

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Complainant: Commissioner of Police
(represented by Mr Joshua Berson of State Solicitor's Office)

First Respondent: Sunseasons Pty Ltd

Second Respondent: Ms Anita Marlene Grace
(both respondents represented by Mr Travis Kean, Delta Legal Lawyer)

Commission: Mr Jim Freemantle (Chairperson)
Mr Eddie Watling (Member)
Ms Helen Cogan (Member)

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

Premises: Cellarbrations at Newman, Hildich Avenue, Newman

Date of Hearing: 20 August 2013

Date of Determination: 25 September 2013

Determination:

The Commission orders that, in addition to the conditions imposed by the Director on 29 July 2013 which shall continue to apply:

- a. the licensee is to install and maintain CCTV cameras in accordance with the Director of Liquor Licensing's Policy in its premises including the public areas at the front and rear of the premises;
- b. the second respondent, Ms Grace, complete, within 60 days of the date of this determination, the core unit, MLP1 of the Course in Management of Licensed Premises [52473WA] provided by the Australian Hotels

Association, Clubs WA and Access All Areas Training;

- c. pursuant to section 96(1)(m) of the *Liquor Control Act 1988*, the licensee shall pay a monetary penalty of \$1,500 and shall lodge with the Liquor Commission within 30 days of the date of this determination evidence of payment of the penalty.

Introduction:

- 1 On 24 June 2013, the Commissioner of Police (“the Police”) lodged a complaint pursuant to section 95 of the *Liquor Control Act, 1988* (“the Act”) against Sunseasons Pty Ltd, the licensee of Cellarbrations at Newman, situated at Shop 5 Hildich Avenue, Newman (licence number 6030018366) and Anita Marlene Grace, Director and Approved Manager of the licensee company.
- 2 A hearing of the Commission, constituted in accordance with section 95(7a) of the Act was held on 20 August 2013.

Submissions on behalf of the Commissioner of Police

- 3 It is alleged by the Police that there is proper cause for disciplinary action under section 95(4) of the Act on the following grounds:
 - 1) The licensed premises are not properly managed in accordance with the Act [section 95(4)(b) of the Act].
 - 2) The licensee has contravened a requirement of the Act or a term or condition of the licence [section 95(4)(e)(i) of the Act].
 - 3) 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 becomes not a fit person and proper person to hold that position or to be so interested [section 95(4)(h) of the Act].
 - 4) The licence has not been exercised in the public interest [section 95(4)(j)].
 - 5) The safety, health or welfare of persons who resort to the licensed premises is endangered by an act or neglect of the licensee [section 95(4)(k) of the Act].
- 4 The submission by the Police provided a background of the liquor restrictions imposed on the liquor licences in the town of Newman subsequent to an inquiry undertaken by the Director of Liquor Licensing (“the Director”) in 2003, pursuant to section 64 of the Act. The purpose of the enquiry was to assess the level of alcohol related harm and determine whether restrictive conditions should be imposed on a number of liquor licences in the town of Newman.
- 5 As a consequence of the enquiry, restrictions were imposed on alcohol sales in Newman in August 2003 and were the subject of further review and amendment during 2004 and 2005.
- 6 As a result of these restrictions the licensee of Cellarbrations Newman is currently subject to the following conditions:
 - a) Full strength packaged liquor may only be sold between 12:00 noon and 8:00pm Monday to Saturday;
 - b) The sale of packaged liquor between 10:00am and 12:00 noon and between 8:00pm and 10:00pm on any day or night of permitted trading is restricted to the sale of low-strength alcohol (i.e. up to 3.5% ethanol per volume);

- c) The sale of 750ml beer bottles (“King Browns”) is prohibited;
- d) Wine in casks/flagons containing more than two (2) litres of alcohol; and fortified wine in two (2) litre casks or more is prohibited; and
- e) The sale of port wine is prohibited on Tuesday, Wednesday, Thursday, Friday and Saturday, unless by way of approved exemption.

Note: The licensee is permitted to sell products specified in condition 4 above, and to trade outside the hours specified in conditions 1 and 2 above, but only within the permitted trading hours as specified by section 98D of the Act, where the sale and supply of liquor is to a station owner or pastoralist and only on the condition that:

- 1. The liquor has been pre-ordered at least 24 hours in advance of pick-up/delivery;
- 2. The licensee maintains on the licensed premises, a register of purchases, which must be made available for inspection at the request of an authorized officer; and
- 3. The register must contain the following information in relation to the station owner or pastoralist:
 - Name;
 - Address; and
 - Address for where the liquor is being delivered/taken to

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REGISTERS

The licensee must maintain on the licensed premises the following registers:

- 1. a register of prescribed incidents that take place on the licensed premises (section 116A of the Act and regulation 18EB of the regulations refer); and
 - 2. a register that records training compliance for all staff (section 103A of the Act and regulation 14AG refer).
- 7 As further background it was submitted that in June 2010 the licensee and Ms Grace each were issued with a formal written caution for the following alleged conduct:
- a) selling full strength liquor to members of the public before 12:00 noon without an exemption in place;
 - b) failing to maintain a responsible Service of Alcohol (“RSA”) Register; and
 - c) failing to properly display the liquor licence and Management Plan.
- 8 On 3 April 2013, the respondent, Ms Grace telephoned the Newman Police to advise of an assault that was occurring outside Cellarbrations Newman. During attendance at that assault, Police observed that both the victim and offender were in possession of cold 375ml full strength Jim Beam and Cola cans that they claimed they had purchased from Cellarbrations Newman just

after opening at 10:00am.

- 9 Police also spoke to a group in the vicinity of the Newman Shopping Centre and located a 700ml bottle of Jim Beam bourbon, which was two thirds full. The bottle was seized, resulting in the group becoming verbally hostile towards Police.
- 10 When Police subsequently spoke to Ms Grace she denied selling any full strength alcohol that morning, however, a viewing of CCTV footage showed the sale of six (6) Jim Beam and Cola cans at 10:02am. Ms Grace told the Police she thought they were 'mid-strength'. An examination of the cash register for the corresponding time displayed 'No Sale', which Ms Grace explained sometimes, occurred through pressing the incorrect buttons.
- 11 While at the premises, Police observed Ms Grace serving full-strength alcohol to a number of persons whom Ms Grace stated were from remote mining sites. Police did not observe any register being kept of the sales as required by the licence conditions.
- 12 The Police reviewed the full CCTV footage that was obtained, however, were unable to view that of the previous day as it could not be located. Detailed audit reports for trading between 10:00am and 12:00 noon on 1, 2 and 3 April, 2013 were obtained.
- 13 The Police submission lists numerous incidents on 1, 2 and 3 April, 2013 and based on CCTV observations and the detailed audit report of sales have determined that Sunseason Pty Ltd and Ms Anita Grace committed the following offences:
 - a) On 1 April 2013:
 - Breach of conditions x 11, s 110(1)(aa) of the Act by selling mid and full-strength alcohol between 10:00am and 12:00 noon or in the alternative breach of conditions x 11, s 110(1)(aa) of the Act by failing to maintain a register of an individual sale to a pastoralist;
 - b) On 2 April 2013:
 - Breach of conditions x 26, s 110(1)(aa) of the Act, by selling mid and full-strength alcohol between 10:00am and 12.00 noon or in the alternative breach of conditions x 26, s 110(1)(aa) of the Act, by failing to maintain a register of an individual sale to a pastoralist;
 - c) On 3 April 2013:
 - Breach of conditions x 31, s 110(1)(aa) of the Act, by selling mid and full strength alcohol between 10:00am and 12:00 noon; or in the alternative, breach of conditions x 31, s 110(1)(aa) of the Act, by failing to maintain a register of an individual sale to pastoralist;
 - Breach of condition x 1, s 110(1)(aa) of the Act, by not maintaining a register of sales to station owners and/or pastoralists during restricted hours.

- 14 On 16 April 2013, the Police interviewed Ms Grace who explained that on the morning of 3 April 2013, she had intervened in the fight outside the front of the liquor store and had escorted an injured woman inside. Ms Grace stated that on that morning she had been continually harassed into selling full strength liquor and did so because she wanted those customers to move on. In hindsight she could have phoned the Police or closed the store.
- 15 By way of explanation as to why some cash sales observed on the CCTV do not appear on the detailed audit report, Ms Grace stated that she was so busy that day; that she was on the phone trying to organize a lot of things. Ms Grace stated that she is not coping with managing the store and that she feels she needs to take a step back and employ a manager.
- 16 When asked to produce the register of sales to pastoralists, Ms Grace admitted to not maintaining one. When asked to produce the Incident Register, Ms Grace produced a lever arch file containing a small number of incident reports and admitted that when local Police asked to view the register on 3 April 2013, that it was loose sheets of paper, not a file.
- 17 It was submitted that the evidence in the complaint outlines offences detected over three (3) consecutive days during a restricted trading period. During this period a substantial number of breaches of the Act were detected and a pattern of poor management in the general operation of the licence may be inferred. The sole director and approved manager of the licensee was present, or participated, in the majority of these breaches.
- 18 It was further submitted that the evidence in this complaint demonstrates a complete disregard for the conditions imposed on the licence pursuant to a section 64 inquiry, which was established to address and minimize the harm, ill-health and antisocial issues within the Newman community.
- 19 It was submitted that the sole Director of the company, Ms Anita Grace, is no longer a fit and proper person to remain in a position of authority as defined under the Act, due to her continued approach of disregard for the conditions imposed on the licence. The licensee has failed to meet its obligations pursuant to the Act and has breached conditions of the licence. As such, there is a proper course for disciplinary action as there is sufficient material for the Commission to determine that the grounds of the complaint (refer aragraph 3.) have been made out.
- 20 Accordingly, the Police seek the following disciplinary action upon the licensee, Sunseasons Pty Ltd, and the director and approved manager of the licensee company, Ms Anita Marlene Grace, or as the Commission sees fit:
- a) Pursuant to section 96(1)(b) of the Act, restrict the trading hours of the licence to between 12:00 noon and 8:00pm.
 - b) Pursuant to section 96(1)(m) of the Act, imposition of a monetary penalty on the licensee, as the Commission sees fit.
 - c) Pursuant to section 96(1)(b) of the Act, impose a condition that the licensee install and maintain CCTV cameras in accordance with the Director's Policy and to include the public areas at the front and rear of

the licensed premises.

- d) Pursuant to section 96(1)(n) of the Act, make such an order as the Commission thinks fit, in relation to the Director of the licensee company, Ms Anita Marlene Grace.

Submissions on behalf of the respondents

21 It was submitted that the second respondent, Ms. Anita Grace, was a person with a strong commitment to the local community, including:

- a) Serving as a Councillor on the Shire of East Pilbara for the past 18 years incorporating:

- a period as Deputy President of the Shire;
- member of the internal financial audit group;
- member of the airport development group;
- member of the women's shelter committee; and
- Deputy Councillor of the Pilbara Regional Council over the past two years.

- b) Being involved in making the local community safer, healthier and ensuring its welfare by being:

- Chairperson of the Newman Liquor Accord;
- active in Justice of the Peace duties;
- former member of the Pilbara College governing council;
- former member Hospital Advisory Committee;
- former Tourist Centre committee member; and
- former Pilbara Development Commission member.

- c) Having the following involvement in the liquor industry:

- operating the Star & Garter Hotel in Kalgoorlie for 3 years;
- owner and operator of Newman Liquor Store since 1995;
- holding the necessary RSA certificate and Unrestricted Approved manager's card; and
- holding a Security Officer's and crowd controller's licence.

22 It was advised that Ms Grace assists the Newman Police two to three times a week, either by providing the store security footage or in her role as a Justice of the Peace.

23 It was submitted that due to Newman's remote location and social alcohol

problems, when groups of people arrive in Newman for funerals or gatherings, the local police sometimes close down the licensed venues in Newman. On 3 April 2013, the day an assault took place in front of the licensed premises, a group similar to this was outside the store.

24 In respect to the incidents recorded in the Police complaint, many are not offences as they include the legal sale of mid-strength alcohol, which is allowed under the licence (section 64 inquiry condition no 2).

25 References in the Police complaint to the detailed audit report are misleading as this report is simply a printout of the till from the store and includes sales to station owners and pastoralists, which are not unlawful under the licence (section 64 inquiry condition no. 2). These sales from prior orders are regularly placed through the till at quiet times in the morning and do not necessarily result in the alcohol products leaving the premises at that time.

26 The evidence of sales occurring does not imply that they are illegal. The respondents maintain that the "Detailed Audit Report" is not evidence of when a sale occurred and therefore not a breach of the liquor licence as the respondents are entitled to sell full strength alcohol after midday to either station owners or pastoralists prior to midday.

27 While the licensee must keep a register of purchases by station owners or pastoralists, there is no specific format dictated or prescribed that the register must adhere to.

28 In her personal presentation at the hearing, Ms Grace advised that on 3 April 2013, there were staff members away ill and due to the family gathering and her attending to the assault, the business operations were very busy.

29 The Police incident reports could not be taken as an indication of how the store generally operated, as being a small community everyone would know if there was any ongoing inappropriate service of alcohol.

30 It was pointed out that the liquor store often operated under difficult circumstances and the morning of 3 April 2013, was such occasion, although there was no sale of alcohol from the store associated with the altercation. The reported large bottle (700ml) of Jim Beam in the possession of a group not directly involved in the incident did not come from Cellarbrations Newman.

31 The procedures being applied in the store under the licence (section 64 inquiry conditions) had been signed off by the liquor inspectors only months before.

32 In hindsight, the store should have been closed on the morning of 3 April 2013.

33 The following was submitted in relation to the remedies proposed by the Police:

- a) Restrict the trading hours of the licence to between midday and 8:00pm.

Since the incident, the respondents have only been opening the store after midday to avoid another situation. This will only affect the conditional sales and not have any effect on the safety, health and welfare of the local community.

- b) An imposition of monetary penalty on the licensee as the Commission sees fit.

The store is already under financial strain with it recently employing a full time manager. The future of the business will have to be considered if any substantial penalty is imposed. Any penalty will have a detrimental effect on the business of the respondents but will not have any positive effect on the safety, health and welfare of the local community.

- c) Impose a condition the licensee install and maintain CCTV cameras in accordance with the Director's Policy and to include the public areas at the front and rear of the licensed premises.

The store already has CCTV installed. The respondents are agreeable to an upgrade to the system but it would be a significant financial imposition on a small business.

- d) Make an order as the Commission thinks fit, in relation to the Director of the licensee company, Ms Anita Marlene Grace.

Ms Anita Grace is an active member of her community, a councillor, Justice of the Peace and activist for social change in the Newman Community. It is the respondents submission that she has a positive effect on the safety, health and welfare of the local community.

Responsive submission of behalf of the Commissioner of Police

34 It was submitted that the arguments being presented by the respondents, that the early sales of full strength alcohol on the morning of 3 April 2013 were for prior orders, were inconsistent with the direct police observations, the CCTV recording and the detailed audit report.

35 The Register required to be completed for prior orders to station owners or pastoralists was totally inadequate and the incident register was not complete and it was submitted that there was no documentation confirming that the registers had earlier been inspected and confirmed by the licensing inspectors.

36 Direct observations and viewing the CCTV footage of 1, 2, and 3 April 2013 show that Ms Grace did not take enough time to assess the intoxication of customers and should have kept the doors of the store closed on the morning of 3 April 2013 because of the group gathering outside.

37 The police has noted the community involvement of Ms Grace and acknowledges the stress of operating the business and staff engagement difficulties during sensitive situations in this location. However, there were questions about the ability of the licensee to comply with the conditions of the licence requiring the disciplinary actions being sought.

Determination

- 38 The Commission may, where a complaint is lodged under section 95 of the Act, take disciplinary action. Pursuant to section 96 of the Act, if the Commission is satisfied on the balance of probabilities that the ground(s) upon which the complaint is based have been made out so that a proper cause for disciplinary action exists, the Commission may take action pursuant to section 96(1) of the Act.
- 39 The Commission has examined all of the material, including the CCTV footage, submitted by the Complainant and received submissions from the respondents, both in written form and by personal presentation at the hearing by Ms Grace and her legal representative.
- 40 The Commission accepts that the operation of the Cellarbrations Newman liquor store is faced with many significant challenges due to the remoteness of the location, the social difficulties in the community and the problems associated with attracting and retaining competent staff.
- 41 In particular the Commission is cognizant of the issues that can arise for the respondents at times when large groups arrive in Newman for occasions that can generate a high demand for, and an excessive consumption of, alcohol by many of the participants.
- 42 None-the-less, it is incumbent upon the licensee to meet all of the requirements and responsibilities that are imposed by the licence and the Act and there is sufficient evidence before the Commission to indicate that there were a number of breaches of the licence conditions over the period 1, 2 and 3 April 2013.
- 43 The Commission accepts the complainant's submission that the direct observations reported by the police, a review of the CCTV footage, an examination of the detailed audit reports and the licensee's approach to maintaining the register of purchases by station owners and pastoralists, are clear indications that the premises were not being managed in accordance with the licence conditions and the Act over the period of 1 to 3 April 2013.
- 44 There is no evidence before the Commission to confirm that there has been a long term systematic breakdown by the licensee in meeting its obligations under the licence and the Act, however, it would appear that there is a general lack of understanding or ambivalence by Ms Grace towards the licence conditions to the extent that her ability/suitability to be a licensee is to be considered.
- 45 The Commission accepts the respondents submission that the detailed audit reports can reflect sales of full strength alcohol outside of the prescribed times due to the processing of pre-order sales, however, the lack of supporting records in the register and the consistency between takeaway sales shown on the CCTV footage and the detailed audit report would indicate that breaches of the licence conditions have occurred.
- 46 The Commission therefore finds that grounds 1, 2, 4 and 5 of the complaint

have been made out and a proper cause for disciplinary action exists.

47 With regard to ground 3, that the second respondent, Ms Grace, is not a fit and proper person under the *Liquor Control Act 1988* to hold a position of authority in licensed premises, the Commission is not persuaded that on the basis of the complaints as they relate to the period of 1 to 3 April, 2013, there is sufficient reason for disciplinary action under section 95(4)(h) of the Act.

48 The Commission acknowledges, on the evidence presented, that the second respondent has experienced significant challenges in complying with the special trading conditions and the difficulties that are faced on a daily basis in the operation of a liquor store in Newman. However, being a first time offender and after many years in the liquor industry, 18 years as the owner and operator of the Newman Liquor Store, the Commission is prepared to dismiss ground 3 of the complaint subject to Ms Grace participating in a licensee retraining program.

49 In reaching this determination the Commission has also taken into consideration Ms Grace's extensive community involvement including her long service as a Councillor on the Shire of East Pilbara, her role as Justice of the Peace and participation on numerous committees benefiting the Newman community.

50 Accordingly, whilst acknowledging that the licensee has voluntarily introduced these trading hours subsequent to the lodging of this complaint; the Commission orders, in addition to the conditions imposed by the Director on 29 July 2013 which shall continue to apply, the following:

a) The licensee is to install and maintain CCTV cameras in accordance with the Director of Liquor Licensing's Policy in its premises including the public areas at the front and rear of the premises.

b) The second respondent, Ms Grace, complete, within 60 days of the date of this determination, the core unit, MLP1 of the Course in Management of Licensed Premises [52473WA] provided by the Australian Hotels Association, Clubs WA and Access All Areas Training.

c) Pursuant to section 96(1)(m) of the *Liquor Control Act 1988*, the licensee shall pay a monetary penalty of \$1,500 and shall lodge with the Liquor Commission within 30 days of the date of this determination evidence of payment of the penalty.



MR JIM FREEMANTLE
CHAIRPERSON