

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

- Complainant:** Commissioner of Police
(represented by Ms Aleksandra Miller of the State Solicitor's Office)
- First Respondent:** Hades Corp Pty Ltd
(represented by Ms Elmi Carlean as counsel and Ms Hayley Reeve of Forbes Kirby Lawyers)
- Second Respondent:** Mr Lenno Joseph Parasuraman (director and shareholder of Hades Corp Pty Ltd)
(represented by Ms Elmi Carlean as counsel and Ms Hayley Reeve of Forbes Kirby Lawyers)
- Commission:** Ms Emma Power (Acting Chairperson)
Mr Nicholas van Hattem (Member)
Dr Kim Hames (Member)
- Matter:** Complaint for disciplinary action pursuant to section 95 of the *Liquor Control Act 1988*
- Premises:** Millennium Restaurant
74A Francis Street, Northbridge
- Date of Hearing:** 11 November 2021
- Date of Determination:** 8 February 2022

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. The First Respondent Hades Corp Pty Ltd is to pay a monetary penalty of \$30,000 pursuant to section 96(1)(m) of the *Liquor Control Act 1988* within 4 months of 8 February 2022 and lodge with the Commission evidence of payment of the penalty within 28 days of making the payment.

2. The Restaurant Licence of Millennium Restaurant (Licence Number 606208120615) is varied as set out in paragraphs 3 and 4 below:
3. Under “Trading Hours” the current condition is deleted and replaced with the following:

“The trading hours are between 10:00am and 3:00am seven days a week and otherwise as prescribed in s 98F of the Act.”
4. The following conditions are added under the heading “Responsible Service of Alcohol (“RSA”)” as clauses (h), (i), (j), (k), (l) and (m)”
 - “h) *No liquor is to be sold or supplied for consumption on the Premises in any of the following ways:*
 - i) *no liquor is to be supplied in a vessel with a capacity exceeding 600 ml, except bottles of wines;*
 - ii) *no spirit-based beverages are to be supplied in vessels with a capacity exceeding 375 ml; and*
 - iii) *in measurements of spirits that exceed 45 ml in any vessel. For the purpose of this condition the term “spirits” means potable spirit which at 20 degrees Celsius contains more than 20.06 per cent ethanol by volume.*
 - i) *The business conducted at the Premises must consist primarily and predominantly of the regular supply to customers of meals to be eaten at the Premises.*
 - j) *Subject to conditions k) and l) below liquor must not be consumed by a person on the Premises except ancillary to a meal supplied by the licensee to that person.*
 - k) *Each person or group or persons attending the Premises and consuming alcohol must order and be served enough food to be considered a genuine “meal” for each such person in the manner defined in the Act.*
 - l) *the Licensee may only supply liquor to a person from the period between the person ordering the “meal”, and the earlier of:*
 - i) *90 minutes after the person received the “meal”;* or
 - ii) *120 minutes after the person ordered the “meal”.*
 - m) *Staff, employees and agents of the licensee are not permitted to consume liquor at the premises. “Agents” includes “party hostesses” or persons engaged to provide entertainment of any kind.”*

BACKGROUND

1. The First Respondent is the licensee of Millennium Restaurant (Licence Number 606208120615) (“the Licence”) situated at 74A Francis Street, Northbridge WA 6003 (“the Premises”).
2. The Premises trades as a karaoke themed restaurant with individual rooms to hire. The rooms are set up with mainly shorter coffee tables and lounge settings rather than typical restaurant-style dining tables and chairs.
3. The First Respondent has held the restaurant Licence for the Premises since 20 December 2019.
4. The Second Respondent was the sole director and secretary and a shareholder of the First Respondent at the time of the events comprising the complaint and remains in that position.

THE COMPLAINT

5. By the Complaint dated 15 July 2021 signed by Mr Dale Bell as Delegate of the Commissioner of Police, the Complainant alleges that there is a proper cause for disciplinary action against the First and Second Respondents on six grounds:

- Ground 1 The Premises are not properly managed in accordance with the Act (section 95(4)(b));
- Ground 2 The First Respondent has contravened a requirement of the Act or a term or condition of the Licence (section 95(4)(e)(i));
- Ground 3 The First Respondent has been given an infringement notice under section 167 and the modified penalty has been paid in accordance with section 95(4)(fa);
- Ground 4 A person holding a position of authority in a body corporate that holds the licence, or who is interested in the business or profits or proceeds of the business, is or become not a fit and proper to hold that position or be so interested (section 95(4)(h));
- Ground 5 The Licence has not been exercised in the public interest (section 95(4)(j)); and
- Ground 6 The safety, health or welfare of persons who resort to the Premises is endangered by an act or neglect of the First Respondent (section 95(4)(k)).

THE COMPLAINT

Background

6. Prior to the First Respondent holding the Licence, the same was:
 - a. held by Iconic Water Solutions Pty Ltd and operated under the trading name Subaru Karaoke Restaurant; and
 - b. the subject of a complaint under section 95 of the Act by the Commissioner of Police dated the 11 April 2019 (“the Prior Complaint”).

7. The Prior Complaint was determined by the Commission and resulted in additional conditions being placed on the Licence with respect to managing the Premises appropriately and in accordance with the type of Licence.
8. The Prior Complaint also noted that any further transgression of the new conditions by the then licensee would be viewed gravely by the Commission.
9. The Second Respondent is also the sole director and shareholder of “*Island Protective Services International*” being a Crowd Control Agent under the *Security and Related Activities (Control) Act 1996*.

Grounds of Complaint

10. The grounds of the Complaint relate to seven incidents that occurred at the Premises between 24 January 2020 and 29 April 2021 summarised as follows:

Incident	Date	Description
1	24 January 2020	Patrons found in possession of drugs at the Premises while hostesses were present.
2	24 May 2020	Hostess identified herself as employee but unable produce RSA certificate.
3	6 July 2020	Hostess reports to police that while working a Millennium she had four to five shots of Hennessey and alleged that her drink had been spiked.
4	2 August 2020	Patrons using drugs at the Premises; Hostesses engaging in drug use with patrons; Patrons free-pouring liquor; hostess pouring liquor into patron's mouth; Hostess performing lap dance for female patron; patron touching woman indecently; Fight at the Premises between patrons; and No substantial meals provided to this group of patrons.
5	4 September 2020	Staff permitting patrons to free-pour liquor in rooms; and Not monitoring to ensure that liquor consumed in a responsible matter.
6	8 November 2020	Patrons using drugs at the Premises and facilitated to do so by hostess; Hostess exposing her underwear and lap-dancing; Patron indecently touching hostess's backside and crotch; Patrons free-pouring liquor; and Sales receipts show liquor being sold in disproportionate amounts to food.
7	29 April 2021	Patrons free-pouring liquor; and Sales receipts show liquor being sold in disproportionate amounts to food.

Incident 1 - 24 January 2020

11. WA Police Liquor Enforcement Unit (“LEU”) officers attended the Premises and conducted a check of all occupied rooms.
12. In room 38 two male patrons appear to be holding a cannabis cigarette. When LEU officers entered the room:
 - a. one of the patrons dropped a small clip seal bag containing what appeared to be cannabis;
 - b. the occupants of the room were asked to empty their pockets; and
 - c. one of the occupants removed a clip seal bag containing three pink pills from his pocket.
13. At the time there were four male patrons and three female hostesses/agents in the room. The male patron found in possession of the drugs was subsequently issued with a Drug Diversion Notice.
14. Incident 1 establishes Grounds 1, 4 and 5.

Formal Engagement with First and Second Respondent

15. On 11 February 2020, LEU officers conducted a formal engagement with the First Respondent represented by the Second Respondent.
16. The LEU discussed the following matters with the Second Respondent:
 - a. camera angles in several karaoke rooms did not capture all areas within the rooms as required by the conditions of the Licence;
 - b. the CCTV system was unable to retain footage for 28 days as required by the conditions of the Licence;
 - c. the fully transparent safety glazing to the large karaoke room did not allow people in the corridor to view the whole room, due to blind spots, as required by the conditions of the Licence ;
 - d. the definition of a 'meal as food';
 - e. that patrons must be seated while consuming liquor;
 - f. the Crowd Control conditions of the Licence ;
 - g. that an RSA qualified member of staff must be assigned to each room and serve all liquor in that room as required by the conditions of the Licence;
 - h. that no bottles of spirits (opened or unopened) may be left unattended with patrons as required by the conditions of the Licence;
 - i. that there be no self-service of alcohol by patrons as required by the conditions of the Licence;

- j. no unconsumed liquor purchased at the Premises may be taken from the Premises by patrons; and
- k. the meaning of the 'Entertainment Condition', in the Licence.

COVID-19 Closure

- 17. The Premises were then closed in accordance with *the Emergency Management Act 2005 (WA)* ("EMA") from 23 March 2020 until 17 May 2020.

Incident 2 - 24 May 2020

- 18. LEU officers attended the Premises.
- 19. LEU officers spoke with a female hostess/agent who identified herself as an employee. This hostess was not signed in as an employee, she was not on the RSA register and she was unable to produce her RSA certificate. LEU officers advised the approved manager of the current EMA direction relating to the maximum number of patrons allowed in the Premises at any one time.
- 20. LEU officers placed a requirement on the Premises to comply with the current EMA direction which was complied with. The female was also asked to leave the Premises. Hades was given a formal caution for this breach.
- 21. Although the Respondents assert that the relevant person was attending the Premises for the purposes of a work trial this is inconsistent with the information provided to police as the person is recorded as having identified themselves as an employee of Millennium Restaurant.
- 22. Incident 2 establishes Grounds 1 and 2.

Incident 3 – 6 July 2020

- 23. On 6 July 2020, a female patron attended the Perth Police Station. Such person advised police:
 - a. her drink was spiked; and
 - b. she was employed by Hades as a hostess.
- 24. Although the Respondents assert that the relevant person was attending the Premises for the purposes of a work trial this is inconsistent with the information provided to police as the person is recorded as having identified themselves as an employee of Millennium Restaurant.
- 25. Incident 3 establishes Grounds 1 and 2

Incident 4 – 2 August 2020

- 26. Police assistance was required due to a fight which occurred in a private room of the Premises.

27. The CCTV footage obtained for room 38 at Millennium shows numerous breaches of the Licence trading conditions. In summary, the CCTV footage shows:
- a. a parade of hostesses being presented to patrons, from which patrons select three hostesses to remain in the room;
 - b. alcohol being served in the form of entire bottles of vodka and other spirits;
 - c. patrons pouring their own liquor on numerous occasions, including without mixers;
 - d. a hostess pouring liquor directly into a patron's mouth;
 - e. patrons using illicit substances, including snorting lines of what appears to be cocaine from the table;
 - f. hostesses dancing in a lewd manner with patrons, performing lap dances, sitting on a patron's lap, and kissing a patron, in breach of the entertainment condition placed on the Licence (being the hostess wearing the light coloured halter cross top); and
 - g. a male patron touching a woman indecently between the legs, including while a hostess wraps her arms around them and dances with the pair.
28. Hostesses were present during these incidents and can also be seen engaging in drug use together with patrons.
29. Sale receipts indicate that entire bottles of spirits were sold to room 38, together with only three plates of finger food, as well as non- alcoholic drinks.
30. During the course of the evening:
- a. the room occupancy varied from 13 to 17 persons;
 - b. the patrons consumed significant amounts of liquor from 9:18pm on 1 August 2020, until 1:00am on 2 August 2020, a period of about four hours; and
 - c. at no stage were the patrons provided with any substantial food or a meal, nor did it appear that most of the patrons consumed the limited food provided.
31. A fight occurred between the male patrons at 1.04 am.
32. Resulting from Incident 4, six infringement notices were issued for breaches identified under section 110(1)(aa) of the Act. These infringements were paid by the First Respondent.
33. Incident 4 establishes Grounds 1, 2, 3, 4 and 5.

Formal Engagement with First and Second Respondent

34. On 20 August LEU officers conducted a formal engage with the First respondent and Second Respondent regarding Incident 4.

35. The Second Respondent was spoken to regarding his current business model and advised that he should consider an alternate type of licence (Special Facility). Resulting from this engagement, Mr Parasuraman agreed that he would ensure that:
- a. RSA staff are present in all rooms;
 - b. bottles would be removed from the rooms;
 - c. patrons would be screened prior to entry;
 - d. greater training would be given to staff/ hostesses;
 - e. all patrons had a meal; and
 - f. meals be made available approximately 20 minutes after arrival.
36. The Second Respondent further agreed that while operating with a restaurant liquor licence, alcohol should only be provided ancillary to a meal. The definition of a genuine meal was outlined again to the Second Respondent at this time.

COVID-19 Restriction Breaches

37. There were five breaches of capacity restrictions under the *Closure and Restriction (Limit the Spread) Directions No. 5* identified at the premises between 2 August 2020 and 9 August 2020.
38. The Commissioner submits this indicates a blatant disregard for authority and community safety by Hades and Parasuraman. Even after receiving a formal caution on 2 August 2020, the Premises again breached the EMA directions immediately afterwards on 8-9 August 2020.

Incident 5 – 4 September 2020

39. LEU attended the Premises and identified several breaches of the Licence.
40. The CCTV footage identified that RSA staff allowed patrons to free pour their own liquor in room 28 and were not monitoring the room to ensure that liquor was consumed in a responsible matter.
41. This resulted in three infringement notices issued. These infringements have been paid by the First Respondent.
42. Incident 5 establishes Grounds 1, 2 and 3.

Incident 6 – 8 November 2020

43. LEU officers requested and reviewed CCTV footage from 8 November 2020.
44. The CCTV footage for room 118, identified the following incidents:
- a. that two entire bottles of vodka were decanted into jugs by a RSA officer and patrons were self-pouring liquor from the jugs;

- b. a RSA officer did not remain in the room the entire time during the night, as required by the Licence;
 - c. a patron ("Patron 1") giving a large amount of cash to the RSA officer in the room. The RSA officer then leaves the room;
 - d. alleged use of illicit substances by patrons;
 - e. a female hostess points out the CCTV camera to the patrons allegedly using illicit substances and then points out a blind spot of the camera;
 - f. the RSA officer is in the room during the alleged illicit substance use either assisting patrons with the karaoke machine or sitting down looking at his phone;
 - g. a patron cuddling and kissing a hostess;
 - h. A hostess lifting her skirt exposing her underwear, backing up toward the male, twerking and sitting on his lap. The male indecently touches her backside and between her legs numerous times. Some of this touching appeared non-consensual; and
 - i. another patron can also be seen kissing a different hostess at various points during the night.
45. The Respondents submit that the women in the room engaging in lewd acts and facilitating illicit drug use were patrons and not hostesses. However it is open for the Commission to be satisfied that the woman wearing a blue top and black skirt (who points out the camera blind spot) is associated with the Premises due to the manner in which she greets a known hostess.
46. At the hearing, counsel for the Respondents was asked whether there was any reasonable inference open, other than the substances being consumed being illicit or controlled substances. Counsel did not propose any other reasonable inference being available.
47. It is clear that the Respondents' business model involved the provision of "hostesses" to entertain patrons on this occasion, and that there was insufficient monitoring of patrons' activities in the karaoke room. Further, the men taking illicit substances are right next to the RSA officer who is insufficiently monitoring the room and was provided with a large amount of cash.
48. The Respondents also submit that all liquids poured by patrons on this occasion were non-alcoholic drinks.
49. The Complainant accepts that, given the lack of labels, it is difficult to determine conclusively whether drinks poured by patrons on every occasion were alcoholic or not. However, the Commission can be satisfied that liquor was being self-poured by a patron at least on the two occasions as shown on the CCTV footage.
50. Further, it is clearly apparent on the footage that the manner of alcohol service on this occasion was not in accordance with the licence conditions and created a risk that patrons could self-pour straight spirits. This is because it is clear that two entire bottles of vodka were decanted and available to patrons in two clear jugs, and that on numerous occasions during the night patrons had access to the table where the alcohol was present without the RSA officer supervising them. This method of serving alcohol was in breach of conditions requiring

alcohol to be served by way of table or bar service, and circumvented the condition that no unopened bottles of spirits be left with patrons.

51. Further, it is apparent on the footage that alcohol was not being consumed as ancillary to a genuine meal.
52. Sales receipts for 7/8 November 2020 for rooms 118, 48, 78 and 168 show that alcohol had been served in disproportionate amounts to food. In particular, receipts showed sales of numerous full bottles of spirits and other alcoholic drinks together with only several plates of appetisers only such as fruit, chicken wings or squid rings.
53. Resulting from this incident, five liquor infringement notices were issued. These infringements have been paid.
54. Incident 6 establishes Grounds 1, 2, 3, 4 and 5.

Incident 7 – 29 April 2021

55. During a routine compliance check, LEU officers required the approved manager to present dockets for all of the rooms at Millennium.
56. The dockets showed that liquor sale was the primary focus at the Premises and patrons barely ordered any food.
57. Some dockets did not have any assigned RSA staff.
58. LEU officers witnessed patrons collecting liquor from the bar, and RSA staff not remaining in the room as required by the Licence.
59. LEU officers conducted an interview with the Second Respondent, however, he refused to answer the questions that were put to him regarding the breaches of the Licence conditions.
60. It was ascertained that CCTV cameras were operational and recording.
61. As a result of this investigation Hades and Parasuraman received a further three Liquor Infringements each. These were not paid at the time the Complaint was made but have been subsequently paid.

Infringement Notices

62. In respect to section 167(7)(a) of the Act as referenced by the Respondents, the Complainant does not assert that the payment of the infringement notices by the Respondents constitutes an admission of the conduct but is rather a ground for disciplinary action pursuant to section 95(4)(fa) of the Act.
63. Accordingly, this cause for disciplinary action is clearly made out and the Commission is empowered to take disciplinary action in accordance with section 96 of the Act on this basis. This is not inconsistent with section 167 of the Act, and the Complainant relies upon the other evidence presented with the Complaint to establish the incidents giving rise to the issuing of the infringement notices.

Measures Taken in Response to the Incidents

64. The Respondents submit that following Incident 4, the Respondents suspended the relevant hostesses, implemented further staff training, expanded the food menu and did not permit open bottles of liquor in karaoke rooms.
65. The decision to no longer permit open bottles of spirits in karaoke rooms arose out of formal engagement by the Liquor Enforcement Unit (LEU) with Mr Parasuraman, during which LEU officers discussed the business model with Mr Parasuraman as well as the licence conditions.
66. It is apparent from the subsequent incidents at the Premises that the measures implemented by the Respondents following Incident 4 were not effective in ameliorating all responsible service of alcohol issues at the Premises.
67. It is apparent that the termination of the approved manager following Incident 5 and the replacement of all staff within six months, and further staff training have likewise been ineffective.
68. Subsequent incidents show that:
 - a. liquor continued to be a primary focus for patrons as opposed to merely ancillary to a meal; that very large quantities of liquor were sold on several occasions; that staff have not been complying with the conditions imposed on the licence - namely that an RSA officer be present in karaoke rooms unless collecting liquor; and
 - b. liquor was not being served by way of bar or table service as required by the licence, and instead spirits were decanted into jugs which were at times left unattended with patrons, defeating the purpose of the decision not to permit entire bottles of spirits in karaoke rooms (Incidents 4 - 6).
69. The issues continued at the Premises until at least April 2021, a period extending significantly beyond the measures said to have been implemented by the Respondents.
70. The Respondents' risk management policy, code of conduct and "House Rules" have also been insufficient or ineffective. These policies are very high-level and do not contain any detail as to appropriate amounts of alcohol to serve, and the need for alcohol to be ancillary to genuine meals.
71. The Complainant notes that the requirement for staff to check on karaoke rooms at 15 minute intervals is inconsistent with the licence conditions requiring continuing supervision by an RSA officer present in the room.
72. The measures including glass windows on karaoke room doors and CCTV monitoring are requirements of the liquor licence conditions imposed by the Commission in LC 30/2019.

The Respondents' Business Model

73. The Commission can be satisfied that the underlying reason why the measures implemented have not been effective in ensuring the Premises operate in accordance with the Act is the Respondents' business model which is inapposite to operating the Premises under a restaurant licence.

74. Patrons attend the Premises for the primary purpose of consuming alcohol and "partying" (including with "party hostesses").
75. Operating by way of private karaoke rooms in circumstances where large quantities of alcohol are available for sale, including at early hours of the morning, lends itself to irresponsible consumption of alcohol, difficulties in monitoring patrons and inappropriate behaviour between hostesses and patrons (and indeed between patrons).
76. In the circumstances, it is simply not possible for such a business model to operate safely and in accordance with the Act under a restaurant liquor licence.
77. Further, the Commission can be satisfied that the Respondents are not presently committed to operating as a restaurant or to ensuring that liquor is served as only ancillary to meals.
78. The current menu available at the Premises includes an extensive range of spirits which are only sold by the bottle, a "beer tower" which costs \$80, and shooters, including a "Wet Pussy Tower" and "Illusion Tower" which each cost \$300.
79. Further, the current food menu on the website is not as extensive as that contained in Mr Parasuraman's witness statement and is consistent with the finger food ordered by patrons during the Incidents set out in the Complaint.

Subsequent Involvement Of LEU

80. The Respondents submit that the management of the Premises is now meeting LEU expectations and that the Premises have been trading without issue for "hundreds of days".
81. The Commissioner of Police continues to have significant concerns as to the operation of the Premises.
82. As a result, LEU officers have conducted 11 visits to the Premises since 29 April 2021 however, the Premises was closed a substantial number of those times.
83. Accordingly, given that LEU officers have only been able to observe the manner of trade at the Premises on two occasions since 29 April 2021, it is not open for the Commission to be satisfied that the Premises have been trading without issue for "hundreds of days".

Financial Consequences of Licence Cancellation

84. The Respondents have pointed to anticipated financial impacts of licence cancellation.
85. The Commission's task is to determine whether a proper cause for disciplinary action exists, and the Commission's attention ought to be directed towards ensuring the safety of the public and maintaining proper industry standards.
86. The purpose of disciplinary proceedings is not to punish the Respondents but to protect the public.
87. Accordingly, matters personal to the Respondents including the financial impact of any licence cancellation should be given little weight.

Summary of Complaint

88. The Commissioner submits the licensee is obligated to conduct the business of a licensed premise in a manner consistent with the 'public interest' and the 'objects of the Act'.
89. When the Premises are operating, the public expectation is that:
 - a. the licensee, approved managers and staff do not breach the requirements of the Liquor Control Act 1988;
 - b. the conditions of the licence will be strictly adhered to;
 - c. the licensee conducts its business in order to minimise harm or ill-health to people, or any group of people, due to the use of liquor; and
 - d. the licensee will develop management practices and procedures to address antisocial behaviour in and about licensed premises.
90. The evidence in this Complaint demonstrates significant offences and breaches of the liquor licence conditions in particular the conditions set by the Commission, detected over a period of 16 months.
91. Rather than operating as a traditional restaurant, the incidents show that Millennium operates in a manner akin to a nightclub or adult entertainment venue; the consumption of liquor as opposed to food is the patrons' primary focus and "hostesses" are provided as entertainment for the guests.
92. The Incidents of this nature are an ongoing concern at the Premises.
93. The Commissioner submits that the frequency and seriousness of this repeat offending demonstrates a complete disregard for the conditions imposed on the Licence.
94. The deliberate actions of the 'female hostesses' in identifying blind spots to assist patrons take illicit drugs undetected, and the deliberate actions of staff in providing decanted jugs of liquor to circumvent liquor licence conditions, are significant features in this Complaint.
95. Further, the evidence in this Complaint demonstrates a pattern of behaviour that has continued at the Premises since the imposition of the additional conditions on the Licence and the transfer of the Licence to Hades, and despite numerous engagements with LEU about the requirements of the Licence.
96. While the management of the Premises changed in name, the nature of its operations has not. This pattern of behaviour is placing unnecessary risk on persons who frequent the Premises and members of the community and demonstrates that the conditions imposed previously by the Commission to address these risks have not been effective.
97. Ongoing engagements, attendance and breaches detected by the WA Police and LEU, not only demonstrate a continued unacceptable risk to the community from alcohol related harm but that the Premises are utilised for illicit drug use and sexual acts by patrons with agents of Hades.

98. The continued disregard for liquor conditions and protective measures:
 - a. demonstrate a continued unacceptable risk to the community from alcohol related harm;
 - b. have a detrimental effect not only on the core objects of the Act; and
 - c. undermine the effectiveness of the industry to take a positive participation in harm minimisation.
99. The First Respondent's disregard for the law is also demonstrated by breaches of COVID-19 venue capacity restrictions.
100. The further breaches that occurred after engagement with WA Police LEU officers shows that the belligerency of Hades and Parasuraman and that the parties have no wish to control the trade at the Premises in the current restricted environment.
101. The Commissioner submits that given the Commission has already conditioned the Licence and these conditions have been breached on numerous occasions as detailed in this complaint, the imposition of further conditions would likewise not be effective in preventing further similar incidents.
102. The licensee has failed to meet its obligations pursuant to the Act and has breached conditions of its licence.
103. The Commissioner submits:
 - a. that all of the grounds in this matter have been made out.
 - b. there is proper cause for disciplinary action by the Commission.
104. the First Respondent is not a fit and proper entity to hold a liquor licence and the very nature of this style of karaoke restaurant with private rooms has been demonstrated to be not in the public interest to hold a restaurant liquor licence.
105. The First Respondent has been afforded every opportunity to manage the Premises in accordance with the Act and the conditions of the restaurant liquor licence and despite making minimal efforts, the nature of the business attracts these high-risk behaviours.
106. The Premises are not being managed in accordance with the Act. Incidents occurring at the Premises are not dissimilar to those occurring under the previous Licensee and at other problematic karaoke venues in WA.
107. The Commissioner submit that the already heavily conditioned Restaurant Liquor Licence is no longer being exercised in the public interest and that it should be cancelled.

Remedy Sought

108. If the Commission, pursuant to section 96 of the Act, finds that the grounds of Complaint are established, the Commissioner seeks the following disciplinary action imposed upon the licensee, Hades Corp Pty Ltd, and the sole director, Mr Lenno Parasuraman, or as the Commission sees fit:

- a. Pursuant to section 96(1)(e) of the Act, cancellation of the liquor licence.
 - b. Pursuant to section 96(1)(n) of the Act, make an order that Mr Lenno Parasuraman is no longer a fit and proper person to hold a position of authority with a Licensee company and remove his approved managers status.
109. If the Commission is of the opinion that the liquor licence should not be cancelled, the Commissioner submits the following disciplinary action be imposed, and additional conditions be placed on the liquor licence:
- a. Pursuant to section 96(l)(m) of the Act, imposition of the maximum monetary penalty of \$60,000 on the Licensee, or as the Commission sees fit.
 - b. Pursuant to section 96(1)(b) of the Act, impose a condition preventing the sale of liquor more than thirty (30) minutes after the supply of a meal.
 - c. Pursuant to section 96(1)(b) of the Act, impose a condition that the licensee is not permitted to employ "hostesses" or allow the services of "hostesses" in any private karaoke room.
 - d. Pursuant to section 96(1)(b) of the Act, impose a condition that the Licensee is not permitted to have unadulterated (straight) spirits in any vessel in any karaoke room;
 - e. the Licensee is not permitted to decant any bottles of alcohol into other vessels exceeding 375ml by volume and spirits decanted must not exceed 30ml by volume in any such container.
 - f. Pursuant to section 96(1)(b) of the Act, impose any other condition deemed suitable by the Commission.

SUBMISSIONS BY THE COMPLAINANT

110. The Complainant provided:
- a. an Outline of Submissions dated 14 October 2021; and
 - b. an Outline of Responsive Submissions dated 5 November 2021.
111. The Commission should accept that it is beyond doubt that the Incidents did in fact occur at the Premises, primarily on the basis of the CCTV footage, police incident reports and sales receipts obtained from the Premises.
112. In particular, it is open for the Commission to find that:
- a. the licensed premises are not properly managed in accordance with the Act (Incidents 1, 2, 3, 4, 5, 6, 7);
 - b. the licensee has contravened a requirement of the Act or a term or condition of the licence (Incidents 2, 3, 4, 5, 6, 7);

- c. the licensee has been given an infringement notice under section 167 of the Act and the modified penalty has been paid in accordance with that section (Incidents 4, 5, 6, 7);
- d. Mr Parasuraman is not a fit and proper to hold that position (Incidents 1, 4, 6);
- e. the licence has not been exercised in the public interest (Incidents 1, 4, 6); and
- f. the safety, health or welfare of persons who resort to the licensed premises is endangered by an act or neglect of the licensee (Incidents 3, 4, 6, breaches of COVID-19 restrictions).

113. The Incidents show that:

- a. the Premises are not being operated as a restaurant - it is clear that many patrons attend the premises for the primary purpose of consuming alcohol while partaking in karaoke entertainment in the company of "party hostesses"; and
- b. incidents involving drug use by patrons, indecent behaviour and non-compliance with the conditions of the licence have continued over 15 months despite LEU officers engaging with Hades and Mr Parasuraman multiple times; and
- c. numerous infringement notices being issued and paid.

114. As the Premises operate under a restaurant licence, the business should be focussed on the regular supply of genuine meals.

115. This is not demonstrated by the manner of booking "girls" as hostesses and the sale receipts which indicate that large amounts of liquor are purchased in proportion to food.

116. On 1 August 2020, an entire bottle of Alize and an entire bottle of vodka were sold to room 38, and the only food sold was three plates of finger food/starters.

117. The Incidents are of particular concern given that enforcement action by way of infringement notices and engagement by LEU officers to explain the requirements of the licence conditions have been unsuccessful in curbing conduct of concern at the Premises.

118. This suggests that Mr Parasuraman, and approved managers at the Premises, are either unable to control the trade at the premises in such a way as to ensure compliance with the Act and the Licence conditions, or have a disregard for those laws and conditions.

119. There is evidence before the Commission which suggests that staff or agents of Hades have at times behaved in ways that actively promoted unlawful activity or circumvented the licence conditions, in particular:

- a. "party hostesses" (who are engaged on behalf of Hades) participating in drug use with patrons;
- b. "party hostesses" showing patrons who are using illicit substances to a CCTV blind spot; and

- c. staff members decanting vodka into jugs and leaving those jugs unattended with patrons.
120. As evidenced by the Incidents, Hades has breached the Licence conditions on numerous occasions. It is therefore appropriate (and indeed necessary in the interests of public safety) to cancel the liquor licence for the following reasons:
 - a. the purpose of disciplinary action is to protect the public, and not to punish the Respondents;
 - b. the nature of the Respondents' business model at the Premises lends itself to the risk of similar breaches continuing to occur;
 - c. the conditions imposed by the Commission previously have proved to be ineffective in protecting the public from serious shortcomings in the operation of the Premises in accordance with the Act despite multiple attempts by LEU officers to explain the requirements of the conditions and enforcement action by way of infringement notices; and
 - d. in light of continued breaches of conditions, it is likely that more stringent licence conditions or disciplinary action short of licence cancellation would likewise be ineffective.
121. There is precedent for the cancellation of a restaurant liquor licence in similar circumstances in *Commissioner of Police v ASMC Group Pty Ltd (LC 36/2018)* ("Mirage Palace"). The Commission also disqualified the licensee's sole director for a period of 18 months 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.
122. The Mirage Palace decision was based on incidents of sexual conduct between "party hostesses" and patrons, the sale of large amounts of liquor in a manner not authorised by the licence, failures to record details such as times at which food and liquor were served to patrons, and serving snack food instead of genuine means, and included breaches of additional conditions placed on the licence. The incidents in Mirage Palace had occurred over a period of two months.
123. Relevantly, the Commission held that:
 - a. the number and repeated nature of the incidents showed that 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;
 - b. the fact that some incidents occurred after additional conditions were imposed on the licence was "*evidence of the extent of the problem management had with managing the sale of liquor in accordance with the Act*";
 - c. evidence of Mirage Palace not operating as restaurant included the nature of the food being served not being substantial (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 being secondary to the supply of alcohol, in terms of both quantity and cost;

- d. in relation to the director of the licensee, it was relevant that there were repeated breaches even after he was put on notice that the LEU were investigating the management of the premises, fundamental to his role as the director was to ensure the premises were being operated in accordance with the licence; and
 - e. as director, the Second Respondent allowed snack type foods to be served, secondary to the sale of alcohol.
124. Due to the similarity of the incidents and the nature of the business, it is likewise open for the Commission to make such findings in this case.
125. While the incidents concerning sexual acts were more serious in Mirage Palace, the Incidents in this case have taken place over a longer period of time, and there have also been serious incidents concerning drug use on the premises, significant LEU engagement, numerous incidents involving the sale of large amounts of alcohol and no genuine meals as well as continuing breaches of licence conditions.
126. Accordingly, it is open for the Commission to cancel the licence in this case and order that that Mr Parasuraman is not a fit and proper person.
127. The cancellation of the First Respondent's licence and an order that the Second Respondent is not a fit and proper person, and removing his approved manager status, are both necessary to protect the public.

SUBMISSIONS BY THE FIRST AND SECOND RESPONDENT

128. The Respondents provided:
- a. Primary Submissions on behalf of the First and Second Respondent dated 25 October 2021;
 - b. Witness Statement of the Second Respondent dated 21 October 2021;
 - c. Outline of Responsive Submissions on behalf of the First and Second Respondent dated 5 November 2021; and
 - d. Witness Statement of the Second Respondent dated 4 November 2021.
129. In respect to the Incidents the following submissions were made:

Incident 1 - 24 January 2020

130. This incident occurred within months of the transfer of the licence to the First Respondent.
131. The Second Respondent was present at the Premises but not in the room that the alleged incidents occurred.
132. Patrons are not allowed to smoke in the Premises and if seen smoking, which can occur on occasions, they are requested to smoke outside.

133. The Respondents cannot physically search patrons for possession of banned substances however, if suspected, they would have been asked to empty their pockets and the police would have been contacted.
134. There is no evidence that the Respondents have knowingly, or otherwise, permitted a reputed supplier of unlawful drugs to remain on the licensed premises within the meaning of section 115.
135. During the Formal LEU Engagement on 11 February 2020, following Incident 1, the issue was not discussed with the Second Respondent.
136. The Respondents distribute and provide training to all employees on their Risk Management Plan which includes dealing with intoxicated and suspected drug affected persons.
137. If any person on the Premises is seen to be doing anything of an illegal nature, the employees of the Respondent are required to advise an approved manager, record in the incident report and contact the police as per the Risk Management Plan.
138. It is the First Respondent's recollection that the patrons were holding an unlit cigarette.
139. The First Respondent supported LEU's decision to remove these patrons for carrying illegal drugs.
140. The evidence presented by the Complainant is not conclusive to support the adverse finding sought, under Grounds 1, 4 and 5.

Incident 2 – 24 May 2020

141. Ms. Rika was known to the Respondents and was present to observe the working of Millennium and for the Second Respondent to consider whether she would be suitable for employment in the future.
142. Ms. Rika was not serving patrons and the First Respondent believed that there were other RSA officers with her that would have been serving the patrons.
143. The Respondents have a register of employees with RSA sighted and copies of RSA certificates of employees are retained.
144. The evidence presented by the Complainant is not conclusive to support the adverse finding sought, under Grounds 1 and 2.

Incident 3 – 6 July 2020

145. Ms. Kluth did not pursue her complaint with the Police, does not seem to have obtained a toxicology report and did not contact the Respondents to obtain CCTV footage.
146. Ms. Kluth was known to the Respondents and was at the Premises to see the operations of the Millennium Restaurant and for the Respondents to consider whether she would be suitable to hire in the future.

147. The First Respondent was not present for this incident. It is the First Respondent's practice that if someone alleges that their drink has been spiked, he would contact the police and ensure the person is provided with medical attention.
148. The Complaint relies on the Incident Report and running sheet only as evidence.
149. The evidence presented by the Complainant is not conclusive to support the adverse finding sought, under Grounds 1 and 2.

Incident 4 – 2 August 2020

150. Incident 4 was the most serious incident experienced at Millennium.
151. The Second Respondent with employed security tried to resolve the altercation and removed glass items out of the room to mitigate the situation.
152. The female identified in CCTV footage with a green top is not an employee of Millennium. She is a patron and can be seen entering the room with the other patrons at 21:00 ("the Female Patron").
153. The woman dancing in a lewd manner various times is the Female Patron.
154. In respect to the alleged participation of drug use by party hostesses, the evidence relied upon by the Complainant in this regard is not conclusive to support the adverse finding sought, under Grounds 1, 2, 3, 4 and 5.
155. There were three female RSA officers present who permitted the irresponsible serving of alcohol and other acts that the Respondents acknowledge and do not condone.
156. The Respondents took immediate action in response to Incident 4 to ensure the future safety of patrons including:
 - a. Suspending (terminating) hostesses;
 - b. Replacing all glass and jugs with polycarbonate;
 - c. not permitting open bottles of liquor in the rooms;
 - d. expanding the food menu; and
 - e. ensuing further training with staff regarding safe practices.
157. The fight was the only one experienced by the First Respondent at the Premises.
158. The Respondents have accepted that this incident does not meet the expectations of the public. It has taken various measures to address the shortcomings in a meaningful way
159. In response to Ground 3, the infringement notices issued have been paid and pursuant to section 167 (7a) of the Act relevantly provides that:

"The payment of the penalty shall not be taken to be an admission, in any proceedings whether criminal or civil."

Incident 5 – 4 September 2020

160. CCTV footage was willingly provided by the Respondents and the Respondents concede that RSA employees without authorisation, breached Millennium policies and the Licence by allowing patrons to free pour drinks and were not adequately monitoring the room.
161. The responsible RSA employees and approved manager at this time, Mr. Leslie Kok, have since been terminated by the Respondents.
162. The Respondents continue to focus on training staff and take requisite action if any employees are found to not follow the policies of Millennium, RSA requirements, Licence conditions or the law.
163. The Respondent accepts that this incident occurred and did not meet the expectations of the public. However, again, it must be seen as a relatively isolated incident, when viewed within the context of the overall period since the Respondents have operated the licence.
164. The infringement notices issued have been paid and section 167(7)(a) of the Act is reiterated.

Incident 6 – 8 November 2020

165. The women in the room were incorrectly identified as employees of the Respondents.
166. The female who points out a spot under CCTV to which patrons seem to go in which to use illicit substances is not an employee of Millennium Restaurant but a patron.
167. The male patron is cuddling and kissing a woman who is not a female employee but a female patron. This same female patron is that who is seen lifting her skirt and engaging in other lewd acts.
168. The Respondents do not condone drug taking and the RSA officer was assisting other patrons with the music in the corner and cannot see this happening as it seems to be short in time. If he did see this happen, the Second Respondent would hope that the RSA officer would advise management so that the matter could be dealt with appropriately.
169. The Respondents place alcohol for patrons into small plastic jugs with clear lids. The "mixers" which are soft drink or other non-alcoholic drinks are placed in open plastic jugs without lids.
170. The images of patrons self-pouring liquid was not alcohol as these are open jugs without lids.
171. The patrons are therefore free-pouring non-alcoholic drinks.
172. The RSA officer leaves the room and patrons from this point are unsupervised from within the room as all alcohol was removed and they did not order any further alcohol.
173. Management could monitor the room externally by CCTV camera footage from the office/bar area and from looking through the window in the door.
174. The infringement notices issued have been paid however:
 - a. alleged incidents are not founded and the infringements should not have been issued; and
 - b. section 167(7)(a) of the Act is reiterated.

175. The evidence relied upon by the Complainant in this regard is not conclusive to support the adverse finding sought, under Grounds 1, 2, 3, 4 and 5.

Incident 7 – 29 April 2021

176. LEU officers allege that invoices show that liquor sales are disproportionate to the sale of food, that RSA officers were not remaining in the room at all times and some dockets did not show assigned RSA staff as per paragraph 8 and the Licence.

177. During this Incident, the Premises were closed to the public for a private event for a friend. It is unknown if all food sold was included on the invoices as it was a private event.

178. The Second Respondent did answer questions of the LEU however, after being asked what he thought was the same questions being asked over again, he had to advise that he needed to go back to work.

179. Six infringements were issued for incidents alleged on 29 April 2021 and these have been paid.

180. Section 167(7)(a) of the Act is reiterated.

COVID-19 Capacity Restrictions

181. The alleged breaches of capacity restrictions imposed by the *Closure and Restriction (Limit the Spread) Directions No. 5* were reported in early August 2020 are unusual in that the pandemic is unprecedented and were arguably unintentional and of a minimal amount.

182. The Respondents have identified this requirement with employees and agents and there have been no further breaches to date that the Respondents are aware of.

Implemented Changes

183. From when the Respondents were issued with the Licence, improvements and changes were implemented from the former restaurant that was in operation under the Licence as detailed below.

184. The Respondents are committed to working with the LEU officers and police and contact the police immediately when they consider a breach of the law has occurred at the Premises.

185. All staff of the former licensee has been replaced with new employees, which has taken a period of approximately 6 months.

186. There has been an implementation of clear management policies, including the Risk Management Plan and House Management Policy, and the Respondents ensures these are provided to all staff. It is compulsory for staff to follow these policies in at all times. Staff are further encouraged to ask questions and keep up to date with policies to ensure compliance.

187. A risk register and incident reporting system is maintained to ensure compliance and monitoring of practices at the Premises.

188. The Respondents mandates RSA certification to be held by all staff.

189. Excessive or rapid drinking is actively discouraged at the Premises and the following measures have been implemented to mitigate the risk of harm to staff and patrons resulting from alcohol consumption:
- a. Jugs of water are available free of charge both in the karaoke rooms and at the bar, which patrons are made aware of soon after entering the Premises.
 - b. An extensive, high quality and varied food menu is provided to all patrons and it is compulsory that they order food if they are consuming alcohol at the Premises. The food menu offers a range of cuisines and sized meals (entrees and mains) to cater to as many tastes as possible and to encourage the ordering of food with drinks.
 - c. Liquor is served in standardised quantities to ensure recognition by patrons to encourage responsible tracking of their alcohol consumption. Half shots are also available.
 - d. Non-alcoholic and low alcohol drinks are readily available as part of the drinks' menu.

Staff Training

190. All staff are expected to have completed and maintained relevant training (RSA Licence) and licenses for their positions.
191. Ongoing education of staff is provided to ensure they keep up to date with best practice and are aware of their duties.
192. New staff are subject to a prescribed induction process to ensure they are adequately trained to serve alcohol responsibly, manage antisocial behaviour and comply with relevant policies to mitigate the risk of harm to themselves and to patrons.
193. Staff are trained to have no tolerance of aggressive or disorderly conduct and security personnel are trained to respond to such behaviour calmly and using aggression reduction methods (including removing the aggressor from onlookers, using appropriate language and moving calmly) so as to avoid any escalations which may result in harm.
194. The First Respondent now trains all new employees himself. He focuses on ensuring they understand their RSA obligations and that they understand to come to the First Respondent (or an approved manager) for assistance if they feel threatened or if they believe they cannot implement the venue management policies.

Responsible Service of Alcohol

195. The Respondents implement the following practices as per their Risk Management Policy to enforce responsible service of alcohol policies and procedures, and to mitigate risk generally, including but not limited to:
- a. Those deemed to be intoxicated are refused entry, asked to leave the Premises or refused service.
 - b. Minors are not granted entry to the Premises and trained security personnel are directed to check the valid ID of each entrant to the Premises.

- c. Staff are trained to enter each karaoke room in 15-minute intervals to monitor the status of patrons, including their levels of intoxication and any unruly behaviour. During these checks, staff encourage the consumption of water to patrons and assess any risks that may rise.
- d. Each karaoke room door is fitted with a glass window so that staff may monitor conduct within the rooms without having to enter the rooms.
- e. CCTV is installed, and will remain installed, in all common areas of the Premises.
- f. Patrons in the karaoke rooms have access to a call button to request immediate attendance of a staff member.
- g. There are no discounted alcohol offers, such as happy hour deals, to avoid the rapid increase of patrons' intoxication levels.
- h. Bar hopping conduct is discouraged, as the rooms are usually pre-booked and incur a booking fee.

Premises designed to minimise harm

- 196. Each karaoke room is fitted with a glass window to permit surveillance.
- 197. The effect of private rooms is that those in the room are usually acquainted and this minimises interactions between strangers.
- 198. The privacy provided by the karaoke rooms provides greater comfort to patrons and less overcrowding, which mitigates the occurrence of agitation and aggressive behaviour.
- 199. The service of alcohol at the Premises is secondary to its primary offerings as a restaurant and karaoke entertainment venue. Patrons are encouraged to engage in karaoke and dining, which assists in avoiding rapid consumption of alcohol in a short amount of time.
- 200. All areas of the Premises have adequate lighting and are kept clear.

Responsible marketing practices

- 201. Signage is found throughout the Premises including the "House Rules" and Responsible Service of Alcohol signage and a copy of the code of conduct of the Licensee.
- 202. The website of the business also emphasises the use of the Premises as a restaurant and for high quality karaoke entertainment. The food menu appears before the drinks menu to encourage the selection of food prior to any drinks.

Improvements and Upgrades

- 203. Improved kitchen facilities and appliance upgrades have occurred.
- 204. Upgrades to CCTV has been implemented, the Respondents spending approximately \$30,000 to ensure the cameras are of high definition and can take clearer footage in darkened areas.

205. A Canopy for the outdoors area has been added so that patrons who smoke are not enticed to smoke inside.
206. The Respondents have spent approximately \$2,000 on replacing all glass to plastic jugs and cups.
207. Termination of a former employee who was an approved manager and cook, to employing a formally qualified and trained chef, from around 23 May 2021, who created a menu with approximately 60 dishes to entice and ensure patrons are ordering quality food that is proportionate to any alcohol sales.

Public interest

208. The public interest that attaches to a liquor licence is multi-faceted and it should give weight to periods in which the Respondents have demonstrated an environment that meets the expectations of the public and section 5 of the Act, by offering good service in a safe environment with adequate controls on liquor consumption, to experience its karaoke themed restaurant.
209. Further, the implemented changes of Millennium that have occurred, has shown the Respondents have actively worked towards practices and a business model that focus on the promotion, sale, supply, service and consumption of liquor that are consistent with the interests of the community.
210. Incident 4 and Incident 6 are the only two incidents which, in the Respondent's submission, evidence that the licence has not been exercised in the public interest. This must be seen in context over the period of 15 months spanning all of the alleged incidents. During that entire time the Respondents have been subject to ongoing spot-checks either once or twice per week and no further incidents have been reported. Furthermore, since the final alleged incident on 21 April 2021, there have been no further breaches reported.
211. Weight must be appropriately given to the periods in which the Respondents have demonstrated an environment that meets the expectations of the public.

Iconic

212. The Incidents in this matter should not be compounded with the Incidents in *Commissioner of Police v Iconic Water Solutions Pty Ltd (Iconic) LC 30/2019*.
213. Whilst the Licence is the same and Iconic did pass on some unfortunate legacy traits and employees early on, the Second Respondent has made considerable contributions and worked proactively to implement change.

Mirage Palace

214. The Incidents are dissimilar to those that occurred in Mirage Palace (LC 36/2018) in that:
 - a. there were 11 incidents in a period less than four weeks;
 - b. some of these incidents were very serious in nature whereby sexual activity occurred between patrons and employees and the Commission held with particular concern that one act was without consent; and

- c. the licensee did not evidence considerable implemented changes or polices to work towards meeting the public interest, improving the nature of its premises and minimising the risk of endangering their staff.

215. The serious nature of the sexual activity and short timeframe in which the incidents occurred at Mirage Palace should be distinguished from the Respondents' current case.

Cancellation of Licence

216. The cancellation of a licence in this regard is serious and should be matched with proven grounds of complaint that adequately match the seriousness of such outcome.

217. Previous Commission decisions that resulted in the cancellation of a licence include breaches at a higher level of seriousness which warranted the cancellation of a licence.

218. Further, based on the balance of probabilities, all incidents cannot be founded.

Fit and Proper Person

219. The Second Respondent has worked hard to improve Millennium and does concede it has had short comings at the start, which he has spent considerable funds and made changes to improve and meet Licence and LEU requirements. The Second Respondent can prove that Millennium has had no incidents of concern over the last six months to his knowledge and he is committed to continuing this.

220. The Second Respondent has been in the industry for over 15 years and has worked with many venues, businesses and events to resolve a myriad of security concerns. His engagement and reputation in the industry and within the community is recognised and his continued employment and engagement indicates the community does have trust and confidence in his ability.

221. The actions of the previous licensee (Iconic) and its person of authority has no direct link to the Second Respondent and should not be held against him in this regard.

222. There is insufficient evidence of the Second Respondent's conduct to warrant an order pursuant to sections 96(1) and 164(1a) of the Act that he is no longer a fit and proper person to hold a position of authority with a licensee company and to remove his approved manager's status.

223. The Second Respondent draws his income and ability to maintain his livelihood through his position of authority with the licensee company, Hades Corp. An order to the above effect, would be catastrophic to the Second Respondent and his ability to maintain his livelihood and generate an income to pay his day to day expenses.

224. The Second Respondent is a director and registered Crowd Control Agent of a security business, JLL Security. The *Security and Related Activities (Control) Act 1996 (WA)* requires that the applicant is of good character and is a fit and proper person to hold a suitable licence.

225. Whilst the Second Respondent has been in the security business for over 15 years and has proven to be a fit and proper person, this is the first time he is a director of a licensee of a restaurant licence.

226. The First Respondent did not condone the behaviours of employees or the approved manager in incidents that are a clear breach of their employment conditions, and which formed part of the Complaint. The acts of these persons were not in direct sight or instruction from the Second Respondent and there was no actual or constructive knowledge to the extent that he would be vicariously liable.

First Respondent Submissions

227. The First Respondent understands that every incident that occurs at the Premises prejudices the continued operation of the business. This employment provides for the majority of the First Respondent's income and he is committed to ensuring the Premises continues to operate lawfully into the future.

228. For the seven alleged incidents, plus the alleged COVID-19 capacity breaches, there have been hundreds of days per year that the Premises have operated meeting licence conditions and providing a safe and enjoyable restaurant experience for patrons. LEU officers have attended The Premises since and would indicate that the Respondents are meeting the Licence conditions and LEU expectations. These hundreds of days of meeting expectations highlight the Respondents' commitment to patrons, employees and the law.

229. Since April 2021, being 6 months, the Respondents have had LEU officers attend the Premises and there have been no instances that the First Respondent is aware that show the Respondents are not following Licence conditions.

230. The Respondents intend to continue to work with LEU and police to ensure that Hades Corp and Millennium Restaurant can cooperate to ensure compliance with the Act.

231. Due to the COVID-19 closures and economic hit to tourism and the hospitality industries, the business has run at a significant loss the past two years and the Respondents need to continue to trade to recoup losses.

232. The Respondents have third party obligations to their lessee, to employees and suppliers. To cancel the Licence would mean the Respondents would need to close the business. This would cause major implications to others, their families and would place the First Respondent and others into economic hardship or even ruin and would prevent the Respondents from earning an income. The First Respondent wishes to continue the business of Millennium and work with LEU to ensure he can run it to their standard and ensure a safe and enjoyable restaurant experience for patrons and the public.

Conclusion

233. On the balance of probabilities, the Incidents cannot be founded as a whole.

234. The Respondents cannot prevent patrons or rogue employees from acting in ways that breach requirements of the law however, they concede that there have been incidents that should not have occurred and have acted immediately to change practices and preventing these incidents from occurring in the future.

235. This is the first instance in which the Respondents have been subject to a complaint pursuant to section 95 of the Act.

236. The Respondents submit that the Licence should not be cancelled pursuant to section 96(1)(e) of the Act as:
- a. there is insufficient evidence to substantiate all the alleged incidents on the balance of probabilities;
 - b. it is against good conscience to do so as it would result in Millennium being forced to close in circumstances where it has only operated for under two years and has not been in a position to recoup its initial outlay and investment capital. The closure would cause Millennium to be in a position where it owes significant loans, which is likely to be foreclosed due to no capacity to repay;
 - c. there would be an adverse flow-on effect and dire consequences in that employees and the Respondents would result in a loss of income and would affect their livelihood and ability to meet ongoing liabilities to third parties, including commitments under the lease of the Premises, to employees and suppliers to name a few; and
 - d. previous decisions of the Commission that did result in the cancelling of a licence such as in Mirage Palace, relates to incidents of a more serious nature.
237. The Second Respondent is a fit and proper person and there is insufficient evidence to warrant an order pursuant to section 96(1) and 164(1)(a) of the Act.
238. The Respondents have paid all infringement fines issued, approximately \$20,000 to date in relation to these incidents, including Incident 6, which incurred \$6,000, is arguably not correct and this should be taken into consideration for any further monetary penalty.
239. The Respondents are committed to the continuation of Millennium and working with the LEU and meeting its Licence conditions. The Respondents would agree to further Licence conditions if it were seen to improve the facility, meet the public interest and continuation of Millennium.
240. It bears consideration that unlike in other states such as NSW, there is no karaoke liquor licence in WA. These licences do not require the serving of a meal. Karaoke venues are established more so overseas and in Asian culture and is a way in which patrons can blend business and pleasure. The Respondents provide a karaoke venue to accommodate this niche market and have made every effort to comply with the more stringent requirements of the restaurant licence.
241. The Respondents are committed to the continuation of Millennium and working with the LEU and meeting its Licence conditions. The Respondents would agree to further Licence conditions if it were seen to improve the facility, meet the public interest and continuation of Millennium including the following:
- a. Not permitting the employment of hostesses or allowing the services of hostesses in any private karaoke room; and
 - b. Not permitting the decanting of any bottles of alcohol into other vessels exceeding 375ml by volume and spirits decanted must not exceed 30ml by volume in any such container.

242. The Complainant seeks that if the Commission is of the opinion that the Licence should not be cancelled, then the following disciplinary action be imposed and additional conditions be placed on the liquor licence, then the Respondents make the following submissions:

- a. *Imposition of the maximum monetary penalty \$60,000, or as sees fit* - The Respondents have paid approximately \$20,000 to date in relation to these incidents and arguably some infringements were unfounded and incorrect.
- b. *Imposing a condition preventing the sale of liquor more than thirty minutes after the supply of a meal* - This would affect business as some patrons may have eaten a substantial meal and did not order drinks in the first instance, or only one drink and would then be required to order more food in order only one further standard drink.
 - i. This could force people to choose other venues to eat and drink at. Preventing the sale of liquor more than thirty minutes after the supply of a meal.
 - ii. This is unreasonable as some patrons do not drink straight after their meal and prefer to wait sometime after, or only drink one drink with their meal and would like another after.
 - iii. If it is expected they can only drink thirty minutes after a meal, it would mean encouraging poor drinking and eating practices, either ordering more food than necessary or trying to drink quickly in a thirty minute period.
- c. *Impose a condition that the licensee is not permitted to employ hostesses or allow the services of hostesses in any private karaoke room* - The Respondents are agreeable to this condition however, the Respondents will have RSA staff in the karaoke rooms to serve drinks and monitor patrons and will require clarification on what is considered a "hostess".
- d. *Impose a condition that the licensee is not permitted to have unadulterated (straight) spirits in any vessel in any karaoke room* - This would affect business as some patrons enjoy a small amount of straight spirits with a meal and if it was prevented, this business would be lost to other restaurants.
- e. *Impose a condition that the licensee is not to decant any bottles of alcohol into other vessels exceeding 375ml by volume and spirits decanted must not exceed 30ml by volume in any such container* - *The Respondents are agreeable to this condition. However, clarification would be required as to whether these volumes would be acceptable if placed with mixers in larger vessels;*
- f. *Impose any other condition deemed suitable by the Commission.*

RELEVANT LAW

243. In determining whether there is proper cause for disciplinary action, the Commission needs to be satisfied on the balance of probabilities that one or more of the grounds of complaint alleged pursuant to section 95(4) of the Act have been made out.

244. The standard of proof applicable to section 95 proceedings is proof on the balance of probabilities.

245. Section 95(11) of the Act states that it is not a defence to a complaint lodged pursuant to section 95 of the Act to show that the licensee:

- a. did not know, or could not reasonably have been aware or have prevented the act or omission which gave rise to the Complaint; or
- b. had taken reasonable steps to prevent the act or omission from taking place.

246. The policy of the Act is that a licensee is to be held personally responsible for acts or omissions on their licenced premises. This is illustrated by the following:

- a. the conduct of business under a licence is always the responsibility of the licensee and shall be personally supervised and managed by a natural person in accordance with section 100(1) of the Act;
- b. it is a criminal offence for the licensee to fail to ensure that the conduct of the business at the licensed premises is supervised and managed in accordance with section 100 of the Act, section 100(8) of the Act; and
- c. a licensee is liable for offences committed on the licensed premises by an employee or agent of the licensee, or by a person acting, or purporting to act, on behalf of the licensee - even if the licensee did not know of and could not reasonably have been aware of or have prevented, the commission of the offence, in accordance with section 165 of the Act (see also sections 95(4)(f) and (k) of the Act).

247. Section 50(1) of the Act provides:

“(1) Subject to this Act the licensee of a restaurant licence is, during permitted hours, authorised to sell to any person liquor on the licensed premises for consumption on the premises ancillary to a meal supplied by the licensee to, and eaten by, that person there.”

248. A “meal” is defined in s 3 of the Act as follows:

“meal means food —

(a) that is eaten by a person sitting at a table, or a fixed structure used as a table, with cutlery provided for the purpose of eating the food; and

(b) that is of sufficient substance as to be ordinarily accepted as a meal; and

(c) that may consist of one or more courses,

but does not include any food prescribed not to be a meal;”

DETERMINATION

249. It is noted by the Commission that the Respondents have conceded that Incidents, 4, 5 and 6 did not meet the expectations of the public.
250. The Commission further considers these to be the most serious of the alleged incidents.
251. There is some argument by the Respondents that the evidence supplied does not satisfactorily establish all the alleged conduct the subject of the Complaint.
252. However the Commission is satisfied to the required standard that:
- a. patrons have been left unattended and unmonitored by RSA officers at times while large quantities of alcohol have been present in the karaoke rooms;
 - b. RSA staff have not adequately monitored the karaoke rooms;
 - c. alcohol, including undiluted spirits, has been self-served and free poured by patrons;
 - d. alcohol has been served to patrons in a manner which is not ancillary to a “meal” as defined in the Act;
 - e. illicit substance use has occurred at the Premises, including by “hostesses”, being RSA officers; and
 - f. employees of the First Respondent, being the “hostesses” have engaged in undertaking activities in a lewd or indecent manner.
253. The Commission is further of the opinion that the practice of decanting whole bottles of spirits into jugs is a deliberate evasion of the condition of the Licence which prohibits bottle of spirits being left unattended with patrons. Such practice cannot in practicality be considered to promote responsible service or consumption of alcohol.
254. In all the circumstances, the Commission is satisfied, on the balance of probabilities, that there is proper cause for disciplinary action on five grounds pursuant to section 95(4) of the Act being:
- a. Ground 1 - The Premises are not properly managed in accordance with the Act (section 95(4)(b));
 - b. Ground 2 - The First Respondent has contravened a requirement of the Act or a term or condition of the Licence (section 95(4)(e)(i));
 - c. Ground 3 - The First Respondent has been given an infringement notice under section 167 and the modified penalty has been paid in accordance with section 95(4)(fa);
 - d. Ground 5 - The Licence has not been exercised in the public interest (section 95(4)(j)); and
 - e. Ground 6 - The safety, health or welfare of persons who resort to the Premises is endangered by an act or neglect of the First Respondent (section 95(4)(k)).

255. This finding is based upon the totality of the evidence that was put before the Commission, but primarily in relation to Incident 4, Incident 5 and Incident 6 which the Respondents concede were serious incidents.
256. In respect to the matter of the Respondent's constructive knowledge of the particulars of the Incidents the Commission notes that the Second Respondent is the sole director and secretary of the First Respondent. He is therefore ultimately responsible for the manner of operation of the business.
257. Further it is clear that the Second Respondent regularly attends the Premises and should therefore have a reliable understanding of the manner in which the Premises are being operated on a daily basis.
258. Although the Second Respondent may have limited knowledge and power over the individual actions of patrons, it is of primary concern to the Commission that the nature of operation of the business does not encourage poor behaviours and allows a safe environment operated in accordance with proper industry standards.
259. The Licence is a restaurant licence granted in accordance with section 50 of the Act. By its nature this type of licence requires the service of food to be the primary focus of the relevant business.
260. In this case, although in some circumstances the type of food served could be considered to be part of a genuine "meal" with patrons sharing a number of smaller dishes, the nature of service and the portions provided do not indicate that the same was intended to be a "meal" or that such meal was not secondary to the consumption of alcohol.
261. Although the Premises includes fixed tables, the food provided was not generally provided with cutlery or other utensils to eat with. This is a specific part of the definition of "meal" in the Act.
262. Further the invoices provided with the Complaint indicate that substantial amounts of liquor, including entire bottles of spirits, were ordered along with minimum plates or servings of food to be shared between large amounts of people.
263. The nature of the alcohol able to be ordered by patrons also indicates that it is anticipated that patrons may be consuming significant amounts of alcohol. It is a requirement of the Licence that the Licensee ensures any alcohol served is ancillary to a "meal". The Incidents indicate that this practice has not reliably occurred.
264. The Commission does not find that the Incidents are serious enough to cancel the licence in accordance with section 96(1)(e) of the Act. The most serious incidents occurred over a relatively short period of time and active steps were taken to ensure that the offending staff were dismissed and that practices were updated.
265. Alternatively, the Commission is minded to impose further conditions on the Licence to ensure that the Licensee is operating within the confines of a restaurant licence. This will assist the Licensee in understating the parameters of a restaurant licence as well as encourage an environment that will permit patrons to drink in a more responsible manner.

266. The Commission intends to impose the conditions set out in paragraphs 278 and 279 below to:
- a. encourage the Premises to operate in a manner consistent with a genuine restaurant;
 - b. ensure that alcohol is not served in large and/or unmeasured quantities;
 - c. require that genuine “meals” are served in a manner consistent with a restaurant and in a timeframe which reflects the usual nature of ordering a “meal”; and
 - d. encourage employees of the Licensee to not participate in risky conduct or engage in inappropriate consumption or service of alcohol.
267. The Commission further advises and recommends that the First Respondent:
- a. ensures that the manner of service of food is consistent with the definition of a “meal” contained in the Act; and
 - b. updates its risk management policy, code of conduct and House Rules to specify what actions will be taken by staff and management where it becomes apparent patrons are engaged in the use of illicit substances.
268. The fact that a specialist “karaoke” licence is not available in WA is irrelevant to the Commission’s findings. In the event that the Licensee believes it cannot operate as it wishes within the requirements of a restaurant licence, the Commission recommends that:
- a. serious consideration is given to the Licensee applying for a special facility licence pursuant to section 46 of the Act, which does not require service of food; or
 - b. the Licensee apply for an extended trading permit in accordance with s 60(4)(ca) of the Act to be able to sell liquor to a person whether or not ancillary to a meal eaten by the person.
269. The Commission has not made a finding that the Second Respondent is not a fit and proper person to hold a position of authority in the First Respondent or be interested in the business or profits or proceeds of the business.
270. The Second Respondent is relatively new as a director of a licensee and the Commission notes that he has actively engaged with LEU officers and demonstrated that changes to the business (including staff training and food menus) and to then current employees upon engagement by LUE officers.
271. The Commission is further satisfied that this is the first section 95 complaint made with respect to the Respondents and that all reasonable efforts will be made to prevent further breaches.
272. Despite this the Commission is satisfied that there should be a penalty imposed against the First Respondent on the basis there have been established breaches of the Licence and the Act.
273. In all the circumstances the Commission considers that a fine in the sum of \$30,000 is a suitable sum that reflects the seriousness of the relevant breaches.

274. In addition, the Commission comments that further breaches of the conditions imposed on the Licence or the Act would be viewed seriously by the Commission, given the opportunities the Respondents have had to remedy the shortcomings in the business.

ORDERS

275. On the basis that the Complaint in respect of grounds (1), (2), (3), (5) and (6) are made out, the Commission makes the orders set out in paragraphs 276 to 279 inclusive.

276. The First Respondent Hades Corp Pty Ltd is to pay a monetary penalty of \$30,000 pursuant to section 96(1)(m) of the *Liquor Control Act 1988* within 4 months of 8 February 2022 and lodge with the Commission evidence of payment of the penalty within 28 days of making the payment.

277. The Restaurant Licence of Millennium Restaurant (Licence Number 606208120615) is varied as set out in paragraphs 278 and 279 below:

278. Under "Trading Hours" the current condition is deleted and replaced with the following:

"The trading hours are between 10:00am and 3:00am seven days a week and otherwise as prescribed in s 98F of the Act."

279. The following conditions are added under the heading "Responsible Service of Alcohol ("RSA")" as clauses (h), (i), (j), (k), (l) and (m)"

"h) No liquor is to be sold or supplied for consumption on the Premises in any of the following ways:

iv) no liquor is to be supplied in a vessel with a capacity exceeding 600 ml, except bottles of wines;

v) no spirit-based beverages are to be supplied in vessels with a capacity exceeding 375 ml; and

vi) in measurements of spirits that exceed 45 ml in any vessel. For the purpose of this condition the term "spirits" means potable spirit which at 20 degrees Celsius contains more than 20.06 per cent ethanol by volume.

i) The business conducted at the Premises must consist primarily and predominantly of the regular supply to customers of meals to be eaten at the Premises.

j) Subject to conditions k) and l) below liquor must not be consumed by a person on the Premises except ancillary to a meal supplied by the licensee to that person.

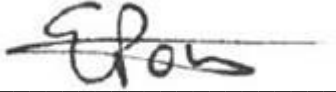
k) Each person or group or persons attending the Premises and consuming alcohol must order and be served enough food to be considered a genuine "meal" for each such person in the manner defined in the Act.

l) the Licensee may only supply liquor to a person from the period between the person ordering the "meal", and the earlier of:

iii) 90 minutes after the person received the "meal"; or

iv) 120 minutes after the person ordered the "meal".

m) *Staff, employees and agents of the licensee are not permitted to consume liquor at the premises. "Agents" includes "party hostesses" or persons engaged to provide entertainment of any kind.*



EMMA POWER
ACTING CHAIRPERSON



NICHOLAS VAN HATTEM
MEMBER



DR KIM HAMES
MEMBER