

**Liquor Commission of Western Australia**  
**(Liquor Control Act 1988)**

- Complainant:** Commissioner of Police  
(represented by Mr John Carroll of State Solicitor's Office)
- Respondent** Ms Claire Louise Parker  
(represented by Ms Jessica Patterson of Lavan)
- Commission:** Mr Eddie Watling (Deputy Chairperson)  
Dr Eric Isaachsen (Member)  
Mr Alex Zilkens (Member)
- Matter:** Complaint for disciplinary action pursuant to sections 95 of the  
*Liquor Control Act 1988*
- Date of Hearing:** 30 August 2018
- Date of Determination:** 26 November 2018
- Determination:** Pursuant to section 96(1)(a) of the *Liquor Control Act 1988*, the Respondent is issued a reprimand, and pursuant to section 96(1)(m) of the Act, the Respondent is to pay a monetary penalty of \$1,000 within 60 days of the date of this determination and lodge with the Commission evidence of payment of the penalty within 28 days of making that payment.

**Authorities referred to in the determination**

- *Commissioner of Police v Claire Louise Parker* (LC 03/2018)

## **Introduction and Background**

- 1 Following a complaint made by the Commissioner of Police (“the Complainant”) on 3 March 2017 against the Respondent (“the First Complaint”), the Liquor Commission (“the Commission”) found the First Complaint made out and imposed a number of conditions upon the Respondent by way of disciplinary action pursuant to section 96(1) of the *Liquor Control Act 1988* (“the Act”).
- 2 The conditions, being five in all (the Conditions), are set out at paragraph 22 of the Commission’s decision in *Commissioner of Police v Claire Louise Parker* (LC 03/2018) (“the Decision”), the relevant conditions (three) for the purpose of the current complaint being:
  - a) Ms Parker is not to consume liquor on the licensed premises, they being Cowaramup Brewing Company situated at 233 Treeton Road North, Cowaramup (“the Premises”) at any time, including out of hours;
  - b) Ms Parker is not to be involved in the sale, supply or service of liquor at the Premises, which includes but is not limited to, being behind the bar, or the clearing of glassware from which liquor has been consumed; and
  - d) Ms Parker is to have a blood alcohol level of zero at all times whilst present on the Premises (“the Relevant Conditions”).
- 3 The Commission imposed the Relevant Conditions to remain in force for a period of three years from 26 September 2017.
- 4 By complaint dated 19 February 2018 (“the Current Complaint”), the Complainant made a further complaint against the Respondent pursuant to section 95 of the Act alleging that, on 15 January 2018, the Respondent failed to comply with the Relevant Conditions.

## **Submissions on behalf of the Complainant**

- 5 The Complainant alleges that there is a proper cause for disciplinary action pursuant to section 95(4)(h) of the Act if:

*“A person holding a position of authority in a body corporate that holds the licence, or who is interested in the business or the profits or proceeds of the business, is or becomes not a fit and proper person to hold that position or to be so interested.”*
- 6 The basis for the Current Complaint is an allegation that the Respondent failed to comply with the Relevant Conditions, being that:
  - a. the Respondent consumed liquor on the Premises;
  - b. the Respondent was behind the bar; and
  - c. the Respondent did not have a blood alcohol level of zero while on the Premises.

- 7 The Complainant submits that the Commission should, for a period of five years, disqualify the Respondent from being:
- a. the holder of a position of authority in Stonebay Holdings Pty Ltd that holds special facility licence number 6090104951, pursuant to section 96(1)(g)(i) of the Act; and
  - b. interested in, or in the profits or proceeds of, the business of Stonebay Holdings Pty Ltd that holds special facility licence number 6090104951, pursuant to section 96(1)(g)(ii) of the Act.
- 8 The Complainant relies on the signed statements of four police officers regarding:
- a. the conversations they had with Mr Jeremy Good (a director of the licensee), where Mr Good stated that the Respondent both walked behind the bar at the Premises on 15 January 2018 and drank wine at the Premises on 15 January 2018; and
  - b. the conversation that they had with the Respondent on 15 January 2018, where she made admissions to drinking on the Premises on 15 January 2018.

### **Submission on behalf of the Respondent**

- 9 The Respondent submitted that:
- a. the Current Complaint is based entirely on hearsay evidence, mainly from a drunk and distressed person whose speech was unclear.
  - b. the Current Complaint is not supported by evidence of credible value.
  - c. the allegations in the Current Complaint are strongly denied, which denial is supported by probative evidence.
  - d. there is no basis for any disciplinary action to be taken.
  - e. the Current Complaint should be dismissed.
- 10 The Respondent relies on:
- a. her statutory declaration made on 15 August 2018;
  - b. two statutory declarations of Mr Good, made on 27 March 2018 and 29 August 2018, respectively;
  - c. a statutory declaration of Shane Blount made on 22 August 2018; and
  - d. letters from Dr Gary Wilson dated 27 March 2018 and 28 August 2018.

### **Determination**

- 11 The purpose of the disciplinary action contemplated in section 95 of the Act is to protect the public by maintaining the standards of behaviour for licensees, or a person holding a position of authority in a body corporate that holds a licence, or who is interested in the business or the profits or proceeds of the business. The object of disciplinary proceedings is not to punish those against whom a complaint has been made out.

- 12 The Commission is cognizant that it is a primary responsibility of the licensing authority to provide adequate controls over the persons directly and indirectly involved in the sale, disposal and consumption of liquor and that the professional standards of the industry must be maintained at the highest level.
- 13 In determining whether there is a proper cause for disciplinary action, all that the Commission needs to be satisfied of, on the balance of probabilities, is that the Respondent breached one of the Relevant Conditions as alleged by the Complainant.
- 14 If the Commission finds that the Respondent did breach one of the Relevant Conditions, section 96(1) of the Act outlines the sanctions that may be imposed.
- 15 There is a wide discretion as to the disciplinary action to be imposed and the Commission is required to consider all the circumstances surrounding the conduct complained of and to exercise the discretion accordingly.
- 16 The Commission has reviewed all the material submitted in respect to this matter and heard the submissions of the parties at the hearing.
- 17 The Commission accepts the probative value of the evidence of PC Ward and SC Mule in relation to the events that took place on 15 January 2018, particularly the evidence regarding their conversation with the Respondent.
- 18 The Commission notes the Respondent's statements to PC Ward and SC Mule as described in paragraphs 18 and 20 of PC Ward's statement made on 21 January 2018, being:

*"Claire Parker said "Yes. He hit me because I was drinking in the office" ...I was drinking wine in the office and he came in to stop me. He tried to take the bottle away but I kept drinking from it".*

- 19 The admission was also made to SC Mule as per his statement made on 21 January 2018 at paragraph 9, where he states that:

*"Parker stated she was drinking a bottle of white wine and Wood (sic, Good) took it from her and poured it on her head".*

- 20 The Respondent's statements to PC Ward and SC Mule are admissible even if the declarants had no basis for knowing the truth of the statement.

- 21 The above accounts given by PC Ward and SC Mule are further supported by statements made by Mr Good to Officer Southall and PC Seymour, being:

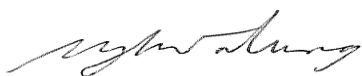
- a. At paragraphs 8 to 13 of Officer Southall's statement made on 19 January 2018, Officer Southall recalls the conversation he had with Mr Good on 15 January 2018, particularly:

*"It became apparent to Jeremy that Claire was intoxicated...Jeremy told me that Claire had walked behind the bar and taken a bottle of wine from the refrigerators and opened it."*

- b. PC Seymour, in his statement made on 24 January 2018, states that on 15 January 2018, Mr Good told him that on that day, the Respondent:
    - i. twice walked behind the bar, and
    - ii. collected a bottle of wine from the Premises and started drinking from it in front of Mr Good.
- 22 The Commission does not accept the Respondent's submissions that the above officers misheard, misunderstood or misinterpreted the information provided by the Respondent and Mr Good.
- 23 Based on the Respondent's admission to PC Ward and SC Mule, the Commission is satisfied that conditions (a) and (d) of the Relevant Conditions were contravened and that there is a proper cause for disciplinary action against the Respondent.
- 24 Where there is a wide discretion as to the disciplinary sanction to be imposed, as specified in section 96(1) of the Act, the Commission is required to consider all the circumstances surrounding the conduct which is the subject of the complaint and to exercise its discretion accordingly.
- 25 On the last occasion, the Commission noted at paragraph 23 in the Decision that:

*“Any transgression of these conditions will be viewed gravely by the Commission and without pre-empting matters, there would be a strong likelihood that the Commission, if satisfied that there were further grounds for disciplinary action, would impose the penalties advocated by the Police in this matter.”*
- 26 Although the Decision is highly relevant, the Commission is not bound to impose the penalties advocated by the Complainant.
- 27 The Commission acknowledges the steps that the Respondent has taken to treat her alcoholism and the progress she has made, as evident at the date of the hearing, and from Dr Wilson's letter dated 28 August 2018.
- 28 The Commission also notes the significant set-back for the Respondent personally and professionally in terms of her health and progress in managing and defeating alcoholism that an adverse finding may have.
- 29 At the same time, the Commission recognises the serious nature of the Complaint, particularly in circumstances where the Respondent has previously been given a “second chance” if she complies with the Conditions. The fact that the Respondent has failed to comply with the Relevant Conditions is serious indeed.
- 30 During the hearing, the Complainant raised the issue in relation to a requirement to install closed-circuit television video (CCTV) footage at the Premises as a disciplinary action in circumstances where the Commission is not minded to disqualify the Respondent.

- 31 The Commission requested that the parties file their submissions on the issue following the hearing.
- 32 On 3 September 2018, the Complainant submitted that there is no power for such disciplinary action to be taken in the circumstances of this case, where the licensee is not a respondent to the Current Complaint. The Complainant therefore did not press for such disciplinary action as an alternative to the disciplinary action sought in the Current Complaint.
- 33 On 19 September 2018, the Respondent submitted that:
- a. the opinion of the Complainant set out in his representative's email of 3 September 2018, is incorrect;
  - b. s96(1)(b) of the Act clearly provides the Commission with the requisite power;
  - c. nothing in that section requires the licensee to have been a respondent to, or even appeared at, the hearing in order for the Commission to exercise that power; and
  - d. in this regard and to assist the Commission, the licensee would be prepared to accept the installation of CCTV should the Commission consider it appropriate.
- 34 The Commission agrees with the Complainant that there is no power under the Act to impose a condition on a licence where the Respondent is not the licensee.
- 35 Nonetheless, as observed in paragraphs 27 and 28 above, the Respondent has made progress in addressing the issues she has with alcohol and the Commission has taken this factor into careful consideration, particularly the fact that an adverse finding will have a significant impact on the Respondent's health improvement continuing.
- 36 The Commission recognises that the 15 January 2018 breach is the only contravention of the Conditions to date since they were imposed on 26 September 2017 and whilst this is still most concerning, particularly in the light of the direction given in paragraph 23 of the original decision (LC 03/2018), the Commission is prepared to accept that the incident is an aberration in what has been a period of progress in treating her condition.
- 37 However, the serious nature of the breach does require disciplinary action and pursuant to section 96(1)(a) of the Act, the Respondent is issued a reprimand, and pursuant to section 96(1)(m) of the Act, the Respondent is to pay a monetary penalty of \$1,000 within 60 days of the date of this determination and must lodge with the Commission evidence of payment of the penalty within 28 days of making that payment.
- 38 The conditions applied in LC 03/2018 remain in full force and effect.



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**EDDIE WATLING**  
**DEUPTY CHAIRPERSON**