Australia
2 Pty Limited
c/o Mr John Bolzan
Bolzan & Dimitri Solicitors
21/331 Balmain Road
LILYFIELD NSW 2040

TWTY2 Pty Limited
Premises Owner
Velvet Underground
64A Clarence Street
SYDNEY SW 2000

sean.goodchild@olgr.nsw.gov.au

luisa@bdlaw.com.au

elizabethpurdie@yahoo.com.au

mtsoukatos@optusnet.com.au

Via email and Express Post

15 September 2016

Dear Ms Purdie

**Decision on Grounds of Complaint under Part 9 of the *Liquor Act 2007*
“Velvet Underground” – Sydney**

I am writing to you about a disciplinary complaint received by the Independent Liquor and Gaming Authority dated 27 July 2015 under Part 9 of the *Liquor Act 2007* made by Mr Anthony Keon, the former Director of Compliance and Enforcement of the (then) Office of Liquor, Gaming and Racing, now Liquor and Gaming NSW.

At its meeting on 31 August 2016, the Authority decided to order, under section 141(2)(g) of the Act, that Ms Elizabeth-Anne Purdie’s approval to act as an approved manager of licensed premises in New South Wales be withdrawn and to order, under section 141(2)(h) of the Act, that Ms Purdie be disqualified from being the manager of licensed premises, or from holding a licence, or being the close associate of a licensee in New South Wales for a period of 12 months from the date of this decision. This letter encloses reasons for that decision.

Please contact the Authority’s General Counsel via bryce.wilson@ilga.nsw.gov.au if you have any advice or enquiries about this letter or the attached reasons for decision. Rights of review in relation to this decision are detailed at the end of the statement of reasons.

Yours faithfully

Philip Crawford

Chairperson

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

STATEMENT OF REASONS

INTRODUCTION

1. I refer to a disciplinary complaint (**Complaint**) made to the Independent Liquor and Gaming Authority (**Authority**) by Mr Anthony Keon (**Complainant**), the former Director of Compliance and Enforcement of the (then) Office of Liquor, Gaming and Racing (**OLGR**), now known as Liquor and Gaming NSW (**LGNSW**) in his capacity as a delegate of the Secretary of the NSW Department of Justice. The Complaint is made under Part 9 of the *Liquor Act 2007* (**Act**) and was dated and emailed to the Authority on 27 July 2015.
2. The Complaint concerns Ms Elizabeth-Anne Purdie, who is now the former approved manager (**Approved Manager**) of the licensed premises trading as "Velvet Underground", located at 64A Clarence Street, Sydney (**Premises**).
3. The licensed business operating on the Premises is a nightclub with an on-premises liquor licence number LIQO624006970. The designated purpose of the licensed premises as recorded on the *OneGov* record of the licence dated 18 June 2015 is "theatre public entertainment". The live entertainment provided on the Premises takes the form of adult entertainment, including pole dancing.
4. The Complaint concerns Ms Purdie's conduct as approved manager of the Premises on 19 December 2014, when a patron of the venue was seriously injured in an assault committed by a security guard engaged by the licensed business outside the Premises.
5. The *OneGov* licence record discloses that the licensee and business owner in relation to the Premises is a company, Xtreme Enterprises Australia 2 Pty Limited (**Licensee**). Mr Michael Tsoukatos is also recorded as the business owner of the Premises (**Business Owner**).
6. Licensing records indicate that the owner of the freehold in the Premises is a company, TWTY2 Pty Limited (**Premises Owner**).
7. The Authority gave preliminary consideration to this matter at its meeting of 28 October 2015, when the matter was deferred by consent of the parties until the outcome of the related *Liquor Act 2007* prosecutions were heard by the Local Court.
8. In those Local Court proceedings the corporate Licensee, Xtreme Enterprises Australia 2 Pty Limited, was prosecuted by NSW Police for two alleged offences against section 11(2) of the Act in relation to (i) failing to maintain a "round the clock" incident register and failing to produce that incident register to Police upon request contrary to a licence condition and (ii) failing to notify Police of a violent incident contrary to a licence condition (clauses 53ZF and 53ZE of the *Liquor Regulation 2008*). These offences arose from conduct committed on 19 December 2014.
9. Following the dismissal of those proceedings on 11 January 2016, the matter was further delayed while the Authority awaited the production of Court transcripts, which were provided by the Complainant on 7 April 2016.

10. The course of submissions from the parties is further summarised in the Consultation section of this statement of reasons.

GROUNDS OF COMPLAINT

11. The Complainant specifies two grounds of complaint (**Grounds**) that are available under section 139(3) of the Act.

Ground 1

12. This Ground is available under section 139(3)(b) of the Act and states:

That the licensee or manager has failed to comply with any of the conditions to which the licence is subject.

Ground 2

13. This Ground is available under section 139(3)(i) of the Act and states:

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) of the Act 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).

Facts Alleged

14. The Complainant relies upon the same set of facts in relation to both of the Grounds.
15. The Complainant contends that the subject offences arose from an incident that occurred on 19 December 2014 in which a security guard engaged by the business, allegedly without physical provocation, punched a patron, Mr Jason Hoste (**Mr Hoste**) outside the Premises, knocking him unconscious and resulting in Mr Hoste being hospitalised for 10 days.
16. The Complainant describes Mr Hoste's injuries as "life threatening". This assault was recorded on CCTV. The Complainant alleges that the assault occurred as follows:
- (a) On 19 December 2014 at approximately 7:00pm Mr Hoste was asked to leave the Premises and was escorted out of the Premises by venue security.
 - (b) After being escorted out of the Premises, Mr Hoste had an altercation with a security guard, Mr Levi Lemalu (**Mr Lemalu**). Mr Lemalu punched Mr Hoste once in the head, causing Mr Hoste to fall backwards and hit the back of his head on the kerb, rendering him unconscious.
 - (c) At no time in the CCTV footage did Mr Hoste make any threatening gestures or actions towards the security guard.
 - (d) Ms Purdie, the Approved Manager of the Premises, is visible in the CCTV footage witnessing the assault.
 - (e) At no point did Ms Purdie or any of the venue staff call the Police or an ambulance. A call for assistance was eventually made by a passer-by.
 - (f) When Police attended the scene at approximately 7:22pm (after the injured patron, Mr Hoste, had left the area), neither Ms Purdie nor any of the staff of the licensed business made any mention of the incident to the Police at that time.

- (g) At 7:59pm a text message was sent to Jason (Jack) Russell, Licensing Sergeant for the City Central Local Area Command (**LAC**) by Ms Purdie stating that there had been "a bit of push and shove" at the Premises.
- (h) The Complainant also notes that on the morning of 20 December 2014 at approximately 2:20am, Police attended the venue again on an unrelated matter and once again no mention was made of the incident.
- (i) The Complainant notes that on 20 December 2014, Mr Hoste was admitted to Gosford Hospital with symptoms of painful eyes and vomiting. After assessment, Mr Hoste was transported to Royal North Shore Hospital Intensive Care Unit for treatment of a subarachnoid haemorrhage and frontal bone fracture.

17. On 12 January 2015, Police attended the venue to investigate the incident and reviewed the CCTV footage.

18. The Complainant contends that it was only at this point that Police became aware of the actual circumstances of the assault. The incident was recorded by Ms Purdie in the Incident Register for the Premises as:

Aggression escalated. Patron fell. Security assisted him.

19. The Complainant contends that, in a 22 January 2015 meeting between the Business Owner, Approved Manager, and licensing Police from the Sydney City Local Area Command, Ms Purdie admitted to not reporting the assault, stating:

I was told a regular reported it.

Complainant Submissions in relation to the Complaint

20. The Complainant contends that Ms Purdie did not report the incident or call an ambulance, and appears to have deliberately misled Police as to the actual circumstances of the assault.

21. The Complainant submits that this conduct indicates that Ms Purdie is not fit to manage a licensed premises, particularly as the Premises is listed as a *high risk venue* in Schedule 1B of the *Liquor Regulation 2008 (Regulation)*.

22. The Complainant submits that considering whether a person is fit and proper to hold a licence involves "an assessment of their knowledge, honesty, and ability in the context of the role they are seeking to undertake". The Complainant cites Toohey and Gaudron JJ in *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at 380 in support of this contention:

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 the 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 indication as to likely future conduct) or reputation (because it provides 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.

23. The Complainant submits that a consideration of fitness should also have regard to section 45(5A) of the Act, which provides that when the Authority is determining the fitness of a liquor licence applicant, the Authority must, without limitation, consider whether the licence applicant (a) is of good repute having regard to character, honesty and integrity; and (b) is competent to carry on "that business or activity".
24. The Complainant contends that Ms Purdie's actions demonstrate "significant dishonesty and recklessness, if not a conscious and deliberate attempt not to render or effect first aid and ensure a serious violent incident was reported to Police".
25. The Complainant notes, by way of background, that the *Sydney CBD Plan of Management* was implemented by the State Government in 2014 as a result of growing community concern into alcohol related violence, precipitated by the "one punch" assaults which led to the deaths of Daniel Christie and Thomas Kelly.
26. The Complainant submits that Ms Purdie, as the approved manager of a high risk venue located in the Sydney CBD Entertainment Precinct, "would be aware of this background and realise the seriousness of such an incident" and her responsibility to manage and report the incident.
27. The Complainant notes that as a result of the incident, Mr Lemalu was charged by Police with *Assault occasioning actual bodily harm* on 4 June 2015. His security licence was subsequently suspended by the Security Licensing and Enforcement Directorate pending the outcome of legal proceedings. Mr Lemalu pleaded guilty to the above assault charge at the Downing Centre Local Court on 15 July 2015 and the sentencing hearing is listed for 28 August 2015.
28. The Complainant contends that the "king hit" by the security guard and the subsequent failure of venue staff to preserve the area, report the incident and immediately call an ambulance, indicates a "complete absence of appropriate venue procedures and a flagrant disregard for requirements designed to safeguard the community".
29. The Complainant submits that Ms Purdie's "reckless inaction" is "completely unacceptable behaviour" by an individual responsible for running a late night high risk licensed premises in the Sydney CBD Entertainment Precinct and that disqualifying Ms Purdie from the industry will "provide an adequate deterrent to persons operating outside the parameters of NSW liquor laws".

Outcomes Sought by the Complainant

30. The Complainant concludes the Complaint Letter with the recommendation that the Authority take the following disciplinary action:
 - (i) Withdrawal of Ms Purdie's approval to manage licensed premises;
 - (ii) Disqualification of Ms Purdie from being the manager of licensed premises, or from holding a licence or being the close associate of a licensee for 12 months or for such period as the Authority thinks fit;
 - (iii) Order the approved manager to pay the investigation costs incurred by the Secretary;
 - (iv) Any other disciplinary action as the Authority thinks fit.

THE COMPLAINT MATERIAL

31. The Complainant has submitted 62 pages of evidence or material in support of the Complaint (**Complaint Material**). The following is a summary of those documents:
32. **OneGov liquor licence details for the Premises as at 18 June 2015.** This record of the liquor licence indicates that there is an extended trading authorisation in force in respect of the licence. The licensed trading hours are recorded as from 5:00am to 5:00am Monday to Sunday. The conditions of the licence are also listed. They include the following:
- *Condition 101: Different trading hours on Good Friday (12:00pm to 10:00pm), Christmas Day (12:00 midday to 10:00pm), and 31 December (normal opening time until normal closing time or 2:00am, whichever is later).*
 - *Condition 220: Nudity off stage is not permitted. Audience members are not permitted on stage.*
 - *Condition 230: Physical audience participation is not permitted other than the placement of money in the clothing of performers.*
 - *Condition 250: Simulated sex acts are not permitted by the performers.*
 - *Condition 260: No person under the age of eighteen (18) shall be allowed on the Premises.*
 - *Condition 280: Unclassified films are not to be exhibited on the Premises.*
 - *Condition 290: At least one (1) of the licensee's security staff must be present on the Premises on Saturday nights or whenever buck's parties are held.*
 - *Condition 300: The number of patrons on the Premises shall not exceed the number authorised by the "Certificate of Entertainment Approval" issued pursuant to the Local Government Act [which the Authority notes is a now obsolete type of development consent instrument].*
 - *Condition 310: The licensee is to maintain a register of any persons who have been removed from the Premises and to continue to refuse entry to such persons.*
 - *Condition 320: Any place within the Premises in which entertainment is provided shall not be partitioned to prevent observation of activity in that place.*
 - *Condition 330: No advertising or other promotional reference to the nature of entertainment being conducted is to be placed on the outside of the Premises.*
 - *Condition 340: All advertising shall advise that the entertainment is of an explicit nature.*
 - *Condition 350: There is to be no spruiking or touting for business outside or near the Premises.*
 - *Condition 360: All requirements relating to behaviour of patrons must be clearly displayed on the Premises and regularly broadcasted.*
 - *Condition 380: "The On-Licence (Restaurant) licence 407544 is to be held in a DORMANT capacity and not to be exercised whilst the On-Licence (Theatre) is in existence".*
33. **NSW Police Brief of Evidence regarding offences occurring on 19 December 2014.** This document records the names of 12 witnesses and summarises the evidence in relation to the events of 19 December 2014. The witnesses include Ms Purdie, security guards on duty at the time of the assault, Mr Hoste and three other patrons who accompanied him on the evening of the assault, Police who attended the Premises on 19 and 20 December 2014, and Sergeant Russell, the officer in charge of licensing breaches in the Sydney City LAC on the evening of 19 December 2014.
34. **Key liquor licence details extracted from the NSW Police Alcohol Related Crime Information Exchange database recording the liquor licence details of licence number LIQO624006970 as at 25 May 2015.** Unlike the *OneGov* liquor licence record, this document also lists the owner of the Premises in addition to the business owner. According to this document, the premises owner is TWTY2 Pty Limited.

- 35. NSW Police Penalty Notice (penalty number 4930073610) dated 22 January 2015.** This is a Penalty Notice regarding the Premises that was issued to Xtreme Enterprises Australia 2 Pty Limited, the corporate Licensee and Business Owner, for failing to maintain an incident register contrary to licence conditions. A description of the assault on 19 December 2014 is included. The Penalty Notice states that inspection of the Incident Register by Police showed the assault recorded as "Aggression escalated, Patron fell. Security assisted him".
- 36. NSW Police Penalty Notice (penalty number 4930073620) dated 22 January 2015.** This is a Penalty Notice regarding the Premises that was addressed to Xtreme Enterprises Australia 2 Pty Limited for failing to notify Police of a violent incident contrary to licence conditions. A description of the assault on 19 December 2014 is included. The Penalty Notice states that the assault was reported to Police by a person passing by the Premises.
- 37. Statement of Police by Sergeant Jack Russell (Sergeant Russell) of The Rocks Police Station, dated 5 June 2015.** This statement takes the form of a statutory declaration by Sergeant Russell relating to the assault at the Premises on 19 December 2014.
- 38.** This statement notes that Sergeant Russell was performing licensing duties for the Sydney City LAC from 6:00pm on 19 December 2014 to 6:00am on 20 December 2014 and that he received a text message from Ms Purdie at 7:59pm on 19 December 2014 stating that "we had a bit of push and shove, the group of *tradies* left however a customer called the police. Police came and left. No damage to staff or venue. Thanks Liz".
- 39.** This statement details that at 2:20am on 20 December 2014, Sergeant Russell and a Constable attended the Premises in relation to a business inspection during which Ms Purdie did not mention the assault.
- 40.** This statement then notes that the Sergeant returned to the Premises on 12 January 2015 to examine the CCTV footage for the evening of 19 December 2014, after the assault was reported and Mr Hoste was admitted to hospital.
- 41.** This statement contains a description of the CCTV footage in which Sergeant Russell observes a security guard striking Mr Hoste suddenly after a prolonged non-physical conflict between security and Mr Hoste.
- 42.** This statement notes a conversation between Ms Purdie and Sergeant Russell in which Ms Purdie is asked why she did not report the assault to Police, to which Ms Purdie is recorded as responding, "I was told a regular patron phoned Police".
- 43.** Furthermore, this statement records Sergeant Russell asking Ms Purdie why the Incident Register records the incident as the patron falling down. Ms Purdie is recorded as responding, "I panicked".
- 44.** This statement goes on to state that Sergeant Russell advised Ms Purdie that infringement notices would be issued for not producing the Incident Register upon request by a Police officer (contrary to clause 53I of the Regulation) and for not reporting a violent incident to Police (contrary to clause 53J(1)(b) of the Regulation).

45. Sergeant Russell's statement attaches a copy of an extract from the Premises' Incident Register and an OLGR Fact Sheet entitled "Special licence conditions for premises in the Sydney CBD" dated July 2014.
46. **Statement of Police by Constable Scott McCallum (Constable McCallum) of Sydney City LAC, dated 28 January 2015.** This statement is a statutory declaration by Constable McCallum relating to the assault at the Premises on 19 December 2014.
47. This document states that at approximately 7:15pm on 19 December 2014, Constable McCallum, accompanied by Constable Amy Loomes, responded to a Police broadcast that there had been an assault by a security guard on a male, who had consequently hit his head on the gutter. The assault was reported as taking place at the corner of York Lane and Erskine Street, Sydney (just outside the Premises).
48. Constable McCallum states that when he arrived at the Premises, the patron who had been assaulted had left the Premises.
49. Constable McCallum states that when he asked security at the Premises if there had been a person lying on the ground nearby, the answer was mumbled and not clear (although Constable McCallum states that he does not recall exactly what was said).
50. Constable McCallum states that "as there was no further calls regarding the males despite it being opposite a hotel with a number of patrons outside and in an area of normally high pedestrian activity we left the scene", but other Police officers stayed at the scene.
51. **Witness Statement by Mr Hoste taken at Royal North Shore Hospital, dated 24 December 2014.** This statement is a statutory declaration by Mr Hoste relating to the assault at the Premises on 19 December 2014.
52. Mr Hoste states that at about 6:00pm on 19 December 2014, Mr Hoste was at the Premises and had imbibed approximately 15 "drinks".
53. Mr Hoste states that after about five drinks he went upstairs for a cigarette, which was about an hour after he arrived. He contends that he was smoking with Mr Gavin Mooney (**Mr Mooney**), whom he asked to go back into the Premises and retrieve his bag.
54. Mr Hoste states that when Mr Mooney returned, accompanied by a few other patrons (friends of Mr Hoste), Mr Hoste was unconscious on the ground.
55. Mr Hoste contends that Mr Mooney and the other patrons witnessed a bouncer holding Mr Hoste up off the road.
56. Mr Hoste contends that when his friends asked the bouncer what had occurred, the bouncer replied that Mr Hoste had fallen over.
57. Mr Hoste contends that the bouncer worked at the Premises as he had seen him some weeks prior.
58. Mr Hoste states that later that night he walked to a bus stop and went back to a friend's house.

59. Mr Hoste contends that on the morning of 20 December 2014, he was in a great deal of pain and vomited. Shortly after this, Mr Hoste went to Gosford Hospital where he had a CT scan and was transferred by ambulance to the Royal North Shore Hospital.
60. **Witness Statement by Mr Hoste taken at Sydney City Detectives, dated 24 February 2015.** This statement is a statutory declaration by Mr Hoste relating to the assault at the Premises on 19 December 2014. It is made as a further statement to that made by Mr Hoste at the Royal North Shore Hospital on 24 December 2014.
61. This statement notes that Mr Hoste was attending a work Christmas party with about 20 to 30 co-workers from *Precision Air* at Sussex Hotel on Sussex Street, Sydney.
62. At about 2:00pm, Mr Hoste and about four others went to Darling Harbour, then to the Concourse Bar, and then to the Premises.
63. Mr Hoste states that after about three full strength schooners of beer at the Premises, Mr Hoste went outside with Mr Mooney to smoke.
64. Mr Hoste contends that from that point he cannot recall anything until about 4:00am the following morning, when he woke up at his friend's house in Five Dock with a severe headache, painful eyes and temples, and a gash about 2 inches across and half an inch wide on the "back right crown" of his head.
65. Mr Hoste contends that he asked his friend what happened and his friend replied that a bouncer at the Premises told him that Mr Hoste had fallen over and hit his head on the gutter.
66. Mr Hoste contends that this did not make sense to him as he did not have any lacerations to his hands or elbows.
67. Mr Hoste states that at about 8:00am on 20 December 2014, he left his friend's house and, while walking up the road, vomited in a garden.
68. Mr Hoste then sought medical advice and was advised to go to hospital.
69. Mr Hoste states that he attended Gosford Hospital where he was given a CT scan, after which the doctor asked if he had been assaulted. Mr Hoste replied that he did not know.
70. Mr Hoste contends that he was advised by the doctor that the injuries he sustained were consistent with an assault as the lacerations were to the back of his head and the fracture and bleeding of the brain was in the front.
71. Mr Hoste states that he was then transferred to Royal North Shore Hospital due to the seriousness of his injuries, where he stayed for about 10 days.
72. Mr Hoste states that on 23 December 2014, he asked hospital staff to call the Police as he believed that he may have been assaulted. The following day, Constable Vallin from North Shore Police attended the hospital and took a statement from Mr Hoste.
73. Mr Hoste states that as a result of his injuries he has been taking pain killers and Viagra. He states that he has not "been able to get a proper erection", and is "very

weary, paranoid and anxious" since the assault. He states that this incident has greatly affected his life and that he "used to be a very sociable person".

74. Furthermore, Mr Hoste contends that he has not been able to attend work and has been missing out on overtime pay whilst his colleagues are working on the Barangaroo construction site.
75. Mr Hoste states that 19 December 2014 was the first time he had been to the Premises and that he does not know any of the staff there and never gave any person permission to assault him at any time.
76. **Witness Statement made by Mr Victor Ramirez (Mr Ramirez) at Sydney City Detectives, dated 12 February 2015.** This statement is a statutory declaration by Mr Ramirez relating to the assault at the Premises on 19 December 2014.
77. Mr Ramirez states that on 19 December 2014, he attended a *Precision Air* work Christmas party at the Sussex Hotel, where he consumed food and drank beer.
78. Mr Ramirez notes that at about 2:30pm he left the Christmas party with approximately 30 people and moved to the Brew House at King Street Wharf, where he drank two light schooners of beer and then left to attend the Occidental Hotel where he had another light schooner of beer.
79. Mr Ramirez states that at about 7:00pm, he went to the Premises where he had another drink.
80. Mr Ramirez notes that after a couple of hours at the Premises, he went outside and saw Mr Hoste lying in the gutter with a cut on the back of his head which was bleeding.
81. Mr Ramirez states that while he was outside the Premises, he saw Mr Glenn Roots and Mr Gavin Mooney talking to a security guard. He contends that they asked the security guard why he hit Mr Hoste and the security guard stated, "I never hit him".
82. Mr Ramirez contends that he then asked the security guard, "Why did you hit him?" and the security guard replied, "I didn't touch him, he fell over, I didn't hit him".
83. Mr Ramirez contends that another security guard came shortly after and the first security guard said, "You wanna fight, c'mon let's fight", at which time the security guard who had just arrived separated the two men.
84. Mr Ramirez states that after this occurred, Mr Mooney attended to Mr Hoste and Mr Ramirez went to Wynyard Station to catch a train home.
85. **Witness Statement made by Mr Glen Roots (Mr Roots) at Barangaroo Worksite, Sydney, dated 3 February 2015.** This statement is a statutory declaration by Mr Roots relating to the assault at the Premises on 19 December 2014.
86. Mr Roots states that on 19 December 2014, he attended a *Precision Air* work Christmas Party at the Sussex Hotel where he consumed a meal and two full strength beers.

87. Mr Roots states that after the Christmas party he went to the Brew House, where he drank one full strength beer. Following this, he states that he went to the Occidental Hotel and drank another full strength beer.
88. Mr Roots states that after the Occidental Hotel, he and five to six other colleagues went to the Premises.
89. Mr Roots states that while at the Premises he drank one beer.
90. Mr Roots contends that while at the Premises, Mr Mooney got onto the stage as a "prank" while there were no girls performing and was asked to leave by security. While this was happening, Mr Roots contends that Mr Hoste stepped in between Mr Mooney and the security guards and said, "He's not intoxicated, he is just joking, just relax".
91. Mr Roots contends that after this, everything was "dealt with" and Mr Hoste went upstairs to smoke but was told by security that if he left the Premises he would not be allowed back in.
92. Mr Roots contends that Mr Hoste said to the security guard, "What's your problem?" and the security guard said, "Let's go outside and talk about it". Mr Roots states that Mr Hoste then walked up the stairs and he did not see him again.
93. Mr Roots contends that after about five to ten minutes he began to wonder where Mr Hoste was and he walked outside and found Mr Hoste lying in the laneway unconscious with his head in the gutter.
94. He contends that he then saw a security guard bend over Mr Hoste and try to pick him up, saying, "Please wake up, please wake up!" At this point, Mr Roots contends that he approached the security guard and said, "What did you do to him?" to which the security guard said, "I didn't do anything, he hit his head on the gutter. He fell over and..."
95. At this point, Mr Roots contends that Mr Hoste began to come to and the security guard let go of him. Mr Roots contends that he then walked toward the security guard and said, "What did you do to him? He didn't fall over. Don't bullshit me, you hurt him", and the security guard kept saying, "I didn't do anything, he just fell over".
96. Mr Roots states that he kept talking to the security guard and two other work colleagues emerged from the Premises and asked what happened. Mr Roots contends that the conversation became heated and the security guard said, "Come on, you wanna fight. I'll give you a fight", with both fists clenched and then another male stepped in between them and moved the security guard back into the Premises.
97. Mr Roots contends that he then turned his attention back to Mr Hoste and asked him what happened, to which Mr Hoste responded that he did not know.
98. Mr Roots then states that he took Mr Hoste back to his house.
99. **Office of Liquor, Gaming and Racing Compliance Branch File Note by Mr Paul Newman dated 15 June 2015 (CCTV File Note)**. This is a file note describing the CCTV footage recovered from the Premises from the perspective of this officer for the night of 19 December 2014 and provided in support of the Complaint.

100. The entirety of the CCTV File Note states as follows:

DATE/TIME: 15 June 2015 – Commencing at 10:30hours
VENUE: Velvet Underground
SUBJECT: DVD file conversion

On Monday 15 June, SCO Matt weber attended my desk with a DVD marked Velvet Underground. Matt asked if there was a way the video files could be extracted from the DVD, then restitched so that the files play in one continuous file, to determine whether any footage is missing. I took the DVD and advised that I would look into it for him.

Matt showed me which files he wanted to view continuously. Matt opened the first file and images appeared on my screen of a premise in Sydney known as Velvet Underground, a strip Club located near Wynyard station. A review of the footage identified a security guard striking a male patron, who subsequently fell backwards and hit his head violently on the road.

I copied the .AVI files sequentially named 2014DEC19183000_0_24 to 2014DEC19183000_0_58 and placed them into a new folder on my desktop.

I then conducted a search on Google using the words "Stitching AVI files Windows". A number of results were returned and I selected a site I was familiar with and trusted, cnet.com. I selected a software named Video Joiner Free and installed it to the PC.

Once the software was installed, I selected the video files I wanted stitched together and dropped them into the software window. After a short time the software sent me an alert informing me that the process was complete. The result of the stitching produced a 25 minute video clip.

The clip was reviewed to determine if any footage was missing. It was identified that the footage was complete and not edited, other than the stitching done on my work PC.

I burned two copies of the DVD with the stitched footage and burned an additional copy of the original DVD provided by Matt Weber. I then gave Matt the three copies and the original DVD.

As no date and time is recorded on the footage provided by the venue an abbreviated stitched compilation of footage was produced. The stitched compilation commenced at file 24 of the total amount of files provided by Velvet Underground, which can be viewed on the disc marked "Velvet Underground".

The time displayed below is the amount of time that has passed since the commencement of the stitched footage provided in the disc marked 'Merged CCTV Footage Copy 1'. The times displayed below can be seen adjacent to the 'Play' button.

- 7secs – On-duty guard and accompanying off-duty guard escort male patron from premises. The male patron is the victim in the assault.
- 3min 22secs – On-duty guard strikes patron. Assault witnessed by Approved Manager standing next to a pole several meters away.
- 3min 35secs – Approved Manager re-enters premises.
- 3min 45secs – On-duty guard attempting to lift patron.
- 6min 10secs – Off-duty guard pushing patrons.
- 6mins 24secs – On-duty guard pushes a patron.
- 6mins 26secs – On-duty guard pushes another male
- 6mins 38secs – Off-duty guard pushes another patron.
- 7mins – Assaulted patron is standing, leaning against wall.
- 8mins 23secs – On-duty guard walks in front entrance inside the premises.
- 8mins 30secs – On-duty guard exits front entrance and re-enters about thirteen seconds later.
- 9mins 30secs – Assaulted patron is being supported to stand by friends.
- 9mins 39secs – Off-duty guard sits near assaulted patron and his friends and puts shoes on before commencing evening security shift.
- 10mins – Assaulted patron sitting down on window sill.

- 10mins 50secs – Off-duty guard (Now known as Evening Guard) enters the premises and commences the shift working on the front door.
- 13mins 20secs – Approved Manager reappears for first time since entering immediately after the assault. Approved Manager appears to look at the assaulted patron and group of friends from the front door.
- 14mins 11secs – Approved Manager looks at her mobile phone.
- 14mins 25secs – Approved Manager is speaking with two members of the assaulted patrons friends at the front door as the main group moves off. The assaulted patron can be seen holding his head.
- 15mins 19secs – The assaulted patron walks away from the group of friends and past the Approved Manager, who is standing at the doorway. The Approved Manager appears to look at the assaulted patron but does not appear to speak with him or attempt to provide assistance.
- 15mins 50secs – The assaulted patron's friends walk away in a group towards Wynyard.
- 16mins 15secs – Group appears to see Police attend the venue but continue walking.
- 16mins 25secs – Police enter laneway.
- 16mins 34secs – Evening guard spoken to by Police.
- 20mins 30secs – First group of Police leave the scene.
- 21mins 40secs – Second group of Police obtain details of evening guard.
- 23mins 20secs – Final group of Police leave the scene.

CCTV FOOTAGE

101. The CCTV footage of this incident has been provided by the Complainant to the Authority. The Authority viewed the footage at its meeting of 27 April 2016 and the Authority is satisfied that the CCTV File Note is a correct account of the footage.

LEGISLATION

102. In determining the Complaint, the Authority has considered the provisions contained in Part 9 of the Act. Relevantly, section 139 states:

139 Grounds for making complaint

- (1) *A complaint in relation to a licensee, manager or close associate of a licensee may be made to the Authority by any of the following (referred to in this Part as "the complainant"):*
 - (a) *the Secretary,*
 - (b) *the Commissioner of Police,*
 - (c) *a person authorised by the regulations to make a complaint under this Part.*
- (2) *A complaint must be in writing and specify the grounds on which it is made.*
- (3) *The grounds on which a complaint in relation to a licensee, manager or close associate may be made are as follows:*
 - (a) *...*
 - (b) *that the licensee or manager has failed to comply with any of the conditions to which the licence is subject,*
 - (c) *...*
 - (i) *that the licensee is not a fit and proper person to be the holder of a licence (whether for the same reason as that set out in section 45(5) or otherwise) or the manager is not a fit and proper person to be the manager of the licensed premises (whether for the same reason as that set out in section 68(4A) or otherwise)*

...

103. Relevantly, section 141 of the Act confers the following disciplinary powers upon the Authority:

141 Disciplinary powers of Authority

- (1) ...
- (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.*

104. When considering the fitness and propriety of an approved manager, section 139(3)(i) requires the decision maker to have regard to section 68(4C) of the Act which states, relevantly:

68 Approval of persons to manage licensed premises

- (4C) *Without limiting subsection (4) (a), in determining whether a person is a fit and proper person to manage licensed premises the Authority is to consider whether the person:*
- (a) *is of good repute, having regard to character, honesty and integrity, and*
 - (b) *is competent to manage licensed premises.*

105. In determining the Complaint, the Authority has had regard to the objects and considerations in section 3 of the Act, 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.*

CONSULTATION ON THE COMPLAINT

Show Cause Notices

106. On 22 September 2015, show cause notices and letters inviting submissions were sent to the Approved Manager, Licensee, Business Owner and Premises Owner inviting each respondent to provide submissions or evidence as to why disciplinary action should not be taken on the basis of the Grounds of Complaint.

Submissions from Mr Tsoukatos on behalf of the Licensee and Business Owner

107. In a submission dated 25 September 2015, Mr Tsoukatos claimed that he was prevented from making any submissions in response to the Complaint by reason that he was in the course of giving evidence in the related Local Court proceedings, which were adjourned and due to resume in January 2016.

108. In a second submission received on 16 October 2015, Mr Tsoukatos made submissions to the effect that he has been involved in the liquor and entertainment industry for “almost 30 years”; that the Premises’ management staff had been “restructured” since the incident on 19 December 2014; and that the business had implemented “many new changes” to the business including internal *Venue and Security Plans of Management* since 2012.

109. Mr Tsoukatos contended that Ms Purdie was “well informed and well versed” in the *Plans of Management* and conditions upon the licence for the Premises and that she “communicated effectively” with OLGR and NSW Police. Copies of the internal

business planning documents to which Mr Tsoukatos referred in his submission were also provided.

Submission from the Approved Manager, Ms Purdie dated 17 October 2015

110. With regard to the assault on 19 December 2014, Ms Purdie submitted that she managed the situation to the best of her ability, given the circumstances and the resources that were available to her at the time. Ms Purdie expressed her regret over the incident and contends that she has “worked in the industry for many years, handling many difficult situations, without any previous incident” and that she has always been cooperative with any authorities she has dealt with in her professional capacity.
111. Ms Purdie contends that that she is reliant upon the income from her position as Approved Manager at the Premises to support herself and that she was not in a position to bear the cost of any financial penalty that may be imposed by the Authority as a result of this Complaint.

Further Submissions from Mr Tsoukatos dated 11 and 18 January 2016

112. In a brief email submission of 11 January 2016, Mr Tsoukatos advised that the two related Local Court prosecutions had been dismissed on that date.
113. In a further submission dated 18 January 2016, Mr Tsoukatos outlined the challenges involved in running a high risk licensed venue in the CBD (including the “invasion” of outlaw motorcycle gangs, street shootings and numerous assaults) and the ongoing changes to the liquor legislation. He also contends that he and Ms Purdie have worked together for many years and that Ms Purdie is a person of good character who works to the best of her ability, and advised that Ms Purdie was no longer working as the Approved Manager of the Premises and had been reassigned to an “administrative role”.

Further Submission from the Complainant dated 9 February 2016

114. In a further submission dated 9 February 2016, the Complainant submitted that notwithstanding the result of the related Court proceedings, the Authority should nevertheless consider taking disciplinary action against Ms Purdie, albeit that “a lesser regulatory response” may now be warranted.

Letter notifying Findings on Grounds of Complaint dated 30 May 2016

115. At its meeting on 24 February 2016, the Authority resolved to further defer consideration of the matter by reason that the Authority required transcripts of the Local Court judgments in respect of the prosecutions for the related alleged offences against the *Liquor Act 2007* that were dismissed by the Local Court during January 2016. Those transcripts were provided to the Authority by LGNSW on 7 April 2016.
116. The Authority gave further consideration to the Complaint at its meeting of 27 April 2016 and a letter notifying the Authority's findings on the Grounds of Complaint was sent to the Complainant, the Approved Manager, the Licensee/Business Owner, and the Premises Owner on 30 May 2016 inviting final submissions confined to the question of what, if any, disciplinary action should be taken in light of those findings.

Final Submission from the Complainant dated 6 June 2016

117. The Complainant advised in a brief email dated 6 June 2016 that it relies on its previous submissions on the Complaint and that it did not wish to make any additional submissions.

Final Submission from the Approved Manager dated 12 June 2016

118. In this half-page response dated 12 June 2016, Ms Purdie indicated that since the events of 19 December 2014 she has ceased to operate as an approved manager and no longer works in the liquor, service and hospitality industry. Ms Purdie offered to surrender her approval as an approved manager and requested that the Authority show leniency when considering what disciplinary action to take in relation to the Complaint.

FINDINGS ON GROUNDS OF COMPLAINT

119. When making findings on a disciplinary complaint, the Authority is not purporting to determine whether an offence against the Act has been committed to the criminal standard of proof.
120. Rather, the Authority makes findings on the allegations that support the Complaint, to the civil standard of proof – although the Authority is mindful of its obligation to take care when fact finding in a disciplinary context, pursuant to the principle in *Briginshaw v Briginshaw* (1938) 60 CLR 336 in which Dixon J stated:

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

Authority Observations on the CCTV footage

121. As described in the CCTV File Note prepared by LGNSW staff dated 15 June 2015, the CCTV footage of the assault that occurred outside the Premises on 19 December 2014 is actually a collection of several video CCTV files strung together in sequence on a single file. All of the files are from the same North facing camera covering the entry point to the Premises and the corner of York Lane and Erskine Street.
122. The date and time are not displayed on the merged CCTV footage file, which according to the time counter for the video file is 25 minutes and 30 seconds in total duration. However the footage is not time-coded, so it is difficult from this footage alone to get an accurate sense of the real time that has elapsed over the course of the footage. There is no sound available on the merged CCTV file.
123. The Authority has conducted its own analysis of the footage, which in its assessment features the following:
- (a) The patron/victim of the assault (Mr Hoste), a man of Caucasian appearance and wearing blue jeans, a black and white T-shirt and tan shoes emerges from the venue entrance at 00:08 of the merged CCTV footage. He is closely followed by a security guard of Islander appearance wearing a high visibility jacket, perhaps ensuring the victim leaves the Premises. A lengthy process of discussion or argument ensues between the victim, the security guard and

- another patron in blue jeans, black T-shirt and white sneakers who seems to be trying to mediate between the victim and the security guard. The victim appears to be refusing to leave the vicinity of the venue. It is not clear whether he has been directed to leave the vicinity of the Premises from the CCTV footage, which contains no sound.
- (b) Ms Purdie, who is wearing black jeans, a black sleeveless top and black ballet flats appears at the venue entrance at 02:16 of the merged CCTV footage, from where she watches the discussion between the victim and the security guard. Ms Purdie remains standing at the venue entrance until 03:16 of the merged CCTV footage, when she walks out of the venue and turns left onto York Lane and stands directly across the street from where the victim and the security guard are standing.
 - (c) The assault occurs in York Lane adjacent to the venue at 03:22 of the merged CCTV footage. York Lane runs from left to right on the screen, with Erskine Street on the far right of the screen with constant vehicular traffic. York Street is featured at the top right of the screen. In what does not appear to be an act of self-defence, the security staff member in the high visibility jacket (Mr Lemalu) suddenly punches the victim to the head. The victim falls back onto the street and seems to be out cold. Several people attend to him, including the security guard/assailant, who is seen attempting to lift the victim at 03:45.
 - (d) Ms Purdie is seen to witness the assault. She watches briefly and then re-enters the venue at 03:35 of the merged CCTV footage.
 - (e) A small group of people continue to tend to the victim. The security guard/assailant is seen pushing patrons from between 06:10 and 06:40 of the merged CCTV footage. He goes back inside the venue at 08:22. He then reappears at the venue entrance at 08:30 where he has a brief conversation with a male in blue jeans, dark blue T-shirt and black and white shoes who is speaking on a mobile phone. The security guard/assailant re-enters the venue at 08:42.
 - (f) Since the time of the assault the victim is monitored by another male of Islander appearance, who appears to be another (off-duty) security staff member. This security guard is initially not in uniform and is dressed in a black T-shirt and black pants and is carrying a black bag (about to start his shift). This security guard in black is also seen pushing patrons from between 06:10 and 06:40 of the merged CCTV footage.
 - (g) This off-duty security guard in black then sits near the victim and his friends and puts on shoes at 09:39 of the merged CCTV footage before commencing his evening shift. He remains with the victim until 10:50 and then returns inside the venue.
 - (h) A male of Mediterranean appearance in a blue T-shirt, blue cargo shorts and orange sneakers appears on screen from Erskine Street at the bottom left at 12:45 of the merged CCTV footage.
 - (i) The security guard in black re-emerges from the venue at 12:48 of the merged CCTV footage, now in uniform (black shirt with "SECURITY" printed in large

- white letters on the back, no high visibility vest). He remains at the venue entrance and appears to be carrying out security duties at the door.
- (j) Ms Purdie re-emerges from the venue at 13:20 for the first time since re-entering the venue immediately after the assault. Ms Purdie stands at the venue entrance and talks to the security guard in black, occasionally looking over at the victim with his friends or colleagues. At 14:11 Ms Purdie looks at her mobile phone. At 14:25 Ms Purdie speaks to two of the victim's friends at the front door as the main group starts to move off. The victim can be seen holding his head.
 - (k) At 15:19 the victim walks away from his group of friends and down Erskine Street, past Ms Purdie, the security guard in black and the male in the blue T-shirt, all of whom are standing at the front entrance. Ms Purdie appears to look at the victim but does not appear to speak with him or attempt to provide assistance.
 - (l) Ms Purdie, the security guard in black and the male in the blue T-shirt all continue to monitor the rest of the victim's group until they start to walk up Erskine Street away from the venue at about 15:45 of the merged CCTV footage. Ms Purdie returns inside the venue.
 - (m) The security guard in black and the male in the blue T-shirt remain at the front entrance to the venue. Police arrive and walk down York Lane near the venue entrance at 16:19 of the merged CCTV footage, apparently in relation to another incident.
 - (n) Police officers speak to the security guard in black and the male in the blue T-shirt on York Lane outside the venue at 16:32. The security guard in black puts on a high visibility jacket at 16:50. All of the Police officers leave the scene, walking up Erskine Street by 17:04 of the merged CCTV footage.
 - (o) The male in the blue T-shirt goes back inside the venue at 19:04. The security guard in black remains at the front entrance to the venue throughout this whole time. Two Police officers approach the security guard in black from York Lane on the left of the screen and have a conversation with him at 21:36 of the merged CCTV footage.
 - (p) The male in the blue T-shirt re-emerges from the venue at 21:46 and walks down York Lane to the left of the screen, past the security guard in black and the two Police officers. The Police officers continue their conversation with the security guard in black and then leave, walking up Erskine Street at 23:18 of the merged CCTV footage.
 - (q) The security guard in black remains at the venue entrance. At 24:42, the male in the blue T-shirt reappears in the frame from the left of the screen in York Lane. He stands outside the venue entrance with the security guard in black and they have a conversation until the vision ends at 25:30.

Authority Findings on Ground 1

124. This Ground is based upon section 139(3)(b) of the Act, which states as follows:

...that the licensee or manager has failed to comply with any of the conditions to which the licence is subject.

- 125.** The Authority is satisfied, as alleged in relation to Ground 1 of the Complaint, that at approximately 7:00pm on 19 December 2014, a patron of the Premises, Mr Jason Hoste was asked to leave the Premises, escorted out of the Premises by venue security and then, without physical provocation, punched by a security guard engaged by the business, knocking him unconscious.
- 126.** This finding is made on the basis of the CCTV File Note, the Premises' Incident Register from 19 December 2014 (attached to the Statement of Police by Sergeant Russell dated 5 June 2015), the NSW Police Force Penalty Notice (penalty number 4930073620) dated 22 January 2015 and the Statements of Mr Hoste dated 24 December 2014 and 24 February 2015 respectively. The finding is also made on the basis of the CCTV footage that is before the Authority.
- 127.** The Authority is satisfied, as alleged in relation to Ground 1 of the Complaint, that after being escorted out of the Premises, Mr Hoste had an altercation with a security guard, Mr Levi Lemalu. Mr Lemalu punched Mr Hoste once in the head, causing Mr Hoste to fall backwards and hit the back of his head on the kerb, rendering him unconscious.
- 128.** This finding is made on the basis of the CCTV File Note, the NSW Police Force Penalty Notice (penalty number 4930073620) dated 22 January 2015 and the Statement of Police by Sergeant Russell dated 5 June 2015 at paragraph 9. This finding is also made on the basis of the CCTV footage that is before the Authority.
- 129.** The Authority is satisfied, as alleged in relation to Ground 1 of the Complaint, that at no time in the CCTV footage did Mr Hoste make any threatening gestures or actions towards the security guard.
- 130.** This finding is made on the basis of the CCTV File Note, the NSW Police Force Penalty Notice (penalty number 4930073620) dated 22 January 2015, the Statement of Police by Sergeant Russell dated 5 June 2015 at paragraph 9 and the Witness Statement by Mr Hoste dated 24 February 2015. This finding is also made on the basis of the CCTV footage that is before the Authority.
- 131.** The Authority is satisfied, as alleged in relation to Ground 1 of the Complaint, that Ms Purdie, the Approved Manager of the business operating on the Premises, is visible in the CCTV footage witnessing the assault, but that at no point did she or any of the venue staff call the Police or an ambulance. The Authority notes that this allegation has not been contested by the respondents and makes this finding on the basis of the CCTV File Note and the CCTV footage that is before the Authority.
- 132.** The Authority is satisfied, as alleged in relation to Ground 1 of the Complaint, that when Police attended the scene at approximately 7:22pm (after the injured patron, Mr Hoste, had left the area), neither Ms Purdie nor any of the staff of the licensed business made any mention of the incident to the Police at that time.
- 133.** This finding is made on the basis of the Statement of Police by Sergeant Russell dated 5 June 2015 at paragraph 6 and the Statement of Police by Constable McCallum dated 28 January 2015.

134. The Authority is satisfied, as alleged in relation to Ground 1 of the Complaint, that at 7:59pm a text message was sent to Jason (Jack) Russell, Licensing Sergeant for the City Central Local Area Command by Ms Purdie, stating that there had been "a bit of push and shove" at the Premises.
135. This finding is made on the basis of the screenshot of a text message which appears in the Statement of Police by Sergeant Russell dated 5 June 2015, titled "*Photo of text message forwarded to Sgt Russell from Elizabeth PURDIE on 19/12/2014*".
136. The Authority is satisfied, as alleged in relation to Ground 1 of the Complaint, that at approximately 2:20am on the morning of 20 December 2014, Police attended the venue again on an unrelated matter and once again no mention was made of the incident.
137. This finding is made on the basis of the Statement of Police by Sergeant Russell dated 5 June 2015 at paragraph 6.
138. The Authority is satisfied, as alleged in relation to Ground 1 of the Complaint, that on 20 December 2014, Mr Hoste was admitted to Gosford Hospital with symptoms of painful eyes and vomiting. After assessment, Mr Hoste was transported to Royal North Shore Hospital Intensive Care Unit for treatment of a subarachnoid haemorrhage and frontal bone fracture.
139. This finding is made on the basis of the Witness Statement by Mr Hoste taken at Royal North Shore Hospital dated 24 December 2014 and the further Witness Statement by Mr Hoste taken at Sydney City Detectives dated 24 February 2015.
140. The Authority is satisfied, as alleged in relation to Ground 1 of the Complaint, that on 12 January 2015, Police attended the venue to investigate the incident that took place on 19 December 2014 and reviewed the CCTV footage.
141. This finding is made on the basis of the Statement of Police by Sergeant Russell dated 5 June 2015 at paragraphs 7 and 9.
142. The Authority is satisfied, as alleged in relation to Ground 1 of the Complaint, that it was only on 12 January 2015 that Police became aware of the actual circumstances of the assault and that Police detected that the incident had been recorded by Ms Purdie in the Incident Register of the Premises as "Aggression escalated. Patron fell. Security assisted him".
143. This finding is made on the basis of the NSW Police Penalty Notice (penalty number 4930073610) dated 22 January 2015, the Statement of Police by Sergeant Russell dated 5 June 2015 at paragraphs 7 to 10 and the copy of an extract from the Premises' Incident Register dated 19 December 2014 attached to Sergeant Russell's statement.
144. The Authority is satisfied, as alleged in relation to Ground 1 of the Complaint, that in a meeting between the Business Owner, Approved Manager, and licensing Police for Sydney City Local Area Command that took place on 22 January 2015, Ms Purdie admitted to not reporting the assault, stating: "I was told a regular reported it".
145. This finding is made on the basis of the Statement of Police by Sergeant Russell dated 5 June 2015 at paragraphs 7 and 10.

146. The Authority is satisfied, as alleged in relation to Ground 1 of the Complaint, that Ms Purdie did not report the incident or call an ambulance, and deliberately misled Police as to the actual circumstances of the assault.
147. This finding is made on the basis of the Statement of Police by Sergeant Russell dated 5 June 2015, including the attached copy of an extract from the Premises' Incident Register dated 19 December 2014.
148. The Authority notes that the related Local Court prosecution concerned a violent incident that occurred *off* the licensed area of the Premises on 19 December 2014.
149. The Authority does not consider that the Approved Manager was under an obligation arising under the relevant *licence condition* to report an incident occurring *off* the Premises.
150. Nevertheless, the Authority is satisfied, on the balance of probabilities, that the Approved Manager misled Police with her exchanges and notations of the incident. The Authority is satisfied that she also misled Police with her silence.
151. The Authority is satisfied, on the balance of probabilities, that the Approved Manager contravened a condition of the licence arising from a requirement in clause 53ZE(1)(b) of the *Liquor Regulation 2008*, requiring that any serious incident of violence occurring on the premises or in the immediate vicinity of the premises of which she is aware be recorded in the incident register.
152. The Authority is satisfied that Ground 1 is established.

Authority Findings on Ground 2

153. This Ground is based upon section 139(3)(i) of the Act, which states as follows:

...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).

154. The Authority is satisfied, as alleged in relation to Ground 2 of the Complaint, that at approximately 7:00pm on 19 December 2014, a patron of the Premises, Mr Jason Hoste was asked to leave the Premises, escorted out of the Premises by venue security and then, without physical provocation, punched by a security guard engaged by the business, knocking him unconscious.
155. This finding is made on the basis of the CCTV File Note, the Premises' Incident Register from 19 December 2014 (attached to the Statement of Police by Sergeant Russell dated 5 June 2015), the NSW Police Force Penalty Notice (penalty number 4930073620) dated 22 January 2015 and the Statements of Mr Hoste dated 24 December 2014 and 24 February 2015 respectively. This finding is also made on the basis of the CCTV footage that is before the Authority.
156. The Authority is satisfied, as alleged in relation to Ground 2 of the Complaint, that the assault occurred at approximately 7:00pm after Mr Hoste was asked to leave the Premises and escorted out of the Premises by venue security.

- 157.** This finding is made on the basis of the CCTV File Note, the Premises' Incident Register from 19 December 2014 (attached to the Statement of Police by Sergeant Russell dated 5 June 2015) and the NSW Police Force Penalty Notice (penalty number 4930073620) dated 22 January 2015. This finding is also made on the basis of the CCTV footage that is before the Authority.
- 158.** The Authority is satisfied, as alleged in relation to Ground 2 of the Complaint, that after being escorted out of the Premises, Mr Hoste had an altercation or argument with a security guard, Mr Levi Lemalu. Mr Lemalu punched Mr Hoste once in the head, causing Mr Hoste to fall backwards and hit the back of his head on the kerb, rendering him unconscious.
- 159.** This finding is made on the basis of the CCTV File Note, the NSW Police Force Penalty Notice (penalty number 4930073620) dated 22 January 2015 and the Statement of Police by Sergeant Russell dated 5 June 2015 at paragraph 9. This finding is also made on the basis of the CCTV footage that is before the Authority.
- 160.** The Authority is satisfied, as alleged in relation to Ground 2 of the Complaint, that at no time in the CCTV footage did Mr Hoste make any threatening gestures or actions towards the security guard.
- 161.** This finding is made on the basis of the CCTV File Note, the NSW Police Force Penalty Notice (penalty number 4930073620) dated 22 January 2015, the Statement of Police by Sergeant Russell dated 5 June 2015 at paragraph 9 and the Witness Statement by Mr Hoste dated 24 February 2015. This finding is also made on the basis of the CCTV footage that is before the Authority.
- 162.** The Authority is satisfied, as alleged in relation to Ground 2 of the Complaint, that Ms Purdie, the Approved Manager of the Premises, is visible in the CCTV footage witnessing the assault but that at no point did she or any of the venue staff call the Police or an ambulance. The Authority notes that this allegation has not been contested by the respondents and makes this finding on the basis of the CCTV File Note and the CCTV footage that is before the Authority.
- 163.** The Authority is satisfied, as alleged in relation to Ground 2 of the Complaint, that when Police attended the scene at approximately 7:22pm (after the injured patron, Mr Hoste, had left the area), neither Ms Purdie nor any of the staff of the licensed business made any mention of the incident to the Police at that time.
- 164.** This finding is made on the basis of the Statement of Police by Sergeant Russell dated 5 June 2015 at paragraph 6 and the Statement of Police by Constable McCallum dated 28 January 2015.
- 165.** The Authority is satisfied, as alleged in relation to Ground 2 of the Complaint, that at 7:59pm a text message was sent to Jason (Jack) Russell, Licensing Sergeant for the City Central Local Area Command by Ms Purdie, stating that there had been "a bit of push and shove" at the Premises.
- 166.** This finding is made on the basis of the screenshot of a text message which appears in the Statement of Police by Sergeant Russell dated 5 June 2015, titled "*Photo of text message forwarded to Sgt Russell from Elizabeth PURDIE on 19/12/2014*".

167. The Authority is satisfied, as alleged in relation to Ground 2 of the Complaint, that at approximately 2:20am on the morning of 20 December 2014, Police attended the venue again on an unrelated matter and once again no mention was made of the incident.
168. This finding is made on the basis of the Statement of Police by Sergeant Russell dated 5 June 2015 at paragraph 6.
169. The Authority is satisfied, as alleged in relation to Ground 2 of the Complaint, that on 20 December 2014, Mr Hoste was admitted to Gosford Hospital with symptoms of painful eyes and vomiting. After assessment, Mr Hoste was transported to Royal North Shore Hospital Intensive Care Unit for treatment of a subarachnoid haemorrhage and frontal bone fracture.
170. This finding is made on the basis of the Witness Statement by Mr Hoste taken at Royal North Shore Hospital dated 24 December 2014 and the Witness Statement by Mr Hoste taken at Sydney City Detectives dated 24 February 2015.
171. The Authority is satisfied, as alleged in relation to Ground 2 of the Complaint, that on 12 January 2015, Police attended the venue to investigate the incident that took place on 19 December 2014 and reviewed the CCTV footage.
172. This finding is made on the basis of the Statement of Police by Sergeant Russell dated 5 June 2015 at paragraphs 7 and 9.
173. The Authority is satisfied, as alleged in relation to Ground 2 of the Complaint, that it was only on 12 January 2015 that Police became aware of the actual circumstances of the assault and that the incident had been recorded by Ms Purdie in the Incident Register of the Premises as "Aggression escalated. Patron fell. Security assisted him".
174. This finding is made on the basis of the NSW Police Penalty Notice (penalty number 4930073610) dated 22 January 2015, the Statement of Police by Sergeant Russell dated 5 June 2015 at paragraphs 7 to 10 and the copy of an extract from the Premises' Incident Register dated 19 December 2014 attached to Sergeant Russell's statement.
175. The Authority is satisfied, as alleged in relation to Ground 2 of the Complaint, that in a meeting between the Business Owner, Approved Manager, and licensing Police for Sydney City Local Area Command that took place on 22 January 2015, Ms Purdie admitted to not reporting the assault, stating: "I was told a regular reported it".
176. This finding is made on the basis of the Statement of Police by Sergeant Russell dated 5 June 2015 at paragraphs 7 and 10.
177. The Authority is satisfied, as alleged in relation to Ground 2 of the Complaint, that Ms Purdie did not report the incident or call an ambulance, and deliberately misled Police as to the actual circumstances of the assault.
178. This finding is made on the basis of the Statement of Police by Sergeant Russell dated 5 June 2015, including the attached copy of an extract from the Premises' Incident Register dated 19 December 2014.

Fitness and Propriety at General Law

179. 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.

180. In *Hughes & Vale Pty Limited v NSW (No 2)* (1955) 93 CLR 127, the High Court of Australia held that:

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

181. 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.

182. Section 139(3)(i) refers to section 68(4C) of the Act, which states:

(4C) Without limiting subsection (4)(a), in determining whether an applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, the Authority is to consider whether the applicant:

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

183. The Authority has considered whether, on the facts found in relation to the incident of 19 December 2014 and taking into account Ms Purdie's past experience and apparent generally good character, and the positive submissions from Mr Tsoukatos, her employer, there is a sufficient basis for finding that she is not a fit and proper person for want of demonstrating the degree of honesty, knowledge and ability expected of a reasonably diligent approved manager.

184. The Authority is satisfied that the context of the relevant business for which Ms Purdie was exercising responsibility is that the venue was at relevant times designated by the Secretary as a "high risk venue" within the meaning of section 116B of the Act by reason of its late hours, its location in the Sydney CBD Entertainment Precinct and the nature of the licensed business. The venue (liquor licence number LIQO624006970) is designated a "high risk venue" in Schedule 1B to the *Liquor Regulation 2008*.

185. The Authority has considered its findings made in relation to Ground 2 and has taken into account Ms Purdie's submissions in mitigation made in her submission letter

dated 17 October 2015. The Authority accepts that Ms Purdie has worked in the liquor industry for a prolonged period of time.

186. There is no indication in the Complaint Material or the Complainant's submissions that Ms Purdie has a prior history of committing licensing or other offences. While Ms Purdie has previously submitted that she relies upon her income from working in the hospitality industry, her latest submission indicates that this is no longer the case.
187. Notwithstanding Ms Purdie's record, which appears to be incident free, the events at issue in this Complaint are considered by the Authority to be most serious. They involved an act of violence, committed by a staff member or contractor engaged by the licensed business, without apparent justification, with potentially drastic consequences for the victim.
188. Ms Purdie was aware of the incident when it occurred. The Authority is satisfied, on the basis of its findings, that the Approved Manager's conduct with regard to recording the incident and her dealings with Police in relation to the incident were inadequate, unsatisfactory and contrary to the public interest in respect of the *Liquor Act 2007*.
189. Section 91 of the Act states that it is the duty of a licensee or approved manager (in the case of a licence held by a company) to exercise personal responsibility for the conduct of a licensed premises and to ensure compliance with all legislative requirements. Full and frank record keeping and liaison with regulatory authorities and law enforcement forms an important part of this responsibility.
190. The inadequacy of Ms Purdie's conduct, particularly given the serious nature of the assault perpetrated by a security staff member of which she was aware as the events unfolded, calls into question Ms Purdie's honesty and ability as a person responsible for a licensed premises. Her conduct fell well short of the standard of conduct that is required of a person responsible for any licensed premises, let alone a high risk licensed venue.
191. On the basis of the above findings, the Authority is satisfied that Ground 2 of the Complaint has been established and Ms Purdie is not fit and proper to be an approved manager of a licensed premises. Ms Purdie has not demonstrated the degree of honesty and ability that the Authority would expect from a reasonably diligent approved manager.

DECISION ON DISCIPLINARY ACTION

192. The Authority has considered the Complaint and all of the material before it, including the latest submissions made by Ms Purdie about her personal circumstances and her previous submissions on her history of involvement with licensed premises. The Authority has also had regard to the positive submissions from Ms Purdie's former employer, Mr Tsoukatos.
193. The purpose of disciplinary action is protective rather than punitive. When considering disciplinary action, the Authority is concerned with the prevention of offences against the Act, for the protection of the industry and the public.

- 194.** Mr Tsoukatos contends that Ms Purdie was “well informed and well versed” in the *Plans of Management* and conditions upon the Premises’ licence and that she “communicated effectively” with OLGR and NSW Police.
- 195.** In her submission dated 17 October 2015, Ms Purdie contended that she has worked in the liquor industry for many years, “handling many difficult situations, without any previous incident” and has always cooperated with authorities.
- 196.** In her final submission dated 12 June 2016, Ms Purdie advises that she has now left the hospitality industry and offers to surrender her approval to act as an approved manager of licensed premises in New South Wales.
- 197.** While the Authority accepts (and there is no evidence to contradict) that Ms Purdie has worked in the liquor industry without previous offences, the seriousness of the misconduct established in this Complaint calls for a substantial disciplinary response.
- 198.** Notwithstanding that Ms Purdie may well have been able to implement Plans of Management on the Premises as contended by Mr Tsoukatos, she did not display sufficient knowledge or ability as an approved manager on 19 December 2014 when those skills were put to the test.
- 199.** Ms Purdie’s failure to even call an ambulance adversely reflects upon her ability, while the manner in which the incident was recorded and reported to Police calls into question both her ability and honesty on this occasion.
- 200.** An important aspect of any approved manager’s role is to record significant incidents that may have regulatory consequences for the licensed premises and be frank when dealing with law enforcement.
- 201.** While Ms Purdie has now left the industry, she is currently at liberty to return to the liquor industry (where she has worked for some years) and even work in a regulated capacity were she to decide to do so. Ms Purdie could work as a licensee or approved manager of the Velvet Underground or another licensed premises – including another high risk licensed venue.
- 202.** Taking disciplinary action against Ms Purdie will serve to protect the industry by sending a signal to other licensees or approved managers that negligent conduct with respect to patrons of a licensed business and deceptive conduct with regard to law enforcement may give rise to regulatory consequences – even if it is a “once off” failure to exercise the diligence reasonably expected of an approved manager.
- 203.** In the initial Complaint, the Complainant recommended that Ms Purdie be disqualified for a period of 12 months and pay the Secretary’s costs on the investigation that gave rise to the Complaint.
- 204.** In submissions dated 9 February 2016, the Complainant softened its position on disciplinary action following the failure by LGNSW to secure a conviction against the corporate Licensee for any offence against the Act.
- 205.** While this Complaint concerns the events of 19 December 2014 and does not involve a sustained pattern of acts or omissions, the Authority is nevertheless satisfied that a significant period of disqualification is appropriate.

- 206.** The injuries caused to Ms Purdie's patron, arising from a serious assault perpetrated by staff, just outside the entrance to the Premises, were potentially life threatening.
- 207.** Whether or not any offence occurred, licensees and approved managers should be aware that if they are not frank in their dealings with law enforcement and do not exercise diligence when serious incidents of alcohol related violence occur, their character and competence may be called into question.
- 208.** Having regard to the statutory considerations in section 68(4C) of the Act, the Authority is satisfied that Ms Purdie's conduct fell well short of demonstrating the character and competence expected of a licensee or approved manager of any licensed premises, let alone a high risk venue.
- 209.** Were the events of 19 December 2014 considered in isolation, the Authority would be minded to impose a period of disqualification for 2 years. However, taking into account an absence of any prior regulatory issues with Ms Purdie and her prior lengthy involvement with the industry, the Authority is satisfied that Ms Purdie's approval to act as an approved manager should be withdrawn and that a period of disqualification of **12 months** from acting as a licensee, approved manager or close associate is appropriate.
- 210.** This action will serve the protective purpose of ensuring that Ms Purdie remains out of the liquor industry for this period while sending a signal to others in that industry that this conduct is unacceptable and will have regulatory consequences.
- 211.** The Authority notes that the Complainant has not pressed, in its later submissions, the initial recommendation that the Secretary's costs on the investigation be paid by Ms Purdie. Having regard to Ms Purdie's personal circumstances, the fact that she has left the licensed business and the manner in which Ms Purdie has conducted her response to this Complaint, the Authority is not satisfied that it is in the public interest to order Ms Purdie to pay the Complainant's costs in this matter.
- 212.** In making this decision the Authority has had regard to all of the objects and considerations prescribed by section 3 of the Act, but has given weight to the consideration in section 3(2)(a) - the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour).

ORDERS

- 213.** The Authority makes the following orders:
- (i) Pursuant to section 141(2)(g) of the Act, the Authority withdraws from Ms Elizabeth-Anne Purdie her approval to act as an approved manager of licensed premises in New South Wales.
 - (ii) Pursuant to section 141(2)(h) of the Act, the Authority orders that Ms Elizabeth-Anne Purdie be disqualified from being the manager of licensed premises, or from holding a licence, or being the close associate of a licensee, for a period of 12 months from the date of this decision.

REVIEW RIGHTS

- 214.** Pursuant to section 144 of the Act, an application for review of this decision may be made to the New South Wales Civil and Administrative Tribunal (**NCAT**) by the Complainant or any person against whom any disciplinary action is taken, no later than 28 days after those parties receive notification of this decision.
- 215.** 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.

Date of Decision: 31 August 2016

Philip Crawford
Chairperson