

# NORTHERN TERRITORY LIQUOR COMMISSION

## DECISION NOTICE

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**MATTER:** DISCIPLINARY ACTION PURSUANT TO THE LIQUOR ACT

**REFERENCE:** LC2020/046

**LICENCE NUMBER:** FLL1072

**LICENSEE:** BK Graham Pty Ltd

**PREMISES:** SEIT Outback Australia  
Lot 203 Kali Circuit  
YULARA NT 0872

**LEGISLATION:** Section 165 of the *Liquor Act 2019*

**HEARD BEFORE:** Mr Russell Goldflam (Acting Deputy Chairman)  
Ms Elizabeth Stephenson (Health Member)  
Ms Sandra Cannon (Community Member)

**DATE OF HEARING:** 15 December 2020

**DATE OF DECISION:** 15 December 2020

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### **DECISION**

1. On 15 December 2020, the Northern Territory Liquor Commission ("the Commission") heard and upheld a complaint against BK Graham Pty Ltd ("the licensee"), and decided to take disciplinary action against the licensee.
2. The Commission imposed a monetary penalty on the licensee in the amount of 20 penalty units (\$3,160.00).
3. The Commission notes that section 167(3) of the *Liquor Act 2019* ("the Act") provides that the licensee must pay this penalty within 28 days of 15 December 2020.

### **STATEMENT OF REASONS**

#### **THE COMPLAINT**

4. On 26 June 2020, a delegate of the Director of Liquor Licensing ("the Director") accepted a complaint against the licensee. In accordance with section 162 of the Act, a letter informing the licensee of the complaint and its grounds was delivered to the licensee on 26 June 2020. The Director referred the complaint to the Commission on 22 September 2020.

5. The nominated grounds of complaint were:
  - a. The licensee contravened a condition of the licence or authority.
  - b. The licensee obtained the licence by fraud or misrepresentation.
6. The Director particularised the complaint as follows:
  - a. It is alleged that the licensee breached a condition of its liquor licence, contrary to section 293 of the Act by allowing a person not employed by BK Graham Pty Ltd (ABN 138 451 859) to sell liquor. Specifically, an employee of SEIT Outback Australia Pty Ltd (ABN 088 076 233).
  - b. The licensee contravened section 54 of the Act by failing to disclose persons of influence and potential beneficiaries of a liquor licence.

## **THE HEARING**

7. The matter proceeded as a public hearing on 15 December 2020. Mr Wade appeared on behalf of the Director. Mr Cozens appeared on behalf of the licensee. The Commission thanks them both for their attendance and assistance.
8. The brief that had been referred to the Commission by the Director was tendered as evidence, without objection. The licensee tendered some further correspondence, also without objection, and Mr Graham gave oral evidence.
9. Although the complaint was contested, most of the relevant facts were not in contention.

## **THE UNDISPUTED FACTS**

10. The Commission finds the following facts, which were admitted, to be proved.
11. On 29 March 2019 the licensee (then trading as SEIT Outback Australia Pty Ltd – ABN 138 451 859) applied for a liquor licence under the *Liquor Act 1978* (“the 1978 Act”). The licensee nominated Mr Brett Graham (“Mr Graham”), Ms Kathryn Graham (“Ms Graham”), Ms Debra McConnell and Mr Gary Edney to be joint managers of the licence.
12. On 8 April 2019, when all required documentation was received, the application was accepted by the Director. The application included affidavits in accordance with section 26A of the 1978 Act sworn or affirmed on 5 and 8 April 2019 by the two principals of the licensee, Ms Graham and Mr Graham respectively, disclosing influential persons or potential beneficiaries. The disclosures contained in the affidavits were accurate at the time they were sworn or affirmed.
13. On 19 June 2019, Mr Graham wrote to Ms Christine Free (“Ms Free”), the Senior Compliance Officer of the Director with conduct of the licensee’s application, stating:

SEIT is in the process of selling the business – however not confirmed as yet or when but we have a strong lead and one of the questions is the liquor licence which once granted will need to be assigned to the new owner.

On that date, Ms Free responded, advising that “if and when a licence is issued, you and the new applicant will need to complete [a licence transfer application] form.”

14. On 26 June 2019, Mr Jeff Verinder, a delegate of the Director, issued a Continuing Special Licence to Sell Liquor (21015/CSL) to the licensee, valid from 26 June 2019 to 31 December 2019, pursuant to section 59 of the 1978 Act (“the special licence”). The licensee had been issued with similar annual licences in previous years. The special licence identified the licensee as “SEIT OUTBACK AUSTRALIA PTY LTD”, which was at that time the business name of the applicant. An ABN was not cited in the special licence. A term of the special licence was that “The sale of liquor must be supervised by one or more persons nominated by the holder of the special licence”. The special licence listed the same four persons as nominees as the persons nominated to be managers in the licensee’s application made on 29 March 2019.
15. On 17 July 2019 the licensee and Wilderness Australian Safaris Pty Ltd (“the purchaser”) executed an agreement pursuant to which the licensee sold the business as a going concern to the purchaser. On the same date the parties also signed a Management and Consulting Services Agreement that saw the Directors of the licensee, Mr Graham and Ms Graham, working with the purchaser until the end of 2019, in a hands on transition to the new owners and then as consultants until 17 July 2021.
16. In June and July 2019 the licensee and the purchaser, in accordance with the terms of the sale agreement, registered with ASIC the transfer of the business and the transfer of its business name, SEIT Outback Australia Pty Ltd, to the purchaser. When the business name was transferred, it was registered with the ABN of the purchaser (ABN 088 076 233). Previously, it had been registered with the ABN of the licensee (ABN 138 451 859).
17. On 1 July 2019, pursuant to the sale agreement, the sale of the business was completed.
18. On 12 July 2019, the licensee’s application was referred to the Commission.
19. On 13 August 2019, the Legislative Assembly of the Northern Territory passed the Act.
20. On 16 August 2019 the Commission held a public hearing to consider the application. Mr Graham, who appeared on behalf of the applicant at the hearing, did not disclose the sale or management agreements entered into on 17 July 2019 to the Commission. Neither did Ms Free, who was present, or Mr Verinder, who appeared on behalf of the Director at the hearing. Both Ms Free and Mr Verinder had previously been made aware that the licensee was in negotiation to sell the business.
21. At the conclusion of the hearing, the Commission determined to grant liquor licence FLL1072 to the licensee, under the business name SEIT Outback Australia Pty Ltd (with the licensee’s ABN). The licence permits the supply of liquor for consumption on or at six designated areas within the Uluru-Kata Tjuta National Park, and five designated areas within Curtin Springs Station to members of tours conducted by the licensee.
22. In its Decision Notice dated 19 August 2020, the Commission stated “The liquor provided will be supplied to guests as part of their tour package, and will not be sold separately.” Accordingly, the following condition was included in the licence:

The licensee is authorised to supply liquor only to members of tours conducted by the licensee, as part of a tour package sold by the licensee to guests.
23. A further condition of the licence, as fixed by the Commission, provided:

The Licensee is authorised to supply up to three (3) standard drinks to each guest.

24. Another condition of the licence provides as follows:

This licence does not authorise the sale of liquor on or from any part of the licensed premises by any person other than the Licensee or an employee of the Licensee unless the prior approval in writing of the Director-General has been obtained by the Licensee.

25. On 26 August 2019, Mr Graham wrote to Ms Free as follows:

Hi Christine,

Thanks for the attached copies of licence and RSA registration forms.

All will be in place by end of week.

Some advise [sic] if you can with out upsetting anything – what is the procedure for starting to change some details? or should we wait awhile?

We will need to change the ABN – all other business details remain exactly the same, name, addresses, managers etc...

Eventually Myself and Kathy will drop off as nominees, Kathy in January 2020 and myself 12-18 months from now TBC.

The new owners are a corporation with 5 directors – do they need to be nominees or can the current nominees remain and we just change the ABN for now?

All new directors live in Sydney or overseas.

Thoughts on the best way to move forward and when?

For now it is business as usual with all current players in place.

26. On the same date, Mr Graham wrote to a representative of the purchaser as follows:

The Liquor Licence has been granted for SEIT Outback Australia Pty Ltd (old ABN) – see attached copy.

We need to start the process of changing the details due to ABN change and director changes.

Anyone whom has a 15% or more financial stake in the business needs to be involved in the changeover process.

I am actually thinking it may be easier to apply for a new licence using our new licence as the approved template and then just insert all new director details?

You will still all need to get the personal information together for each director.

As of October 1 2019 the new NT Liquor laws come into effect – unknown details as not released yet.

Do you have a person in your team who can co-ordinate all of this?

Also I need your SAFENT criminal history check urgently so if you can call them and check on its progress.

Once I have this I can transfer vehicles over and get the CVL number issued.

27. On 4 September 2019, at the request of Mr Graham, Ms Free provided him with further information about the process and requirements for applying for the transfer of a liquor licence.
28. On 1 October 2019, the Act came into force.
29. On 24 March 2020, the business suspended its operations because of COVID-19 restrictions.
30. On 25 March 2020, the purchaser applied for a transfer of the licence. The Commission is informed that the Director has determined to defer consideration of this application pending the outcome of these complaint proceedings.
31. On 21 May 2020, Mr Graham sent an email to Ms Free in which he stated:

As you may be aware we have sold the business SEIT Outback Australia to [the purchasers] last year. [The purchasers] are continuing to operate as SEIT Outback Australia as per previous operations business as usual.
32. On 25 June 2020, the purchaser applied to the Director to register as a complimentary server of liquor under section 39 of the Act. (Such registration would authorise the purchaser to serve not more than two complimentary standard drinks in a day to a customer.)
33. On 26 June 2020, the Director accepted the complaint and notified the licensee of the complaint.
34. On 10 July 2020, the licensee's solicitor provided a detailed written response to the complaint to the Director.
35. On 29 July 2020 licence FLL1072 under the heading *Liquor Act 1978* was re-issued to the licensee by a delegate of the Director, with the same conditions as the licence issued on 16 August 2019, but with the name of the licensee amended to reflect the change by the licensee of its business name twelve months previously, and the deletion of two persons previously designated as licence nominees, leaving Mr Graham and Ms Graham as the sole nominees.
36. On 1 October 2020, the licensee's solicitor wrote to the office of the Director seeking to surrender the licence pursuant to section 66 of the Act.

## **THE DISPUTED FACTS**

37. Mr Graham gave oral evidence that immediately prior to the Commission hearing of 16 August 2019, he met Ms Free and told her that he had sold the business to the purchaser

on 17 July 2019, upon which Ms Free advised him not to mention this to the Commission at the hearing.

38. The Commission received into evidence a statutory declaration declared by Ms Free on 7 August 2020 in which she relevantly deposed as follows:

On 16 August 2019 prior to the commencement of the hearing I spoke briefly with Mr Graham who mentioned he was in the process of selling the business and asked what he would need to do.

I advised he would need to transfer the licence and that I could send him the necessary application form.

...

On 25 March 2020 an application was received from counsel for SEIT Outback Australia Pty Ltd (ACN 088 076 233) seeking a transfer of liquor licence FLL1072 issued 16 August 2019 to SEIT Cutback Australia Pty Ltd (ACN 138 451 859).

Materials accompanying the application confirmed the sale of the business of BK Graham Pty Ltd (ACN 138 451 859) to Wilderness Australian Safaris Pty Ltd (ACN 088 076 233) on 1 July 2019.

This is first formal confirmation that had been provided in relation to the sale of the business.

...

At no time had Mr Graham notified Licensing NT or the Liquor Commission of the change in company name.

39. The Commission considers that this is a significant evidentiary dispute for the purpose of determining the second ground of the complaint.

## **CONSIDERATION**

### The first ground of complaint

40. Section 160(1)(b) of the Act provides that a person may make a complaint against a licensee on the ground that the licensee or the licensee's employee contravened another provision of this Act or the regulations.

41. Section 293(1) of the Act provides:

A licensee commits an offence if:

- (a) The licensee intentionally engages in conduct; and
- (b) The conduct results in a contravention of a condition of the licensee's licence or authority and the licensee is reckless in relation to that result; and
- (c) The contravention does not constitute another offence against this Act.

42. The Director alleged that after selling the business, the licensee contravened section 293(1) of the Act by engaging in conduct that resulted in a contravention of the licence condition referred to at paragraph 24 above.
43. On the evidence adduced at the hearing, the Commission is not satisfied that this part of the complaint is made out, for the following reasons.
44. The licensee contended that, in its terms, the condition concerns “the sale of liquor”, but that all liquor supplied to guests of the business was complimentary, and accordingly this condition was not engaged. The Commission disagrees. The Act defines “sell” to include “supply for, or in expectation of, a reward or benefit”. Noting that all liquor supplied in the course of the business was to members of tours as part of a tour package sold to guests, the Commission is satisfied that liquor supplied to guests was in expectation of a reward, albeit a very modest reward.
45. The licensee also submitted that there was no evidence before the Commission that any liquor was supplied to any guests of the business before it went into COVID-19 hibernation in March 2020. The Commission does not accept this submission. The Commission infers from Mr Graham’s repeated assertions that it was “business as usual” that the business continued to operate as it had before it was transferred to the purchaser.
46. There is more force in the licensee’s submission that it did not engage in conduct that resulted in a contravention of a condition of the licence. The unchallenged evidence of Mr Graham was that from the sale completion date of 1 July 2019, he played no role in the supply of liquor or supervision of any staff who supplied liquor. No evidence was given as to what role if any the other joint nominees (Ms Graham, Ms McConnell or Mr Edney) played in the operation of the licence after 1 July 2019.
47. However, in the view of the Commission, even if the licensee’s intentional conduct in selling the business resulted in a breach of the condition of the licence (a matter that it is unnecessary to determine), the Commission is not satisfied on the balance of probabilities that the licensee was reckless in relation to that result. Section 8 of the Act provides that Part IIAA of the Criminal Code applies to an offence against the Act. Part IIAA of the Criminal Code 1983 includes section 43AK(1), which provides:

A person is reckless in relation to a result if:

  - (a) The person is aware of a substantial risk that the result will happen; and
  - (b) Having regard to the circumstances known to the person, it is unjustifiable to take the risk.
48. The Commission considers that the licensee’s executive officer, Mr Graham, and, accordingly, the licensee, were aware that there was a substantial risk that following the sale of the business, persons other than employees of the licensee would supply liquor to paying guests of the business. However, it does not follow that Mr Graham was aware that this was a contravention of a condition of the licence. At the hearing of the complaint, the licensee submitted that it did not constitute a contravention of the licence. If liquor was supplied without authority, it was submitted, responsibility for that conduct rests with the purchaser. It is unnecessary to decide this point of law. It is sufficient to find that the Commission is not satisfied that Mr Graham was aware that as a result of his conduct, the licence condition referred to at paragraph 24 above might be breached.

49. Furthermore, in the view of the Commission, in the circumstances known to him it was not unjustifiable for Mr Graham, who the Commission accepts was at the time not legally represented, to take the risk of breaching the licence condition. These circumstances included:
- a. Mr Graham notified Ms Free that a sale was under negotiation on 19 June 2019 (and indeed, the evidence suggests, as early as April 2019).
  - b. Condition 8(b) of the contract of sale required Mr Graham to “use best endeavours to obtain the permanent Liquor Licence in respect of the Business and upon obtaining such Licence, use best endeavours to transfer it to the Purchaser on or after Completion”.
  - c. The transfer of the liquor licence could not be progressed unless and until the purchaser made application to the Director for this to occur.
  - d. On 26 August 2019, shortly after the Commission had granted a liquor licence to the licensee, Mr Graham wrote to both Ms Free and the purchaser in an attempt to expedite the transfer of the licence.
  - e. Although a consequence of the transfer of the business name was to obscure the fact that the licensee was no longer operating the business, condition 6.3(b) of the contract of the sale required Mr Graham “to deliver to the Purchaser all documents necessary to transfer all Business Names to the Purchaser”, as is usual when a business is being sold as a going concern.
50. The Commission is satisfied that following the grant of the licence on 16 August 2019, Mr Graham did not intentionally engage in conduct calculated to mislead the Director as to the status or operation of the business. The Commission is not satisfied that Mr Graham was aware that there was a substantial risk his conduct might result in a contravention of a condition of the licence as a consequence of the purchaser’s employees supplying liquor to customers of the business. Even if he was so aware, the Commission is satisfied that, having regard to the circumstances known to him, he was justified in taking that risk.
51. The first ground of the complaint is dismissed.

#### The second ground of complaint

52. Section 160(1)(k) of the Act provides that a person may make a complaint against a licensee on the ground that the licensee obtained the licence by fraud or misrepresentation. This is the second ground of complaint nominated by the Director. The Commission considers that the particulars of this ground as framed by the Director and set out at paragraph 66.b) above, are misconceived.
53. Firstly, the reference to section 54 of the Act is erroneous. Section 54 concerns the disclosure of persons of influence and potential beneficiaries. However, the licensee obtained its licence under the 1978 Act, the counterpart provision of which was section 26A. Moreover, and more importantly, there was no contravention of section 26A, which requires an applicant to “make an affidavit disclosing whether certain persons may be able to influence the applicant, or expect a benefit from the applicant, if the licence is granted.” As noted at paragraph 12 above, it is an agreed fact that the licensee complied with section 26A.



54. Nevertheless, notwithstanding the defective particulars, the Commission considers that there is substance in this ground of complaint.
55. Section 166(4) of the Act provides:
- The Commission may hear a matter not referred to it but which arises from a matter that was referred to it.
56. In the view of the Commission, the scope of this power extends to permitting the Commission to hear a complaint other than as particularised by the Director, provided that no actual prejudice to the licensee results. The licensee did not identify any actual prejudice that arises in this case by departing from the Director's particulars, and neither does the Commission: The licensee was not deprived of an opportunity to adduce evidence or make submissions in response to the complaint as a consequence of the change in the particulars of the complaint.
57. In his evidence, when asked by Commissioner Cannon why he had not told the Commission at the hearing on 16 August 2019 about the sale of the business, Mr Graham conceded that he should have given this information, but maintained that he was just delivering the information he had been instructed to give. In response to questions by Commissioner Reynolds, Mr Graham explained that he had been focussed on finalising the sale of the business, which distracted him from the liquor licence application, but agreed that the documents he had submitted in support of the application, were, by the time of the Commission hearing, no longer correct.
58. In the view of the Commission, this evidence amounted to an admission by Mr Graham that he misrepresented to the Commission the identity of the proprietor of the business. In submissions, the licensee only faintly suggested that this did not produce a result that the licence was obtained by misrepresentation.
59. Had the Commission been apprised of the true circumstances of the matter on 16 August 2019, it would not have granted a liquor licence. Instead, it would have caused a request to be made to the purchaser to provide information so that the Commission could assess the following matters as it was required to do by section 28(2) of the 1978 Act:
- a. The purchaser's financial stability, general reputation and character;
  - b. The general reputation and character of the purchaser's secretary and executive officers;
  - c. Whether the purchaser was a fit and proper person to be a licensee;
  - d. Whether the purchaser had complied with section 26A of the 1978 Act; and
  - e. Whether any person nominated by the purchaser was a fit and proper person to be a manager of the licensee.
60. The Commission finds that the licensee obtained the licence by misrepresentation.
61. As stated above at paragraphs 37, Mr Graham gave evidence that on the day of the hearing he had told Ms Free that the sale of the business had been completed, and that she had advised him not to mention this to the Commission. If accepted by the Commission, this would very significantly mitigate the seriousness of the licensee's

misrepresentation, to the extent that the Commission would have been inclined to dismiss this ground of the complaint.

62. There are, however, several reasons why the Commission would hesitate before accepting this evidence of Mr Graham. Firstly, it is a self-serving account. Secondly, it appears to be recent in origin: no reliance was made on this claim in the licensee's detailed written response of 10 July 2020 to the complaint. Thirdly, there is no clear evidence that Mr Graham had informed Ms Free that the sale had been completed on a previous occasion, in either his email to Ms Free of 19 June 2019<sup>1</sup> or his email to Ms Free of 26 August 2019.<sup>2</sup> Fourthly, the terms of his email to Ms Free of 21 May 2020 ("As you may be aware we have sold the business...")<sup>3</sup> imply that Mr Graham did not on that date know that Ms Free was already aware of the sale of the business. Fifthly, Mr Graham's claim is inconsistent with Ms Free's account in her statutory declaration.<sup>4</sup> Sixthly, the Commission considers that it is likely that had Ms Free, a Senior Compliance Officer, been informed prior to the hearing that the business had been sold, she would have so instructed Mr Verinder, who appeared on behalf of the Director at the hearing, and who was also aware that sale negotiations were in train, and that Mr Verinder would have informed the Commission accordingly.
63. The Commission considers that the burden of proof of this disputed fact, which is asserted in mitigation by a respondent to a complaint, lies with the respondent licensee. The Commission also considers that a finding in favour of Mr Graham on this point would necessarily entail a finding highly adverse to Ms Free and possibly Mr Verinder, and that accordingly, before making such a finding the Commission would need to be satisfied of the relevant matters on the balance of probabilities, to a comfortable degree, based on clear, cogent and strict evidence.<sup>5</sup>
64. The Commission invited the licensee to apply to have Ms Free made available for the purpose of cross-examination. The licensee declined this invitation.
65. On the evidence before it, having regard to the applicable burden and standard of proof, the Commission is not satisfied that Mr Graham informed Ms Free on 16 August 2019 that the business had been sold, and, similarly, the Commission is not satisfied that Ms Free advised Mr Graham not to mention this to the Commission.
66. Accordingly, on completing the hearing, the Commission upheld the second ground of complaint and decided to take disciplinary action against the licensee.

## **DISCIPLINARY ACTION**

67. Mr Wade submitted on behalf of the Director that disciplinary action should be taken by imposing a monetary penalty and cancelling the licence.
68. The Commission declined to cancel the licence. Indeed, in the view of the Commission, such a course was apparently not available, as, in the absence of any evidence that the

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<sup>1</sup> See paragraph 13 above.

<sup>2</sup> See paragraph 25 above.

<sup>3</sup> See paragraph 31 above.

<sup>4</sup> See paragraph 38 above.

<sup>5</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336.

Director has used his power under section 324(5) of the Act to convert the licence issued under the 1978 Act to a licence under the 2019 Act, the Commission presumes that the licence expired on 1 October 2020 by operation of section 324(2) of the Act. It is to be recalled that on that date the licensee applied to surrender the licence.

69. If the Commission's presumption is incorrect, and a licence was issued to the licensee under the 2019 Act, then the Commission considers that the appropriate course is for the Director to respond to the licensee's application to surrender the licence pursuant to section 66 of the Act.
70. The Commission accepts that the appropriate disciplinary action in relation to the ground of complaint that has been upheld is to impose a monetary penalty.
71. In considering the amount of the monetary penalty, the Commission has had regard to the following circumstances that are adverse to the licensee:
  - a. The making of a misrepresentation to the Commission to obtain a liquor licence is inherently serious. It tends to undermine public confidence in the integrity of the Commission and its processes. It is disrespectful to the Commission.
  - b. In the view of the Commission, Mr Graham knowingly made the misrepresentation. The conduct involved a measure of dishonesty.
72. In considering what disciplinary action to impose, the Commission has had regard to the following circumstances that are favourable to the licensee:
  - a. Mr Graham did not seek to obtain any financial reward by making the misrepresentation, and did not make any such reward. In the view of the Commission he was merely trying to "cut corners" in order to expedite his compliance with his obligations to the purchaser arising from the sale of the business.
  - b. Both prior to and following the sale of the business, Mr Graham took some (albeit equivocal and ineffective) steps to inform the office of the Director of the sale of the business.
  - c. Mr Graham did not aggravate his misconduct by attempting to hide the fact that the business had been sold from Licensing NT or the Commission.
  - d. In contesting the complaint, Mr Graham did no more than raise a legitimate defence to first ground (which was dismissed) and a legitimate defence to the second ground (which had been defectively particularised by the complainant). When the Commission indicated that it intended to hear the second ground without reference to the defective particulars, the licensee made appropriate concessions and in effect, admitted that the complaint should be upheld.
  - e. As a result of the misrepresentation, no harm appears to have resulted. From 1 October 2019, pursuant to section 38 of the Act, the purchaser would have been authorised to serve up to two standard complimentary drinks a day to a customer without a licence, provided it had applied for and been granted registration for that purpose by the Director pursuant to section 39 of the Act.

- f. Having made the misrepresentation, Mr Graham took steps to attempt to procure the purchaser to proceed with an application for the transfer of the licence. He had no control over the failure of the purchaser to promptly take those steps.
- g. Both the licensee and its principals are persons of prior good character, with no record of non-compliance with the Act or licence conditions.

73. The Commission does not consider that the licensee's attempt to surrender the licence is either a mitigating or an aggravating circumstance. It only sought to do so after being informed of the complaint, approximately a year after it had sold the business, by which time the licence must have been of no actual value to the licensee. Although the attempted surrender (which, as explained above, appears to have been ineffective as by then the licence had already apparently expired) may be indicative of the licensee's remorse, it could just as easily be indicative of a desire to avoid being exposed to an additional penalty.

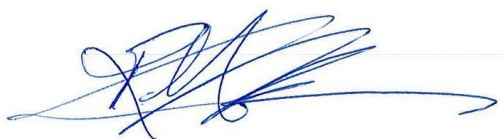
74. On behalf of the Director, Mr Wade submitted that the Director has been unable to identify any previous instances of a complaint of this nature being upheld in the Northern Territory. Section 167(1) of the Act provides that the amount of a monetary penalty must not exceed 200 penalty units. A Northern Territory penalty unit is currently \$158.00.

75. Having regard to all the circumstances of the impugned conduct, and the circumstances of the licensee, the Commission determined to impose a monetary penalty in the amount of 20 penalty units.

#### **NOTICE OF RIGHTS**

76. Section 31(1) read with section 166(7) of the Act provide that the decision set out in this decision notice is reviewable by the Northern Territory Civil and Administrative Tribunal (**NTCAT**). Section 94(3) of the *NTCAT Act* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.

77. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Director and the licensee.



RUSSELL GOLDFLAM  
ACTING DEPUTY CHAIRPERSON  
NORTHERN TERRITORY LIQUOR COMMISSION

5 January 2021

On behalf of Commissioners Goldflam, Stephenson and Cannon