

Mrs Tracy Keegan Former Licensee Gladstone Hotel	Mr Dimitri Argeres Director of Compliance & Enforcement Department of Enterprise, Investment & Trade
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Our ref: DOC24/065155

10 May 2024

Dear Sir/Madam

Decision regarding complaint about Ms Tracy Keegan under section 139 of the *Liquor Act 2007*

Our decision

We are satisfied that the ground of complaint is established and have determined to:

- **Disqualify** Ms Tracy Keegan from holding a licence, or from being the manager of licensed premises, or the close associate of a licensee under section 141(2)(f) of the *Liquor Act 2007* (Act), for a period of **two (2) years**.

Background

Application for Complaint under section 139 of the Act

On 26 September 2022, Mr Dimitri Argeres, Director Compliance & Enforcement, as delegate of the Secretary of the Department of Enterprise Investment & Trade, submitted a complaint under section 139(3)(d) of the Act, in relation to Ms Tracy Keegan, former licensee of the Gladstone Hotel (LIQH400117523) (venue), located at 36 Mitchell Street, Stockton. The complaint specifies that Ms Keegan failed to comply with requirements of the Act, by permitting intoxication on licensed premises in contravention of section 73(1) of the Act.

Details of the incident

On 6 March 2021, a male patron at the venue consumed 22 full strength schooners of beer and one shot, following which he collapsed and required removal from the venue. CCTV footage of the incident was provided by the applicant and depicts the male patron exhibiting signs of intoxication, including that his balance and coordination were noticeably affected. He is seen stumbling, swaying, and falling over, including his last fall which required him to be carried out by other patrons.

After reviewing CCTV, L&GNSW observed the male patron consume 23 alcoholic beverages between 11:51am and 5:23pm. Based on staff recollections of the alcohol being consumed by the male patron, these drinks equate to approximately 35 standard drinks. From 4:56pm until his departure at 5:59pm, CCTV footage shows the male patron demonstrating signs of intoxication, including stumbling, unsteadiness, swaying and falls. He is observed requiring assistance from other patrons or aids of objects to remain upstanding. He requires assistance into a car when he leaves the venue at 5:59pm.

L&GNSW consulted with NSW Police in this matter. NSW Police investigated, which included an engagement with the male patron and a review of CCTV. Police concluded that the male patron suffered from a medical condition and did not show signs of intoxication until

his collapse, matching their observations in the CCTV. Police concluded to take no action in the matter.

L&GNSW assert that lodging a disciplinary complaint in this matter represents a proportionate regulatory response to the serious risk of harm caused by the former licensee's failure to ensure that the responsible service of alcohol was practiced at the venue and that appropriate practices, procedures, training, and supervision were in place to identify the risk of harm and minimise the likelihood of this incident occurring.

Ground of complaint

The ground of complaint is:

- That Ms Keegan, while licensee, failed to comply with any other requirement under the Act or the regulations (or under the former Act), relating to the licence or the licensed premises, under section 139(3)(d) of the Act.

Consultation and submissions

On 11 July 2023, we issued a show cause notice inviting submissions as to why we should not take further disciplinary action.

Submissions on behalf of Ms Keegan and L&GNSW were received between 24 October 2023 and 6 December 2023. The submissions are detailed below:

Submissions on behalf of Ms Keegan:

- L&GNSW failed to provide evidence that the male patron exhibited signs of intoxication.
- L&GNSW have ignored the Police conclusion that the male patron was not intoxicated, have disregarded the evidence of staff that the male patron showed no signs of intoxication prior to his falls, and noted they were not present at the time of the incident.
- L&GNSW failed to interview the male patron and obtain his version, in which he identified that he'd had a medical episode and regularly consumed this volume of liquor without becoming intoxicated.
- L&GNSW failed to undertake sufficient investigation to otherwise provide reason for the "affected speech, balance, co-ordination or behaviour" of the male patron.
- L&GNSW have incorrectly assumed that 22 schooners of beer will result in intoxication.
- The subject has not been convicted of any breach of the Liquor Act 2007.

Submission on behalf of L&GNSW:

- Statements provided by the respondent are inconsistent with those made at the time of the incident and were taken two years after.
- L&GNSW determined they sufficiently understood the male patron's medical circumstances, based on information provided in the Police COPS Event of the incident, and as such did not undertake an interview with the patron.
- L&GNSW acknowledge the male patron's account of his medical condition, although notes it is inconsistent with information provided to Police and venue staff. They noted the patron did not stop consuming liquor after his first fall and noted the difficulty standing only appeared to become an issue after 20 schooners of beer.
- Police interpretation of the male patron not exhibiting signs of intoxication prior to his falls is inconsistent with the behaviour demonstrated in the CCTV.
- The respondent has not provided evidence to counter what can be observed in the CCTV – that the male patron's balance and coordination are noticeably affected. The male patron consumed approximately 35 standard drinks over a six-hour period.

Despite his medical circumstances, it is reasonable to conclude that the affected speech, balance, co-ordination, or behaviour identified in the complaint was a result of the consumption of an objectively significant quantity of liquor.

- No enforcement action has been taken by L&GNSW against Ms Keegan, although five complaints were received by L&GNSW during her tenure as Licensee (and no action could be taken in those instances).
- Penalty notices for supplying alcohol to intoxicated patrons have been issued to the current approved manager and a staff member while MKTK Pty Ltd has been licensee. Ms Keegan is a business owner of the corporate licensee, along with her husband and current approved manager, Mr Mark Keegan.

Our findings

Ms Keegan, in her time as licensee, failed to put appropriate measures in place to prevent this serious intoxication incident from occurring. In consideration of the seriousness of incident and the harm experienced by the patron, we agree with the complainant that disciplinary action is warranted in this instance.

Relevant legislation

Prescribed ground of complaint

We are satisfied that the complaint was made validly and that the established ground of complaint is a prescribed ground under sections 139(3)(d) of the Act.

The material we considered

The following material was considered in the determination of this matter:

- The disciplinary complaint letter from Mr Dimitri Argeres, including 19 exhibits, made on 26 September 2022
- A submission on behalf of Mrs Tracy Keegan in response to the complaint, dated 24 October 2023
- A submission from L&GNSW, dated 10 November 2023
- A final submission on behalf of Mrs Tracy Keegan in response to the complaint, dated 23 November 2023

If you are dissatisfied with this decision

The respondent or complainant may apply to [NCAT](#) for a review of this decision under the *Administrative Decisions Review Act 1997*.

For more information, please contact the NCAT Registry at 1300 006 228 or visit the [NCAT website](#).

This decision may be published on the [Liquor & Gaming NSW website](#).

Further action required in response to disciplinary action – Ms Tracy Keegan

As a result of our decision, Ms Keegan is no longer permitted to, hold the position of licensee, approved manager, or be a close associate of a licensee for a period of two (2) years. Records provided by L&GNSW indicate that Ms Keegan is a shareholder in MKTK Pty Ltd, who is the current licensee at the venue.

Ms Keegan's position as a shareholder of MKTK Pty Ltd, positions her as a close associate of the venue's current licensee, within the definition of *close associate* under section 5 of the *Gaming and Liquor Administration Act 2007*. Our decision disqualifies Ms Keegan from

being a shareholder of the current corporate licensee for a period of two (2) years as the position falls within the definition of *close associate*.

To be compliant with the terms of the disqualification, the current licensee must either transfer the licence to another person or Ms Keegan must remove herself as a shareholder in MKTK Pty Ltd.

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 blue ink, appearing to read 'Caroline Lamb', written in a cursive style.

Caroline Lamb

Chairperson

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