

# NORTHERN TERRITORY LIQUOR COMMISSION

## DECISION NOTICE

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<b>MATTER:</b>	<b>DISCIPLINARY ACTION PURSUANT TO THE LIQUOR ACT</b>
<b>REFERENCE:</b>	<b>LC2021/012</b>
<b>LICENCE NUMBER:</b>	80802878
<b>LICENSEE:</b>	Silvey Pty Ltd
<b>PREMISES:</b>	United Wycliffe Well
<b>LEGISLATION:</b>	Part 7 of the <i>Liquor Act 2019</i>
<b>HEARD BEFORE:</b>	Mr Russell Goldflam (Acting Deputy Chairman) Ms Pauline Lewis (Health Member) Mr Blair McFarland (Community Member)
<b>DATE OF HEARING:</b>	3 June, 7 July, 16 July, 3 September 2021
<b>DATE OF DECISION:</b>	23 September 2021

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### **DECISION**

1. Following a hearing conducted on 3 June, 7 July, 16 July and 3 September 2021, the Northern Territory Liquor Commission (**the Commission**) has determined to uphold a complaint against Silvey Pty Ltd (**the Licensee**), and to take disciplinary action against the Licensee.
2. The Commission takes the following disciplinary action:
  - a. Vary the conditions of the licence by omitting the condition of the licence headed “Camera Surveillance Requirement” and substituting the following condition:

The Licensee must install, maintain and operate a camera surveillance system in compliance with the requirements and guidelines prescribed by the Director of Liquor Licensing (**the Director**), including CCTV camera surveillance at the point of sale designed and operated so as to record information regarding the items purchased, the use of the BDR scanner, interactions between the purchaser and the salesperson, the appearance of the purchaser and the appearance of the salesperson. The Licensee must retain all data captured by the camera surveillance system for not less than 14 days.

- b. Impose the following additional condition on the licence:

**On premises restrictions**

The following restrictions do not apply to bona fide lodgers.

- i. Liquor sold for consumption on the premises is restricted to:  
Six (6) bottles or cans of mid-strength beer per person per day; or  
Four (4) bottles or cans of heavy beer per person per day; or  
Four (4) cans of RTDs (with an alcohol content no greater than 5%) per person per day; or  
A combination of the above, provided the total amount of liquor sold does not exceed six standard drinks per person per day
- ii. Liquor must not be sold for consumption on the premises unless the Licensee has fitted the purchaser with a wristband that the purchaser is wearing on which a tally of drinks sold to the purchaser that day has been marked by the Licensee. The Licensee may only supply one wristband per person per day, when the person orders food.

- c. Direct the Licensee to take the following action as soon as practicable:

Take all reasonable steps to ascertain the maximum number of patrons on the premises as determined by Northern Territory Fire and Emergency Services.

**STATEMENT OF REASONS**

**Background**

3. The Licensee operates the Wycliffe Well roadhouse (**the premises**), a stopover 130 km south of Tennant Creek on the Stuart Highway. Most such establishments along the Stuart Highway operate liquor licences with a wayside inn authority. However, for reasons unknown to the Commission, this Licensee has instead, been issued with a restaurant authority.<sup>1</sup> The premises are the closest fuel and liquor outlet to Alekerange (also known as Ali Curung), an Indigenous community with approximately 500 residents, 40 km to the southeast.
4. Regulation 80 of the *Liquor Regulations 2019* (**the Regulations**) prescribes various conditions for licences operating with a restaurant authority, including:
  - (1) Liquor must not be sold served or supplied to anyone who is not also consuming food on the premises.

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<sup>1</sup> The licensee has also been issued with a BYO authority, a takeaway authority and a lodging authority, but those authorities are not the focus of these proceedings.

- (7) The appearance of the licensed premises must be appropriate for a restaurant.
  - (8) The licensed premises must provide seating for 75% of the maximum number of patrons allowed on the premises under the *Fire and Emergency Services Act 1996*.
  - (9) Subject to subregulation (10),<sup>2</sup> patrons must be seated when consuming liquor.
5. At about 5:15 pm on 27 August 2020, Acting Remote Sergeant Tony Delamere and Constable Dean Garnsey, who had been patrolling in the district, stopped at Wycliffe Well and purchased fuel.
  6. At that time, the layout of the premises was unusual for a restaurant. There were a total of about 40 seats, more than half of which were in the beer garden, mainly comprising wooden benches. There were also some chairs and small tables set against a wall of the shop area near the front entrance to the premises, a table and a couple of chairs in a pool room, and a few other small tables with chairs in various locations. There was no room laid out with rows of tables and chairs in the manner of a typical dining room in a restaurant.
  7. The officers observed that a substantial number of people were in the vicinity of the premises (estimates varied: according to officer Garnsey, “30 to 40 or a bit less”<sup>3</sup>; according to officer Delamere, “over 60”<sup>4</sup>). Many if not all of those people observed by police were intoxicated, and about a dozen of them, according to officer Garnsey, were engaged in fist-fights. The officers intervened, broke up the fights and transported an intoxicated and distressed female in the back of their paddy wagon to her residence at Alekerange.

### **The complaint and the investigation**

8. The following day, officer Delamere returned to Wycliffe Well and personally served Mr Lakshman Ramiseti (**the nominee**<sup>5</sup>) with a document titled “Requisition”, requiring or purporting to require the Licensee to provide CCTV footage of the premises for the period from noon to 6:00 pm on 27 August 2020.
9. On 30 August 2020, the Licensee provided the footage the subject of the requisition to officer Delamere, who reviewed the footage, made notes of his observations, and in due course arranged for it to be passed on to Licensing NT Senior Compliance Officer Skyye Dowie for the purpose of investigating whether there had been a breach of licence conditions or the Act.<sup>6</sup>

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<sup>2</sup> Subregulation 10 is inapplicable to the events the subject of these proceedings.

<sup>3</sup> Oral evidence of Dean Garnsey

<sup>4</sup> Exhibit 4: undated file note by Tony Delamere

<sup>5</sup> The licence designates two nominees, Mr Ramiseti and Mr Satish Meka. Mr Ramiseti attended throughout the hearing and gave evidence to the Commission. Mr Meka was not on site on 27 August 2020 and did not participate in these proceedings or attend the hearing.

<sup>6</sup> At the hearing of the complaint, counsel for the licensee did not object to the admission of the CCTV footage into evidence, but submitted that it may have been improperly obtained and that accordingly the Commission should “proceed with caution” when relying on this evidence. Section 109 of the Act requires a licensee to produce on the request of a police officer any record required to be kept by the licensee under the Act. Whether

10. On 7 October 2020, Senior Compliance Officer Holly Sowerby made a complaint against the Licensee pursuant to section 160 of the Act. The complaint alleged firstly, a breach of section 141 of the Act (“Duty and power to exclude and remove persons”) (**alleged breach one**), secondly, a breach of section 141 together with a breach of section 285 of the Act (“Prohibition of liquor to intoxicated person”) (**alleged breach two**), and thirdly, a breach of the licence condition prescribed for restaurant authorities by Regulation 80(1) of the Regulations (**alleged breach three**).<sup>7</sup>
11. On 12 October 2020, a Delegate of the Director, Mr Bernard Kulda, accepted the complaint pursuant to section 161 of the Act, and on the same day, in compliance with section 162 of the Act, Mr Kulda gave the Licensee written notice of the complaint, including notification of the Director’s intention to investigate the complaint. By operation of section 158(2) of the Act, Licensing NT was required to complete this investigation within 90 days of 12 October 2020, namely by 13 January 2021.
12. On 25 October 2020, as provided for by section 162(2) of the Act, the nominee responded in writing to the complaint. The Licensee did not admit any of the alleged breaches. In response to alleged breaches one and two, the nominee asserted that each of the patrons in question presented as a “functioning alcoholic” and did not exhibit any signs of being intoxicated. In response to alleged breach three, the nominee asserted that all patrons who were served alcohol were also served meals.
13. In about October 2020 SCO Sowerby, who the Commission accepts is an experienced and competent investigator, commenced an investigation of the complaint by reviewing, analysing and logging the CCTV footage, a task that, according to her unchallenged evidence, took her the equivalent of three weeks full-time work. SCO Sowerby completed the investigation in March 2021. During the investigation period of about five months, in addition to undertaking the investigation, Ms Sowerby, who was one of only two compliance officers on duty at the Alice Springs office of Licensing NT, also took leave for one month, undertook an audit of licensed premises at Yulara, and attended to a variety of other professional duties.
14. On 5 March 2021, the Director of Liquor Licensing purported to extend time for the investigation period to 22 March 2021. On 11 March 2021, the investigation having been completed, a Delegate of the Director referred the complaint to the Commission, which on 25 March 2021 notified the Licensee that it was setting the matter for hearing on 27 April.

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or not officer Delamere used the correct form, and whether or not he was conducting an inspection pursuant to section 156 of the Act, the licensee was required by law to hand over the CCTV footage when asked to do so. Whether or not the process was irregular, it was not improper. In any event, once the CCTV footage was admitted as evidence, the Commission was entitled and indeed required to give it the weight it merited as a contemporaneous independent record of events, irrespective of the manner in which it had been obtained.

<sup>7</sup> These particulars are accurately set out in the complaint dated 7 October 2020 made by Senior Compliance Officer Sowerby (pages 12 and 13 of the brief of evidence tendered by the Director at the hearing). Unfortunately, the statement of particulars in the memorandum of the Director’s Delegate to the Commission dated 11 March 2021 (page 1 of the brief) is garbled. Before commencing to present evidence at the hearing, the Director’s representative clarified and confirmed the particulars.

## **The Licensee challenges the validity and sufficiency of the complaint**

15. On 16 April, the Licensee's solicitors applied to vacate the hearing due to unavailability of counsel. On 21 April 2021, having satisfied itself that this application was unopposed, the Commission vacated the hearing and relisted it for 3 June 2021. On 1 June 2021, following an urgent request by the Director to vacate the hearing because his designated representative had unexpectedly been required to take immediate leave, the Licensee's solicitors wrote to the Commission foreshadowing various preliminary applications to summarily dismiss the complaint, which, it submitted, should be heard on 3 June 2021, notwithstanding the Director's application to vacate that date.
16. On 2 June 2021, the Commission vacated the evidentiary hearing listed for the following day, but retained the listing to hear the Licensee's submissions on the preliminary issues.
17. The Licensee's contentions on the preliminary issues can be summarised as follows. Firstly, the Licensee contended that the Director had no power to extend time for the investigation of the complaint, and that accordingly the Director's referral of the complaint to the Commission was ultra vires and a nullity. Secondly, the Licensee contended that because of the passage of time since the events the subject of the complaint, and the delay in completing the investigation, it would be an abuse of process for the Director to now seek a retrospective extension of time from the Commission. Thirdly, the Licensee contended that for the Commission to retrospectively extend time for the investigation (assuming it had the power to do so) would deny procedural fairness to the Licensee. Fourthly, the Licensee submitted that the Director's referral (or purported referral) of the complaint to the Commission "renders the complaint process... functus". Fifthly, the Licensee contended that the evidence contained in the brief was insufficient to satisfy a reasonable tribunal that any of the alleged grounds of the complaint could be made out.
18. On 3 June 2021, the Commission heard submissions from Ms Ozolins on behalf of the Licensee, and from Mr Timney, the Director. At the conclusion of argument, the Commission dismissed all of the Licensee's above contentions and reserved its reasons, which now follow.
19. The Director conceded that his action on 5 March 2021 to purportedly extend time to conduct the investigation was ultra vires. That concession was properly made. Section 158(2) of the Act states:

An investigation into a complaint accepted under section 161 must be conducted within 90 days after the complaint is accepted or any longer period *allowed by the Commission* [emphasis added].
20. The Commission accepts the Licensee's uncontroverted submission that to the extent of any inconsistency between section 158(2) and section 318, the former, a special provision, prevails over the latter, a general provision. Section 158(2) therefore limits the general power conferred on the Director by section 318 of the Act to extend a time limit specified under the Act, and consequently, only the Commission has the power to extend time for a complaint to be investigated.

21. Section 318(3) of the Act provides:

Failure by the Commission or the Director to meet a deadline under the Act does not for that reason alone invalidate the action, matter or proceeding being conducted.

There is no inconsistency between section 318(3) and section 158(2). In the view of the Commission, there is no reason why section 318(3) would be inapplicable in the instant case.

22. In this case, the Director failed to meet the 13 January 2021 deadline to complete the investigation. In the view of the Commission, the effect of section 318(3) is that this failure does not alone invalidate the completion of the investigation or the associated subsequent referral of the complaint to the Commission. The Commission does not consider that the Director's misconceived attempt to extend time affects the validity of the investigation. The Licensee has not adverted to any other act or circumstance that could affect the validity of the investigation. Accordingly, the Commission does not accept the Licensee's first contention. The Commission finds that the referral of the complaint to the Commission was not a nullity.
23. In the course of oral submissions, the Director applied to the Commission to exercise its powers under section 318(2) (which provides that the Commission may extend a time limit after it has expired) to extend time for the investigation under section 158(2). The Licensee opposed that application, which it submitted was an abuse of power (the Licensee's second contention). The Commission rejects that contention. The Director's error in presuming he had the power to extend time was clearly inadvertent, and it was not suggested by either party that this point has ever previously been adverted to in complaint proceedings before the Commission. It is not an abuse of power to take steps to correct an innocent mistake. Furthermore, the 57 day delay involved, a substantial portion of which occurred over the Christmas holiday season, has been explained to the satisfaction of the Commission, which considers that it is not unduly excessive. This is to be contrasted with the Commission's previous dismissal of a complaint against a Licensee in part because of a delay in processing a complaint of almost a year, including an unexplained period of eight months.<sup>8</sup>
24. Had leave been sought from the Commission to extend time as should have occurred, the Commission would in the circumstances have granted the extension of time. The Commission rejects the Licensee's third contention, that to now allow an extension of time would deprive the Licensee of procedural fairness. The Licensee was provided with an opportunity, which it took, to respond to the complaint at an early stage of the matter. The principal evidentiary basis of the complaint was then and has continued to be the CCTV footage of the events of 27 August 2020. The Licensee had a copy of that footage in its possession on 25 October 2020, when it formulated its response to the complaint. The Commission considers that the subsequent delay did not result in any significant forensic disadvantage to the Licensee.
25. The Licensee's fourth contention, that the Director's referral of the complaint to the Commission "renders the complaint process... functus" was not pressed with vigour in oral submissions, and, if the Commission understands this brief and not altogether

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<sup>8</sup> Northern Territory Liquor Commission, *Disciplinary Action Pursuant to the Liquor Act* LC2018/151, delivered 15 February 2019

clear contention correctly, is misconceived. The principle of *functus officio* prevents decision-makers from re-visiting their own decisions to correct an error they have made. In this instance, the Director has not sought to re-visit any decision he has made. He has asked another authority to make a decision about a previous decision of the Director that he now concedes he was not authorised to make. In these circumstances, the *functus officio* principle does not arise.

26. Having formed the view that the Commission would have granted the extension of time to complete the investigation if it had been asked to do so in the first place, and not having identified any actual prejudice or unfairness that would be incurred by the Licensee if a retrospective extension of time were now granted, the Commission determined in the exercise of its discretion to accede to the Director's application to extend time.
27. As an aside, the Commission notes that on 5 August 2021 the Commission delegated its power under section 158(2) of the Act to extend time to complete the investigation of a complaint to the Chairperson, Deputy Chairperson and Acting Deputy Chairperson of the Commission.
28. Finally, the Commission rejected the Licensee's contention that the complaint should be summarily dismissed because the evidence in the brief, even taken at its highest, was insufficient to satisfy a reasonable tribunal that any of the complaint could be made out. As stated above, the primary evidence relied on by the Director was the CCTV footage. The Commission frequently hears and determines complaints of this nature against Licensees based primarily on CCTV footage. In that respect, the instant complaint is wholly unexceptional. In such cases, the Commission has frequently (although by no means always) upheld a complaint that, for example, a Licensee has sold liquor to an intoxicated person, or failed to remove a person incapable of controlling their behaviour from the premises, and in doing so the Commission has frequently relied primarily or even wholly on CCTV footage. The Commission determined that there was, to use the parlance of the criminal law, a case to answer, and accordingly, for a third time fixed the matter for an evidentiary hearing, on 7 July 2021.

### **The hearing of evidence**

29. The proceedings continued with a public hearing of the evidence on 7 and 16 July 2021. On these occasions, Mr Wood appeared on behalf of the Director. Ms Ozolins again appeared on behalf of the Licensee.
30. The Director called three witnesses, Officers Delamere and Garnsey, and SCO Sowerby, each of whom was cross-examined.
31. A police officer with 25 years experience, officer Delamere said that he had never seen so many intoxicated people at a roadhouse before. He said that when he reviewed the CCTV footage, it looked to him as though the premises were being used as a pub. Officer Delamere, who had been stationed on occasion for stints of a few weeks at Alekerange, said that 90% of the domestic violence incidents in that community were alcohol-related.

32. Officer Garnsey, who had been stationed at Alekerange for ten months, said that the effect of alcohol on Alekerange was “very high”. Domestic violence was prevalent in the community and was “mainly all alcohol”. There were 20 to 30 heavy drinkers in the community who would wait for the roadhouse to open “every day”. He said that community members would regularly purchase alcohol from various outlets, including Wycliffe Well and Wauchope, and even from as far away as Mt Isa. He described the lengths people in the district go to get alcohol as being “extraordinary”.
33. He recognised most of the people he saw fighting in the vicinity of the premises on 27 August 2020, including an Alekerange male the Commission will refer to as M1. As well as Alekerange residents, officer Garnsey saw community members from Epenarra, Murray Downs, Stirling Station, Tara and Willora.
34. Ms Sowerby, a senior compliance officer with 13 years experience in the field, compiled a painstakingly annotated log of the recordings taken over a period of five hours commencing at about midday on 27 August 2020 from six CCTV cameras on the premises. The annotated log ran to 33 typed pages, and included a list of 33 adult male and female patrons individually identified by a description of their clothing.
35. Officer Sowerby played salient extracts of the footage at the hearing. In relation to alleged breach one, the material showed a female patron (**F1**) who is observed to purchase six cans (some of Victoria Bitter, some of Bundaberg and coke) over a period of 95 minutes. An hour after her last observed purchase, F1 is seen stumbling and leaning on a table in the beer garden; an hour after that F1 is seen with her arm around neck of another person who is assisting her to walk, stumbling and lurching out of the beer garden, across the pool room, across the restaurant and out of the premises.
36. In relation to alleged breach two, M1 is seen to purchase a meal and eleven cans of Victoria Bitter over a period of three hours 20 minutes. When purchasing the seventh of these cans, two hours after his first purchase, M1 is visibly swaying and exhibiting exaggerated movements. Half an hour later he stumbles into a pool player who is making a shot, and a minute after that he purchases two more cans, when he leans against and is pushed away by a female at the counter. Seventeen minutes later, M1 is given a chair by a staff member, and falls backwards into it while trying to sit down. He then stands, sways, and holds onto the bar to support himself.
37. In relation to alleged breach three, officer Sowerby said that in the course of reviewing the CCTV footage she observed 163 sales of liquor for consumption on the premises to 33 individual patrons, and 27 meals being ordered, purchased or delivered. She did not observe F1 order, purchase, be served or eat any food. Ms Sowerby had also obtained a copy of the premises’ till tapes with a view to extracting from them information regarding sales of food and liquor respectively. However, on inspecting the till tapes she realised that they did not clearly distinguish between liquor sales and food sales, so she did not initially seek to adduce the till tapes as evidence at the hearing, although for the sake of completeness they were ultimately tendered as evidence by the Director.
38. Officer Sowerby conceded in cross-examination that functioning alcoholics can mask their signs of intoxication when purchasing liquor.



39. Both of the police witnesses deposed that they have a good relationship with the nominee, who is always co-operative and compliant in response to police requests regarding the operation of the licence. Similarly, officer Sowerby told the Commission that in September 2020 Licensing NT had conducted an audit of the premises at which various minor issues had been identified, all of which the Licensee had satisfactorily addressed.
40. The Licensee called two witnesses, Mr Ramisetti (the licence nominee) and Mr Raja Seelam (an employee of the Licensee), and also tendered without objection statutory declarations from these two witnesses, as well as records of the Licensee's compliance history and previous dealings with Licensing NT.
41. Mr Ramisetti manages the roadhouse and is a director of a company that is seeking to have the licence transferred to it. He moved to Wycliffe Well in January 2020 at the invitation of the previous manager, a long-term friend. Mr Ramisetti, who migrated from India to Australia in 2013, had no previous experience in the liquor and hospitality business or of living in a remote location in the Northern Territory, but he obtained an RSA Certificate in January 2020 and, in his oral evidence, demonstrated an understanding of basic RSA principles and the responsibilities of a Licensee.
42. Mr Ramisetti gave evidence that customers are not permitted to purchase liquor for consumption on the premises unless they have also purchased a meal before buying their first drink. They are only permitted to buy one can at a time, unless they are purchasing a second can for another customer to whom staff have previously sold a meal that day. Patrons are required to return an empty can to the bar when purchasing their next drink, so that bar staff can satisfy themselves that the patron has purchased a meal.
43. Mr Ramisetti deposed that 27 August 2020 was an unusually busy day. It was a pension day and there had been a nearby funeral, which had apparently been attended by a large number of visitors from surrounding communities. By contrast, apart from that day, there have never been more than about 20 patrons at a time on the premises since Mr Ramisetti has managed Wycliffe Well. On 27 August 2020, Mr Ramisetti was on duty along with two other members of his staff. Mr Ramisetti was on the counter, selling food, liquor and petrol. Mr Seelam was in the kitchen preparing food. Usually, the third member of staff on duty would walk around checking to see if anyone was drunk, and to ensure that patrons are seated while drinking liquor, but it was so busy that day this did not occur, and staff did their best to monitor patrons for signs of intoxication as they were serving food and working at the counter.
44. Mr Ramisetti started selling liquor at about midday, and at around 2:00 pm he started to refuse people entry "simply because the premises was too busy", and only continued to supply liquor to patrons who were already on the premises, which he continued to do until about 4:10 pm. He continued to sell takeaway liquor until around the time the police arrived.
45. Mr Ramisetti's evidence was that he did not recall seeing anyone that day being extremely intoxicated or causing trouble inside the premises.
46. He knows F1 as a regular and familiar patron. In a statutory declaration he deposed on 6 July 2021, Mr Ramisetti declared that on previous occasions he had refused service to F1 because of her level of intoxication, but that she did not exhibit signs of

intoxication on 27 August 2020. She can use her hands a lot when she talks, even when she is not drunk. In his oral evidence, however, Mr Ramisetti gave a rather different account, saying that he had never seen F1 do anything wrong or get very drunk on previous occasions. The Commission places limited weight on this apparent discrepancy, noting that English is not Mr Ramisetti's first language, and that he gave his evidence via a sub-optimal videolink.

47. Mr Ramisetti deposed that he also knows M1. M1 is F1's husband. Mr Ramisetti has on occasion refused service to M1 because of his level of intoxication. When M1 is intoxicated he can become disorderly and quarrelsome. On 27 August 2020, however, he did not exhibit signs of intoxication or disorderliness. He was talking too much, but that is normal for him even when he is not drunk.
48. As noted above, in his initial written response to the complaint made on 25 October 2020, Mr Ramisetti stated that both F1 and M1 had presented as "functioning alcoholics". In the course of his oral evidence, when Mr Ramisetti was asked to explain what he understood this term to mean, it became apparent to the Commission that he does not understand this term. Mr Ramisetti said that he had recently reviewed the CCTV footage and maintained his assessment that neither F1 nor M1 exhibited signs of intoxication. He initially said he could not say whether F1 would likely be intoxicated after consuming seven alcoholic drinks, and that he could not say whether M1 would likely be intoxicated after consuming eleven alcoholic drinks. When pressed on this issue, however, he eventually conceded that after drinking that much, it is likely that M1 would have been intoxicated. This part of the nominee's evidence caused the Commission some concern.
49. At some point after 27 August 2020, the nominee had voluntarily imposed a limit of three cans of VB per person per day for consumption on the premises, but he subsequently raised this daily limit to four cans. He had also posted notices up around the premises stating "Please Must be Seated while Consuming 'Alcohol and Eating Food'", and moved the pool table into the shop area, and five tables and ten chairs into the former pool room.
50. Mr Ramisetti said that he has been waiting for the Northern Territory Fire and Emergency Service to visit the premises and certify the maximum number of patrons allowed on the premises since 2020.
51. Mr Seelam also gave evidence. Before starting work at the premises in March 2020, he had also had no experience in the liquor industry. His evidence was similar in substance to that given by Mr Ramisetti.

#### **A fourth alleged breach is added**

52. 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.

53. During the hearing, after watching parts of the CCTV footage, the Commission formed the view that there may have been a breach of Regulation 80(9), which requires patrons to be seated while consuming liquor. Accordingly, the Commission determined to add this as a fourth alleged breach. In order to prevent any unfairness to the

Licensee, on 16 July 2021 the Commission adjourned the hearing and made directions for the filing and service of further evidence in relation to this issue.

54. On 3 September 2021 the hearing resumed and the Commission received additional evidence directed to the fourth alleged breach, notably further extracts from the CCTV footage. The Licensee conceded that this evidence established that on 20 August 2020 patrons on the premises consumed liquor without being seated.

## Consideration

### Alleged breach one

55. Having viewed and considered the CCTV footage of F1 as summarised above at paragraph 35, the Commission finds that F1 was incapable of controlling her behaviour when she was assisted to leave the premises at 3:47 pm.<sup>9</sup> The Licensee had sold F1 about ten standard drinks over a period of an hour and a half earlier in the afternoon. An obvious and natural inference to draw from F1's purchase of these drinks is that she consumed them. In the absence of any evidence to the contrary, and having regard to officer Sowerby's meticulously annotated examination of the 64 discrete observations of F1 captured by CCTV over a period of three and a half hours, the Commission draws that inference. The Commission also draws the natural inference that by consuming at least in the order of ten standard drinks over a period of an hour and a half, F1 became intoxicated, an inference that is supported by the Commission's observations of her deteriorating behaviour over the period her behaviour was captured on CCTV footage. The Commission finds that due to her intoxication F1 had been incapable of controlling her behaviour for some time before 3:47 pm.
56. It is a defence to a charge of breaching section 141 that the Licensee had a reasonable excuse for failing to remove a person incapable of controlling their behaviour from the premises. The Commission has considered whether this defence has been established in this case. Even if the Commission were to accept the evidence of Mr Ramisetti and Mr Seelam that neither of them noticed any signs of intoxication at the premises on 27 August 2020, in the circumstances that prevailed on that day, the Commission does not consider that this would give rise to a reasonable excuse for failing to remove a patron incapable of controlling their behaviour. As the Commission held when considering a complaint of a breach of section 121(1) of the *Liquor Act 1978*, a relevantly similar provision to section 141 of the Act, the establishment of this strict liability offence "imposes a duty on Licensees to provide sufficient staff to enable continuous active surveillance of patrons..."<sup>10</sup>
57. The Commission accepts the submission of Mr Wood for the Director that on 27 August 2020 the nominee, supported by only two staff members, was "clearly inundated... he clearly lost control on this day". In other words, on this occasion the Licensee lacked the capacity to control the behaviour of patrons who had lost the capacity to control their own behaviour. The nominee gave evidence that he took steps to avoid losing control, by limiting liquor sales to patrons already on the premises at about 2:00 pm, by ceasing to serve liquor for consumption on the premises at about 4:10 pm, and by

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<sup>9</sup> The CCTV time stamp showed the time as being 4:16 pm. The CCTV clock was set 29 minutes fast.

<sup>10</sup> Northern Territory Liquor Commission, *Disciplinary Action pursuant to the Liquor Act* (LC2018/055), delivered 4 December 2018, at [32]. See also *Northern Territory Liquor Commission and Others v Rhonwood Pty Ltd* (1997) 6 NTLR 209.

ceasing takeaway sales at about 5:00 pm, but even if that evidence were accepted, in the view of the Commission those steps were too small and too late to establish a reasonable excuse for failing to remove F1.

58. The Commission is satisfied that without reasonable excuse the Licensee breached section 141 of the Act by failing to remove F1 from the premises. The Commission upholds this ground of the complaint.

#### Alleged breach two

59. Having viewed and considered the CCTV footage of M1 as summarised above at paragraph 36, the Commission finds that M1 was incapable of controlling his behaviour by the time he was assisted into a chair by a staff member at 2:47 pm. The Commission infers that M1 had been incapable of controlling his behaviour for some time before this, as a result of intoxication, having been sold at least 13 standard drinks over about two and a half hours by the Licensee earlier in the afternoon. The Commission finds that M1 continued to be incapable of controlling his behaviour on the premises until exiting the premises at 4:35 pm. The Commission is satisfied that the Licensee breached section 141 of the Act by failing to remove M1 from the premises.

60. The Commission finds that by 2:47 pm, if not before, and until 4:35 pm, if not later, M1's balance, coordination and behaviour were noticeably impaired and that it was reasonable in the circumstances to believe that this impairment resulted from his consumption of liquor. Accordingly, the Commission finds that M1 was intoxicated pursuant to section 7 of the Act. During this period the Licensee sold M1 an additional two cans of Victoria Bitter. The Commission is satisfied that the Licensee breached section 285 of the Act by intentionally selling liquor to M1, who was intoxicated. The Commission finds that at the time of these sales the Licensee's nominee was aware of a substantial risk that M1 was intoxicated and that having regard to the circumstances known to the nominee, it was unjustifiable to take that risk. In accordance with section 43AK of the Criminal Code (which applies by operation of section 8 of the Act) the Commission finds that the nominee was reckless in relation to M1's state of intoxication. The Commission upholds this ground of the complaint.

#### Alleged breach three

61. The Commission accepts the evidence of officer Sowerby set out above at paragraph 37, that she counted 33 patrons drinking liquor, but only 27 meals. The Commission also accepts the evidence of Mr Ramisetti set out above at paragraph 42 that he believes all patrons who purchased liquor had been supplied with a meal, and that he had a system in place to enforce this practice. When considering an allegation that a licence condition has been breached, the Commission has previously stated:

The Commission considers that it should apply the "Briginshaw" test. To establish this ground of complaint, the Commission must be satisfied that the allegation is made out to the reasonable satisfaction of the Commission. "In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences".<sup>11</sup>

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<sup>11</sup> *Briginshaw v Briginshaw* (1930) 60 CLR 336 per Dixon J, cited in Northern Territory Liquor Commission, *Disciplinary Action pursuant to the Liquor Act 1978* (LC2019/059 & LC2019/121), delivered 17 March 2020, at [92].

62. Applying the Briginshaw test to alleged breach three, the Commission is not satisfied that the allegation is proven. This ground of the complaint is dismissed.

#### Alleged ground four

63. As noted above at paragraph 54, it is not in dispute that on 27 August 2020, the condition that patrons be seated when consuming liquor was breached. The Commission upholds this ground of complaint.
64. As noted above at paragraph 31, when officer Delamere reviewed the CCTV footage, he formed the view that the premises looked as though they were being used as a pub. When the Commission reviewed the footage for itself, it formed the same view.

#### **DISCIPLINARY ACTION**

65. The Commission is satisfied in accordance with s 165(1) of the Act that three grounds for disciplinary action exist and that the disciplinary action it has determined to impose is appropriate in relation to these grounds.
66. The seriousness of these breaches must be assessed by reference to the context in which they occurred. By the time police arrived at 5:15 pm, a potentially extremely dangerous drunken brawl was well underway a short distance from the premises. As officer Garnsey, whose evidence the Commission accepts, said, "it was chaos". The Commission does not find that all of the liquor consumed by the numerous people the police saw fighting had been purchased at Wycliffe Well, but the Commission has no doubt that at the very least a substantial amount of that liquor had been sold that day by the Licensee. The Commission accepts the evidence of officer Garnsey noted above at paragraph 33 that one of the men seen fighting by the police was M1. The Commission considers that on 27 August 2020 the Licensee, by supplying liquor as it did, substantially contributed to a serious breach of the peace that constituted a serious threat to public safety. For this reason, in the view of the Commission, the breaches were objectively serious.
67. As stated above at paragraph 48, the Commission found some of the evidence given by the nominee to be disquieting. This relatively inexperienced nominee appeared to lack a fully-fledged appreciation of his responsibilities as a Licensee, and the Commission was left with doubts as to his capacity to effectively discharge those responsibilities without the imposition of additional licence conditions.
68. On the other hand, the Commission accepts the evidence of the nominee that the circumstances of 27 August 2020 were unprecedented and have not been repeated. The Commission also finds that they were unforeseen and unforeseeable, and that the Licensee was caught unawares and then overwhelmed by an extraordinary inundation of patrons. Moreover, the Commission accepts that, as detailed above at paragraph 49, to its credit the nominee has on his own initiative since instituted various measures to mitigate the risk of any further breaches, and has addressed all issues identified by Licensing NT in its audit as requiring attention. Notwithstanding his relative inexperience as a Licensee operating in the exceptionally challenging environment of such a remote location, Mr Ramisetti has built a good reputation with police and Licensing NT as a compliant and responsible nominee. That is to his credit.

69. The Director submitted that a short period of licence suspension should be imposed. The Commission does not consider this would be appropriate in the unusual circumstances of this matter. Similarly, the Commission does not consider that it is appropriate to impose a monetary penalty on the Licensee, which has already incurred significant costs arising out of this complaint, in part because of the delays in finalising the matter.
70. The Commission has instead determined to vary the licence and add additional conditions that the Commission has formulated having regard to the Licensee's recent voluntarily imposed "four can" limit in combination with a wristband monitoring system that the Commission considers will be both practicable to implement (similar arrangements are commonly used for special event authorities) and more robust than the Licensee's current arrangements. Noting that the quality of some of the CCTV footage was compromised by the failure of the Licensee to properly maintain the equipment, the Commission has also determined to substitute the existing CCTV condition with a condition identical in substance to that imposed by the Commission on all Alice Springs and Barkly district takeaway outlets.
71. Finally, the Commission has directed the Licensee to take all reasonable steps to have the premises inspected for the purpose of compliance with the *Fire and Emergency Act 1996*. Licensing NT conducted an audit of the premises on 4 September 2020 and raised this issue, to which the nominee responded on 26 November by advising that he was waiting for the NTFRS to come and inspect. The Commission considers that it is now time for the Licensee to be more pro-active about this outstanding issue.

## NOTICE OF RIGHTS

72. Section 31(1) read with s 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.
73. In accordance with s 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

23 September 2021

On behalf of Commissioners Goldflam, Lewis and McFarland