



Civil and Administrative Tribunal
New South Wales

Case Name: Ogilvie v Independent Liquor and Gaming Authority

Medium Neutral Citation: [2016] NSWCATAD 195

Hearing Date(s): 23 March 2016

Date of Orders: 25 August 2016

Decision Date: 25 August 2016

Jurisdiction: Administrative and Equal Opportunity Division

Before: S Montgomery, Senior Member

Decision: (1) The Respondent's decision to disqualify the Applicant from holding a liquor licence for a period of ten years is set aside.
(2) The Respondent's decision to disqualify the Applicant from being a close associate of a licensee for a period of ten years is set aside.
(3) In substitution for the Respondent's decisions set out in Order 1 and 2 above, the following decision is made:
a. Pursuant to section 141(2)(f) of the Liquor Act 2007, the Applicant is disqualified from holding a liquor licence for a period of five years. This period of disqualification commences with effect from 8 December 2015 with respect to the licensed premises of the Albion Hotel, located at 155 Murray Street, Finley N.S.W. but commences from 24 November 2015 with respect to other licensed premises in New South Wales.
b. Pursuant to section 141(2)(j) of the Liquor Act 2007, the Applicant is disqualified from being a close associate of a licensee for a period of five years from 24 November 2015. This period of disqualification commences with effect from the date of this decision with respect to other licensed premises in New South

Wales but commences from 24 November 2016 with respect to the licensed business of the Albion Hotel located at 155 Murray Street, Finley N.S.W.

Catchwords: Liquor licence - close associate - disqualification - fit and proper person – severity of civil penalty

Legislation Cited: Liquor Act 2007

Category: Principal judgment

Parties: Allan Francis Ogilvie (Applicant)
Independent Liquor and Gaming Authority (Respondent)

Representation: Solicitors:
Allan Francis Ogilvie (Applicant in person)
Crown Solicitors Office (Respondent)

File Number(s): 1510774

REASONS FOR DECISION

- 1 This matter concerns a decision under the *Liquor Act 2007* (“the Act”) by the Independent Liquor & Gaming Authority (“the Authority”). The decision concerns a liquor licence held by Mr Ogilvie (“the Applicant”). Mr Ogilvie was the licensee of the Albion Hotel (“the Hotel”) located in Finley.
- 2 The Authority’s orders were in the following terms:
 - a. Pursuant to section 141 (2)(f) of the Act, the Respondent, Mr Allan Francis Ogilvie, be disqualified from holding a liquor licence for a period of ten (10) years. This period of disqualification commences with effect from the date of this decision with respect to other licensed premises in New South Wales but commences fourteen (14) days from the date of this decision with respect to the licensed premises of the Albion Hotel, located at 155 Murray Street, Finley 2713.
 - b. Pursuant to section 141 (2)(j) of the Act, the Respondent, Mr Allan Francis Ogilvie, be disqualified from being a close associate of a licensee for a period of ten (10) years from the date of this decision. This period of disqualification commences with effect from the date of this decision with respect to other licensed premises in New South Wales but commences twelve (12) months from the date of this decision with respect to the licensed business of the Albion Hotel located at 155 Murray Street, Finley 2713.
- 3 I note that the decision was dated 24 November 2015. Part of the decision was to take effect from that date. Part of the decision was to take effect fourteen days from the date of the decision i.e. on 8 December 2015. The remainder of

the decision was to take effect twelve months from the date of the decision i.e. on 24 November 2016.

- 4 The Applicant has applied to this Tribunal for review of the decision. He contends that the orders are unacceptably harsh.

Background

- 5 The Objects of the Act as set out in section 3 of the Act are:

- (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.

- 6 Section 7 of the Act provides that a person must not sell liquor unless the person is authorised to do so by a licence. A hotel licence authorises the licensee to sell liquor on the licensed premises for consumption on or away from the licensed premises: section 14(1).

- 7 The Applicant has held the licence for the Hotel since October 2013. The licence enables the sale or supply and consumption of liquor on the Hotel premises from 5:00am to 2:00am on Monday to Saturday and from 10:00am to 10:00pm on Sunday. The Hotel also has a minors' area authorisation for the dining room, lounge and bistro areas.

- 8 Part 9 of the Act provides for disciplinary action to be taken in relation to a licensee or a manager. Section 139 of the Act provides grounds for making complaint:

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 persons (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,

(c) that the licensee has failed to comply with any of the conditions to which any authorisation or approval held by the licensee under this Act is subject,

(d) that the licensee or manager has failed to comply with any other requirement under this Act or the regulations (or under the former Act), relating to the licence or the licensed premises,

(e) that the licensee or manager has failed to comply with a direction or other requirement of the Authority, the Secretary or the Commissioner of Police under this Act (or of the Secretary or the Commissioner under the former Act),

(f) that the licensee or manager has engaged in conduct or activities that are likely to encourage misuse or abuse of liquor (such as binge drinking or excessive consumption),

(g) that intoxicated persons have frequently been on the licensed premises or have frequently been seen to leave those premises,

(h) that acts involving violence against persons or damage to property have frequently been committed on or near the licensed premises by persons who have been on the licensed premises,

(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),

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

(k) that a complaint against a licensee under this section has been made and that:

(i) the close associate knew or ought reasonably to have known that the licensee was engaging (or was likely to engage) in conduct of the kind to which the complaint relates, and

(ii) the close associate failed to take all reasonable steps to prevent the licensee from engaging in conduct of that kind,

(l) that the close associate is (or has become) a close associate of a licensee while disqualified by the Authority from being a close associate,

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

(n) that a person is (or has become) a person who is interested in the business, or in the conduct or profits of the business, carried on under a

licence while disqualified by the Authority under this Part from being a person so interested,

(o) in the case of a limited licence - that the licensee has not exercised proper control and supervision over a function held under the licence,

(p) in the case of a limited licence - it is not in the public interest for liquor to be sold or supplied at functions held by or under the auspices of the non-proprietary association on whose behalf the licence is held,

(q) in the case of a licence held by a corporation-that a person who occupies a position of authority in the corporation is not a fit and proper person to occupy such a position in a corporation that is the holder of a licence,

(r) that public entertainment has been conducted on the licensed premises otherwise than in accordance with any requirements under the Environmental Planning and Assessment Act 1979 relating to the use of the premises for public entertainment,

(s) that the licence has not been exercised in the public interest,

(t) that the continuation of the licence is not in the public interest.

(4) In subsection (3),

"former Act" means the *Liquor Act* 1982 or the regulations made under that Act and includes, in the case of a licensee that is a registered club, the *Registered Clubs Act* 1976 as in force immediately before the repeal of section 9 of that Act by Schedule 2 to the *Miscellaneous Acts (Casino, Liquor and Gaming) Amendment Act* 2007 .

9 The procedure for taking disciplinary action is set out in section 140 of the Act:

140 Procedure for taking disciplinary action

(1) If a complaint in relation to a licensee, manager or close associate is made under this Part, the Authority must, before taking any disciplinary action against the licensee, manager or close associate, notify the licensee, manager or close associate in writing of the grounds on which the Authority is proposing to take disciplinary action.

(2) Any such notice is to invite the licensee, manager or close associate to show cause, by way of a written submission, as to why the Authority should not take disciplinary action against the licensee, manager or close associate.

(3) The Authority must also, before taking disciplinary action against a licensee, invite written submissions from the following persons:

(a) if the licensee occupies the licensed premises under a lease-the lessor,

(b) each person named in the written statement referred to in section 41 that accompanied the application for the licence,

(c) each person named in the information provided to the Authority (as required by section 55) who has become interested in the business, or the conduct of the business, carried out on the licensed premises concerned,

(d) if the grounds for taking the proposed disciplinary action relate to a person (other than the licensee) not being a fit and proper person-that person.

(4) The Authority may specify:

(a) the time within which a submission under this section may be made, and
(b) any other requirements that must be complied with in relation to the making of any such submission.

(5) If any written submission is made in accordance with this section, the Authority must take the submission into consideration in deciding whether or not to take disciplinary action against the licensee, manager or close associate concerned.

(6) Subsection (1) does not require the Authority to disclose any criminal intelligence.

10 There is no suggestion that these requirements were not met.

11 The disciplinary powers of the Authority are set out in section 141 of the Act:

141 Disciplinary powers of Authority

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

...

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

(a) cancel the licence,

(b) suspend the licence for such period not exceeding 12 months (or, if circumstances of aggravation exist in relation to the complaint, not exceeding 24 months) as the Authority thinks fit,

(c) order the licensee or manager to pay, within such time as is specified in the order:

(i) a monetary penalty not exceeding 500 penalty units (in the case of a corporation) or 200 penalty units (in the case of an individual), or

(ii) if circumstances of aggravation exist in relation to the complaint—a monetary penalty not exceeding 1,000 penalty units (in the case of a corporation) or 400 penalty units (in the case of an individual),

(d) suspend or cancel any authorisation or other approval (other than the licence itself) held by the licensee under this Act,

(e) impose a condition to which the licence, or any authorisation or approval held by the licensee under this Act, is to be subject or revoke or vary a condition to which the licence or any such authorisation or approval is subject,

(f) disqualify the licensee from holding a licence, or from being the manager of licensed premises or the close associate of a licensee, for such period as the Authority thinks fit,

(g) withdraw the manager's approval to manage licensed premises,

(h) disqualify the manager from being the manager of licensed premises, or from holding a licence or being the close associate of a licensee, for such period as the Authority thinks fit,

- (i) in the case of a limited licence held on behalf of a non-proprietary association-order that a limited licence is not, for a period of not more than 3 years from the date on which the decision takes effect, to be granted to any person on behalf of the non-proprietary association,
 - (j) disqualify the close associate from being a close associate of a licensee or the manager of licensed premises for such period as the Authority thinks fit,
 - (k) disqualify the close associate from holding a licence for such period as the Authority thinks fit,
 - (l) order the licensee, manager or close associate to pay the amount of any costs incurred by:
 - (i) the Secretary in carrying out any investigation or inquiry under section 138 in relation to the licensee, manager or close associate, or
 - (ii) the Authority in connection with the taking of disciplinary action against the licensee, manager or close associate under this section,
 - (m) reprimand the licensee, manager or close associate.
- (3) If the Authority orders a licensee or manager to pay a monetary penalty under this section and the penalty is not paid within the time specified in the order, the Authority may:
- (a) cancel the licence, or
 - (b) suspend the licence until such time as the penalty is paid (or for such other period as the Authority thinks fit).
- (4) While a person is disqualified by the Authority from being a close associate of a licensee, the person is conclusively presumed for the purposes of this Act to be a person who is not a fit and proper person to be a close associate of a licensee.
- (5) Action against other interested persons In deciding whether to take disciplinary action under this section against a licensee in relation to a complaint, the Authority may take disciplinary action against a person who is interested in the business, or in the conduct or profits of the business, carried on under the licence (regardless of whether the Authority takes any disciplinary action under this section against the licensee concerned).
- (6) If the Authority decides to take disciplinary action against any such interested person, the Authority may do any one or more of the following:
- (a) disqualify the person, for a period commencing on a specified day, from being a person interested in the business, or in the conduct or profits of the business, carried on under a licence,
 - (b) reprimand the person.
- (7) Circumstances of aggravation For the purposes of this section, circumstances of aggravation exist in relation to a complaint if (and only if) each of the following paragraphs applies:
- (a) the complaint concerns a contravention or alleged contravention of section 73 or 74,
 - (b) the complaint alleges that for the reasons specified in the complaint the matter of the complaint is so serious as to warrant the taking of action that is available to the Authority when circumstances of aggravation exist,

(c) the Authority, in finding that the matter of the complaint has been made out, is of the opinion (having regard to any matter such as the number of contraventions of the Act involved, the seriousness of the contravention involved, the number of people involved in the contravention or the seriousness of the outcome of the contravention, or any other relevant consideration) that the matter of the complaint is so serious as to warrant the taking of action that is available to the Authority when circumstances of aggravation exist.

(8) In this section:

"criminal organisation associate ground" means:

(a) in relation to a licensee-that the licensee is not a fit and proper person to be the holder of a licence for the same reason as that set out in section 45 (5), or

(b) in relation to a manager - that the manager is not a fit and proper person to be the manager of the licensed premises for the same reason as that set out in section 68 (4A).

The Complaint

12 In November 2014, Mr Anthony Keon made a complaint to the Authority under Part 9 of the Act. Mr Keon, who was the Acting Director of the Compliance Branch of the Office of Liquor, Gaming and Racing ("OLGR"), made the complaint in his capacity as delegate of the Secretary of New South Wales Trade and Investment.

13 Mr Keon's complaint relied on the following grounds in section 139 of the Act:

- 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: section 139(a);
- 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) section 139(i); and
- that a person who is interested in the business, or in the conduct or profits of the business, carried on under the licence is not a fit and proper person to be so interested: section 139(m).

The offences

14 Section 9 of the Act provides:

9 Sale or supply of liquor contrary to licence

(1) A licensee or an employee or agent of a licensee must not sell or supply liquor, or cause or permit liquor to be sold or supplied:

(a) in contravention of the conditions to which the licence is subject, or

(b) otherwise than in accordance with the authority conferred on the licensee by or under this Act.

(2) Without limiting subsection (1), a licensee must not:

(a) keep licensed premises open for the sale or supply of liquor, or

(b) sell or supply liquor,

at a time when the licensee is not authorised under this Act to sell or supply liquor.

(3) A licensee must not sell, or employ or permit another person to sell, liquor on premises other than premises on which the licensee is authorised by the licence or this Act to sell the liquor.

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

15 Section 73 of the Act provides:

73 Prevention of excessive consumption of alcohol on licensed premises

(1) A licensee must not permit:

(a) intoxication, or

(b) any indecent, violent or quarrelsome conduct,

on the licensed premises.

Maximum penalty: 100 penalty units.

(2) A licensee or an employee or agent of a licensee must not, on the licensed premises, sell or supply liquor to an intoxicated person.

Maximum penalty: 100 penalty units.

(3) A person (other than a licensee or an employee or agent of a licensee) must not, on licensed premises, supply liquor to an intoxicated person.

Maximum penalty: 10 penalty units.

(4) If an intoxicated person is on licensed premises, the licensee is taken to have permitted intoxication on the licensed premises unless the licensee proves:

(a) that the licensee, and the licensee's employees or agents, took the steps set out in subsection (5), or

(a1) that the licensee, and the licensee's employees or agents, took the steps set out in the guidelines under subsection (5A) to prevent intoxication on the licensed premises, or

(b) that the intoxicated person did not consume alcohol on the licensed premises.

(5) For the purposes of subsection (4) (a), the following are the relevant steps:

(a) asked the intoxicated person to leave the premises,

(b) contacted, or attempted to contact, a police officer for assistance in removing the person from the premises,

(c) refused to serve the person any alcohol after becoming aware that the person was intoxicated.

(5A) The Secretary is to issue guidelines relating to the prevention of intoxication on licensed premises. Such guidelines are to be made publicly available in such manner as the Secretary considers appropriate.

(6) In the application of this section to an on-premises licence that relates to a catering service, a reference to licensed premises does not include private domestic premises except for the purposes of subsection (2).

16 Mr Keon's Complaint relied on a number of offences committed by Mr Ogilvie as the licensee of the Hotel. Five offences were committed in April 2014:

1. 'Licensee permit indecency on licensed premises';
2. 'Licensee permit intoxication on licensed premises'; and
3. Three offences of 'Licensee sell/supply liquor not in accordance with authority', relating to the sale of liquor outside authorised hours.

17 A further two offences were committed on 16 May 2014:

1. 'Licensee permit intoxication on licensed premises'; and
2. 'Licensee supply liquor to intoxicated person'.

18 It was alleged that the Applicant was present on the premises when the offences occurred and made no attempt to stop the conduct.

19 The Applicant was convicted of these offences by the Albury Local Court on 4 November 2014. In relation to the offences of permitting indecency and intoxication he was ordered to pay a fine of \$300. In relation to the April 2014 offences of selling or supplying liquor not in accordance with the authority he was ordered to enter into a good behaviour bond for 12 months, pursuant to section 9(1) of the *Crimes (Sentencing Procedure) Act 1999*. In relation to the 16 May 2014 offences he was ordered to pay a fine of \$400.

20 In relation to his complaint Mr Keon submitted:

The facts of the offences indicate the licensee was present on both occasions and contributed to the offending. The licensee's role in the offending conduct indicates a permissive culture at the licensed premises and limits the effectiveness of any proposed conditions or alternate measures to ensure the venue is appropriately managed in line with the expectations of the community. The pattern, frequency and seriousness of offending indicates the risk of alcohol related harm to the community is too great should Mr Ogilvie be permitted to continue managing a licensed premises. As the venue's business owner since 2007, Mr Ogilvie ought to have been fully aware of the requirements of running a licensed premises. It is alarming that seven offences of such seriousness were committed less than 12 months after Mr Ogilvie became the licensee. All seven offences are defined as 'prescribed offences'

under the 3 Strikes disciplinary scheme, which the government has identified as being the most serious offences under the Liquor Act.

With regard to the objects of the Act and the need to regulate the sale and supply of liquor consistent with community expectations, it is appropriate to disqualify Mr Ogilvie and provide an adequate deterrent to persons electing to operate outside the parameters of NSW liquor laws.

The industry ought to be aware that such conduct is not acceptable.

The Tribunal's Jurisdiction

21 Section 144 of the Act provides:

144 Administrative review by NCAT of decisions by Authority under this Part

(1) Each of the following persons may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of a decision by the Authority in relation to a complaint under this Part:

- (a) the person against whom any disciplinary action is taken by the Authority in relation to the complaint,
- (b) the complainant.

(2) Part 2 of Chapter 3 of the *Administrative Decisions Review Act 1997* does not apply to an application to the Civil and Administrative Tribunal for an administrative review of a decision by the Authority under this Part.

(3) In determining an application for a review of any decision by the Authority under section 141 (1A) or (1B), the Civil and Administrative Tribunal (and any Appeal Panel of the Tribunal in determining any internal appeal against such a review under the *Civil and Administrative Tribunal Act 2013*):

- (a) is to ensure that it does not, in the reasons for its decision or otherwise, disclose any criminal intelligence without the approval of the Commissioner of Police, and
- (b) in order to prevent the disclosure of any criminal intelligence, is to receive evidence and hear argument in the absence of the public, the applicant for the administrative review, the applicant's representative and any other interested party, unless the Commissioner of Police approves otherwise.

22 Section 8 of the *Administrative Decisions Review Act 1997* ("the ADR Act") provides

8 Meaning of "administrator"

(1) An "administrator" , in relation to an administratively reviewable decision, is the person or body that makes (or is taken to have made) the decision under enabling legislation.

Note : There are a number of circumstances in which a person or body is taken to have made a decision. See, for example, subsection (2) and sections 6 (2)-(5) and 9 (3) and (4).

(2) The person or body specified by enabling legislation as a person or body whose decisions are administratively reviewable decisions is taken to be the only administrator in relation to the making of an administratively reviewable

decision even if some other person or body also had a role in the making of the decision.

- 23 In this matter the decision under review was made by the Authority. However, the Authority did not assume the role of active contradictor before the Tribunal. This was consistent with the comments of the Court of Appeal in *Commissioner of Police, New South Wales Police Force v Fine* [2014] NSWCA 327 at paragraphs [77] – [82]:

77. The decision in *Macedon Ranges [Shire Council v Romsey Hotel Pty Ltd* [2008] VSCA 45; 19 VR 422] was made in the particular circumstances of that case. The case is not authority that where a decision-maker is an active party in merits review proceedings, other parties ought not be made parties or alternatively are not appropriate parties. Nor is it authority for the proposition that a decision-maker should always be an active party in merits review proceedings.

78. Further, it was important in *Macedon Ranges* that the decision-maker had experience, knowledge and expertise that “adversaries” in the Tribunal did not possess. That is not the case here. The Commissioner would have the knowledge and expertise relevant to the making of a banning order. Although arrangements may be made for the supply of information contained in police records to assist in the effectual administration of the legislation: Gaming and Liquor Administration Act, s 11, the Police Force is in fact the primary repository of such information and is likely to be of more immediate practical assistance to the Tribunal in a particular matter.

79. In the present case, whilst the Appeal Panel correctly observed that the *Hardiman* principle is not immutable, as the decisions referred to above demonstrate, it concluded, at [59], that the *Hardiman* principle does not apply generally to merits review proceedings such as were before the Tribunal, although noted that in “an appropriate case” the joinder of another party would be permitted. It is apparent from the comments of the Appeal Panel earlier in that paragraph that it considered that joinder of another party would only be permitted in a “special or unusual case”. The Appeal Panel then concluded, at [60], that the Authority was not required to take a purely passive role in these proceedings before the tribunal.

80. This involved error at two levels. First, the Tribunal has restricted the joinder of a party to circumstances where there is a “special or unusual” case. As explained above, s 44 is not so limited. The error in failing to appreciate the role of the Tribunal on a hearing of the review application and in proceeding on a basis that the discretion was constrained by reference to principles applicable in other contexts, was such as to warrant appellate intervention.

81. Secondly, having determined that the *Hardiman* principle did not apply in this case and hence that there was no impediment to active participation by the Authority, the Appeal Panel found the joinder of the Commissioner to act as a contradictor was not necessary. However, the question whether a party should be joined as a party to the proceedings is not to be determined by reference to the question whether the decision-maker is or is not an active protagonist in the proceedings. To take that approach imputes a pre-condition to the power of joinder which is not founded in the text of the legislation. Moreover, the Tribunal in exercising its discretion failed to have regard to the

fact that the very party who could have acted as a contradictor had filed a submitting appearance.

82. There is another way of viewing this error. Although the Appeal Panel did not dictate that the Authority must take an active part in the proceedings, it nonetheless considered that there was a party, the Authority, who should be a contradictor in the proceedings and, it seems, assumed that the Authority would be an active party. In doing so, the Appeal Panel effectively placed a constraint on the exercise of discretion conferred by s 44 in that it failed to assess the factors relevant to determining whether the Commissioner should be joined as a party. Even if the Authority became an active participant in the proceedings, that fact alone could not determine whether the Commissioner was a proper party. However, for the reasons explained above, doubts exist as to whether the Authority was an appropriate contradictor in this case in the proceedings before the Tribunal.

- 24 Nevertheless, Mr Granziera, who appeared for the Authority, appeared in order to provide assistance to the Tribunal. He has filed material on behalf of the Authority pursuant to section 58 of the ADR Act. The OLGR did not participate in the proceedings.
- 25 Section 63 of the ADR Act provides that in determining an application for review of an administratively reviewable decision the Tribunal is to make the correct and preferable decision having regard to the material before it, and any applicable written or unwritten law. It provides that in determining an application, the Tribunal may decide:
 - (a) to affirm the administratively reviewable decision, or
 - (b) to vary the administratively reviewable decision, or
 - (c) to set aside the administratively reviewable decision and make a decision in substitution for the administratively reviewable decision it set aside, or
 - (d) to set aside the administratively reviewable decision and remit the matter for reconsideration by the administrator in accordance with any directions or recommendations of the Tribunal.
- 26 In my view section 144 of the Act is to be construed as giving the Tribunal the power to make a fresh decision. It is also my view that in considering an application for review under the Act, the Tribunal is not constrained to have regard only to the material that was before the Authority, but may have regard to any relevant material before it at the time of the review.
- 27 In this particular matter the Applicant has not filed any material that was not before the Authority. However, he gave evidence and made oral submissions

in regard to the severity of the Authority's orders. He has limited the scope of the application to that issue.

Fitness and Propriety

28 As noted above, under section 139(3)(i) of the Act, a complaint may be made in relation to a licensee on the ground that the licensee is not a fit and proper person to be the holder of a licence. The phrase "fit and proper person" is well known and has been considered on numerous occasions in connection with a range of legislation.

29 A useful review of the authorities was provided in the case of *AJO v Director-General Department of Transport* [2012] NSWADT 101 at paragraphs [24] to [35]:

24. Assessment of whether a person is fit and proper to be the holder of a licence is different from, but related to, an assessment of whether a person is of good character.

25. In *Australian Broadcasting Tribunal v Bond* [1990] HCA 33; (1990) 170 CLR 321, Chief Justice Mason explained that, at 380:

'The question whether a person is fit and proper is one of value judgment. In that process the seriousness or otherwise of particular conduct is a matter for evaluation by the decision maker. So too is the weight, if any, to be given to matters favouring the person whose fitness and propriety are under consideration.'

Toohy and Gaudron JJ said at 380:

"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 of 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."

26. A person's fitness is to be gauged in the light of the nature and purpose of the activities that the person will undertake. In *Hughes and Vale Pty Ltd v New South Wales (No. 2)* [1955] HCA 28; (1955) 93 CLR 127 the High Court said (at 156-7):

"The expression 'fit and proper' is of course familiar enough as traditional words when used with reference to offices and perhaps vocation. But their very purpose is to give the widest scope for judgment and indeed for rejection. 'Fit' (or 'idoneus') with respect to an office is said to involve three things, honesty, knowledge and ability ... When the question was whether a man was a fit and proper person to hold a licence for the sale of liquor it was considered that it ought not to be confined to an inquiry into his character and that it would be unwise to attempt any definition of the matters which may legitimately be inquired into; each case must depend upon its own circumstances."

27. In *Sobey v Commercial and Private Agents Board* 20 SASR 70 Walters J said:

"In my opinion what is meant by that expression is that the Applicant must show not only that he is possessed of a requisite knowledge of the duties and responsibilities evolving upon him as the holder of a particular licence ... but also that he is possessed of sufficient moral integrity and rectitude of character as to permit him to be safely accredited to the public ... as a person to be entrusted with the sort of work which the licence entails."

28. Fitness and propriety are flexible concepts. A consideration of whether a person is fit and proper involves an assessment of their knowledge, honesty and ability in the context of the role they are seeking to undertake. Thus in *Obradovic -v- Commissioner for Fair Trading, Office of Fair Trading (GD)* [2006] NSWADTAP 18 the Appeal Panel agreed that a formerly licenced building contractor should have his application for a new licence refused, despite there being no evidence that he was dishonest or of bad repute. Evidence that he had been extremely tardy and intransigent in dealing with customer complaints, and the regulator, when he held a licence, was sufficient to conclude that he was not fit and proper for the role. In that case the licensing scheme was among other things, designed to protect consumers and to provide them with adequate means of redress against licensed contractors. In *Bond* the assessment occurred in the context of whether the Applicant was a fit and proper person to hold a licence under the *Broadcasting Act 1942* (Cth).

29. In *Saadieh v Director General, Department of Transport* [1999] NSWADT 68, Hennessey DP set out the factors to be taken into account in determining a person's suitability and fitness to obtain a taxi authority. They are:

- the nature, seriousness and frequency of any criminal offences for which the Applicant has been arrested or convicted;
- the Applicant's reputation in the community; and
- the likelihood that the Applicant will re-offend, be the subject of further complaints or commit further traffic offences.

30. In *Director General, Transport NSW v AIC (GD)* [2011] NSWADTAP 65 the Appeal Panel, at [37] drew attention to the role public interest considerations play in the assessment of fitness and propriety.

The courts have emphasised the connection that assessment of repute, fitness and propriety have in a regulated context with public interest considerations. Repute, fitness and propriety involve concepts that should not be 'narrowly construed or confined' and may extend to 'any aspect of fitness and propriety

that is relevant to the public interest' (*Australian Broadcasting Tribunal v Bond* [1990] HCA 33; (1990) 170 CLR 321 (26 July 1990) at [64] per Mason CJ.

The comments of Kirby P in *Pillai v Messiter* [No.2], quoted above, are an example of this.

[the omitted comments of Kirby P are as follows:

"... The public needs to be protected from delinquents and wrong-doers within professions. It also needs to be protected from seriously incompetent professional people who are ignorant of basic rules or indifferent as to rudimentary professional requirements. Such people should be removed from the register or from the relevant roll of practitioners, at least until they can demonstrate that their disqualifying imperfections have been removed ..."]

31. The discretion vested in a decision maker in determining whether a person is fit and proper, in any given context, was said by the Full Court of the Federal Court in *Commissioner for ACT Revenue v Alphaone Pty Ltd* (1994) 49 FCR 589 at 389, per Northrop, Miles and French JJ, to "give wide scope for judgement and allow broad bases for rejection."

32. As was made clear by Toohey and Gaudron JJ in *Bond*, issues of character and reputation may play a determinative role in deciding whether a person is fit and proper. Their Honours also clearly highlighted that there is a difference between the two. They explained that an assessment of character is relevant because it is an indicator of a person's likely future conduct when considering how a person might act in the context of the role they are seeking to undertake. Reputation on the other hand, provides an indication of the public perception of future conduct in that role. In *Re T and the Director of Youth and Community Services* [1980] 1 NSWLR 392, Waddell J explained, at 393:

A distinction must be drawn between "repute" or "reputation" and "character" or "disposition". The word "character" is sometimes used as meaning a person's reputation, but "reputation" is not ordinarily used to mean character. The distinction has been referred to in many decisions of the courts."

In *Melbourne v The Queen* [1999] HCA 32; [1999] 198 CLR 1 at 15 McHugh J explained:

"... character refers to the inherent moral qualities of a person or what the New Zealand Law Commission has called "disposition - which is something more intrinsic to the individual in question". It is to be contrasted with reputation, which refers to the public estimation or repute of a person, irrespective of the inherent moral qualities of that person."

33. In *Ex Parte Tziniolis; Re Medical Practitioners Act* (1966) 67 SR (NSW) 448 Walsh JA, at 450, said that in determining questions of character:

"... the court is required to consider matters affecting the moral standards, attitudes and qualities of the Applicant and not merely to consider what is his general reputation."

That case was concerned with an application for registration of a medical practitioner. His Honour went on to explain that the Court was entitled to inquire

into personal misconduct, as well as professional misconduct, in considering whether the Applicant was a man of good character:

"... whilst recognizing that there may be some kinds of conduct deserving of disapproval which have little or no bearing on whether or not it shows the Applicant for registration as a medical practitioner is a person of good character. In this respect, I think, that some assistance can properly be obtained as to the mode of approach to be made from the observations made in cases where the question was whether or not a person was fit and proper to be a barrister, such as those *in Ziems v Prothonotary of the Supreme Court of NSW* [1957] HCA 46; (1957) 97 CLR 279."

Thus, as with fitness and propriety, assessment of character is to be made in the context of the nature and purpose of the activities that the person is seeking to undertake. In *Director General, Department of Transport v Z (No.2) (GD)* [2002] NSWADTAP 37 the Appeal Panel explained:

'Good repute' refers to the way reasonably-minded people assess an individual's current reputation, with reasonably precise knowledge of those matters that put the person's reputation in doubt. The fact that the person produces evidence from witnesses who vouch in general terms for the person's reputation cannot be conclusive. Equally, care must be taken, as we see it, not to use the 'good repute' requirement as a way of bringing into consideration stereotypes or assumptions which offend, for example, against human rights or anti-discrimination standards.

- 30 Fitness and propriety is a question of fact for the decision maker to determine objectively on the basis of the all evidence. Where a person has been convicted of offences, the decision maker must consider the circumstances of those convictions. In the matter of *Christopher Alfred Clearihan v the Registrar of Motor Vehicle Dealers In the Australian Capital Territory* [1994] ACTSC 101; (1994) 122 ACTR 25 Miles CJ considered an appeal against a decision to affirm the refusal to issue a motor vehicle dealer licence on the basis that the appellant was not of "good fame and character". The Chief Justice said at paragraph [21]:

"21. ... what is relevant on the assessment of character will vary according to the purpose of the legislation. The Tribunal recognized that it was not so much the convictions as the facts upon which the convictions were based that provided the clue to the appellant's character."

- 31 The Chief Justice said at paragraph [23]:

"23. ... It is a matter of common experience that a person's character is capable of development over time. At the one end of the scale, a person who commits an isolated act of misconduct may afterwards indicate that he or she has learned from the experience, so that any mark on character brought about by that lapse may fade relatively quickly. At the other end of the scale, even people who have demonstrated evil character are capable of reform. A whole

philosophy of sentencing for serious criminal offences is built on that principle. When character is under consideration for a purpose connected with a trade or profession, different considerations apply according to the nature of the trade or profession. ...”

The Authority’s Findings

32 On 18 August 2015 the Authority made the following findings in relation to the grounds in the complaint:

Finding on Ground 1

The Authority is satisfied that Ground 1 has been established. Ground 1 is based on section 139(3)(a) of the Act, which provides that a complaint may be made against a licensee who has, while holding a licence or managing a licensed premises, been convicted of an offence against the Act.

The Authority is satisfied that the Respondent committed an offence on 12 April 2014 against section 9(1)(b) of the Act, involving the sale or supply of liquor outside the authorisation permitted by the licence. This finding is based upon the detailed account of the facts provided in the Prosecution Fact Sheet dated 14 May 2014 and the Certificate of Conviction dated 7 November 2014.

The Authority is satisfied that the Respondent committed an offence on 13 April 2014 against section 9(1)(b) of the Act, involving the sale or supply of liquor outside the authorisation permitted by the licence. This finding is based upon the detailed account of the facts provided in the Prosecution Fact Sheet dated 14 May 2014 and the Certificate of Conviction dated 7 November 2014.

The Authority is satisfied that the Respondent committed an offence on 20 April 2014 against section 9(1)(b) of the Act, involving the sale or supply of liquor outside the authorisation permitted by the licence. This finding is based upon the detailed account of the facts provided in the Prosecution Fact Sheet dated 14 May 2014 and the Certificate of Conviction dated 7 November 2014.

The Authority is satisfied that the Respondent committed an offence on 12 April 2014 against section 73(1)(a) of the Act, involving the permission of intoxication on licensed premises. This finding is based upon the detailed account of the facts provided in the Prosecution Fact Sheet dated 14 May 2014 and the Certificate of Conviction dated 7 November 2014.

The Authority is satisfied that the Respondent committed an offence on 12 April 2014 against section 73(1)(b) of the Act, by permitting of an act of indecency on licensed premises. This finding is based upon the detailed account of the facts provided in the Prosecution Fact Sheet dated 14 May 2014 and the Certificate of Conviction dated 7 November 2014.

The Authority is satisfied that in respect of the offences of selling or supplying liquor not in accordance with the authorisation provided by the licence, committed on 12, 13 and 20 April 2014 respectively, the Respondent was convicted and ordered to enter into a good behaviour bond for 12 months, pursuant to section 9(1) of the *Crimes (Sentencing Procedure) Act* 1999. This finding is based upon the Certificate of Conviction dated 4 November 2014.

The Authority is satisfied that in respect of each of the offences of permitting indecency and intoxication that were committed on 12 April 2014, the Respondent was convicted and ordered to pay a fine of \$300. This finding is based upon the Certificate of Conviction dated 4 November 2014.

The Authority is satisfied that the Respondent committed an offence on 16 May 2014 against section 73(1)(a) of the Act, by permitting intoxication on licensed premises. This finding is based upon the detailed account of the facts provided by the Prosecution Fact Sheet dated 3 June 2014 and the Certificate of Conviction dated 7 November 2014.

The Authority is satisfied that the Respondent committed an offence on 16 May 2014 against section 73(2) of the Act, involving the sale or supply of liquor by a licensee to an intoxicated person. This finding is based upon the detailed account of the facts provided by the Prosecution Fact Sheet dated 3 June 2014 and the Certificate of Conviction dated 7 November 2014.

The Authority is further satisfied that for each of the offences of permitting intoxication on licensed premises and selling or supplying liquor to an intoxicated person that were committed on 16 May 2014, the Respondent was convicted and ordered to pay a fine of \$400. This finding is based upon the Certificate of Conviction dated 4 November 2014.

Finding on Ground 2

The Authority is satisfied that Ground 2 has been established. This Ground is based on section 139(3)(i) of the Act, and it is alleged that the Respondent is not a fit and proper person to be the holder of a liquor licence (whether for the same reason as that set out in section 45(5) of the Act or otherwise).

In reaching this conclusion, the Authority accepts the facts alleged in the Prosecution Fact Sheets (dated 14 May 2014 and 3 June 2014) regarding the Respondent's commission of the seven (7) offences noted above for which the Respondent was sentenced on 4 November 2014.

The Authority is satisfied that the Respondent was present on the Hotel premises at the time that the alleged offences occurred and that he contributed to the occurrence of those relatively serious offences against the Act, in flagrant disregard for his obligations as a licensee.

The Authority has taken into account the relatively moderate penalties issued by the Local Court and the Respondent's submissions to the effect that the Local Court did not see fit to issue additional penalties available to it under Part 10 of the Act.

Nevertheless, the Authority's disciplinary jurisdiction under Part 9 of the Act serves a broader protective purpose, by comparison to the Local Court's penal jurisdiction when dealing with offences against the Act.

The Authority is satisfied that, notwithstanding the lack of any prior evidence of offences committed by the Respondent against this Act, the flagrant and repeated breaches of the Act that are the subject of this Complaint, committed over the course of just two months, indicates that the Respondent is not a fit and proper person to be the licensee of any licensed premises in New South Wales at this time.

The Authority cannot dismiss the Respondent's conduct as the product of a lack of supervision or a lack of diligence. The Respondent participated in deliberate contravention of the Act and these numerous events cannot be regarded as isolated incidents or a lapse in personal judgment.

Finding on Ground 3

The Authority is satisfied that Ground 3 is established. This Ground is based on section 139(3)(m) of the Act, and it is alleged that the Respondent is a

person who is interested in the business, or in the conduct or profits of the business carried on under the licence, and is not a fit and proper person to be so interested in a licensed business. In support of this Ground, the Complainant relied upon the same evidence or material relied upon in support of Ground 2.

The Authority is satisfied that the Respondent is a "person interested" in a licensed business, being the licensee and owner of the Hotel business. A person interested is defined by section 137(3) of the Act ...

The Respondent has not contested that any of the offences alleged by the Complainant have actually occurred, but has made submissions in mitigation in relation to those offences, including that the offences have already been dealt with by the Local Court by way of a conditional bond and fines and that the Local Court did not impose further penalties in relation to the licence under Part 10 of the Act.

The Authority notes that the Respondent is prepared to transfer the licence to a suitable transferee but this is subject to a proviso that (in the Respondent's words) "acceptable commercial terms" can be reached with any intended "purchaser". However, the findings on this Complaint give rise to serious concerns as to whether the Respondent should be placed in a position of influence or control over the operation of a licensed premises at this time.

The Authority has taken into account the submissions made by the Hotel Premises Owner as to Mr Ogilvie's general character. While accepting that he has been a supportive parent and involved with the local football team, the Authority is nevertheless satisfied that Mr Ogilvie has demonstrated serious failings as to the degree of ability with respect to observance of statutory duties that is expected of a reasonably diligent hotelier.

- 33 The Authority invited submissions in relation to disciplinary action in relation to decision on the grounds of the complaint. Mr Keon made submissions to the Authority in relation to the issue. He submitted:

The offences committed by the licensee, of which he was convicted, are all serious offences, and ones for which he was personally and directly involved. The contraventions are 'prescribed offences' under the 3 Strikes disciplinary scheme, which the government has identified as being the most serious offences under the Act.

The commission of seven offences identified as the most serious under the Act, with direct involvement by the person charged with the responsible supervision of the premises, provides a strong basis for establishing that circumstances of aggravation are present.

Importantly, the facts of this matter go even further. The offences occurred over the course of less than two months, with the licensee present and effectively facilitating the unlawful conduct.

...

The complete inaction by the licensee to take any steps to address patently obvious alcohol related harm that was occurring in front of him on his premises on multiple occasions warrants a finding that circumstances of aggravation exist.

Such actions (or inaction as the case may be) are not consistent with the principle objectives of the Liquor Act 2007 and a clear breach of:

- the expectations, needs and aspirations of the community as set out under section 3(1)(a) of the Act
- the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor as set out under section 3(2)(b) of the Act, and
- the need to ensure the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life as set out under section 3(2)(c) of the Act.

Whilst the initial complaint intentionally left the period of disqualification for points 1 and 2 to the discretion of the Authority, having regard to the above, this Office would suggest that a disqualification period in the vicinity of 5 years would be appropriate in the circumstances.

In terms of other disciplinary action suggested at point 3 above, given the findings of the Authority's decision, the Authority may also be minded to impose a monetary penalty on Mr Ogilvie.

Applicant's Submissions

34 The reference in the Authority's findings to submissions made on behalf of the Applicant is a reference several to submissions by the Applicant's solicitor, Mr Rod Pogson. Those submissions are contained in the material filed by the Authority. In February 2015 Mr Pogson submitted in regard to the severity issue:

This [conviction of offences against the Act] is a matter of public record. I would however comment that in light of Submissions made to the Court when the matters were dealt with on 4 November 2014, including the fact that the licensee has previously not come under notice, His Honour dealt with all the matters by way of a conditional bond and fines. That is, His Honour having heard all the facts did not consider it appropriate to direct, as he was entitled to, that any further action be taken in relation to the licence.

35 In September 2015 Mr Pogson wrote:

I refer to the penalties imposed by His Honour when the matter was originally dealt with in the Albury Local Court, the subsequent objection taken by the Police to my client being involved in the management of the hotel and the further objection then being taken to my client being involved in any way in the operation of the hotel, which would of course deprive my client of any entitlement to derive a livelihood.

36 As noted, the Applicant was not legally represented in these proceedings and no additional submissions were made on his behalf. In his application to the Tribunal he identified the Grounds for Application as:

- (1) Incident has been dealt with in court and ceased.

- (2) Penalties relating to breaches have been harsh and solely borne by Allan Ogilvie
- (3) Additional penalty is unacceptably harsh - given mitigating circumstances
- (4) Since "incident" not one incident has occurred - been 18 months
- (5) Business has restructured and re-defined its market
 - Bar closes at 9pm
 - Younger patrons tend to go to other venues which provide music, entertainment and late night services
- (6) The Motel and Restaurant area has been sublet to other Parties, who have recently taken over these areas.
- (7) Mr Ogilvie, in his late 60s has provided a lifetime of service to the community; he is a popular senior member of the local area who people highly regard and respect. Many children refer to Allan as "Poppy". If required could provide many character references from local community members who would back this up.
- (8) The bar is a family based business, children are welcome but have a designated area which is away from the drinking bar and appropriate, and strictly all under 18 year olds need to be supervised by an adult.
- (9) Poor behaviour is not tolerated and is discouraged from patrons and staff.
- (10) The Albion is not only a Pub it is Allan Ogilvie's Home, has been for the past 8 years.
- (11) Competing Hotel/Pubs are in full support for Allan's right to continue his service at the Albion Hotel.
- (12) If Allan were to be evicted from the Hotel it is evident that this will affect him in many ways including health and well-being; the Albion Hotel is Allan's life and career and would be a sad loss to himself and his regular customers and the local community. Allan has helped many of the local community members in many ways where he has put himself out to help another. Many written references could be provided to support him and the business.

37 Before the Tribunal the Applicant asserted that he was poorly represented in the Local Court hearing and that some of the evidence against him should have been challenged. For example, he stated that there was no evidence to support some of the allegations made in relation to conduct that was said to have taken place on 12 April 2014 because there was no camera to record the conduct and witnesses were not interviewed. The Applicant also disputed Mr

Keon's allegation that there were aggravating circumstances in regard to the incident.

- 38 He points to the fact that Mr Keon had suggested that a disqualification period of five years would be appropriate in the circumstances and submitted that the disqualification period of ten years is excessive.

Consideration

- 39 As noted above, the Authority has taken a limited role in these proceedings and the Applicant has not provided any written submissions. Further, the written submissions that Mr Pogson provided to the Authority were very limited and of little assistance.
- 40 While the Applicant has disputed some of the evidence that was before the Local Court he does not dispute the Court's findings or the fact of the orders made. A copy of redacted Facts Sheets for each of the incidents that were dealt with by the Court is in the material filed by the Authority. I understand that the copies of the Facts Sheets provided to the Tribunal are the same as those that were before the Local Court, but with the identities of individuals redacted. Mr Granziera has advised that a non-publication order was made by the Court in respect of information that might identify a woman who is referred to in one of the Facts Sheet as F1.
- 41 It is apparent from the face of the Facts Sheets that the original has been amended. It seems that these changes are to the Applicant's benefit and it is likely that the changes were a result of discussions between the parties in the Local Court matter. It also appears that the Applicant entered a guilty plea in those proceedings.
- 42 In my view, the findings made by the Authority in relation to the conduct that gave rise to the Local Court orders are reasonable. I am satisfied that the offences occurred as alleged in Mr Keon's Complaint.
- 43 With the exception of the issues that I discuss below, I am also satisfied that the Authority's findings in relation to each of those offences are reasonable.
- 44 The exception concerns that description of the offences as "flagrant and repeated". It is not in dispute that the Applicant has owned the Hotel since

2007 and he became the licensee of the Hotel on 31 October 2013. The offences occurred on 12, 13 and 20 April 2014 and 16 May 2014. Mr Keon correctly noted that this was less than 12 months after the Applicant became the licensee of the Hotel.

- 45 I agree with the Authority's findings in relation to the conduct that occurred in April 2014. There is no doubt that the offences were serious.
- 46 In regard to the 16 May 2014 offence it is apparent from the Facts Sheet that the Applicant disputed the level of the patron's intoxication. The Applicant also indicated that the patron was in fact an employee of the Hotel. I note that the Facts Sheet was not amended to reflect this position and that it is not open for review by this Tribunal.
- 47 I do agree that the Applicant ought to have been fully aware of the requirements of running licensed premises. However, on the basis of the Facts Sheet for the 16 May 2014 offence I do not consider that conduct could be described as "flagrant". In my view it is arguable that this conduct was 'the product of a lack of supervision or a lack of diligence'.
- 48 As noted above, in relation to the offences of permitting indecency and intoxication the Applicant was ordered to pay a fine of \$300. In relation to the 12 April 2014 offences of selling or supplying liquor not in accordance with the authority he was ordered to enter into a good behaviour bond for 12 months. In relation to the 16 May 2014 offences he was ordered to pay a fine of \$400. The maximum penalty for each of the offences of permitting indecency and intoxication was \$11,000. Clearly, the penalties imposed by the Local Court were relatively moderate.
- 49 The role of the Local Court was to impose a penalty to both punish and deter the Applicant from reoffending. In my view there is some merit in the Applicant's argument that the Local Court orders were made having heard all the facts and that the Court did not consider it appropriate to take any further action in relation to the licence. However, I agree with the Authority's comments that the disciplinary jurisdiction under Part 9 of the Act serves a broader protective purpose, by comparison to the penal jurisdiction of the Local Court.

- 50 On the material before me I am satisfied that that the Applicant is not a fit and proper person to be the holder of a liquor licence. I also agree with the Authority's view that a substantial regulatory response is required for the protection of the public and to serve the public interest with respect to the Act.
- 51 However, I have taken account of the changes that the Applicant has put in place since the offences. He has taken responsibility for his actions. As noted, the Applicant has restructured his business and re-defined its market and the bar now closes at 9pm. There have not been any further incidents since the April - May 2014 offences.
- 52 In these circumstances I am satisfied that the public interests will be served if the period of suspension that was proposed by Mr Keon is adopted in place of that determined by the Authority. In my view, a period of suspension of five years should be imposed rather than the 10 years determined by the Authority. The Authority's decision should be otherwise affirmed.

Orders

- (1) The Respondent's decision to disqualify the Applicant from holding a liquor licence for a period of ten years is set aside.
- (2) The Respondent's decision to disqualify the Applicant from being a close associate of a licensee for a period of ten years is set aside.
- (3) In substitution for the Respondent's decisions set out in Order 1 and 2 above, the following decision is made:
 - a. Pursuant to section 141(2)(f) of the Liquor Act 2007, the Applicant is disqualified from holding a liquor licence for a period of five years. This period of disqualification commences with effect from 8 December 2015 with respect to the licensed premises of the Albion Hotel, located at 155 Murray Street, Finley N.S.W. but commences from 24 November 2015 with respect to other licensed premises in New South Wales.
 - b. Pursuant to section 141(2)(j) of the Liquor Act 2007, the Applicant is disqualified from being a close associate of a licensee for a period of five years from 24 November 2015. This period of disqualification commences with effect from the date of this decision with respect to other licensed premises in New South Wales but commences from 24 November 2016 with respect to the

licensed business of the Albion Hotel located at 155 Murray Street, Finley
N.S.W.

I hereby certify that this is a true and accurate record of the reasons for decision of
the Civil and Administrative Tribunal of New South Wales.
Registrar

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