



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

10 October 2016

Dear Sir/Madam

Notice of Final Decision with Reasons on Complaint under Part 9 of the *Liquor Act 2007* in relation to Mr David Lakepa, Former Licensee of “Dreamgirls”, Potts Point

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

The complaint concerned Mr David Lakepa in his role as the former licensee of the licensed premises known as “Dreamgirls” trading at B 77 Darlinghurst Road, Potts Point 2011.

The Authority has decided pursuant to section 141(2)(f) of the Act to disqualify Mr Lakepa 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 life.

The Authority has further ordered pursuant to section 141(2)(l)(i) of that Act, that Mr Lakepa pay the Secretary’s costs in carrying out the relevant investigation under section 138 of the Act in the sum of \$10,005.00, within 28 days.

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

Yours Faithfully

Philip Crawford
Chairperson

STATEMENT OF REASONS

BACKGROUND

1. On 22 March 2016, the Independent Liquor and Gaming Authority (**Authority**) received by email a disciplinary complaint (**Complaint**) from the (then) Director of Compliance and Enforcement for Liquor and Gaming NSW (**LGNSW**), Mr Anthony Keon (**Complainant**) in his capacity as a delegate of the Secretary of the Department of Justice (**Secretary**).
2. The Complaint is made under Part 9 of the Act against Mr David Lakepa, the former licensee (**Former Licensee**) of the on-premises licensed venue known as "Dreamgirls".
3. The licensed business operated on the Premises pursuant to an on-premises liquor licence number LIQ00624013611. The licence had the benefit of an extended trading authorisation that enabled the sale or supply of liquor, for consumption on the Premises, from 5.00am to 5.00am seven days per week.
4. The designated primary purpose of the licensed business as recorded on the licence was "theatre – public entertainment venue". As noted in the Complaint Letter, the business operated in the mode of a strip club, providing female strippers as the primary source of live entertainment.
5. Authority records disclose that subsequent to the making of this Complaint, on or about 23 February 2016 Mr Michael Amante (the sole director of the corporate business owner, Royal Restaurant Pty Ltd) hand delivered to LGNSW an application to surrender the licence.
6. On 9 March 2016 a delegate of the Authority determined to accept this licence surrender and cancelled the licence. Consequently, the Premises is no longer a licensed premises at this time.

COMPLAINT IN SUMMARY

7. The letter of Complaint dated 22 March 2016 (**Complaint Letter**) provides a brief description of the layout of the Premises. It describes the relevant licensed area of the Premises as comprising the basement level only of a four storey building situated at 77 Darlinghurst Road, Potts Point.
8. The Premises comprised a ticket booth, small bar area, stage area, private rooms for private strip shows, and male and female toilets.
9. The Complainant contends that the Former Licensee, Mr Lakepa was the last licensee recorded on the licence record – having been appointed as licensee on 29 May 2014 and remaining on the record at the time of the Complaint.
10. The Complainant further contends that a company, Royal Restaurant Pty Ltd (**Business Owner**) is the last recorded *business owner* operating on the Premises. The sole director of this company is Mr Michael Francis Amante, who was a previous licensee of the *Dreamgirls* business from 2008 to 2011.

11. An ASIC Company Extract for Royal Restaurant Pty Ltd dated 25 February 2016 that accompanies the Complaint discloses that as of that date the sole director, secretary and shareholder of the company is Mr Michael Francis Amante.
12. The Complainant contends that on 10 and 17 December 2015, NSW Police detected that level 1 of the building in which the Premises is located was being operated for the conduct of private strip shows and the supply of liquor for consumption in that (unlicensed) area. The Complainant contends that staff of the *Dreamgirls* licensed business were supplying illicit drugs on the Premises and in the unlicensed level 1 area of the building.
13. The Complainant contends that on Saturday 19 December 2015, NSW Police executed a search warrant on the Premises and obtained evidence that level 1 of the building was being conducted as an “illegal bar” by staff involved with the *Dreamgirls* business. Police detected evidence of the possession or use of illicit drugs in the level 1 area and also on the Premises.
14. The Complainant notes that on 19 December 2015 Police applied for an Urgent Short Term Closure Order which was granted by Local Court Registrar Mr Jeffrey Reid, closing the Premises for a period of 72 hours from 2:00am on Sunday 20 December 2015 pursuant to section 82 of the Act.
15. The Complainant further states that on 22 December 2015 the then Office of Liquor, Gaming and Racing (now LGNSW) applied to the Authority for a Long Term Closure Order under section 84 of the Act. This application was granted by the Authority on 31 January 2016 which closed the Premises for a period of six months from that date or until certain conditions were satisfied.

GROUNDS OF COMPLAINT

16. The Complaint Letter specifies three grounds of Complaint (**Grounds**), all of which are based upon statutory grounds that are available under section 139(3) of the Act.
17. Ground 1 is based on section 139(3)(a) of the Act, and provides:

...that the licensee has, while holding a licence, been convicted of an offence under this Act or the regulations (or under the former Act) or of an offence prescribed by the regulations.
18. Ground 2 is based on section 139(3)(b) of the Act, and provides:

...that the licensee has failed to comply with any of the conditions to which the licence is subject.
19. Ground 3 is based on section 139(3)(i) of the Act, and provides:

...that the licensee is not a fit and proper person to be the holder of a licence.
20. While the Complaint Letter does not provide enumerated particulars, the Complainant makes a number of specific factual allegations described as the “elements” of each Ground. The elements are specified in the Authority’s findings below.

Disciplinary Action sought by the Complainant

21. The Complainant submits that Mr Lakepa's actions whilst he was the licensee of *Dreamgirls* show a "complete disregard" for regulatory obligations and a "reckless indifference to the public interest" which, it is said, resulted in a venue that operated "well outside of the law and community expectations".
22. The Complainant further submits that the evidence supports a conclusion that Mr Lakepa has an "unacceptable" record of liquor related convictions; has an "unacceptable" record of breaching licence conditions; and ought to be found not a "fit and proper" person to be the holder of a liquor licence, or a person who is interested in the business.
23. The Complainant closes the Complaint Letter with a submission that the Authority should take the following disciplinary action if a Ground or Grounds of Complaint were established:
 - (i) Pursuant to section 141(2)(c) of the Act, order the Former Licensee to pay a monetary penalty "proportionate with the level of harm" and that provides a "general and specific deterrent".
 - (ii) Pursuant to section 141(2)(f) of the Act, disqualify the Former Licensee from holding a liquor licence "for life".
 - (iii) Pursuant to section 141(2)(f) of the Act, disqualify the Former Licensee from being the approved manager of licensed premises "for life".
 - (iv) Pursuant to section 141(2)(f) of the Act, disqualify the Former Licensee from being a close associate of a liquor licensee "for life".
 - (v) Pursuant to section 141(2)(l) of the Act, order the Former Licensee to pay the amount of any costs incurred by the Secretary in carrying out any investigation or inquiry under section 138 in relation to the Former Licensee. The Authority notes that those costs are not quantified or specified in the Complaint Letter.

Complainant Advice of Further Prosecutions in train

24. The Complainant further advises in the Complaint Letter that LGNSW is currently pursuing a prosecution against Mr Lakepa for offences against section 8 of the Act relating to keeping and using an unlicensed premises in addition to offences against section 9(3) of the Act for permitting the sale of liquor on premises other than premises upon which a licensee is authorised by the licence, arising from conduct detected on 19 December 2015.
25. The Complainant advises that Court Attendance Notices for these matters are "likely to be issued shortly" and the Authority will be kept updated as to the outcome of those prosecutions.
26. Finally, the Complainant notes that an application to surrender the liquor licence for the Premises was approved by an Authority delegate on 9 March 2016 and, for this reason, an order for cancellation of that licence would now be redundant.
27. The Complainant submits that the fact that the licence has been surrendered does not detract from the seriousness of the matters specified in this Complaint. The

Complainant concludes that “strong personal disciplinary action” is required to be taken against Mr Lakepa.

Exhibits to the Complaint

28. Attached to the Complaint Letter are the following Exhibits:

- **Exhibit 1** – OneGov licence record for the Premises as at 25 February 2016
- **Exhibit 2** – ASIC extract for Royal Restaurant Pty Ltd as at 25 February 2016
- **Exhibit 3** – Short Term Closure Order issued by Deputy Registrar Reid dated 20 December 2015
- **Exhibit 4** – Authority decision to issue a Long Term Closure Order in respect of the *Dreamgirls* business dated 31 January 2016
- **Exhibit 5** – SDRO Penalty Notice Information and Payment Summaries
- **Exhibit 6** – OLGR Penalty Notice No. 3081391610 and SDRO Payment Summary
- **Exhibit 7** – OLGR Penalty Notice No. 3081391620 and SDRO Payment Summary
- **Exhibit 8** – OLGR Penalty Notice No. 3081391601, and Court Order Notice issued by the District Court dated 29 February 2016
- **Exhibit 9** – Enforcement Letter from OLGR to Mr Lakepa dated 14 October 2014
- **Exhibit 10** – Transcript of LGNSW interview with Mr Lakepa dated 19 December 2015
- **Exhibit 11** – Transcript of LGNSW interview with Mr Lakepa dated 5 January 2016
- **Exhibit 12** – Transcript of LGNSW interview with Mr Lakepa dated 5 February 2016
- **Exhibit 13** – Statement of NSW Police Undercover Operative dated 18 December 2015
- **Exhibit 14** – Transcript of LGNSW interview with Ms Aoife Keenan dated 2 February 2016
- **Exhibit 15** – NSW Police Property Seizure/Exhibit Form dated 19 December 2015.

CONSULTATION

Show Cause Notice and Invitations to Make Submissions

29. On 22 April 2016, the Authority sent a Show Cause Notice under section 140(1) of the Act enclosing a copy of the Complaint Letter and the entire Complaint Material to

Mr Lakepa via his email address as advised by the Complainant and in respect of which Mr Lakepa has used in recent correspondence.

30. On 22 April 2016, for the purposes of section 140(3) of the Act, the Authority also sent invitations to make submissions to the following parties:

- Mr Michael Amante, the owner of the corporate business owner, Royal Restaurant Pty Ltd.
- Ms Margaret Staltaro, whose own company, Restaurant Royale Pty Ltd contracted to purchase the business on or around 30 July 2015 and who was apparently involved with the operations of the licensed business until about 4 February 2016 – the Authority having made findings to that effect in the Long Term Closure Decision dated 31 January 2016.
- Camco N.S.W. Pty Ltd – the corporate premises owner of the freehold in the Premises.

(Mr Lakepa and these other parties are referred to collectively as the **Respondents**).

No Submissions in response to the Complaint

31. No submissions in response to the Complaint were received from Mr Lakepa or any of the other Respondents.

LEGISLATION

32. In determining this Complaint, the Authority has considered the provisions contained in Part 9 of the Act, which state as follows:

139 Grounds for making complaint

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

141 Disciplinary powers of Authority

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

...

- (2) *If the Authority is satisfied that any of the grounds (other than a criminal organisation associate ground) on which the complaint was made apply in relation to the licensee, manager or close associate, the Authority may decide not to take any action or may do any one or more of the following:*

....

- (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,*

....

- (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,*

....

- (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.*

- 33.** When considering this Complaint, as when making any administrative decision under the Act, the Authority will consider the statutory objects and considerations prescribed by section 3 of the Act:

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 ON GROUNDS

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

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

Findings on Ground 1

35. Ground 1 is based upon section 139(3)(a) of the Act, and states:

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

36. The Complainant alleges, at paragraph 22 of the Complaint Letter, that Mr Lakepa has been the licensee of the venue, operating under an on-premises (public entertainment venue) licence from 29 May 2014 “until the present day” (the date of the Complaint). The Complainant alleges that Mr Lakepa exercised control of the venue as licensee until December 2015.
37. The Authority is satisfied that Mr Lakepa commenced as licensee from 29 May 2014 and remained on the licence record as licensee until the date of the Complaint, but that he only acted as licensee until around 23 December 2015, whereupon he apparently abandoned his role following the issue of the Short Term Closure Order by a Registrar of the Local Court at the Downing Centre on 20 December 2015.
38. Mr Lakepa’s commencement as licensee is established on the basis of the *OneGov* licence record for the Premises as at 25 February 2016 (**Exhibit 1**). His abandonment of his role as licensee is supported by information provided to the Authority by Ms Staltaro’s solicitor, Mr Dion Manca as recorded in the Authority’s Long Term Closure Order decision dated 31 January 2016 that is before the Authority in this matter (**Exhibit 4**).
39. The Authority is satisfied, as alleged at paragraph 26 of the Complaint Letter, that an offence against section 117 of the Act (supply of liquor to a minor on licensed premises) was detected by Police on the Premises on 27 July 2014. The facts of this matter concern a minor being permitted entry into the Premises without having his identification checked or scanned, following which he was permitted to consume a can of beer on the Premises.
40. The Authority is further satisfied, as alleged at paragraph 26 of the Complaint Letter, that on 20 December 2014, Mr Lakepa paid Penalty Notice number 4924255683 in respect of this offence.
41. The Authority notes that pursuant to section 150(7) of the Act, *payment* of a Penalty Notice for an offence is *deemed* to be a conviction for that offence for the purposes of a Part 9 disciplinary complaint.

42. The Authority makes these findings on the basis of the uncontested information provided in the Complaint Letter and the State Debt Recovery Office (**SDRO**) Penalty Notice Information and Payment Summaries provided by the Complainant (**Exhibit 5**).
43. The Authority is satisfied, as alleged at paragraph 27 of the Complaint Letter, that an offence against section 11(2) of the Act, which provides that it is an offence to contravene a condition of a licence, was detected by New South Wales Police on the Premises on 27 July 2014.
44. The relevant condition was imposed through the operation of section 116AC of the Act which requires that photographic identity documents be scanned by persons entering “high risk” venues in the Kings Cross Precinct (the *Dreamgirls* business being a late trading, high risk venue). The facts of this matter relate to the same minor referred to above obtaining entry to the venue without having his identification scanned and being served liquor by staff on the Premises.
45. The Authority is further satisfied, as alleged at paragraph 27 of the Complaint Letter, that on 20 December 2014, Mr Lakepa paid Penalty Notice number 4924255692 in respect of this offence.
46. The Authority makes these findings on the basis of the uncontested information provided in the Complaint Letter and the SDRO Penalty Notice Information and Payment Summaries provided by the Complainant (**Exhibit 5**).
47. The Authority is satisfied, as alleged at paragraph 28 of the Complaint Letter, that an offence against section 11(2) of the Act was detected by New South Wales Police on the Premises on 25 August 2014.
48. The condition was imposed upon the licence by the operation of clause 53H of the Regulation, which requires CCTV systems to be maintained on certain licensed premises within the Kings Cross Precinct, including, relevantly, an on-premises venue that is a public entertainment venue.
49. The facts of this matter concern a request for CCTV footage by Police having been made to the venue as part of an investigation into the two offences identified on 27 July 2014 (noted above). Mr Lakepa later advised Police that the CCTV system on the Premises was faulty.
50. The Authority is further satisfied, as alleged at paragraph 28 of the Complaint Letter, that on 26 November 2014, Mr Lakepa paid Penalty Notice number 4924255701 in respect of this offence.
51. The Authority makes these findings on the basis of the uncontested information in the Complaint Letter and the SDRO Penalty Notice Information and Payment Summaries (**Exhibit 5**).
52. The Authority is satisfied, as alleged at paragraph 29 of the Complaint Letter, that an offence against section 11(2) of the Act was detected on the Premises on 7 September 2014. The relevant condition was numbered “260” on the liquor licence record, requiring that entertainers leave the stage wearing at least a “G” string. The facts of this matter concern an entertainer leaving the stage fully naked, in contravention of this condition.

53. The Authority is further satisfied, as alleged at paragraph 29 of the Complaint Letter, that on 26 November 2014, Mr Lakepa paid Penalty Notice number 3081391610 in respect of this offence.
54. The Authority makes these findings on the basis of the uncontested information in the Complaint Letter and the SDRO Penalty Notice Information and Payment Summary for Penalty Notice No. 3081391610 (**Exhibit 6**).
55. The Authority is satisfied, as alleged at paragraph 30 of the Complaint Letter, that an offence against section 11(2) of the Act was detected on the Premises on 7 September 2014. The relevant condition was numbered “240” on the liquor licence record, requiring that audience members not participate in the live entertainment provided on the Premises. The facts of this matter concern an entertainer (stripper) straddling a patron seated at the stage and rubbing her bare breasts in his face.
56. The Authority is further satisfied, as alleged at paragraph 30 of the Complaint Letter, that on 26 November 2014, Mr Lakepa paid Penalty Notice number 3081391620 in respect of this offence.
57. The Authority makes these findings on the basis of the uncontested information in the Complaint Letter and the SDRO Penalty Notice Information and Payment Summary for Penalty Notice No. 3081391620 (**Exhibit 7**).
58. The Authority is satisfied, as alleged at paragraph 31 of the Complaint Letter, that an offence against section 11(2) of the Act was detected by New South Wales Police on the Premises on 7 September 2014.
59. The relevant condition was imposed by the operation of clause 53G of the Regulation requiring that certain licensed premises in the Kings Cross Precinct including, relevantly, an on-premises venue that is a public entertainment venue, maintain at least two RSA Marshals on duty between midnight and closing. Clause 53G(4) requires RSA Marshals to wear identifying clothing.
60. The facts of this matter concern an entertainer (stripper) walking about the venue wearing a fluorescent “security vest” as a halter top with the words “RSA Marshal” printed on the front. The employed RSA Marshal was identified within the venue and was not wearing the required clothing identifying his role.
61. The Authority is satisfied, as alleged at paragraphs 31 and 32 of the Complaint Letter, that Penalty Notice number 3081391601 was issued to Mr Lakepa in respect of this offence and that Mr Lakepa chose to defend this matter at Court. Mr Lakepa entered a guilty plea and was convicted of the offence by the Downing Centre Local Court on 21 September 2015, but subsequently lodged a severity appeal to the District Court. On 18 February 2016, that appeal was *dismissed* by the District Court of NSW and the conviction of 21 September 2015 was confirmed.
62. The Authority makes these findings on the basis of the uncontested information in the Complaint Letter, a copy of General Penalty Notice number 3081391601 and a copy of a Court Order Notice issued by the District Court dated 29 February 2016 dismissing the appeal against Mr Lakepa’s conviction on 21 September 2015 (**Exhibit 8**).
63. The Authority accepts the submission, made at paragraph 33 of the Complaint Letter, that Mr Lakepa was “convicted” (within the meaning of Part 9 of the Act) of six offences in the period between May 2014 and closure of the venue in January 2016.

64. The Authority makes this finding on the basis of the evidence recording those convictions or payment of Penalty Notices noted above.
65. The Authority accepts the submission, made at paragraph 34 of the Complaint Letter, that four of those six offences are “prescribed offences” within the meaning of section 144B of the Act and that these are considered to be among the most serious offences under the Act. The Authority is satisfied that this submission applies to the first, second, third and sixth offences noted above.
66. The Authority is satisfied, on the basis of these findings, that Ground 1 of the Complaint is established.

Findings on Ground 2

67. Ground 2 is based upon section 139(3)(b) of the Act and states:

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

68. The Authority repeats the findings that it has made on the duration of Mr Lakepa’s tenure as licensee of the Premises that are set out under Ground 1 above.
69. The Authority is satisfied, as alleged by the Complainant at paragraphs 39 to 46 of the Complaint Letter, that Mr Lakepa committed six offences of *Licensee fail to comply with conditions of licence* contrary to section 11(2) of the Act between July and September 2014.
70. In Ground 2, the Complainant repeats the allegations made in Ground 1 regarding Mr Lakepa’s:
 - failure to comply with a condition imposed through the operation of 116AC of the Act (regarding the scanning of photographic identity cards) detected on 27 July 2014;
 - failure to comply with clause 53H of the Regulation (regarding CCTV systems) detected on 25 August 2014;
 - failure to comply with clause 53G of the Regulation (requiring the presence of two RSA Marshals) detected on 7 September 2014;
 - failure to comply with condition number “260” (regarding appropriate dress for entertainers exiting the stage) detected on 7 September 2014; and
 - failure to comply with condition number “240” (prohibiting audience participation) detected on 7 September 2014.
71. The Authority repeats the findings it has made with respect to the convictions specified in Ground 1 on these five matters, which also constitute breaches of licence conditions for the purposes of Ground 2. These findings are made on the basis of the same evidence or material that is specified above with regard to Ground 1.
72. In addition to these five offences, the Authority is also satisfied, as alleged at paragraph 43 of the Complaint Letter, that Mr Lakepa was detected as having committed an offence of *Licensee fail to comply with conditions of licence* against section 11(2) of the Act on 7 September 2014.

73. The relevant condition was numbered “340” on the liquor licence record, requiring that security guards wear uniform to clearly identify that they are working at the venue. On this occasion, OLGR inspectors observed that security personnel were not wearing such identifiable clothing.
74. The Authority is further satisfied, as alleged at paragraph 43 of the Complaint Letter, that Mr Lakepa was issued with a Warning Notice in respect of this breach of a licence condition.
75. The Authority makes these findings on the basis of the Complaint Letter and the Enforcement Letter from Mr Peter Freeman, OLGR Manager Investigations, to Mr Lakepa dated 14 October 2014 in respect of several alleged breaches of legislation detected by OLGR officers on 7 September 2014 (**Exhibit 9**).
76. On the basis of the above findings, the Authority accepts the Complainant’s submission made at paragraph 46 of the Complaint Letter that Mr Lakepa has breached conditions of the licence for the Premises on a total six occasions within a short period of time between July 2014 and September 2014.
77. The Authority further accepts the Complainant’s uncontested submission at paragraph 46 of the Complaint Letter that this conduct demonstrates that Mr Lakepa is unwilling or unable to meet basic requirements of the liquor licence and is not competent to carry on the business of a licensed premises.
78. While Ground 2 is established, the Authority notes that five of the six matters that gave rise to convictions found in Ground 1 were the same matters that also involved the contravention of licence conditions for the purposes of Ground 2 of the Complaint.

Findings on Ground 3

79. Ground 3 is based on 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.

80. 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.

81. 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..."

82. 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.

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

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

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

84. Paragraph 48 of the Complaint Letter alleges that Mr Lakepa has been the licensee of the venue, operating under an on-premises (public entertainment venue) licence since 29 May 2014 until the present day and that he exercised control of the venue as licensee until December 2015.

85. The Authority repeats the findings that it has made on the duration of Mr Lakepa's tenure as licensee of the Premises that are set out under Ground 1 above.

86. Paragraph 49 of the Complaint Letter alleges that Mr Lakepa is not a fit and proper person to be the holder of a licence by reason that he is not of good repute, having regard to character, honesty and integrity and is not competent to carry on the business or activity of a licensed premises.

87. The Authority is satisfied as to this conclusion, noting that Mr Lakepa has not provided any evidence or submissions going to his character, reputation or competence to be responsible for a licensed premises of the kind at issue or in respect of licensed premises generally.

88. This conclusion has been reached on the basis of the Authority's findings on Grounds 1 and 2 above and on the basis of the additional findings below.

Character, Honesty and Integrity – Management and Operation of Unlawful Bar on Level 1

Paragraphs 56 to 62 of the Complaint Letter

89. The Complainant contends at paragraph 56 of the Complaint Letter that during the execution of the search warrants on 19 December 2015, substantial evidence was obtained of unlawful liquor sales by *Dreamgirls* employees.

90. The Complainant contends at paragraph 57 that on that night, Mr Lakepa was present at the venue and was electronically interviewed under caution by OLGR inspectors (the **December Interview**).

91. Pages 2 to 3 of the transcript of the December Interview record Mr Lakepa as informing OLGR inspectors that patrons or clients go to level 1 to have a "smoko up there with the girls". Mr Lakepa describes the upstairs layout as including toilets and storage rooms which contain glasses, sheets and blankets.

92. The Authority is satisfied, as alleged by the Complainant at paragraph 57 of the Complaint Letter, that initially Mr Lakepa “adamantly denied” any knowledge of the use of level 1 by patrons and employees of *Dreamgirls* other than as a location they could attend for a “smoko”.
93. This finding is made on the basis of pages 2 to 3 of the transcript of the December Interview (**Exhibit 10**).
94. Pages 8 and 15 to 16 of the transcript of the December Interview record Mr Lakepa initially stating that “private shows” for patrons were conducted downstairs, but later conceding that such shows also occurred on level 1 and were organised by him. Mr Lakepa also stated during the December Interview that patrons paid \$300 for these shows but that alcohol was not provided.
95. Page 10 of the transcript of the December Interview records Mr Lakepa saying he was unsure as to whether level 1 is a licensed area and stating that alcohol was not sold there during his shift but that it is probable that this occurred on other occasions.
96. These exchanges satisfy the Authority, as alleged at paragraph 57 of the Complaint Letter, that Mr Lakepa later conceded to being aware of, and making arrangements for, the provision of “private shows” for patrons on level 1, while claiming to be unaware of liquor sales.
97. The Authority makes these findings on the basis of the Complaint Letter and pages 8, 10 and 15 to 16 of the December Interview (**Exhibit 10**).
98. The Complainant contends at paragraph 58 of the Complaint Letter that on 5 January 2016, Mr Lakepa participated in a compulsory interview pursuant to section 30 of the *Gaming and Liquor Administration Act 2007* (the **January Interview**).
99. Page 15 of the transcript of the January Interview records Mr Lakepa stating that alcohol is supplied by a waitress to patrons on level 1 during private shows on a complimentary basis.
100. Page 18 of the January Interview records Mr Lakepa making further statements with regard to the sale of liquor in the level 1 area including his statement that there is a spare EFTPOS machine up there but that he is unsure if there would be any evidence as to its use. Mr Lakepa conceded during the January Interview that level 1 is not licensed.
101. These exchanges satisfy the Authority, as alleged at paragraph 58 of the Complaint Letter, that during this interview Mr Lakepa confirmed that he was aware that level 1 was not licensed, while continuing to deny knowledge of liquor sales in the level 1 area.
102. The Authority makes these findings on the basis of the Complaint Letter and pages 15 and 18 of the transcript of the January Interview (**Exhibit 11**).
103. The Complainant contends, at paragraph 59 of the Complaint Letter, that on 5 February 2016, Mr Lakepa was interviewed by OLGR inspectors for a third time (the **February Interview**).
104. The Complainant contends at paragraph 59 of the Complaint Letter that Mr Lakepa provided “full and frank admissions” during this interview with regard to:

- Managing the operation of level 1;
- Directing employees (waitress staff) to level 1 to conduct sales of liquor to patrons;
- Arranging, booking and managing private shows for patrons on level 1; and
- Knowing that liquor sales conducted on level 1 were unlawful.

- 105.** Pages 28 to 29 of the transcript of the February Interview record Mr Lakepa stating that “Michael” [Mr Michael Amante] set up the level 1 area over his objections. Mr Lakepa also stated during the February Interview that the level 1 area was set up in order to bring in additional money because Mr Amante “was losing money to the lockouts and everything”.
- 106.** Pages 43 to 44 of the transcript of the February Interview record Mr Lakepa conceding that he knew liquor was being sold upstairs, had arranged a waitress to serve liquor upstairs and that he knew the area was not licensed. In response to an OLGR inspector’s question as to why he allowed this activity to happen, Mr Lakepa stated that “I had no power to stop it. I was being told by my boss to let it happen”.
- 107.** These exchanges satisfy the Authority, as alleged at paragraph 59 of the Complaint Letter, that Mr Lakepa managed the operation of level 1; directed employees (waitress staff) to level 1 to conduct sales of liquor to patrons on level 1; and knew that liquor sales conducted on level 1 were unlawful.
- 108.** The Authority makes these findings on the basis of the Complaint Letter and pages 28 to 29 and 43 to 44 of the February Interview (**Exhibit 12**).
- 109.** Page 14 of the February Interview records Mr Lakepa stating that Mr Amante set up level 1 “probably a few months” ago so as to bring in additional income and had put in lounges, a fridge, an EPTPOS machine and a bar. Mr Lakepa states that he had “no choice” as Mr Amante “was my boss, I had to do what my boss said, otherwise I’d lose my job”.
- 110.** These exchanges satisfy the Authority, as alleged at paragraph 60 of the Complaint Letter, that Mr Lakepa denied establishing the level 1 operations, stating that Mr Amante, the business owner, had set them up in response to a decline in revenue as a consequence of the commencement of the lockout laws.
- 111.** The Authority is further satisfied, as also alleged at paragraph 60 of the Complaint Letter, that despite holding the position of licensee, Mr Lakepa failed to prevent the conduct of liquor sales on level 1 and indicated that he had to comply with Mr Amante’s directions for fear of losing his job.
- 112.** The Authority makes these findings on the basis of the Complaint Letter and page 14 of the transcript of the February Interview (**Exhibit 12**).
- 113.** The Complainant contends, at paragraph 61 of the Complaint Letter, that on 2 February 2016, OLGR inspectors conducted an interview with Ms Aoife Keenan (**Keenan Interview**), a waitress employed by *Dreamgirls* who was detected serving liquor to patrons on level 1 at the time of the Police and OLGR raids on the Premises on 19 December 2015.

114. Pages 10 to 12 of the transcript of the Keenan Interview conducted on 2 February 2016 record Ms Keenan as stating that “Michael” [Mr Amante] set up level 1 and that she had first gone up there “maybe about a year ago. Not even”.
115. As to the operations of level 1, Ms Keenan states that the amount of times she would go upstairs depended upon how busy it was, but that during a five to six hour shift she would go upstairs either “a few times” or “maybe 10 times more”. Ms Keenan also stated during the Keenan Interview that the upstairs area is open on the days that she works – Thursdays and Fridays – but she did not think it was open on any other day. Ms Keenan adds that Mr Amante had frequently been absent from the Premises in the previous six months, but that he would set up the upstairs level during the day time.
116. Page 13 of the transcript of the Keenan Interview records Ms Keenan stating that either “Kepa or Hopa” [Mr David Lakepa or Mr John Hopoate] would usually tell her to go upstairs.
117. These exchanges satisfy the Authority, as alleged at paragraph 61 of the Complaint Letter, that Ms Keenan believed that Mr Amante had established the level 1 liquor sales about 12 months prior, and during Mr Amante’s absence at the venue, she had taken directions from Mr Lakepa to attend level 1 and supply liquor to patrons in that area.
118. The Authority makes these findings on the basis of the Complaint Letter and pages 10 to 13 of the transcript of the Keenan Interview (**Exhibit 14**).
119. The Authority is satisfied, as alleged at paragraph 62 of the Complaint Letter, that in addition to knowingly managing and continuing the operation of the unlawful liquor supply on level 1, Mr Lakepa, through the directions that he gave to other *Dreamgirls* employees, exposed those employees to potential criminal prosecution.
120. The Authority has reached this conclusion on the basis of the Authority's findings on paragraphs 56 to 61 of the Complaint Letter noted above.

Character, Honesty and Integrity – Willingness to lie and deceive the regulator

Paragraphs 63 to 66 of the Complaint Letter

121. The Complainant contends, at paragraph 63 of the Complaint Letter, that Mr Lakepa has been interviewed on three separate occasions throughout the course of the investigation by OLGR/LGNSW.
122. The Authority is satisfied that this is the case on the basis of the transcripts of the December Interview, the January Interview and the February Interview (**Exhibits 10, 11 and 12**).
123. The Complainant further contends at paragraph 63 of the Complaint Letter, that when questioned about the operation of an illegal bar in the level 1 area during the December Interview, Mr Lakepa “adamantly denied” using level 1 for any purpose, but later conceded that level 1 was used for the conduct of private strip shows. Mr Lakepa also “maintained his denial” of knowledge regarding liquor sales on level 1.
124. The Authority is satisfied as to these allegations on the basis of pages 2 and 3 of the December Interview (**Exhibit 10**). The Authority notes that this is the same evidence as that used to establish the allegations in paragraph 57 of the Complaint Letter.

125. The Complainant contends, at paragraph 64 of the Complaint Letter, that during the January Interview, Mr Lakepa “continued to deny knowledge of liquor sales occurring on level 1 and maintained his previous version of events”.
126. The Authority is satisfied, as alleged at paragraph 64 of the Complaint Letter, that during the January Interview Mr Lakepa continued to deny knowledge of liquor sales occurring in the level 1 area and maintained his previous version of events provided during the December Interview.
127. The Authority makes these findings on the basis of pages 15 and 18 of the January Interview. The Authority notes that this evidence is the same as that used to establish the allegations in paragraph 58 of the Complaint Letter.
128. The Complainant contends, at paragraph 65 of the Complaint Letter, that during the February Interview, Mr Lakepa provided a “significantly different version” of events from his two previous interviews. The Complainant further contends that during the February Interview Mr Lakepa “made full and frank admissions” to managing liquor sales on level 1, knowing these activities to be unlawful.
129. The Authority notes that Pages 28 to 29 of the transcript of the February Interview record Mr Lakepa as conceding that he knew the upstairs area was unlicensed and that he had voiced his concerns to Mr Amante to no avail.
130. Furthermore, pages 40 to 42 of the transcript of the February Interview record Mr Lakepa making the following further admissions:

MR MILLER: Just – you don’t remember too much of that night – the answers you gave, the caution and all of that. Do you agree now that at the beginning of this interview you were given a caution?

MR LAKEPA: Yes.

MR MILLER: And do you agree that you agreed to still provide the answers you’re giving now.

MR LAKEPA: Yes.

MR MILLER: Even though you’re under no obligation to do that.

MR LAKEPA: Yeah.

MR MILLER: Okay.

MR FOWLER: Okay, David. On page 5, line 10 – just before that, I asked you the question:

Are you aware of the sale of alcohol upstairs.

Can you remember what your response to that was?

MR LAKEPA: No.

MR FOWLER: Okay. You said:

No. There’s the – or that – that storage up there was for a separate storage for the drinks downstairs.

Is there anything you want to say in relation to that answer?

MR LAKEPA: No.

MR FOWLER: No.

MR LAKEPA: *I was – because I was shitting myself*

MR FOWLER: *Shitting yourself.*

MR LAKEPA: *Yeah. Got me off guard.*

MR FOWLER: Okay.

MR LAKEPA: *Can't – can't lie to you. Yeah.*

MR FOWLER: *Can you remember what you said about the service of liquor up on level 1?*

MR LAKEPA: No.

MR FOWLER: *Okay. Can you remember providing the response of:*

Oh, I'm not sure. You're going to have to ask the waitress.

MR LAKEPA: No.

MR FOWLER: No. Okay.

MR LAKEPA: *Probably would have said that.*

MR FOWLER: *Yep. Can you remember what you said when we asked you whether you knew liquor was being sold upstairs?*

MR LAKEPA: *Did I say no?*

MR FOWLER: *Do you want me to tell you?*

MR LAKEPA: No.

MR FOWLER: *Okay. You said:*

I'm not denying if they're drinking. I don't know if they are.

MR LAKEPA: *Yeah. Okay.*

MR FOWLER: *Is that an accurate statement?*

MR LAKEPA: *Oh, I'll go off what you say, yeah.*

MR FOWLER: *Yeah. So you're still saying that's accurate; you didn't know if the liquor was being sold upstairs?*

MR LAKEPA: *Oh, yeah. I – I did know there was liquor sold upstairs. Yeah.*

MR FOWLER: *Okay. And is there any reason why you said that on the night?*

MR LAKEPA: *Oh, did I say that I was shitting bricks?*

MR FOWLER: *Yeah. Cool. Can you remember what you said about the EFTPOS being upstairs?*

MR LAKEPA: *Something about it being a spare or something. Yeah.*

MR FOWLER: *A spare. Yep. Can you – can you tell me why you would – would have told me that it was a spare one?*

MR LAKEPA: *Oh, well, no. No.*

MR FOWLER: *Okay.*

MR MILLER: *Are you still saying now that it was a spare one?*

MR LAKEPA: *No.*

MR MILLER: *Okay.*

MR LAKEPA: *No. It wasn't the spare one.*

- 131.** Pages 43 to 44 of the transcript of the February Interview record Mr Lakepa repeating to investigators that he knew that liquor was being sold upstairs, that he had arranged for a waitress to serve such liquor and that he was aware that there was a facility upstairs to conduct financial transactions for the liquor. Mr Lakepa repeats his claim that he had “no power to stop it” because he was “being told by my boss to let it happen”.
- 132.** These exchanges satisfy the Authority, as alleged at paragraph 65 of the Complaint Letter, that Mr Lakepa made full and frank admissions to managing liquor sales on level 1, knowing these activities to be unlawful.
- 133.** The Authority is also satisfied, as alleged at paragraph 65, that Mr Lakepa only conceded these matters once he had been presented with additional evidence which provided him with “little or no defence” to the allegations.
- 134.** The Authority makes these findings on the basis of pages 28 to 29, 40 to 42 and 43 to 44 of the transcript of the February Interview (**Exhibit 12**).
- 135.** The Authority accepts the conclusion invited by the Complainant at paragraph 66 of the Complaint Letter that the content of these three interviews and the eventual “reversal” of Mr Lakepa’s position demonstrates that Mr Lakepa is willing to directly lie to the regulator (OLGR/LGNSW) and that he does not possess the character, honesty and integrity standards required by a person to hold a position of authority as liquor licensee.

Competence to carry on the business of a licensed premises

Paragraphs 67 to 70 of the Complaint Letter

- 136.** The Complainant contends at paragraph 67 of the Complaint Letter that on 29 May 2014, Mr Lakepa was appointed as licensee of the *Dreamgirls* business, a late trading strip club located in the Kings Cross precinct categorised as a “high risk venue”.
- 137.** The Authority is satisfied as to Mr Lakepa’s appointment as licensee from the relevant date on the basis of the *OneGov* licence record for the Premises as at 25 February 2016 (**Exhibit 1**).
- 138.** The venue’s status as a late trading high risk venue arises from the operation of section 116AA(2) of the Act and clause 53R of the Regulation, which provides a list of

all licensed premises specified as “high risk venues” for the purposes of Division 3 of Part 6 of the Act. The Authority notes that liquor licence number LIQO624013611 in respect of the licensed premises formerly trading as “Dreamgirls” was included on that list.

- 139.** The Complainant submits at paragraph 67 of the Complaint Letter, that it would generally be expected that a licensee of such a venue should have a high level of experience and competence.
- 140.** The Complainant contends, also at paragraph 67 of the Complaint Letter, that by his own admission, Mr Lakepa received no formal training for the role and has not received any ongoing training since being appointed.
- 141.** The Authority notes that pages 62 to 63 of the transcript of the February Interview record Mr Lakepa making the following statements as to his prior training and experience:

MR MILLER: And before, as you put it, putting your name on the door at Dreamgirls - - -

MR LAKEPA: Yes.

MR MILLER: - - - did you have any management experience of a venue?

MR LAKEPA: Yes and no. Yes and no. It was just all basic stuff. But nothing too deep. Yeah.

MR FOWLER: Did you get any training?

MR LAKEPA: I don't know that you can call it training, but it was, like, sort of an introduction. Yeah, yeah.

MR FOWLER: So on the job?

MR LAKEPA: Yeah.

MR FOWLER: Nothing where you went and did a course or anything.

MR LAKEPA: No, no. No courses. It was just, like, on top of the head – just seeing, learning – that's it.

MR FOWLER: So when you started as licensee, did you know what your responsibilities were?

MR LAKEPA: Yeah and no.

MR FOWLER: No.

MR LAKEPA: No

- 142.** This exchange satisfies the Authority, as alleged at paragraph 67 of the Complaint Letter, that by his own admission, Mr Lakepa received no formal training for the role and did not receive any ongoing training since being appointed as licensee.
- 143.** The Authority notes that Mr Lakepa has not made any further submissions as to his competence, qualifications or experience.

144. The Complainant submits, at paragraph 68 of the Complaint Letter, that Mr Lakepa has displayed a “complete lack of competence” in his ability to fulfil the role and responsibilities of a licensee, particularly within a high risk venue such as *Dreamgirls*.
145. The Complainant refers to the “poor compliance history” for both the venue and Mr Lakepa during his “short” 19-month tenure as licensee in support of this contention, noting that Mr Lakepa has been convicted of offences against the liquor legislation on six (6) occasions and is currently being investigated for other serious offences under the Act.
146. The Authority is satisfied, as submitted at paragraph 68 of the Complaint Letter, that the *Dreamgirls* business and Mr Lakepa personally have poor compliance histories and that Mr Lakepa has been convicted of offences against the liquor legislation on six (6) occasions during a short period of time and is currently being investigated for other alleged serious offences under the Act.
147. The Authority makes these findings on the basis of the State Debt Recovery Office Penalty Notice Information and Payment Summaries, the copy of General Penalty Notice number 3081391601 along with a Court Order Notice issued by the District Court dated 29 February 2016 dismissing the appeal against Mr Lakepa’s conviction on 21 September 2015, and the Enforcement Letter from Mr Peter Freeman, OLGR Manager Investigations, to Mr Lakepa dated 14 October 2014 in respect of several alleged breaches of legislation detected by OLGR officers on 7 September 2014 (**Exhibits 5, 6, 7, 8 and 9**).
148. The Complainant contends, at paragraph 69 of the Complaint Letter, that during the February Interview Mr Lakepa was asked about his role once being appointed as licensee of *Dreamgirls* and he responded, “Just put my name on the door”. He was further asked, “Did you have any idea what you were doing?” and responded “No”.
149. Page 63 of the transcript of the February Interview records Mr Lakepa making the following statements as to his understanding of the requirements of a liquor licensee:

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

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

MR MILLER: So what were you told to do?

MR LAKEPA: Just put my name on the door.

MR MILLER: Anything else?

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

150. Page 63 of the transcript of the February Interview records Mr Lakepa making the following further statements as to his understanding of the role of a licensee:

MR FOWLER: All right. Let’s put it another way. Did you have any idea what you were doing?

MR LAKEPA: No.

151. These exchanges satisfy the Authority, as submitted at paragraph 69 of the Complaint Letter with regard to Mr Lakepa’s competence to carry on this type of licensed

business, that Mr Lakepa had “no idea” what he was doing as the licensee of *Dreamgirls*.

152. This submission is established on the basis of pages 62 and 63 of the February Interview (**Exhibit 12**) and is further supported by the penalty notices, convictions and compliance notices recorded against Mr Lakepa arising from his reasonably short tenure as licensee (**Exhibits 5, 6, 7, 8 and 9**).
153. The Authority notes that with regard to Mr Lakepa’s competence as a licensee the Complainant repeats the contention made at paragraph 70 of the Complaint Letter, that the February Interview established that Mr Lakepa was “fully aware” of the unlawful operation of the bar on level 1, but he failed to take any preventative actions as licensee to ensure that there were no breaches of licensing legislation.
154. The Authority refers to its above discussion on pages 43 to 44 of the transcript of the February Interview and accepts this submission with regard to Mr Lakepa’s competence to manage this type of licensed premises.
155. For the sake of completeness, the Authority is satisfied, as repeated by the Complainant at paragraph 70, that in addition to knowingly managing and continuing the operation of the unlawful liquor supply on level 1, Mr Lakepa, through his directions given to other *Dreamgirls* employees, exposed those employees to potential criminal prosecution.
156. This finding goes to Mr Lakepa’s competence to conduct the relevant business or activity that is the subject of this Complaint, for the purposes of section 45(5A) of the Act. The Authority makes this finding on the basis of the same evidence that supports the Authority’s findings on paragraphs 67 to 70 of the Complaint Letter, as discussed above.
157. In conclusion, with regard to section 45(5A) of the Act the Authority is satisfied, on the basis of the found convictions and Penalty Notices and noting the absence of any submissions in reply, that Mr Lakepa is **not** a fit and proper person to hold a liquor licence in that he is not of good repute, having regard to the evidence going to his character and integrity and competence to carry on this business or activity. The Authority is satisfied that Mr Lakepa has **not** demonstrated the honesty, knowledge and ability expected of a licensee.
158. The Authority is satisfied that Ground 3 of the Complaint is established and that Mr Lakepa is not a fit and proper person to be the holder of a licence.

FINAL SUBMISSIONS ON DISCIPLINARY ACTION

159. On 18 July 2016 the Authority sent a detailed letter notifying its findings on the Grounds of Complaint to the parties, inviting them to provide any final submissions or evidence confined to the question of what, if any, disciplinary action should be taken in light of those findings.
160. On 25 July 2016 LGNSW made a final submission to the Authority providing a breakdown of costs on the investigation and submitting that the Complainant refers to the outcomes sought in the Complaint Letter dated 22 March 2016. This submission was copied to the other parties. The Complainant seeks that the Authority:

- Pursuant to section 141(2)(c) of the Act, order Mr Lakepa to pay a monetary penalty proportionate with the level of harm and that provides a general and specific deterrent (the quantum is not specified);
- Pursuant to section 141(2)(f) of the Act disqualify Mr Lakepa from holding a licence for life;
- Pursuant to section 141(2)(f) of the Act disqualify Mr Lakepa from being the manager of a licensed premises for life;
- Pursuant to section 141(2)(f) of the Act disqualify Mr Lakepa from being the close associate of a licensee for life;
- Pursuant to section 141(2)(l) of the Act order Mr Lakepa to pay the costs of carrying out the investigation under section 138 of the Act (specified at \$13,006.71).

161. Mr Lakepa did not previously make any response to the merits of the Complaint. However, on 1 August 2016 Mr Lakepa's solicitor Mr Sean Keleher, made a submission to the Authority that the Authority should exercise its discretion under section 141(1) of the Act to take no disciplinary action. Very briefly, this submission is made on the following bases:

- Mr Lakepa is not a licensee, close associate or manager of a licensed premises
- In the future Mr Lakepa will have no ability to attain the above mentioned positions without first satisfying the Authority that he is a fit and proper person to hold that position
- The nature of the disciplinary provisions are protective, not punitive and no further protection can be afforded to the public by making the orders sought by the Complainant
- Mr Lakepa has already incurred significant penalties imposed by the Court as a result of the actions, which are the subject of this Complaint.
- Mr Lakepa made a guilty plea at the earliest opportunity to related Local Court criminal prosecutions, for which he was ordered to pay \$7,000 in fines plus costs of \$15000 with 50% of those costs to be paid to the Complainant.

162. Mr Lakepa submits that the Authority should "ignore" the itemised costs sought by the Complainant on the investigation for the following reasons:

- Mr Lakepa was ordered to pay Court costs in the related criminal proceedings to the Complainant
- A component of the costs sought on this Complaint include an interview that Mr Lakepa voluntarily attended with LGNSW on 5 February 2016
- There is significant overlap in the costs sought in this matter and the costs sought in a related complaint against Mr Michael Amante, the business owner of Dreamgirls
- The costs sought are significantly inflated by a line item "On Costs @30% which has not been substantiated.

163. No final submissions were made by any other parties.

DECISION ON DISCIPLINARY ACTION

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

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

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

166. 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.

167. 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.

168. 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.

169. 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).

170. Mr Lakepa did not respond to the merits of the Complaint. He has not, in his submissions on disciplinary action, provided any positive evidence as to his reputation or ability to serve as the licensee of a licensed premises, let alone a high risk venue such as Dreamgirls.

171. The evidence and material satisfies the Authority that Mr Lakepa does not demonstrate the common law indicia of fitness and propriety – being knowledge honesty or ability. Mr Lakepa has made no effort to substantiate his reputation or competence to carry on the relevant business or activity for the purposes of the statutory considerations provided by section 45(5A) of the Act.

172. On the contrary, the Authority is satisfied that Mr Lakepa permitted himself to be placed on the record by the business owner as a *licensee in name only*. He has demonstrated no awareness of, and a complete disregard for, his statutory responsibilities. In addition to being responsible for a significant number of licensing offences during his short tenure as licensee, he turned a blind eye to significant

prohibited drug supply and other unlawful conduct on the Dreamgirls Premises while he was the licensee (including the operation of a bar associated with the Dreamgirls business in an unlicensed area of the building).

- 173.** The serious compliance failures by the licensed business while he held the licence culminated in Police drug raids in December 2015 followed by the Authority closing the venue for 6 months under section 84 of the Act during January 2016.
- 174.** Any person who permits themselves to be appointed as a liquor licensee while not actually exercising control over the relevant premises undermines the integrity of the licensing scheme provided by the Act and has no place in the industry.
- 175.** The Authority has no confidence that Mr Lakepa should be entrusted with a liquor licence in New South Wales again, nor should he be permitted to occupy a position of influence over a liquor licence.
- 176.** On the evidence and material before it the Authority is satisfied that Mr Lakepa poses a substantial threat to the public interest in respect of the Act and the Authority cannot presently foresee a situation whereby the Authority would give its imprimatur to Mr Lakepa to occupy a regulated position under the Act.
- 177.** In those circumstances the Authority is satisfied that Mr Lakepa should be disqualified for life from holding a licence, acting as an approved manager or serving as a close associate of a licence for any licensed premises in New South Wales.
- 178.** The Authority has considered all of the submissions made by Mr Lakepa on the costs sought by the Complainant and has determined that the costs on the investigation should be paid without the 30% “on costs” figure.
- 179.** The Authority is otherwise satisfied that the breakdown of costs specified by the Complainant are properly attributed to the investigation into Mr Lakepa. The Authority does not accept that Mr Lakepa having been ordered to pay Court costs for the conduct of separate criminal proceedings diminishes the public interest in him paying the Department’s costs on this administrative action, noting that the Complainant has been successful in establishing its case against him and having regard to all of the facts and circumstances of this Complaint.
- 180.** The Authority does not consider that an order that Mr Lakepa pay a monetary penalty would serve any additional protective purpose in light of the Authority’s decision to disqualify him from the industry for life and noting the fines that were recently ordered against him by the Local Court.

ORDERS

- 181.** The Authority takes the following disciplinary action, effective from the date of this letter:
 - (i) Pursuant to section 141(2)(f) of the Act, Mr David Lakepa is disqualified from holding a licence, from being the approved manager of licensed premises or close associate of a licensee in New South Wales, for life.
 - (ii) Pursuant to section 141(2)(l)(i) of the Act, Mr David Lakepa is ordered to pay, within 28 days, the sum of \$10,005.00 to the New South Wales Department of Justice, for the Secretary’s costs on carrying out the relevant investigation or inquiry.

REVIEW RIGHTS

- 182.** Pursuant to section 144 of the Act, an application for review of this decision may be made to the New South Wales Civil and Administrative Tribunal (**NCAT**) by the Complainant or any person against whom disciplinary action is taken by the Authority under Part 9 of Act. An application for review should be made within 28 days of the date of notification of this decision.
- 183.** 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.

Date of Decision: 28 September 2016

Philip Crawford
Chairperson