

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Complainant: Commissioner of Police
(represented by Mr Jesse Winton of State Solicitor's Office)

First Respondent ASMC Group Pty Ltd

Second Respondent Mr Marco Mancini

Commission: Mr Alex Zilkens (Presiding Member)
Ms Pamela Hass (Member)
Ms Wendy Hughes (Member)

Matter: Complaint for disciplinary action pursuant to section 95 of the
Liquor Control Act 1988

Premises: Mirage Palace, 88 James Street, Northbridge

Date of Hearing: 5 September 2018

Date of Determination: 10 December 2018

Determination:

The Commission finds the complaint has been made out to a satisfactory standard such that proper cause for disciplinary action exists on the following terms:

- 1) Pursuant to section 96(1)(e) of the *Liquor Control Act 1988*, restaurant licence number 606207375815 is cancelled.
- 2) Pursuant to section 96(1)(g) of the *Liquor Control Act 1988*, Mr Marco Mancini is disqualified for a period of 18 months from the date of the determination from being a holder of a position of authority in a body corporate that holds a licence, or from being interested in, or in the profits or proceeds of, a business carried on under a licence.

Background

- 1 ASMC Group Pty Ltd (the First Respondent) has held a restaurant licence (licence number 606207375815) (“the licence”) for Mirage Palace since 15 April 2016. Mirage Palace is situated at 88 James Street in Northbridge (“the Premises”) and the manner of trade is a karaoke themed restaurant with 10 individual rooms for hire.
- 2 Since 26 March 2018, Mr Marco Mancini (“the Second Respondent”) has been the sole director and company secretary of ASMC Group Pty Ltd.
- 3 By way of a complaint dated 26 June 2018, the Commissioner of Police (“the Police”) commenced disciplinary action pursuant to section 95(4) of the *Liquor Control Act 1988* (“the Act”) against the first and second respondents.

The Complaint

- 4 The Police submit as per their complaint dated 26 June 2018:
 - (1) the Premises are not properly managed in accordance with the Act, contrary to section 95(4)(b) of the Act;
 - (2) the First Respondent has contravened a requirement of the Act and a term of the licence, contrary to section 95(4)(e)(i) of the Act;
 - (3) the continuation of the licence is not in the public interest, contrary to section 95(4)(j) of the Act; and
 - (4) the safety, health or welfare of persons who resort to the Premises is endangered by an act or neglect of the First Respondent, contrary to section 95(4)(k) of the Act.

The Police rely on 11 incidents that occurred on five separate occasions between 15 April 2018 and 6 May 2018. The details of the incidents are conveniently summarised in a document named “Aide Memoire to alleged incidents” prepared for the hearing by the Police. At the hearing, the Police withdrew incident 9. The Second Respondent took no issue with the description of the incidents as set out in the aide memoire, except for incident 13.

- 5 The incidents are as follows:

#	Date	Description
1	15 April 2018	Failure to record personal details of a patron involved in an incident
2	15 April 2018	Hostess raising dress to expose underwear to a patron on two occasions
3	15 April 2018	Patron removing the underwear of a hostess
4	15 April 2018	Sale of 72 shots of liquor, being in a manner other than as authorised by the licence
5	25 April 2018	Failure to record the prescribed details of Mr Ching Yu Yuen

#	Date	Description
6*	25 April 2018	Failure to record patrons' time of arrival, the time at which food was served, and the time at which liquor was served
7*	25 April 2018	Failure to record the service of alcohol to patrons on at least six occasions
8	25 April 2018	Hostess permits patron to fondle her buttocks before the patron, and then inserts his finger into her anus (which appears to have been done without her consent)
9		<i>Withdrawn</i>
10*	29 April 2018	Failure to record patrons' time of arrival, the time at which food was served, and the time at which liquor was served
11	29 April 2018	Failure to record the prescribed details of Mr Jing Yu Khor
12	5 May 2018	Hostess permits a patron to digitally penetrate her vagina for an extended period
13	6 May 2018	It is inferred from the CCTV footage the Hostess engages in sexual activity with a patron inside an ensuite bathroom within a private dining area <i>Disputed by the second respondent</i>

- 6 It is noted on 27 November 2017 the Director of Liquor Licensing found the Premises was not being managed in a manner which was consistent with the public interest or in accordance with the conditions of its licence. Further conditions were imposed on the licence. Incidents 6, 7 and 10 are contraventions of the new conditions of the licence.
- 7 The Police submit given the concessions made by the Second Respondent as to the incidents, it logically follows that all four grounds of complaint as outlined in paragraph 4 have been made out, with specific emphasis on grounds 1 and 2. The Police further submit continuation of the licence is not in the public interest given the nature of the incidents.
- 8 The Police submitted that, if a proper cause for disciplinary action against the first and second respondents has been established, the Commission should take the following disciplinary action:
- a. in respect to the First Respondent, cancellation of the licence pursuant to section 96(1)(e) of the Act; and
 - b. in respect to the Second Respondent, disqualify the Second Respondent for a period the Commission thinks fit, from being:
 - i. the holder of a position of authority in a body corporate that holds a licence; or
 - ii. interested in, or in the profits or proceeds of, a business carried on under a licence, pursuant to section 96(1)(g) of the Act.

Submissions on behalf of the Respondent

- 9 The Second Respondent confirmed at the hearing he had received all of the material received by the Commission on 28 June 2018 from the Police. There was no issue taken with any of the material submitted nor with any of the incidents relied on by the Police in support of the complaint, except for incident 13 as previously indicated. In addition, as previously stated, incident 9 was withdrawn by the Police at the hearing.
- 10 In relation to incident numbers 2, 3, 8, and 12, referred to at the hearing as “the lewd acts”, the Second Respondent pressed that the behaviour of the hostesses was not condoned by management and explained in oral submissions the difficulty with monitoring all employees at all times whilst on the premises. The Second Respondent submitted there had been upgrades to the premises’ CCTV system and cameras were now installed in all rooms, walkways and entrances, which would allow for better monitoring of employees including the hostesses. It was further submitted that “management” were dissatisfied with the previous recruitment company that was responsible for the hiring of staff, including the hostesses.
- 11 In relation to incident numbers 5, 6, 7 and 10, referred to at the hearing as “failures to record the service of food and alcohol”, the Second Respondent submitted the new point of sale system will assist in the control and monitoring of the service of alcohol and food and in particular the supply in each individual room. Further, it was expected the new point of sale system will also assist with keeping better records.
- 12 In relation to incident numbers 1 and 11, referred to at the hearing as “the failure to record personal information”, the Second Respondent was unable to explain why this occurred and noted it had previously been admitted by the Second Respondent. The Second Respondent submitted they are now using Scantek ID scanner to ensure proper customer identification is kept and advised that security will be employed during busy times, being Thursday to Saturday.
- 13 In relation to incident 4, referred to at the hearing as “the breach of the condition of licence”, it was alleged the Second Respondent is in breach of a condition of its licence, namely that the sale of liquor for consumption on the premises is to be ancillary to the meal supplied. At the hearing the Commission put to the Second Respondent that platters of food containing fruit or spring rolls, such as the case in incident 4, did not meet the definition of a meal either in its ordinary meaning or within the definition provided in the Act. The Second Respondent did not disagree and expressed difficulty with the patrons having a strong preference for these type of snack foods. The Second Respondent submitted considerable effort had gone into improving the menu with the goal to improve the quality of the restaurant and attract more patrons to have dinner at the premises. The Second Respondent explained the premises’ opening hours were now earlier at 6pm and a targeted marketing plan had been implemented through Groupon, Chinese Radio and Most WA Media.
- 14 In general, the Second Respondent submitted that he and management had made mistakes but that he had learnt from these mistakes. The Second Respondent also advised the Commission that he had already paid a \$2,000 fine earlier in relation to other breaches.

Determination

- 15 The Commission may, where a complaint has been lodged under section 95 of the Act, take disciplinary action provided it is satisfied, on the balance of probabilities, that the ground(s) upon which the complaint is based has, or have, been made out.
- 16 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.
- 17 However, in determining the appropriate penalty to impose, a consideration may be the need to deter others of a like mind to transgress in the future.
- 18 The Commission has considered all of the evidence and the submissions from both parties and has determined that all four grounds have been made out.
- 19 In relation to incident numbers 1 and 11, the Commission is satisfied the implementation of the Scantek ID scanner and employing security at busy times will overcome problems surrounding the recording of personal information.
- 20 However:
 - a. In relation to Ground 1, that the licensed premises are not properly managed in accordance with the Act, contrary to section 95(4)(e)(i), the Commission is satisfied the lewd acts (incidents 2, 3, 8, and 12) and failures to record the service of food and alcohol (incidents 5, 6, 7 and 10) is evidence the premises is not being managed in accordance with the Act.
 - b. The Commission finds those incidents directly involved the safety of staff, the sale of liquor and harm minimisation.
 - c. Given the number and repeated nature of the incidents, it indicates these were not isolated incidents and not only were management unable to prevent these incidents from occurring in the first place, but they were also unable to prevent them from occurring subsequently.
 - d. The fact incidents 6, 7 and 10 occurred after further conditions were imposed on the licence in November 2017, is further evidence of the extent of the problem management had with managing the sale of liquor in accordance with the Act, which is a central objective of the Act.
 - e. Whilst the Commission agrees further upgrades to the premises CCTV footage and the point of sale system may assist management with these issues, ultimately it is the responsibility of management to ensure that the safety of its staff and the sale of liquor are in accordance with the Act.

- f. The Commission is also of the view further improvements to the CCTV system should ordinarily be unnecessary given the licence is a restaurant licence, which is supposed to be by its nature low risk.
- g. Accordingly, the Commission finds that ground 1 has been made out to the required standard.

21 In relation to Ground 2, that the First Respondent has contravened the Act and licence, it is noted that:

- a. The primary focus of the business to be conducted under the current terms of its licence is *the provision of meals, with the supply of liquor being a subordinate component of that business*.
- b. The original Public Interest Assessment stated at paragraph 2.26 under the heading "harm minimisation" that "*the directors of ASMC Group Pty Ltd are passionate about the business concept and its main purpose as a quality restaurant that offers karaoke facilities*".
- c. Evidence the Premises was not operating as restaurant includes the nature of the food being served not being substantial (accepted as being fruit platters, potato chips, chicken wings and spring rolls), no cutlery being supplied or used by the patrons on the premises and the supply of food was secondary to the supply of alcohol, in terms of both quantity and cost.
- d. The Commission finds Incident 4 was a particularly serious example of this.
- e. There is also further evidence before the Commission that a large proportion of the expense to the patrons was the cost of the party hostesses, which is also inconsistent with a restaurant licence.
- f. The Second Respondent has taken measures to try and improve the reputation of the premises and attract patrons for dinner.
- g. However, the Commission has formed the view even with the improved menu, earlier opening time and targeted marketing plan, it is unlikely the current reputation of the premises is going to change markedly to ensure the business is operating in accordance with its current licence.
- h. Accordingly, the Commission is satisfied that the Premises is trading in a manner inconsistent with its restaurant licence and finds Ground 2 has been made out to the required standard.

22 In relation to Ground 3, that the continuation of the licence is not in the public interest:

- a. The Commission finds the lewd acts (incidents 2, 3, 8, and 12), the failures to record the service of food and alcohol (incidents 5, 6, 7 and 10) and the contravention of the current licence (incident 4) are evidence the business is trading in a manner contrary to the primary objectives of the Act.

- b. As indicated previously, when applying for the licence the First Respondent submitted in the Public Interest Assessment that *“the nature of the proposal was to be low risk”*, that the Premises has a *“strong and obvious focus on both meals and karaoke”* and that *“every effort will be made by the Applicant to conduct business under the new licence in a manner that minimises the potential or ill health”* (Complaint, Attachment A [2.15], [2.19] and [2.26]).
- c. In granting the First Respondent’s licence, the Director of Liquor Licensing noted that restaurants are “by their very nature” considered to be lower risk, as the sale of liquor was only authorised when ancillary to the supply of a meal (Complaint, Attachment C, [30]).
- d. Attempts have been made to assist the business to improve its manner of trade to bring it in line with the primary objects of the Act, however further incidents have occurred.
- e. Accordingly, the Commission finds the continuation of the licence is not in the public interest and Ground 3 has been made out to the required standard.

23 In relation to Ground 4, that the safety, health or welfare of persons is endangered:

- a. The Commission finds that the lewd acts (incidents 2, 3, 8, and 12) is evidence that the safety, health or welfare of the staff, in particular the hostesses, is endangered.
- b. Whilst incident 8 did not result in criminal charges, it is of particular concern to the Commission as the second act involving the incident appears to have been done without the consent of the hostess involved.
- c. The change in hiring practices and better monitoring of staff of premises may assist, however the Commission finds the incidents occurred as a result of a permissive attitude of management that has allowed the business to develop a reputation of allowing this type of conduct towards hostesses.
- d. Accordingly, the Commission finds ground 4 has been made out to the required standard.

24 In relation to the Second Respondent, the Commission finds:

- a. The incidents relied upon in support of the complaint, were at least in part, and not an inconsiderable part, attributable to the Second Respondent’s failure to take all reasonable steps to secure the First Respondent’s compliance with the Act.
- b. There were repeated breaches even after the Second Respondent being on notice that the Liquor Enforcement Unit were investigating the management of the premises.
- c. Fundamental to the Second Respondent’s role as the director is to ensure the premises is being operated in accordance with its licence. As director the Second Respondent allowed snack type foods to be served as it was the preference of patrons, secondary to the sale of alcohol. This is just one example relied on by the Commission.
- d. Accordingly, the Commission is satisfied it is appropriate to impose a penalty on the Second Respondent pursuant to section 164(1a) of the Act.

Orders

25 The Liquor Commission makes the following orders:

- 1) Pursuant to section 96(1)(e) of the *Liquor Control Act 1988*, restaurant licence number 606207375815 is cancelled.
- 2) Pursuant to section 96(1)(g) of the *Liquor Control Act 1988*, Mr Marco Mancini is disqualified for a period of 18 months from the date of the determination from being a holder of a position of authority in a body corporate that holds a licence, or from being interested in, or in the profits or proceeds of, a business carried on under a licence.



ALEX ZILKENS
PRESIDING MEMBER