



Mr John Anthony Quinlan
Former Licensee
J D's Bar and Grill Restaurant



with a copy to:

Mr Dimitri Argeres
Director, Compliance and Enforcement
Liquor & Gaming NSW
Department of Enterprise, Investment and Trade



12 July 2022

Dear Sir/Madam

Decision regarding disciplinary complaint under section 139 of the *Liquor Act 2007* – Mr John Quinlan

I refer to the disciplinary complaint (**Complaint**) received by the Independent Liquor & Gaming Authority (**Authority**) from a delegate of the Department of Customer Service (**Complainant**) in relation to Mr John Anthony Quinlan (**Respondent**), a former licensee of J D's Bar and Grill Restaurant, Cronulla (LIQO624006752) (**Venue**).

On 12 March 2021, the Authority issued a show cause notice to the Respondent under section 140 of the *Liquor Act 2007* (**Act**), inviting him to:

- show cause as to why the Authority should not take disciplinary action against him, and also, in the event that the Authority did take disciplinary action
- inviting him to make a submission on what, if any, action should be taken.

Having regard to the submissions received and the available information, the Authority is satisfied that the alleged grounds of the Complaint under section 139 of the Act are established, and that the Respondent is not a fit and proper person to be the holder of a liquor licence.

At a meeting on 15 December 2021, the Authority decided to:

- disqualify Mr Quinlan from holding a liquor licence, or from being the manager of a licensed premises or the close associate of a licensee, for life pursuant to section 141(2)(f) of the Act.

A statement of reasons for the Authority's decision is attached.

If you have any questions about this letter, please contact the Authority Secretariat via email at ilga.secretariat@liquorandgaming.nsw.gov.au

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Philip Crawford', written in a cursive style.

Philip Crawford
Chairperson
For and on behalf of the Independent Liquor & Gaming Authority

Decision of the Independent Liquor & Gaming Authority

Complaint against Mr John Quinlan

Complaint and Grounds

1. On 19 January 2021, the Independent Liquor & Gaming Authority (**Authority**) received a disciplinary complaint (**Complaint**) from a delegate of the Department of Customer Service (**Complainant**), in relation to Mr John Anthony Quinlan (**Respondent**), a former licensee of liquor licence LIQO624006752 (**Licence**) for J D's Bar and Grill Restaurant, Cronulla (**Venue**).
2. The Complaint was made under section 139 of the *Liquor Act 2007* (**Act**). The Complaint alleges that the Respondent is not a fit and proper person to hold a liquor licence on the grounds in section 139(3)(i) of the Act.
3. The Complaint alleges that the ground above is made out on the following facts:
 - a) The Respondent was the Venue's licensee between 27 May 2004 and 27 January 2020.
 - b) On 13 October 2019, the Respondent and two patrons known to him consumed liquor at the Venue after the Venue closed and to the point of intoxication.
 - c) The Respondent subsequently engaged in an altercation with and assaulted the two patrons for approximately 15 minutes, causing serious injury.
 - d) As a result of this incident:
 - i. on 20 November 2019, the Authority suspended the Respondent's Responsible Service of Alcohol competency card for one year
 - ii. on 9 March 2020, the Sutherland Local Court made an Apprehended Personal Violence Order against the Respondent for two years for the protection of the two patrons
 - iii. on 20 April 2020, the same Court convicted the Respondent of two counts of assault occasioning actual bodily harm, sentencing him to an imprisonment term of nine months and a community correction order for two years and six months
 - iv. on 11 August 2020, the Authority imposed a first strike against the Respondent under the Act, for the prescribed offence of permitting intoxication on licensed premises.
 - e) Between July 2018 and October 2019, the Respondent was issued eight penalty notices by NSW Police. Six of the penalty notices related to breaching conditions of the Licence, one related to the sale or supply of liquor not in accordance with authority, and one related to permitting intoxication at the Venue.
 - f) Following the issuing of four of the above penalty notices in July 2018, the Respondent was found guilty and fined for hindering and insulting NSW Police.

Complaint Process

4. On 12 March 2021, the Authority issued a Notice to the Respondent under section 140 of the Act, inviting him to show cause, by way of a written submission, as to why disciplinary action should not be taken on the basis of the Complaint.
5. The Authority also invited written submissions from the interested parties specified in section 140(3) of the Act, including the current licensee, approved manager, landlord

and business owner of the Venue. No submission has been received from any of these interested parties.

6. On 18 March 2021, the Respondent made a submission through his legal representative, contending that he:
 - a) accepts that his conduct was not to the standard of a licensee, and remains remorseful and embarrassed about the incident
 - b) was, at the time of the incident, under extreme financial and psychological pressure in trying to keep the business profitable and dealing with Police over compliance issues
 - c) has not previously been involved in any drunken incident in nearly 40 years of working in the hospitality industry, which suggests that his behaviour on this occasion was aberrational and a manifestation of his reliance on alcohol to cope with the pressure at the time
 - d) has in the past year changed the direction of his career and is no longer involved in, nor does he contemplate or anticipate returning to, operating or managing a licensed premises
 - e) requests that the Authority take into consideration the self-help measures he has undertaken in the last year, including having regular sessions with a psychologist to develop coping strategies, participating in a support group which gave him insight into alcohol abuse and mechanisms to cope with it
 - f) Requests that the Authority, in determining the Complaint, not focus solely on the incident, but also consider his previous good standing in the community, and successful efforts in rehabilitating his personal and business life.
7. On 21 April 2021, the Complainant provided a submission noting the Respondent's submission, and maintaining that the relevant evidence and facts relied on in the Complaint, and the seriousness of the offence, are sufficient to demonstrate that the Respondent is not a fit and proper person to be a licensee or hold a relevant position in the liquor industry in the future.
8. On 4 May 2021, the Respondent provided a final submission through his legal representative, reiterating that the incident was the Respondent's first serious incident of any kind in nearly 40 years of working in the hospitality industry, and that he was in a deeply depressed mental state at the time due to the stress of dealing with the police and a financially stricken business. The Respondent again asked that the Authority take into consideration the Respondent's previous good reputation and the steps he took to resurrect his standing in the community.

Relevant law

Prescribed grounds of complaint

9. Section 139(1) of the Act identifies the types of persons, including the Secretary and police, who can make a complaint to the Authority in relation to a licensee, manager or close associate of a licensee.
10. The grounds on which a complaint can be made under section 139(3) are prescribed and include, relevantly that:
 - a) the licensee is not a fit and proper person to be the holder of a licence (whether for the same reason as that set out in section 45(5) or otherwise) within the meaning of section 139(3)(i) of the Act.

Power to take disciplinary action

11. Section 141 of the Act confers on the Authority powers to take disciplinary action against a licensee, manager or close associate of a licensee, if it is satisfied that any of the complaint grounds set out under section 139 of the Act is established.
12. Section 142 of the Act further provides that the Authority is not prevented from taking disciplinary action for a matter merely because the relevant person is subject to criminal or civil proceedings that relate to the same matter.
13. Section 139(3)(i) of the Act sets out the relevant ground relied on in the Complaint, that the licensee is not a fit and proper person to be the holder of a licence.
14. Section 137(1)(a) of the Act provides that a licensee includes a former licensee.
15. Section 140 of the Act requires the Authority to notify a licensee in writing of the grounds on which the Authority is proposing to taken disciplinary action, and invite the licensee to show cause as to why disciplinary action should not be taken. The Authority is also required to invite submissions from the relevant interested parties listed in section 140(3).
16. The Authority is satisfied that all relevant parties were afforded the requisite procedural fairness under the Act, and given the opportunity to make submissions about the Complaint, whether disciplinary action should be taken, and if action should be taken, also about the type of disciplinary action.

Fit and proper person

17. The term 'fit and proper' is not defined within the Act, and has its meaning derived from common law. Being fit and proper normally comprises the three characteristics of "honesty, knowledge and ability": *Hughes & Vale Pty Ltd v NSW (No 2) (1955) 93 CLR 127*.
18. It is relevant to note that section 45(5A) of the Act provide that the factors to consider in determining whether a liquor licence applicant is a fit and proper person to carry on a licensed business include whether the person is:
 - a) of good repute, having regard to character, honesty and integrity, and
 - b) competent to carry on the business or activity.
19. In *Australian Broadcasting Tribunal v Bond (1990) 170 CLR 321*, the High Court of Australia held that:

The expression 'fit and proper person' standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of 'fit and proper' cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of those 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 an indication of likely future conduct) or reputation (because it provides an 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

Findings

20. The Authority is satisfied on the material before it that the Respondent, as a former licensee of the Venue, is a licensee for the purposes of the Authority's exercise of its disciplinary powers under section 141 of the Act.

21. The Authority has had regard to the Respondent's submission that his conduct at the time of the incident was attributable to the pressure and psychological problems he was experiencing from dealing with the Venue's ongoing financial and compliance issues.
22. The Authority accepts that the Respondent has not had any previous records of alcohol-related violent conduct, or incidents of a similar nature to that in the current matter, in his many years of working in the industry.
23. The Authority also notes that the Respondent has expressed remorse for his conduct, taken steps to address his psychological problems, changed his career and stated that he has no intention to operate or manage any licensed businesses in the future.
24. The Respondent's conduct which led to the Complaint nevertheless raises serious concerns about the Respondent's fitness and propriety to hold a liquor licence and the factors above are not sufficient to mitigate the gravity of these concerns.
25. The criminal charges and court orders against the Respondent for the incident, including the sentence of imprisonment, are reflective of the seriousness of his offence and the harm inflicted on the victims. The Respondent's violent conduct was unacceptable for a licensee, especially when it was alcohol-related, and perpetrated at a licensed venue against its patrons.
26. In addition to the assault, the facts of the Complaint suggest that the Respondent also breached multiple conditions of the Licence on the night of the incident, by facilitating the supply of alcohol outside the Venue's authorised trading hours and allowing himself and his patrons to become intoxicated at the Venue.
27. The Authority finds the Respondent's relevant conduct to fall well below the standard of behaviour expected of a licensee, and demonstrate a failure on his part to understand and comply with the conditions of the Licence and a licensee's obligations under section 3(2) of the Act to minimise harm associated with misuse and abuse of harm, and encourage responsible practices towards the supply and consumption of liquor.
28. The finding above is somewhat exacerbated by the multiple penalty notices issued to the Respondent in 2018 and 2019 for supplying alcohol not in accordance with authority and permitting intoxication. It is also noted that the Respondent was found guilty of hindering and insulting police in respect of some of those penalty notices. On the basis of this information, it is arguable that the Respondent did not learn from previous incidents, and demonstrated a disregard for his obligations as a licensee by repeatedly breaching conditions of the Licence.
29. While the Authority has had regard to the Respondent suffering from stress due to the Venue's financial and compliance issues, the Authority also notes that the management of a licensed venue's profitability and compliance with legal requirements is a central part of a licensee's work. Notwithstanding the Respondent's extensive experience working in the industry, his response to the challenges of a licensee's responsibilities, including reliance on alcohol to cope with pressure, adds further doubt in respect of his ability and competency to run a licensed business.
30. The Authority notes the Respondent's argument that he has a good, long-standing reputation in the community and has been successful in rehabilitating his business and personal life after changing his career. However, the Authority has not been provided with evidence to indicate, and cannot have confidence on the information before it, that the Respondent will not repeat his misconduct or breach of licence conditions, should he be put in the position of a licensee again.
31. Having regard to all of the above, the Authority finds that the Respondent has failed to demonstrate the level of competency and integrity expected of a licensee. Accordingly, the Authority finds that the alleged ground of the Complaint is made out, and that the

Respondent is not a fit and proper person to be the holder of a liquor licence for the purpose of section 139(3)(i) of the Act.

Disciplinary Action

32. Having found that the ground of the Complaint is made out and having made observations in relation to the seriousness of its findings, it is open to the Authority to take any one or more of the disciplinary actions set out under section 141 of the Act.
33. On 26 October 2021, the Authority invited the Complainant and Respondent to provide submissions on what, if any, disciplinary action should be taken under section 141 of the Act, having regard to the Authority's findings.
34. The Authority has had regard to the Complainant's submission provided on 8 November 2021 that the Authority take action under section 141(2)(f) to disqualify the Respondent from holding a licence, or from being the approved manager of a licensed premises or the close associate of a licensee, for life.
35. The Authority has also had regard to the Respondent's submissions provided on 6 December 2021 on behalf of his legal representation in reply that:
 - a) he has changed careers as a consequence of the incident and now manages a catering business
 - b) he does not contemplate returning to operating or managing a licensed premises in the foreseeable future
 - c) reiterating that he has undertaken self-help measures in the past 18 months to ensure his conduct does not fall to this level again
 - d) reiterating that he had almost 40 years' experience working in the hospitality industry without concern
 - e) reiterating that the incident, for which he is truly remorseful, was an aberration, his conduct was a manifestation of alcohol reliance to cope with the pressures of dealing with police and a financially stricken business at that time
 - f) he was, and is otherwise, a person of good character and integrity
 - g) the Authority exercise as much discretion as it can in his favour remembering that this is the only stain on an otherwise unblemished record.
36. The Authority notes the Respondent has changed careers and is now managing a catering business. The Authority notes the Respondent does not contemplate operating a licensed premises in the foreseeable future.
37. As a result, in view of the seriousness of its findings in relation to the Respondent's relevant conduct, the Authority considers it necessary and in the public interest to ban the Respondent from participating in any role that could influence the management or operations of any licensed premises for life.
38. Accordingly, the Authority has decided to take the following disciplinary action:
 - a) Pursuant to section 141(2)(f) of the Act, disqualify Mr Quinlan from holding a liquor licence, or from being the manager of a licensed premises or the close associate of a licensee, for life.



Philip Crawford
Chairperson

For and on behalf of the Independent Liquor & Gaming Authority

Important Information:

In accordance with section 144 of the Act, the person against whom disciplinary action is taken may apply to NCAT for an administrative review of this decision under the *Administrative Decisions Review Act 1997*.

An application to NCAT must be made within 28 days after the person receives notification of this decision.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney. The NCAT website is at <http://www.ncat.nsw.gov.au/>.

This decision will be published on the Liquor and Gaming website at:

<https://www.liquorandgaming.nsw.gov.au/independent-liquor-and-gaming-authority/ilga-and-l-and-gnsw-decisions/disciplinary-decisions>