LC 30/2026

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

Applicant:	Director of Liquor Licensing (*represented by Mr Zachary Cliford of the State Solicitor's Office)*
Respondent:	Cabaret Australia Pty Ltd *(represented by Mr Adam Webb, sole director and shareholder of Cabaret Australia Pty Ltd)*
Commission:	Mr Nicholas van Hattem (Deputy Chairperson) Mr Jared Brotherston (Member) Ms Mary Brown (Member)
Matter:	Application for the forfeiture of illegal gains in accordance with section 147(1) of the *Liquor Control Act 1988*
Premises:	The Republic Night Club 66 Lake Street, Northbridge, WA 6003
Date of lodgement of Application:	21 March 2024
Date of Hearing:	7 June 2024
Date of Determination:	15 June 2026
Determination:	The Respondent is ordered to pay the sum of $5,973.80 pursuant to section 147(1) of the *Liquor Control Act 1988* within 60 days of the date of this decision and lodge with the Director of Liquor Licensing evidence of payment within 28 days of making the payment.

Authorities referred to in determination:

- *Engwirda v Owners of Queens Riverside Strata Plan 55728* [2019] WASCA 190
- *Mansfield v Director of Public Prosecutions* [2007] WASCA 39
- *The King v Jacobs Group (Australia) Pty Ltd* [2023] HCA 23
- *R v Peterson* [1992] 1 VR 297

BACKGROUND

1. Cabaret Australia Pty Ltd ("the Licensee") is the Licensee of the Republic Night Club ("the Premises") situated at 66 Lake Street, Northbridge. The Premises are subject to a nightclub liquor licence 6070046870.

2. The permitted trading hours under a nightclub licence are prescribed in section 98A of the *Liquor Control Act 1988* ("the Act"). Pursuant to section 98A(1)(e) of the Act, the permitted trading hours on Good Friday are *"from immediately after 12 midnight on the previous day to 3 a.m., and there are no further permitted hours before 6 p.m. on the following day."*

3. On Saturday, 8 April 2023 (the day following Good Friday), the Republic Night Club opened their Premises, commencing at midnight on Saturday 8 April 2023 and concluding at 5:00am on Saturday 8 April 2023. The Premises remained open until 5:00am on 8 April 2023, which breached the Good Friday trading conditions.

4. Western Australian Police Liquor Enforcement Unit ("LEU") officers conducted an investigation into the breach and obtained CCTV footage from City of Perth as well as body worn camera footage from Perth Police Station officers which showed that the Premises was open and trading between the prohibited hours. Further inquiries identified that the Licensee did not have an appropriate extended trading permit or permission from the licensing authority to trade between these times.

5. LEU officers also seized copies of incident registers, staff sign on sheets and till receipts which corroborated that the Premises were open and trading at the time.

6. Interrogation of the banking summary seized from the Premises indicate that while the Premises was trading, income from bar sales was made. Records show that between the material time the total sales were $7,854.

7. At the hearing, the Licensee's director said he had thought he could trade at that time, because the Premises opened after midnight, i.e., on Saturday not Good Friday. At the hearing, the Licensee accepted that section 98A(1) meant that the Premises could not open at that time. At the hearing, the Applicant agreed that the Licensee had cooperated with the investigation, and there was no evidence of any other non-compliance by the Licensee.

8. As a result of the investigation, the Licensee was convicted for the offence of trading outside of permitted hours contrary to section 111(1)(b) of the Act. The Licensee received a $1,000 fine and has paid that fine.

9. On 31 July 2023, the Commissioner of Police ("the Commissioner") applied under section 147 of the Act for the Director of Liquor Licensing ("the Director") to refer the matter to the Liquor Commission for recovery of illegal gains. The Commissioner submitted that the illegal sales revenue that should be seized is the amount of $7,854.

10. On 21 February 2024, the Director made an application to the Liquor Commission ("the Commission").

11. In written submissions dated 24 May 2024, the Director advised that a review of the materials provided by the Licensee shows that the Licensee gained a financial advantage of $11,559. This comprises $8,534 in bar sales and $3,025 in entry fees. The Director submitted that the illegal sales revenue that should be seized is the amount of $11,559.

STATUTORY FRAMEWORK

12. For the purposes of this decision, it is helpful to set out Section 147 of the Act in its full context:

    Division 5 - Recovery of illegal gains

    147. Illegal gains, estimation and recovery of

    1. *Where a person by contravention of this Act or of a condition of a licence or permit gains any financial advantage, the Commission may, on the application of the Director, estimate the amount of that advantage and the amount so estimated may be recovered from that person as a debt due to the Crown.*

    2. *Subsection (1) applies whether or not the contravention referred to is prosecution as an offence.*

13. An application under section 147 of the Act has two elements. First, the Commission must determine whether there has been a contravention of the Act or a condition of a licence.

14. Secondly, the Commission must estimate the quantum of the financial advantage gained because of the contravention.

15. In considering an application for the recovery of illegal gains, the Commission may make its determination on the balance of probabilities.

16. Section 16 of the Act prescribes that the Commission:

    a) may make its determination on the balance of probabilities: [section 16(1)]; and

    b) is not bound by the rules of evidence or any practices or procedures applicable to courts of record, except to the extent that the licensing authority adopts those rules, practices or procedures or the Regulations make them apply: [section 16(7)(a)]; and

    c) is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms: [section 16(7)(b)]; and

    d) is to act speedily and with as little formality and technicality as is practicable: [section 16(7)(c)].

17. While section 147 provides that the Commission may make an estimate of the financial advantage gained by a person, this language does not import a discretion: *Engwirda v Owners of Queens Riverside Strata Plan 55728* [2019] WASCA 190 at [16]-[17].

18. The Commission must make an estimate of the financial advantage gained by a person upon the satisfaction of the precondition that a contravention of the Act has occurred.

19. The key issue in this matter is the proper construction of “financial advantage”.

DETERMINATION

20. The Commission finds that by trading between 12:00am and 5:00am on Saturday 8 April 2023, the Licensee contravened a term of its licence.

21. It follows that the Commission must determine the quantum of the financial advantage gained by The Republic Nightclub trading during those hours.

SUBMISSIONS

Submissions by the Applicant

22. The Applicant submitted that there are two constructions of financial advantage in section 147 that are open. Financial advantage must refer to either the *revenue* gained from the contravention or the *profit* (i.e., revenue less expenses) gained from the contravention (Applicant's Submissions at [16]).

23. The Applicant submits that the proper construction is "revenue", based on the analysis of the High Court in *The King v Jacobs Group (Australia) Pty Ltd* [2023] HCA 23.

Submissions by the Respondent

24. The Respondent did not make written submissions, but at the hearing submitted that:

    a) he had made a mistake in trading the hours that he did;

    b) the Licensee incurred stock costs during the contravening period; and

    c) that there was an approved profit sharing arrangement in place, such that the Licensee did not receive the revenue from the door sales.

ANALYSIS

25. In *King v Jacobs*, the High Court held that 'advantage' referred to the gain received by a person, *"not any advantage less any concomitant disadvantage or burden or risk to which the offender was subject in obtaining the advantage"* and that *"money received, cash flow, itself is an advantage, irrespective of concomitant costs and expenses"* (at [27] and [29] per Kiefel CJ, Gageler, Gordon, Steward, Gleeson and Jagot JJ and at [61] per Edelman J).

26. While submitting that the approach in *King* was the proper approach, the Applicant (quite properly) identified a basis for an alternative interpretation, based on the approach in *Mansfield v Director of Public Prosecutions* [2007] WASCA 39. There, Steyler P considered the meaning of "criminal benefit" in the *Criminal Property Confiscation Act 2000* (WA).

27. Importantly, in *King*, the majority of the High Court held there that there was *"no meaningful comparison"* between the penalty provision it was construing, and a statutory scheme enabling the court to require a person to disgorge the benefit a person has obtained from certain crimes (at [54] per Kiefel CJ, Gageler, Gordon, Steward, Gleeson and Jagot JJ).

28. The majority referred to *Mansfield* as an example of a case where only part of a transaction is unlawful (e.g., selling legitimately owned shares using insider information) as distinct from a case where the whole transaction is unlawful (e.g., drug transactions). The majority held *"A legislative purpose of requiring the proceeds of crime to be disgorged, of its nature, calls for a targeted approach focusing on the funds tainted by illegality, albeit subject to any contrary provision. A maximum penalty for a crime of obtaining a benefit by bribery is a different context involving no such focus"* (At [54]).

29. Section 147 of the Act is not a penalty provision. The section's purpose is clear in its plain terms: *"Where a person by contravention of this Act or a condition of a licence or permit gains any financial advantage, the Commission may… estimate the amount of that advantage".* The purpose of the provision being disgorgement of an illegal benefit is consistent with the title of Division 5 being *"Recovery of illegal gains"* and the title of section 147 being "*Illegal gains, estimation and recovery of"*. It is also consistent with subsection (2) which provides: *"Subsection (1) applies whether or not the contravention referred to is prosecution as an offence."*

30. Accordingly, the Commission holds that the meaning of "financial advantage" in section 147 of the Act means a financial advantage received by a person by contravening the Act or a condition of a licence, but does not include the cost of stock that was purchased legally but sold illegally.

31. The Commission accepts the Applicant's submission at [48 - 49] that general expenses (e.g., rent and insurance) are not deductible, and specific costs incurred in the course of committing the contravention (e.g., wages or the cost of hiring equipment) are not deductible.

32. The Applicant also submitted that the onus to establish any stock costs is on the Licensee, with reference to paragraph [55] of *Mansfield* (at [32] and [49] - [50] of the Applicant's Submissions).

33. The Commission holds that *Mansfield* is not authority for the proposition that the Licensee has an evidentiary onus. By section 147's terms, it is for the Commission to estimate the stock cost, based on the evidence before it.

34. At the hearing, the director of the Licensee said that alcohol prices were set at approximately 30 percent of stock costs.

Entry door sales

35. The Respondent raised at the hearing that a profit-sharing agreement was in place with Tony Kartel of Seduction Saturday Promotions and Entertainment ("SSPE"), whereby SSPE would provide entertainment on the night, including the provision of door staff and DJs, and in return SSPE would receive the 100% of entry door fees.

36. This was confirmed in a letter provided to the Commission, including the provision of documents proving that $3,025 had been paid to SSPE on 11 April 2023 for the services on the night of the infringement.

37. The Commission holds that the sum of $3,025 from door sales was not a financial advantage received by the Licensee. The Licensee was a "conduit" of those funds, analogous to the respondent in *R v Peterson* [1992] 1 VR 297 cited in *Mansfield* at [36].

The calculation of 'financial advantage'

38. The revenue received by the Licensee in this case was $11,559. This comprises $8,534 in bar sales and $3,025 in entry door fees.

39. As discussed above, the $3,025 in entry door fees will be reduced from the revenue received on the basis that the Licensee did not receive the financial benefit of that income.

40. While there were expenses incurred by the business for operating during the contravention, these expenses will not be deducted from the revenue in determining the financial advantage. Consistent with the construction of 'financial advantage' adopted above, the cost of stock lawfully obtained but sold during the contravention should be deducted. Based on the Licensee's evidence at the hearing that the cost of alcohol was typically 30%, the Commission finds that the cost of stock lawfully obtained is that cost at 30% of the bar sales, being $2,560.20 (i.e., 30% of $8,534).

41. The Commission finds that the Respondent is required to repay the $5,973.80 advantage, being $8,534 in bar sales less $2,560.20 in stock costs.

CONCLUSION

42. The Commission finds:

    a) that there was a contravention of the liquor licence;

    b) 'financial advantage' means any revenue received as a result of trading during a contravention, but does not include the value of stock sold during that contravention but lawfully obtained; and

    c) the cost of stock to be deducted from the financial advantage during the contravention is estimated at 30% of revenue.

43. As such, the Respondent is required to repay the amount gained during the contravention, not including door sales or stock.

44. The Commission finds the value of the financial benefit to be $5,973.80.

ORDERS

45. The Respondent is ordered to pay the sum of $5,937.80 pursuant to section 147(1) of the *Liquor Control Act 1988* within 60 days of the date of this decision and lodge with the Director of Liquor Licensing evidence of payment within 28 days of making the payment.

NICHOLAS VAN HATTEM **DEPUTY CHAIRPERSON**	**JARED BROTHERSTON** **MEMBER**	**MARY BROWN** **MEMBER**