

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

- Complainant:** Commissioner of Police
(represented by Mr Toby Bishop of the State Solicitor's Office)
- First Respondent:** Jashan Tavern Pty Ltd
(represented by Mr Stephen Butcher of Butcher Paull & Calder Barristers and Solicitors)
- Second Respondent:** Mr Vinod Parihar (director and shareholder of Jashan Tavern Pty Ltd)
(represented by Mr Stephen Butcher of Butcher Paull & Calder Barristers and Solicitors)
- Commission:** Ms Pamela Hass (Presiding Member)
Mr Paul Shanahan (Member)
Prof. Colleen Hayward (Member)
- Matter:** Complaint for disciplinary action pursuant to section 95 of the *Liquor Control Act 1988*
- Premises:** The George
216 St Georges Terrace, Perth, WA, 6000
- Date of Hearing:** 23 August 2022
- Date of Determination:** 21 December 2023

Determination:

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

1. Pursuant to section 96(1)(g) of the *Liquor Control Act 1988*, the Second Respondent, Mr Vinod Parihar, is disqualified for a period of five years from the date of the determination from being a holder of a position of authority in a body corporate that holds a licence, or from being interested in, or in the profits or proceeds of, a business carried on under a licence.

Authorities referred to in determination:

- *Australian Broadcasting Tribunal v Bond* [1990] HCA 33
- *Commissioner of Police v ASMC Group Pty Ltd* (LC 36/2018)
- *Commissioner of Police v Tocoan Pty Ltd* (LC 21/2014)

BACKGROUND

1. The First Respondent, Jashan Pty Ltd (**Jashan**), was the licensee of The George, a tavern which is located at 216 St Georges Terrace in Perth (the **Premises**).
2. The Second Respondent, Vinod Parihar (**Mr Parihar**) was the sole director and shareholder of Jashan.
3. By the Complaint dated 18 May 2022 signed by Acting Superintendent Troy Cooper as Delegate of the Commissioner of Police, the Complainant alleges that pursuant to section 95(4) of the *Liquor Control Act 1988* (WA) (the **LC Act**) there is a proper cause for disciplinary action against the First and Second Respondents on five grounds:
 - Ground 1 The licensed premises are not properly managed in accordance with the LC Act (section 95(4)(b));
 - Ground 2 The licensee has contravened a requirement of the LC Act or a term or condition of the licence (section 95(4)(e)(i));
 - Ground 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 and proper person 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 licensee (section 95(4)(k)).
4. The Complaint against the Respondents concern events that occurred at the Premises on the evening of Friday, 31 December 2021 (i.e., New Year's Eve) when the Respondents allowed a function to proceed in a manner that was in breach of the directions issued by the State Emergency Coordinator pursuant to Part 6 the *Emergency Management Act 2005* (WA) (the **EM Act**) and pursuant to the state of emergency declared by the Minister for Emergency Services in respect of the pandemic caused by COVID-19 in accordance with Part 5 of the EM Act (the **Health Directions**).
5. A summary of the Complaint is provided as follows:
 - a) On 27 December 2021, the Commissioner of Police and State Emergency Coordinator issued the *COVID Restrictions (Gatherings and Related Measures) Directions (No 2)* (the **G&RM2 Directions**) as a Health Direction.
 - b) The G&RM2 Directions were issued in response to the high transmission of COVID-19 infections amongst patrons who attended the Perth Mess Hall premises on 19 December 2021. The Perth Mess Hall is a bar, functions and events venue at 8 Francis Street in Perth.
 - c) The G&RM2 Directions closed certain premises, regulated certain gatherings, and placed restrictions on certain places in the Perth and Peel region between 6:00 am on 28 December 2021 and 6:00 am on 4 January 2022.

- d) As at 31 December 2021, the G&RM2 Directions:
 - (i) prohibited dancing at the Premises (paragraph 8);
 - (ii) only permitted seated service or take-away service at the Premises, and only allowed alcohol to be consumed at the Premises by a patron who was seated (paragraph 10); and
 - (iii) required persons in an indoor space to wear a face covering (mask) at all times (paragraph 12).
 - e) On 31 December 2021, a ticketed New Year's Eve event was held at the Premises. The event commenced at about 7:30 pm. Mr Parihar was present during the event as the approved manager of the Premises.
 - f) 353 tickets were sold for the event between 28 and 30 December 2021 (i.e., after the G&RM2 Directions were given). However, given the restrictions on seated service, the Premises could only lawfully accommodate 120 patrons.
 - g) During the event, the G&RM2 Directions were not complied with. Patrons were not wearing face masks, were dancing, and were consuming alcohol while standing.
 - h) During the event, police attended the Premises on two occasions in response to noise complaints. The first attendance was shortly before 10:00 pm. The second attendance was shortly after 11:00 pm.
 - i) On both occasions police attended the Premises, police were delayed entry to the Premises as the front gates were locked. During the periods in which police were delayed entry, Mr Parihar instructed patrons to comply with the Directions to ensure that patrons were seated and wearing masks.
 - j) On the second occasion police attended the Premises, black curtains covered the windows to the Premises. Upon entering, police directed Mr Parihar to cease trading and close the Premises due to the number of intoxicated patrons and the lack of responsible service of alcohol practiced at the Premises.
6. Apart from this Complaint, the event has led to the following criminal and disciplinary proceedings:
- a) Jashan, Mr Parihar and Mr Farooq Latief (the event organiser) were each charged with two counts of failing to comply with a direction contrary to section 86(1) of the EM Act. On 27 April 2022, following a plea of guilty, Mr Parihar was sentenced to a suspended term of imprisonment of 7 months for these charges.
 - b) Jashan was also charged with one count of failing to maintain a register contrary to regulation 14AG(1a) of the *Liquor Control Regulations 1989* (WA), and one count of acting in a way that contravenes the Act or any term or condition of the licence contrary to section 110(1) of the LC Act. On 18 August 2022, Jashan was fined:
 - (i) \$25,000 for the breaches of the EM Act;
 - (ii) \$1,000 for breaching the noise condition attached to the licence; and
 - (iii) \$500 for failure to produce the training register.

- c) Mr Parihar's approval as an approved manager was revoked by a decision of the Director of Liquor Licensing on 17 May 2022.

Relevant Health Directions

7. Paragraphs 8, 9 and 21 of the G&RM2 Directions relevantly required that “[a] *person who owns, controls or operates premises in the affected area* [which relevantly included “*the Metropolitan region described in Schedule 3 to the Planning and Development Act 2005 (WA)*” and which included the location of the Premises] *must not allow a person to engage in dancing at those premises other than* [if it occurs at a wedding or at a home where the participants are all members of the same household]”.
8. It was common ground at the hearing of this matter that the function held at the Premises on the evening of 31 December 2021 was not a wedding and that the patrons who attended the Premises that evening were not all members of the same household.
9. Paragraphs 10 and 21 of the G&RM2 Directions relevantly required that “*a person who owns, controls, operates or is otherwise apparently in charge of, a hospitality venue in the affected area* [which included the location of the Premises] *must only provide:*
- (a) *seated service; or*
- (b) *take-away service,*
- and must not allow food or beverages (including alcohol) to be consumed at the hospitality venue other than by a patron who is seated.”*
10. Paragraph 12 of the G&RM2 Directions relevantly required that “[s]*ubject to paragraph 13* [of the G&RM2 Directions], *a person in the affected area* [which included the location of the Premises] *must wear a face covering at all times while they are: (a) in an indoor space”.*
11. It was common ground at the hearing of this matter that none of the exceptions to the requirements of paragraph 12 of the G&RM2 Directions that are listed in paragraph 13 of the G&RM2 Directions applied to the patrons attending the Premises on 31 December 2021 so as to excuse those patrons from the requirement of wearing a face covering at all times while they were in an indoor space at the Premises.
12. Part III of the Complainant’s ‘Submissions in Support of Disciplinary Action’ (the **Complainant’s Submissions**) also refer to the ‘Proof of Vaccination’ requirements in paragraph 14 of the G&RM2 Directions. Paragraph 14 of the G&RM2 Directions relevantly required that “*except for:*
- (a) *a child under the age of 16 years; or*
- (b) *where the person enters the proof of vaccination venue:*
- (i) *for the purposes of performing a law enforcement function that cannot reasonably be performed other than by entering the particular proof of vaccination venue; or*
- (ii) *for medical or emergency purposes,*
- a person entering a proof of vaccination venue must produce their accepted proof information if requested to do so by a responsible person.” (emphasis added).*

13. Paragraph 40 of G&RM2 Directions says that “*Proof of vaccination venue’ means Ascot Racecourse but only on any day on which patrons are present to attend the Perth Cup.*” The Premises are not part of the Ascot Racecourse. Accordingly, paragraph 14 of the G&RM2 Directions is not relevant to the Complaint.

Breach of the relevant Health Directions

14. It is common ground that the Respondents failed to comply with the G&RM2 Directions on the evening of 31 December 2021 by allowing:
- a) more patrons to enter the Premises than the seated capacity of the Premises;
 - b) more ticket sales than the seated capacity of the Premises;
 - c) patrons to consume liquor while standing;
 - d) patrons to remain at the Premises while they were not wearing face masks; and
 - e) failing to maintain a Responsible Service of Alcohol (**RSA**) Register.
15. It is also common ground that:
- a) there is a proper cause for disciplinary proceedings against the Respondents on the Complaint lodged by the Commissioner of Police under section 95(5) of the LC Act in accordance with section 95(4) of the LC Act;
 - b) at the time of the hearing, Mr Parihar (the Second Respondent) was the sole director and sole shareholder of the First Respondent; and
 - c) Mr Parihar should be disqualified from holding a licence.

However, as the Respondents’ Counsel also said that Mr Parihar will have no future involvement with the Premises, this concession by the Respondents may not be as significant as it first appears.

16. The Complainant also contends that:
- a) The Respondents allowed dancing to occur at the premises that evening in breach of the G&RM2 Directions.
 - b) Mr Parihar delayed police officers when they sought to enter the Premises at 9:52 pm on 31 December 2021, and this is evident from the evidence from the Closed Circuit Television footage taken at the Premises that night (the **CCTV footage**). It is reasonable to infer from the CCTV footage that Mr Parihar deliberately delayed the police officers so that he could attempt to conceal the fact that breaches of the G&RM2 Directions had been taking place at the Premises before the police officers were allowed to enter. The police officers were only allowed to enter the Premises after waiting for approximately 12 minutes.
 - c) Mr Parihar caused the Respondents’ employees to put black fabric over the windows of the premises and as temporary curtains (the **Black Curtains**) on the evening of 31 December 2021 in order to prevent the public and police officers from observing the breaches of the G&RM2 Directions that were taking place at the premises. It is

reasonable to infer from the CCTV footage that this was another attempt to conceal the fact that breaches of the G&RM2 Directions had been taking place at the Premises.

- d) Mr Parihar again delayed police officers from the Liquor Enforcement Unit when they sought to enter the premises after 11:05 pm on 31 December 2021. It is reasonable to infer from the CCTV footage that this was another attempt to conceal the fact that breaches of the G&RM2 Directions had been taking place at the Premises.
- e) Mr Parihar could not produce the RSA training register when he was asked by the police to do so.
- f) Mr Parihar had employed 10 staff to work at the event at the premises on 31 December 2021, but he was unable to provide their full details, including surnames for five of the employees, or their respective RSA training details.
- g) Mr Parihar did not require patrons to comply with the G&RM2 Directions to check in via a COVID contact register or Safer WA QR code upon attending this event. This is evident from the witness statements of First Class Constable Wood¹, Sergeant Ralph², First Class Constable Leslie³ and Detective First Class Constable James⁴.
- h) The Respondents allowed many of the patrons who were at the Premises on 31 December 2021 to become quite intoxicated. This is evident from the CCTV footage and from the witness statements provided by the Complainant.
- i) The Respondents' conduct in breaching the G&RM2 Directions and in attempting to conceal those breaches from the police officers (as described in paragraphs a., b., c., d. and g. above) was deliberate, flagrant and ongoing (i.e., in the sense that conduct was not a single impulsive act but was an ongoing pattern of behaviour).
- j) The Respondents also allowed very loud music to be played at the Premises on 31 December 2021 in breach of trading condition 3 of the licence for the Premises, which states: "*All entertainment is restricted to low level background ambient entertainment only.*"

¹ Paragraphs 72 and 73 of the witness statement of First Class Constable Wood say: "*I asked PARIHAR something like "How did you keep track of who entered the venue?". PARIHAR replied, "Ami was on the door checking tickets on attendees' phones. They had QR codes and Ami was trying to scan but it was taking too long so they just started sighting tickets."*

² Paragraph 42 of the witness statement of Sergeant Ralph says: "*From my observations there appeared to be a lack of Safe WA contact tracing QR codes at the entries and exits to the venue.*"

³ Paragraphs 67 to 73 of the witness statement of First Class Constable Leslie says: "*I asked the accused where his manual sign on register and Safe WA QR Codes were displayed. I said, "Where are your bar-codes and manual sign in registers?" I used the words bar-codes to refer to the QR scan in bar codes. The accused took me to the front glass doors and removed the bar-codes and manual sign on registers from a flower pot adjacent to the entrance. I did not observe any Safe WA bar codes on display anywhere. I looked at the manual sign on register which was about two and a half pages and noticed there were only entries for June, September and November 2021. There were no current entries.*"

⁴ Paragraph 28 of the witness statement of Detective First Class Constable James says: "*I looked around the venue to try and locate any SafeWA QR codes but was unable to locate any.*"

17. The Complainant also contends that, in light of the Respondents' conduct, the Commission should choose to:

- a) cancel the liquor licence pursuant to section 96(1)(e) of the LC Act;
- b) alternatively, suspend the operation of the liquor licence for the Premises until further order or for a specified period pursuant to section 96(1)(d) of the LC Act;
- c) disqualify Mr Parihar, as the licensee, and as the director and shareholder of the First Respondent, from:
 - (i) holding a liquor licence pursuant to section 96(1)(f) of the LC Act; and
 - (ii) holding a position of authority in any body corporate that holds a liquor licence pursuant to section 96(1)(g)(i) of the LC Act; and
 - (iii) being interested in, or in the profits or proceeds of, a business carried on under a liquor licence pursuant to section 96(1)(g)(ii) of the LC Act,for a period of five (5) years or for such period as the Commission thinks fit; and
- d) impose the maximum monetary penalty of \$60,000, or such sum as the Commission sees fit, on the licensee pursuant to section 96(1)(m) of the LC Act,

and that the Commission should also make any such other orders that the Commission thinks fit, in relation to the director and shareholders of the First Respondent pursuant to section 96(1)(n) of the LC Act.

18. The Respondents have not provided any evidence in response to the Complainant's allegations in paragraph 16 above and only addressed those matters by making bare assertions at the hearing.

19. The submissions the Respondents have made that address the Complainant's allegations in paragraph 16 above, are:

- a) There were 250 seats available for patrons at the Premises on 31 December 2021, rather than 120 seats, as the Complainant contends.
- b) Mr Parihar was not involved in the sale of tickets for the event held at the Premises on 31 December 2021. Mr Parihar understood that only 250 tickets would be sold and that there would be 250 seats available at the Premises for the event. In other words, the ticket seller sold more than 250 tickets without Mr Parihar's knowledge or approval.
- c) Mr Parihar doesn't shy away from the fact that he made a massive mistake in the way he managed the event at the Premises on 31 December 2021. Mr Parihar had difficulty managing ticket sales for that event and in hosting the event. However, Mr Parihar did take some steps to try to address the problems with the event at that time, including:
 - (i) he cancelled liquor service at the Premises for one hour; and
 - (ii) he tried to persuade the patrons at the event to wear masks.

However, Mr Parihar also accepts that those steps were inadequate in the circumstances.

- d) It was the host of the party rather than Mr Parihar who put up the black curtains at the Premises on the evening of 31 December 2021.
 - e) When the police attended the Premises for the first time on 31 December 2021, Mr Parihar turned the music down. However, after the police had left the Premises, it was the host of the party rather Mr Parihar who turned the music back up.
 - f) A third party was responsible for checking the QR Codes at the Premises on 31 December 2021.
 - g) None of the patrons at the event at the Premises on 31 December 2021 were drunk. The people who were observed to be drunk by the police officers on that night were all outside the Premises.
20. Other than the submissions described in paragraph 19 above, the Respondents did not directly address the Complainant's allegations in paragraph 16 above. However, the Respondents have made the following further general submissions:
- a) The circumstances of the Complaint are unique, however the Respondents did not provide further details in support of this claim.
 - b) The Respondents have already suffered as a result of their breaches of the EM Act and the LC Act as they pleaded guilty to two breaches of EM Act and (what the Respondent's Counsel has described as) two 'minor' breaches of the LC Act, as a result of which the First Respondent was fined:
 - (i) \$25,000 for the breaches of the EM Act;
 - (ii) \$1,000 for breaching the noise condition attached to the Premises' licence; and
 - (iii) \$500 for failure to produce the training register.
 - c) Those fines will be sufficient deterrence to dissuade the Respondents and any other potential offenders from any similar or analogous future breaches of the LC Act and other legislation. Accordingly, there is no need for the Commission to take the need to deter future breaches of legislation into account when deciding what directions to make in the public interest.
 - d) Mr Parihar and his wife intend to sell the business which the First Respondent operates from the Premises, including the liquor licence, to a third party. At the time of the hearing, Mr Parihar did not have a buyer for the business or a firm timeline for the sale of that business and that licence. In the short term, Mr Parihar wished to transfer that business and that licence to Santosh Foods Pty Ltd, of which Mr Parihar's wife is the sole director and shareholder of the company⁵. If that business was transferred to Santosh Foods Pty Ltd, then Mr Parihar was willing to undertake not to be involved in the day-to-day running of the new licensee.

⁵ The application by Santosh Foods Pty Ltd to transfer the liquor licence was referred to the Commission pursuant to section 24 of the LC Act. The Commission determined to place the referral application (and therefore the application to transfer the licence) on hold pending the determination of this Complaint.

- e) The Commission should not disqualify the licensee, director, and shareholders of the First Respondent from holding a licence (see paragraph 17c. above) as:
- (i) If Mr Parihar is disqualified, then the First Respondent can continue to trade once it has appointed new director(s) and shareholder(s).
 - (ii) If there are new directors/shareholders, then it would not be any public interest in disqualifying the First Respondent from holding a licence as:
 - there would be no basis for any concern that the First Respondent is likely to repeat of the events of 31 December 2021 at the Premises;
 - the incoming directors/shareholders would not be tarnished by the actions of Mr Parihar; and
 - there would be no need to deprive the public of the amenity provided by the business which the Respondents have been operating from the Premises (i.e., the business known as The George).
- f) If the Commission decides to disqualify Mr Parihar, then the Commission should:
- (i) allow Mr Parihar a period of 60 days before the disqualification takes effect to allow Mr Parihar time to sell the First Respondent and the business (including the liquor licence) to a third party; and
 - (ii) make a condition that Mr Parihar is not to be involved in the day-to-day operations of the First Respondent.
- g) There are no grounds for the Commission to order cancellation of the licence (see paragraph 17a. above) because:
- (i) If the First Respondent is disqualified from holding a licence, then the licence for the Premises will continue to exist and will be capable of being transferred. Accordingly, when the Commission considers the Complainant's request to cancel the licence, the real issue for the Commission to consider is whether there is any basis for finding that it is not in the public interest for the business that is conducted under the licence at the Premises to continue.
 - (ii) The Respondent's conduct on 31 December 2021 was an isolated incident and there has never been an occasion where a licence has been cancelled for an isolated incident. In that regard, the decision of *Commissioner of Police v ASMC Group Pty Ltd* (LC 36/2018) (which has been referred to in the Complainant's Submissions), in which the Commission cancelled a liquor licence, concerned a sustained course of conduct. Similarly, the factors which led the Commission to cancel a liquor licence in the decision of *Commissioner of Police v Tocoan Pty Ltd* (LC 21/2014) ("**Tocoan**") were also not present in this case.
 - (iii) The Complainant's request that the Commission cancel the liquor licence is punitive in nature. However, the role of the Commission is not to punish (unlike the Magistrates Court), but rather, to protect the public.
 - (iv) The Respondents have no other prior convictions.

- (v) There is no evidence before the Commission that since 31 December 2021 the licence has not been exercised in the public interest, or that the safety, health or welfare of people at the Premises has been endangered. Accordingly, it is entirely unclear what the public would be protected from by the cancellation of the licence.
 - h) There are no grounds for the Commission to suspend the licence (see paragraph 17b. above) for the same reasons given in paragraphs 20g.(i) to 20g.(iv) above.
21. The Complainant made the following further submissions in reply to the Respondent's submissions in paragraph 20 above:
- a) In reply to the Respondents' contention that the Respondent's conduct on 31 December 2021 was an isolated incident (see paragraph 20g.(ii) above), the Complainant submits that:
 - (i) the period in which the Respondents failed to have due regard to their obligations under the LC Act commenced many days before that night when the Respondents were planning the event on 31 December 2021, including when the Respondents decided to sell many more tickets for that event than the seated capacity of the Premises; and
 - (ii) the nature of the Respondents' conduct on 31 December 2021 was more than mere lapses in complying with their obligations under the LC Act and the EM Act, and that conduct was actively and intentionally obstructive of the police's attempts to enforce that legislation.
 - b) In reply to the Respondents' contention that the *Tocoan* case is irrelevant to this case (see paragraph 20g(ii) above), the Complainant submits that there are material similarities between the facts in the *Tocoan* case and the facts in this case, as in the *Tocoan* case:
 - (i) the licensee's conduct showed a complete disregard for adhering to good management practices and confirming to provisions of the LC Act; and
 - (ii) there was also overwhelming evidence of an ingrained culture of a lack of co-operation and hindrance to police by staff as well as non-compliance with the requirements of the LC Act.
 - c) In reply to the Respondents' contention that an order cancelling the liquor licence is punitive in nature (see paragraph 20g.(iii) above), the Complainant submits that:
 - (i) Although some general deterrence may have been provided by the fines imposed by the Court on the criminal charges, those fines will have had no effect on the Respondents' involvement in the liquor industry and it is important to deter the Respondents' conduct in the context of that involvement.
 - (ii) The fines imposed by the Court are also insufficient by themselves to deter other licensees from similar wilful breaches of their obligations under the LC Act, and their obligations under other legislation, in the future.
 - (iii) Disciplinary proceedings under the LC Act have an entirely different purpose as compared with criminal proceedings.

- (iv) At all relevant times, Mr Parihar was the 'life and soul' of the First Respondent, such that the First Respondent was Mr Parihar's corporate alter ego. In that regard, the Complainant relies on section 129(2) of the *Corporations Act 2001* (Cth)⁶.
- d) In reply to the Respondents' contention that the public should not be deprived of the amenity provided by the business which the Respondents have been operating from the Premises (see paragraph 20e(ii) above), the Complainant points to the notorious facts of the number of similar bars and licensed premises that are within a very short walk of the Premises.
- e) The nature of the Respondents' breaches of the LC Act and the EM Act means those breaches cannot be remedied or addressed by imposing conditions on the liquor licence.
- f) The nature of the Respondents' breaches of the LC Act also means that no effective deterrent to similar deliberate breaches of the LC Act, or to similar attempts to conceal such breaches, can be achieved by imposing conditions on the liquor licence.

DEVELOPMENTS POST-HEARING

22. On 25 July 2023, a delegate of the Director of Liquor Licensing suspended the liquor licence for the Premises pursuant to section 92 of the LC Act, due to Jashan and the freehold owner agreeing to surrender the lease on the Premises by way of a deed to surrender the lease of the Premises and to sell the assets of Jashan's business effective 21 July 2023. Given that Jashan has ceased to occupy the Premises, their interest in the licence is terminated pursuant to section 37(5)(b) of the LC Act.
23. On 27 July 2023, Santosh Foods Pty Ltd withdrew the transfer application due to the delays in progressing the transfer application and the determination of the Complaint.
24. Given these developments, the Respondents are no longer involved in the liquor industry.

RELEVANT LAW

25. 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 LC Act have been made out.
26. Section 95(11) of the LC Act states that it is not a defence to a complaint lodged pursuant to section 95 of the LC 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.

⁶ Section 129(2) of the *Corporations Act 2001* (Cth) states that "[a] person may assume that anyone who appears, from information provided by the company that is available to the public from ASIC, to be a director or a company secretary of the company:

(a) has been duly appointed; and

(b) has authority to exercise the powers and perform the duties customarily exercised or performed by a director or company secretary of a similar company."

27. The policy of the LC 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 LC 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(8) of the LC 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 LC Act (see also sections 95(4)(f) and (k) of the LC Act).
28. In carrying out its functions, including its function under section 96(1) of the LC Act, the Commission is required to have regard to the primary and secondary objects of the LC Act.
29. The primary objects of the LC Act are:
- a) to regulate the sale, supply and consumption of liquor;
 - b) to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor; and
 - c) to cater for the requirements of consumers of liquor and related services, with regard to the proper development of the liquor industry and other hospitality industries in the State.
30. The secondary objects of the LC Act are:
- a) to facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State;
 - b) to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
 - c) to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of the Act.
31. Any inconsistency between the primary and secondary objects is to be resolved in favour of the primary objects.

Position of authority

32. Under section 3(4) of the LC Act a person occupies a position of authority in a body corporate if, among other things, that person is a director of the body corporate.

Fitness and propriety

33. It is a pre-requisite to the grant of a liquor licence to a body corporate that each person in a position of authority is "*a fit and proper person to occupy that position in a body corporate that is a licensee of the premises to which the application relates*".
34. Section 33(6) of the LC Act provides, among other things, that when determining the fitness and propriety of a person the licensing authority may have regard to the character and reputation of that person.
35. Section 33 is concerned with the fitness and propriety of an applicant for a liquor licence. However, the section is also indicative of those considerations which may be relevant to whether a person remains a fit and proper person to hold a position of authority in a body corporate for the purposes of sections 95 and 96. The expression "*fit and proper person*" allows a wide scope for judgment and involves an inquiry about a person's honesty, knowledge and ability in the context of the role they are proposing to undertake.
36. The Commission's primary considerations in deciding whether the Second Respondent is a "*fit and proper*" person are:
 - a) the relationship between the incidents and his roles and responsibilities under the LC Act;
 - b) whether the incidents are of such a nature that they reflect adversely on the Second Respondent's character and reputation to a serious degree; and
 - c) whether the actions of the Second Respondent show a course of disregard for the law and/or provide an indication of likely future conduct.
37. The relevance of character and reputation to the question of fitness and propriety was explained by Toohey and Gaudron JJ in *Australian Broadcasting Tribunal v Bond*. Their Honours observed that the expression "*fit and proper person*" takes its meaning from its context, from the activities in which the person is engaged (in this case, the sale of liquor) and the ends to be served by those activities (in this case, the provision of liquor to the public *in a manner consistent with the public interest*). Their Honours went on at page 380:

"The concept of 'fit and proper' cannot be entirely divorced from the conduct of the person who is ... engaging in those activities. However, depending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question."
(emphasis added)
38. Further, a person may be of good repute but, unbeknownst to those who hold that opinion, have serious deficiencies in his or her moral character. Conversely, a person may not be of good repute because of a widespread but mistaken belief that (for example) he or she is dishonest, but in fact is possessed of good moral qualities.

39. Criminal conduct may be the subject of disciplinary proceedings; disciplinary proceedings under the LC Act have an entirely different purpose as compared with criminal proceedings.

DETERMINATION

40. The Commission finds that:

- a) The allegation described in paragraph 16a. above is proven on the balance of probabilities on the available evidence of the CCTV footage and the statements of witnesses, including the statements of First Class Constable Wood and of Sergeant Ralph.
- b) The allegation described in paragraph 16b. above is proven on the balance of probabilities on the available evidence of the CCTV footage and the statement of witnesses, including the statement of Mr Sean McKiernan (who was working at the Premises on the night).
- c) The allegations described in paragraph 16c. above are proven on the balance of probabilities on the available evidence of the CCTV footage and the statement of witnesses, including the statements of Mr McKiernan, of First Class Constable Wood and of Sergeant Ralph.
- d) The allegations described in paragraph 16d. above are proven on the balance of probabilities on the available evidence of the CCTV footage and the statement of witnesses, including the statements of Mr McKiernan and of First Class Constable Leslie.
- e) The allegations described in paragraph 16g. above are proven on the balance of probabilities on the available evidence of the statement of witnesses, including the statements of Mr McKiernan and of First Class Constable Leslie.

41. The Respondents' response to the allegation at paragraph 16c. above was that the Black Curtains were erected in order to block out sunlight. The Commission rejects that explanation in circumstances where:

- a) the Black Curtains were erected at night time;
- b) many of the Black Curtains were erected in front of a window which faced a public laneway and those windows would not be subject to strong sunlight even in day time; and
- c) most (if not all) of the Black Curtains were erected in a temporary and makeshift manner as there were no permanent fixings from which to hang curtains (such as curtain rods), which indicates that there was not normally any need to block out sunlight even during daylight.

42. The Commission reasonably infers that Mr Parihar erected the Black Curtains to try to prevent the public and police officers from observing the breaches of the G&RM2 Directions:

- a) in the circumstances referred to in paragraph 16a., 16b. and 16c. above;
- b) as the Respondents concede that they were breaching G&RM2 Directions at that time;

- c) as police officers had visited the premises to investigate breaches of those Directions earlier in the evening and before the Black Curtains were erected;
 - d) as erecting the Black Curtains at that time would have clearly made it more difficult for police officers to observe breaches of those Directions without entering the premises; and
 - e) as there seem to be no other clear reasons for erecting the Black Curtains at that time.
43. The Respondents do not appear to have responded to the Complainant's allegations at paragraphs 16a., 16c. and 16d. above in their evidence. However, the Commission believes that those additional allegations are not material to its decision in circumstances where:
- a) the allegations in paragraph 14 above that are common ground; and
 - b) the Commission finds that Mr Parihar erected the Black Curtains in order to try to prevent police officers from observing the Respondents' breaches of the G&RM2 Directions (see paragraphs 41 and 42 above).
44. The Commission is satisfied that Mr Parihar, as the approved manager at the Premises on the night of 31 December 2021, placed the safety, health and welfare of his patrons and staff at risk by not complying with the G&RM2 Directions. This non-compliance also posed a risk to the health and safety of the broader community if persons at the premises contracted COVID-19 and then mixed with family, friends or others. This was a serious failure by Mr Parihar in his role as an approved manager and this disregard for the law reflects adversely on his judgement and character.
45. The health, safety and welfare of persons who resort to licensed premises should be foremost in the mind of a licensee. The G&RM2 Directions under the EMA were put in place to protect the health, safety and welfare of the public and minimise the risks to the community from COVID-19. In this regard, the Respondents failed to fulfil their obligations.
46. Accordingly, the Commission is satisfied that it is appropriate to impose a penalty on Mr Parihar pursuant to section 164(1a) of the LC Act.

ORDERS

47. 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:
- a) Pursuant to section 96(1)(g) of the *Liquor Control Act 1988*, Mr Vinod Parihar is disqualified for a period of five years from the date of the determination from being a holder of a position of authority in a body corporate that holds a licence, or from being interested in, or in the profits or proceeds of, a business carried on under a licence.



PAMELA HASS
PRESIDING MEMBER



PAUL SHANAHAN
MEMBER