

NSW Independent Liquor & Gaming Authority

Licensee & Business Owner, Amaroo Hotel	Premises Owner, Amaroo Hotel
Dubbo Regional Council	NSW Police
Liquor & Gaming NSW	-

30 September 2024

Dear Sir/Madam

Reference No.	DOC24/214074
Licensee	Mr Michael Kempston
Licence Name	Amaroo Hotel
Licence Number	LIQH400112025
Licence Type	Liquor – hotel licence
Premises	Macquarie Street, Dubbo NSW 2830
Legislation	Part 9A of the <i>Liquor Act 2007</i>

Decision on remedial action for demerit points accumulated Mr Danial French, Amaroo Hotel (LIQH400112025)

On 30 July 2024, the Independent Liquor & Gaming Authority notified you of the remedial action it proposed to take for the demerit points accumulated by Mr Danial French, the former licensee of Amaroo Hotel, Dubbo (the venue), under the *Liquor Act 2007* (the Act).

Our decision

On 11 September 2024, we decided to take the following remedial action on the licence of Amaroo Hotel (LIQH40112025):

1. **impose** a condition in respect of RSA training, under section 144T of the Act, as detailed in schedule 1
2. **impose** a condition in respect of CCTV, under section 144T of the Act, as detailed in schedule 1
3. **impose** a condition in respect of incident, under section 144T of the Act, as detailed in schedule 1
4. **impose** a condition in respect of supervision condition, under section 144T of the Act, as detailed in schedule 1
5. **impose** a condition in respect of plan of management, under section 144T of the Act, as detailed in schedule 1.

Statement of reasons

Background

On 14 November 2022 we received a notification from Liquor & Gaming NSW (L&GNSW) that the licensee had:

- committed a category 2 demerit offence of ‘*licensee allow liquor to be sold or supplied to minor*’ under section 117(8) of the Act,
- incurred two demerit points under section 144H of the Act as a result of the offence, and
- accumulated a total of two demerit points during a three-year period.

In addition to the notification, L&GNSW provided a submission recommending that we take remedial action in response to the accumulation of demerit points by the former licensee.

On 7 May 2024 we notified parties as required under section 144Z(1) of the Act, that we proposed to take remedial action in response the accumulation of demerit points and invited submissions in response. The notice proposed the imposition of security, RSA training and plan of management conditions.

Submissions

Submissions on behalf of L&GNSW, NSW Police and the venue were received in response to the notice of proposed remedial action. We have considered these submissions, which are detailed below:

Liquor & Gaming NSW

On 13 May 2024, L&GNSW provided a submission, supporting the proposed remedial action due to the seriousness of the offence. L&GNSW further submitted that the Authority may wish reconsider terminology and limits to implementation of the proposed security condition to more closely address high-risk periods of operation at the venue.

NSW Police

On 27 May 2024, Police provided a submission in response to the proposed remedial action. Police supported the imposition of the RSA training and plan of management conditions but suggested a variation to the security condition in response to operational changes at the venue. They further proposed the imposition of CCTV, incident register and supervision conditions.

Premises owner

On 18 June 2024 a submission was made on behalf of the premises owner and supported by the current licensee and business owner. The premises owner submitted that third-party operations under the former licensee had now ceased and that the area of the venue where the demerit offence occurred had been closed.

The premises owner submitted that the proposed security condition was excessive and disproportionate to the risk identified from the demerit offence. They submitted that they supported the alternative imposition of the additional conditions proposed by Police.

The premises owner submitted that the effectiveness of measures currently in place at the venue, in combination with the removal of the third-party, are evidenced by there

being no repeat incidents since the demerit offence occurred. Any risks that may arise from operations at the venue would be mitigated by the imposition of conditions proposed by Police, relating to CCTV, incident register and supervision, as well as the plan of management and RSA training condition proposed by the Authority.

Further notice of proposed remedial action

In response to the submissions received, the Authority determined not to take the previously proposed remedial action, issuing a further notice of proposed remedial action on 30 July 2024. The new notice proposed the imposition of RSA, plan of management, CCTV, incident register and supervision conditions on the licence of the venue.

On 20 August 2024 a submission was received on behalf of the premises owner. We have considered this submission, which is summarised below:

- the venue did not object to the imposition of the five conditions proposed in the notice dated 30 July 2024,
- the venue has developed a plan of management in consultation with local police and a copy was provided with the submission, and
- the venue submitted that the proposed plan of management condition be updated to refer to the August 2024 plan.

Considerations under section 144ZA of the Act

We have also considered the relevant factors identified in section 144ZA of the Act, and note that:

- there is no material to indicate that the size and patron capacity of the licensed premises impacted the licensee's ability to prevent the commission of the demerit offence,
- the licensee has no history of committing demerit offences,
- there is no record of any previous prescribed complaints against the licensee,
- there is no other action preferable in this instance,
- there has been a change in licensee since the offence, and
- there have been changes in the operation of the venue since the demerit offence, including the cessation of a third-party lease arrangement to operate part of the venue.

Our findings

We are satisfied that:

- two demerit points have been accumulated by the former licensee in a three-year period
- the offence '*licensee allow liquor to be sold or supplied to minor*' was a breach of section 117(8) of the Act.

Having considered the available material, we find that the former licensee failed to comply with their obligations under the Act, including the provision of responsible service of alcohol at the licensed premises. In breaching these obligations, the former licensee failed to provide proper controls and adequate monitoring, resulting in the supply of liquor to a person under the age of 18 years.

We consider the offence to be serious and warrant an enforceable regulatory response by way of remedial action, to prevent any similar occurrence in the future. We accept the submissions from Police and the venue that operations and management at the venue

have changed since the demerit offence and that more appropriate controls have been implemented.

The imposition of licence conditions will ensure the licensee continues to operate under the necessary procedures and controls and will work to ensure demerit offences do not occur in the future. These conditions represent an appropriate response to the risk identified from the demerit offence.

If you disagree with this decision

If a person who was notified of the decision is dissatisfied with this decision, they may apply to NSW Civil and Administrative Tribunal for a review.

An application for review must be made no later than 21 days after being notified of the decision.

For more information, please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney or visit the NCAT website.

If you have any questions

Please contact the Office of ILGA at office@ilga.nsw.gov.au if you have any questions.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jeff Loy', with a long, sweeping flourish extending upwards and to the right.

Jeff Loy

Board Member

For and on behalf of the **Independent Liquor & Gaming Authority**

Schedule 1 – Licence conditions to be imposed
Amaroo Hotel, Dubbo (LIQH400112025)

No.	Condition to be imposed	Description
1.	RSA Training	<p>The Licensee and all staff are required to undertake a responsible service of alcohol (RSA) training course conducted by an approved Registered Training Organisation (RTO). The training is required to be completed by all staff within a 2-month period.</p> <p>In this condition: “staff,” in relation to the subject premises, means any person undertaking duties related to the sale and supply of alcohol on the licensed premises, including staff responsible for the monitoring of liquor consumption and patron behaviour.</p> <p>Note: this excludes staff who have completed RSA training since the prescribed offence occurred.</p>
2.	Plan of management	<p>The premises is to be operated at all times in accordance with the Plan of Management dated August 2024 as may be varied from time to time after consultation with NSW Police. A copy of the Plan of Management is to be kept on the premises and made available for inspection on the request of a police officer, council officer, Liquor and Gaming NSW inspector, or any other person authorised by the Independent Liquor and Gaming Authority.</p>
3.	CCTV	<ol style="list-style-type: none"> 1. The licensee must maintain a closed-circuit television system on the premises in accordance with the following requirements: <ol style="list-style-type: none"> a. the system must record continuously from opening time until one hour after the premises are required to close (or, in the case of premises that are not required to cease trading, continuously at all times), b. recordings must be in digital format and at a minimum of 15 frames per second, c. any recorded image must specify the time and date of the recorded image, d. the system’s cameras must cover the following areas: <ol style="list-style-type: none"> i. all entry and exit points on the premises, ii. the footpath immediately adjacent to the premises, iii. all publicly accessible areas (other than toilets) on the premises.

No.	Condition to be imposed	Description
		<p>2. The licensee must also:</p> <ul style="list-style-type: none"> a. keep all recordings made by the CCTV system for at least 30 days, and b. ensure that the system is accessible by at least one member of staff at all times it is in operation, and c. provide any recordings made by the system to a police officer or inspector within 24 hours of any request by a police officer or inspector to provide such recordings.
4.	Incident Register	<ul style="list-style-type: none"> 1. The licensee must maintain a register, in which the licensee is to record the details of any of the following incidents and any action taken in response to any such incident: <ul style="list-style-type: none"> a. any incident involving violence or anti-social behaviour occurring on the premises, b. any incident of which the licensee is aware that involves violence or anti-social behaviour occurring in the immediate vicinity of the premises and that involves a person who has recently left, or been refused admission to, the premises, c. any incident that results in a person being turned out of the premises under section 77 of the Act, d. any incident that results in a patron of the premises requiring medical assistance. 2. The licensee must, if requested to do so by a police officer or inspector: <ul style="list-style-type: none"> a. make any such incident register immediately available for inspection by a police officer or inspector, and b. allow a police officer or inspector to take copies of the register or to remove the register from the premises. 3. The licensee must ensure that the information recorded in the incident register under this condition is retained for at least 3 years from when the record was made.

No.	Condition to be imposed	Description
5.	Supervision	<p>At any time the licensed premises is trading and the licensee is not present on the premises the licensee must ensure that the premises are under the supervision of a person (“supervisor”) of whom:</p> <ul style="list-style-type: none"> a. The licensee has verified and shall maintain documentary evidence on the premises that the Supervisor has at least one year of experience working as a supervisor or manager of a licensed premises. <p>In this condition:</p> <p>“supervisor” means a person who is appointed by the licensee, either verbally or in writing, to have the responsibility and authority to manage the premises, its staff and contractors in the absence of the licensee and who shall supervise the activities of the licensed business to ensure that the licensed premises, its staff and contractors comply with liquor and gaming legislation.</p>