

# NORTHERN TERRITORY LIQUOR COMMISSION

## DECISION NOTICE

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**MATTER:** DISCIPLINARY ACTION PURSUANT TO THE *LIQUOR ACT* [2025] NTLiqComm 34

**REFERENCE:** LC2025/030

**LICENCE NUMBER:** 80319095

**LICENSEE:** Australian Leisure and Hospitality Group Pty Limited

**PREMISES:** Bell Bar and Bistro  
127 Flynn Circuit  
Bellamack  
NT 0832

**LEGISLATION:** Section 164 of the *Liquor Act 2019*

**HEARD BEFORE:** Mr Russell Goldflam (Chairperson)  
Professor Phillip Carson (Health Member)  
Mr Denys Stedman (Community Member)

**DATE OF HEARING:** 5 November 2025

**DATE OF DECISION:** 12 November 2025

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### DECISION

1. The Northern Territory Liquor Commission (**the Commission**) dismisses the matter referred to it on 3 September 2025 by the Director of Liquor Licensing (**the Director**) of a complaint against Australian Leisure and Hospitality Group Pty Limited (**the licensee**) that, contrary to s 293 of the *Liquor Act 2019* (NT) (**the Act**), the licensee had contravened a condition of liquor licence 80319095 (**the licence**) for the Bell Bar and Bistro, 127 Flynn Circuit, Bellamack NT (**the premises**).

### STATEMENT OF REASONS

#### BACKGROUND

2. The licensee is owned by the Endeavour Group (**Endeavour Group**), which operates one of Australia's largest portfolios of licensed venues, including Beer Wine and Spirits (**BWS**) stores, 17 of which are located in the Northern Territory, and Australian Leisure and Hospitality Group hotels, six of which are located in the Northern Territory. The licensee has owned and managed the premises since 2019.

3. The licence conditions authorise the sale of takeaway alcohol from 09:00 hours to 22:00 hours every day of the week except Sundays, when trade is not authorised to commence until 10:00 hours.<sup>1</sup>

## THE CONTRAVENTIONS

4. On Sundays between 6 August 2023 and 1 September 2024, the BWS store at the premises, instead of opening at 10:00 hours, opened at 09:00 hours, resulting in 314 sales of liquor in contravention of the licence conditions (**the contraventions**).<sup>2</sup>
5. It is common ground between the parties, and the Commission accepts, that this pattern of unauthorised trading over an extended period was not intentional, but was due to inadvertence. This occurred despite three measures established by the licensee across all of its BWS outlets to prevent contraventions of this nature. Those measures are: a “Control Self Assessment” tool, which is the responsibility of the store manager to use; “Dashboard Control”, a software system that is reviewed weekly by the BWS national operations team; and “Audit Control”, a program of random audits conducted by an internal Endeavour Group audit team that reviews the operations of 10% of all Endeavour Group outlets.
6. The contraventions came to light when in October 2024 a Licensing NT compliance officer, in the course of reviewing Banned Drinker Register transactions data supplied to Licensing NT each month, noticed that records indicated that takeaway sales at the premises on Sundays were being transacted before 10:00 hours.
7. When this was brought to the attention of the licensee, to its credit the licensee immediately conducted a review of trading practices at both the premises and all other BWS outlets in the Northern Territory.
8. On 11 November 2024, the Director notified the licensee that she had accepted a complaint laid against the licensee by a Licensing NT officer that day, alleging contraventions on a single day, Sunday 1 September 2024.
9. On 27 November 2024, Ms Rebecca Polley, the Endeavour Group manager for liquor and licensing, responded to the complaint and reported to Licensing NT that having reviewed the matter, the licensee had identified 314 instances of contravention, and had undertaken remedial action by way of staff training, the update of its “Control Self-Assessment” tool, the correction of an error in the “Dashboard Control” settings, and a commitment to make a charitable donation to the value of the contravening transactions.
10. Nine months later, on 31 August 2025, a delegate of the Director decided to refer the matter to the Commission, and the referral was made on 3 September 2025. No satisfactory explanation has been provided to the Commission for this extraordinary delay, which the Commission considers to be unacceptable.

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<sup>1</sup> The licence also contains a condition requiring the licensee to implement a membership/registration scheme for patrons purchasing takeaway liquor that is endorsed by the Director of Liquor Licensing.

<sup>2</sup> An earlier transaction on Sunday 28 May 2023 before 10:00 hours appears to have been an isolated instance of a stock transfer from one section of the premises to another, rather than a sale of takeaway liquor to a member of the public.

## PRE-HEARING EVENTS

11. The Commission initially fixed the matter for hearing on 24 September 2025, but at the request of the licensee, who requested more time to “brief counsel and properly prepare”, the Commission rescheduled the hearing to 5 November 2025.
12. On 3 November 2025, the Director and the licensee executed a document headed “Enforceable Undertaking”, which is reproduced at Annexure One.
13. On the same date, Mr Kulda, a delegate of the Director, wrote to the chairperson of the Commission, as follows:

On behalf of the Director of Liquor Licensing, I am writing to inform you that the complaint referred to the Northern Territory Liquor Commission on 3 September 2025 concerning Australian Leisure and Hospitality Group Pty Limited (the licensee) has been withdrawn.

This decision follows the Director’s agreement to an Enforceable Undertaking with the licensee, pursuant to section 159 of the Liquor Act 2019, which addresses the conduct outlined in the original complaint.

As a result, the Director requests that the Commission discontinue proceedings related to this matter, and that the hearing scheduled for 5 November 2025 be vacated.

14. The Commission declined these requests, and accordingly, on 5 November 2025, the matter proceeded as a public hearing.

## THE HEARING

15. At the hearing Mr Wood appeared on behalf of the Director, accompanied by Mr Kulda. Dr Ford SC appeared for the licensee, instructed by Mr Black (partner, King & Wood Mallesons) and Mr Rogers (senior associate, King & Wood Mallesons), who had both travelled from Perth to Darwin to attend the hearing. In attendance by videolink from interstate on behalf of the licensee were Ms Polley, Endeavour Group corporate counsel Mr Harvey, and Endeavour Group general counsel Ms Landan.
16. The bulk of the hearing was occupied with argument regarding a threshold issue, namely whether the Commission had jurisdiction or power to hear the matter (**the jurisdictional issue**). The Commission reserved its decision on the jurisdictional issue. To avoid the inconvenience and cost of having to reconvene the hearing at a future date, the Commission then proceeded, with the consent of the licensee, to conduct a brief provisional hearing in relation to the substantive matter, namely the complaint that had been referred to the Commission on 3 September 2025, and matters arising therefrom. The hearing of the substantive matter was necessarily provisional because at that stage the Commission had not yet decided whether it had jurisdiction to conduct it.

## THE JURISDICTIONAL ISSUE

### The statutory provisions

17. It is convenient to review the statutory provisions that are engaged in consideration of the jurisdictional issue.

18. Section 6 of the *Liquor Commission Act 2018* (NT) (“An Act to establish the Northern Territory Liquor Commission, and for related purposes”) provides:

- (1) The Commission has the functions imposed on it under this Act or the *Liquor Act 2019*, and must do any other thing that is necessary or convenient to be done for the proper performance of those functions.
- (2) Without limiting subsection (1), the Commission's functions include making decisions on all matters referred to it under the *Liquor Act 2019*.
- (3) The Commission has the power to do all things that are necessary or convenient to be done for, or incidental to, the performance of its functions.

19. Section 3(2) of the *Liquor Act 2019* sets out its secondary purposes, which include “to regulate the sale, supply, service, promotion and consumption of liquor...”.

20. Section 3(4) of the Act provides:

A person exercising a power or performing a function under this Act must have regard to the primary and secondary purposes of this Act and must exercise the power and perform the function in a way consistent with those purposes.

21. Section 19 of the Act relevantly provides:

The Commission is responsible for deciding the following matters...

- (f) taking disciplinary action.

22. Part 7 of the Act establishes a scheme to regulate compliance by licensees with the Act.

23. Part 7 Division 1 confers powers on Licensing NT inspectors and police officers to facilitate the detection of non-compliance by licensees.

24. Part 7 Division 2 requires (“The Director must...”) in some circumstances and authorises (“The Director may...”) in other circumstances the Director to conduct an investigation into “a licensee, a licence, an authority or licensed premises”. Division 2 includes s 159, which provides:

### Enforceable undertakings

- (1) As an alternative to disciplinary action, the Director may accept an enforceable undertaking given by a licensee for a contravention of this Act that has occurred or is alleged to have occurred.

- (2) If an enforceable undertaking is in force, no disciplinary action may be taken against the licensee in respect of the contravention for which the undertaking is given.
- (3) The Director may also invite a licensee to give an enforceable undertaking to prevent a risk of potential harm even if no contravention of this Act has occurred or is alleged to have occurred.
- (4) An enforceable undertaking may provide for the following:
  - (a) the prevention of a contravention of this Act;
  - (b) matters related to mitigation or remediation in relation to a contravention;
  - (c) matters related to the prevention of risks of potential harm;
  - (d) any other matter the Director and the licensee consider relevant.
- (5) Acceptance of an enforceable undertaking must be given in writing by the Director to the licensee.
- (6) A copy of any accepted enforceable undertaking must be published on the Director's website.
- (7) An enforceable undertaking cannot be varied or withdrawn without the consent of the Director.
- (8) A licensee's breach of an enforceable undertaking is grounds for disciplinary action against the licensee.

25. Part 7 Division 3 establishes a scheme for the making of a complaint against a licensee, on various grounds set out in s 160. Section 161 provides that the Director must decide whether to accept or refuse to accept a complaint, and within 14 days to give the complainant written notice of the decision. Notably, this decision is expressed both at s 161(4) and by s 29(1)(a) of the *Liquor Commission Act* to be one that is not reviewable by the Commission. No other category of decision by the Director is subject to this express qualification: s 29 of the *Liquor Commission Act* provides that "any" other decision of the Director is reviewable by the Commission.

26. Part 7 Division 3 includes s 163, which provides:

- (1) On completing an investigation, the Director may do any of the following:
  - (a) take no further action if satisfied that:
    - (i) there are no grounds or evidence to justify taking further action;  
or
    - (ii) the matter does not warrant taking further action;
  - (b) give the licensee a formal warning in relation to the complaint;

- (c) mediate the complaint;
  - (d) issue an infringement notice in relation to the complaint;
  - (e) enter into an enforceable undertaking with the licensee in relation to the complaint;
  - (f) refer the matter to the Commission for disciplinary action.
- (2) The Director may refer to the Commission any other matter suitable for disciplinary action that arises during an investigation.
- (3) Within 14 days after making a decision under subsection (1) or (2), the Director must give a decision notice to the following:
- (a) the complainant;
  - (b) the licensee;
  - (c) the Commission.

27. Part 7 Division 4 (“Commission’s power to take disciplinary action”) commences with s 165, which relevantly provides:

- (1) The Commission may take disciplinary action against the licensee only if the Commission is satisfied:
- (a) a ground for the disciplinary action exists; and
  - (b) the disciplinary action is appropriate in relation to that ground.
- (2) The Commission may take any of the following disciplinary actions against a licensee:
- (a) vary the conditions of a licensee's licence or impose additional conditions on the licence;
  - (b) suspend a licence;
  - (c) cancel a licence;
  - (d) impose a monetary penalty on a licensee in accordance with section 167;
  - (e) direct a licensee to take, or refrain from taking, a specific action;
  - (f) disqualify a person from holding a licence for a specified period.

28. Section 166 (“Hearing and decision”) relevantly provides (emphases added):

- (1) If the Director refers a matter to the Commission for disciplinary action, the Commission *must* decide whether to take disciplinary action against the licensee.

- (2) The Commission *must* conduct a hearing into any matter referred to it by the Director.
- (3) Two or more related matters *may* be heard jointly or at the same time.
- (4) The Commission *may* hear a matter not referred to it but which arises from a matter that was referred to it.
- (5) On completing the hearing, the Commission *must*:
  - (a) dismiss the matter of the hearing; or
  - (b) take disciplinary action against the licensee.
- (6) The Commission *may* dismiss a matter referred to it and cancel a hearing if:
  - (a) the matter is withdrawn; or
  - (b) the Commission is satisfied that the matter should be dismissed.
- (7) As soon as practicable after making a decision under subsection (1), the Commission *must* give a decision notice to the parties to the hearing.

### **Previous similar matters**

29. The Commission has on several previous occasions delivered a decision in which it dismissed a complaint against a licensee that had been referred to it but was subsequently withdrawn by the Director. In the three most recent of these decisions, the Commission stated:<sup>3</sup>

The Commission notes that section 166(6) of the Act clearly contemplates the Director's power to withdraw a "matter" after it has been referred to the Commission.

That section however also makes clear that it is in the Commission's discretion as to whether it dismisses a matter referred to it after it is withdrawn by the Director.

The Commission does not consider it appropriate to "review" the exercise of the Director's discretion to withdraw. The Director has complete discretion to withdraw and is not required to provide reasons to the Commission...

... the Commission has determined to exercise its discretion and dismiss this matter and cancel the hearing pursuant to section 166(6)(a) of the Act.

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<sup>3</sup> *Complaint against Munupi Wilderness Lodge Pty Ltd* [2024] NTLiqComm 28 (**Munupi**), *Complaint against Tennant Creek Golf Club* [2024] NTLiqComm 47 (**Tennant Creek Golf Club**), *Complaint against N & S Hill Pty Ltd* [2025] NTLiqComm 3 (**Hill**)

30. Those three cases, while instructive, can be distinguished on their facts from the instant case. In *Munupi*, prior to the hearing the subject licensee had been evicted from its premises, gone into liquidation and surrendered its licence, leading the Director to withdraw the matter from the Commission. Similarly, in *Tennant Creek Golf Club*, prior to the hearing the subject licensee had surrendered its licence, leading the Director to withdraw the matter from the Commission. In *Hill*, prior to the hearing the subject licensee had applied to transfer the licence to another person, leading the Director to withdraw the matter from the Commission.
31. Five earlier matters in which after referring a complaint matter to the Commission, the Director withdrew the complaint and the Commission proceeded to dismiss the matter, can also be distinguished from the instant case. In each of those cases, the Director had referred a complaint to the Commission that a licensee operating with a grocery store authority had breached reg 53, which limits the gross value of liquor sales to 25% of the grocery store's total sales. These complaints were all withdrawn after both the Director and the Commission had reached the view that the complaints were misconceived.<sup>4</sup>

### **The Director's submissions**

32. At the hearing, Mr Wood adopted the propositions set out in the passages cited above from *Munupi*, *Tennant Creek Golf Club* and *Hill*: the Director has the discretion to withdraw a matter that she has previously referred to the Commission; such a decision is not reviewable by the Commission; and the Commission may, but is not required to, proceed to dismiss the matter. However, Mr Wood further submitted that as the licensee had entered into an enforceable undertaking with the Director, by operation of s 159 ("If an enforceable undertaking is in force, no disciplinary action may be taken"), the Commission was precluded from exercising the power conferred on it by s 166(6) to decline to dismiss the matter.

### **The licensee's submissions**

33. Dr Ford's submissions were directed to the same end, but by a different path. The licensee submitted that by operation of s 159 the legal effect of entering into the enforceable undertaking was to deprive the Commission of either jurisdiction or power to take disciplinary action. Accordingly, the licensee submitted, s 166(6) was not engaged: the "withdrawal" by the Director had no legal effect and was merely "an administrative courtesy".

### **Consideration**

34. The Commission adopts the propositions set out above from *Munupi*, *Tennant Creek Golf Club* and *Hill*, which were formulated by differently constituted Commission panels. The Commission has considered whether the broad terms of s 29(1) of the *Liquor Commission Act* render two decisions by the Director – to enter into an enforceable undertaking with the licensee and to then withdraw the matter – susceptible to review by the Commission. Although on this occasion it is unnecessary to finally determine this

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<sup>4</sup> For reasons explained in *Complaint against Zuccoli IGA Fresh* [2023] NTLiqComm 19. See also *Complaint against Woodroffe Fresh Food Supermarket* (LC2022/004, 30 March 2022), *Complaint against Mataranka Supermarket* (LC2022/005, 5 May 2022), *Complaint against Moulden Supermarket* [2023] NTLiqComm 17 and *Complaint against Gray Supermarket* [2023] NTLiqComm 18.

issue, in the view of the Commission, when considered in the context of other provisions in the *Liquor Act* dealing with the review of decisions, and in particular ss 31(1) of the Act,<sup>5</sup> the words in s 29(1) of the *Liquor Commission Act* “any decision of the Director is reviewable by the Commission” properly construed mean “any decision of the Director for which a decision notice is required is reviewable by the Commission.” The Director is required to make innumerable decisions, large and small, written and unwritten, in the course of performing their functions. It is inconceivable that the legislature intended that each and every one of those decisions is subject to review by the Commission. A literal construction of this provision would give rise to an absurd result. Accordingly, the Commission approaches this matter on the basis that the Director’s two decisions under scrutiny are not reviewable by the Commission.

35. The Commission accepts the Director’s submission that the words “The Commission may dismiss a matter...” in s 166(6) confer a power, as distinct from imposing a duty, on the Commission. The licensee did not go so far as to accept this proposition, but only faintly submitted that it might be erroneous. In forming its view, the Commission places particular weight on the terms “must” and “may” in the text of s 166. The word “must” is the controlling verb in s 166(1), (2), (5) and (7). By contrast, the word “may” is the controlling verb in s 166(3), (4) and (6). The irresistible inference to be drawn is that when enacting this provision, the legislature intended to denote the conferral of a discretion or power by using “may”, and the imposition of a duty or requirement by using “must”. Further support for this conclusion is found in s 166(1), which provides that if the Director refers a matter to the Commission for disciplinary action, the Commission “must” decide whether to take disciplinary action.
36. It follows that the Commission has the power under s 166(6) to continue to conduct a hearing and take disciplinary action even after the Director has withdrawn the matter. Furthermore, s 166(1) and s 166(5) both oblige the Commission to decide whether to take disciplinary action if the Director has referred a matter to the Commission for that purpose. But how can the Commission exercise this power and perform this duty without falling foul of s 159(2), which provides that if an enforceable undertaking is in force, the Commission can take no disciplinary action? It is incumbent on the Commission to attempt to reconcile these apparently conflicting provisions. It is an established principle of statutory construction that provisions of a statute should be construed harmoniously. As the plurality of the High Court stated in *Project Blue Sky v Australian Broadcasting Authority* (1998) 194 CLR 355 (**Blue Sky**) at [70]-[71] per McHugh, Gummow, Kirby and Hayne JJ:

A legislative instrument must be construed on the prima facie basis that its provisions are intended to give effect to harmonious goals. Where conflict appears to arise from the language of particular provisions, the conflict must be alleviated, so far as possible, by adjusting the meaning of the competing provisions to achieve that result which will best give effect to the purpose and language of those provisions while maintaining the unity of all the statutory provisions. Reconciling conflicting provisions will often require the court “to determine which is the leading provision and which the subordinate provision, and which must give way to the other”. Only by determining the hierarchy of the provisions will it be possible in many cases to give each

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<sup>5</sup> “Any decision of the Commission for which a decision notice is required under this Act is reviewable by NTCAT” (emphasis added)

provision the meaning which best gives effect to its purpose and language while maintaining the unity of the statutory scheme [citations omitted].

37. So, what is the “statutory scheme” in this instance? Part 7 Divisions 2 to 4 of the Act, when considered in the context of the statutory provisions referred to above that regulate the functions, powers and responsibilities of the Commission, establishes a scheme to promote regulatory compliance comprising a hierarchy of actions that, in those cases when the Director refers a matter to the Commission, is overseen and controlled by the Commission. Section 163 identifies the various actions the Director can take on completing an investigation, ranging from taking no action up to referring the matter to the Commission for disciplinary action. Although it may be open to the Director to undertake more than one of the listed actions in a particular case (for example, to both issue an infringement notice and enter into an enforceable undertaking with a licensee), given that s 159 expressly provides that entry into an enforceable undertaking is “an alternative to disciplinary action”, it is, in the view of the Commission, not open to the Director to both enter into an enforceable undertaking with a licensee *and* refer the matter to the Commission for disciplinary action.
38. On 31 August 2025, the Director (through her delegate, Mr Kulda) elected the latter course, and duly issued a decision notice to the Commission, in accordance with s 163(3)(c). That election was decisive, and as a consequence the Commission became seized of the matter, with the duty to decide whether to take disciplinary action against the licensee.
39. It does not follow that, having referred the matter to the Commission, the Director was precluded from continuing to communicate with the licensee with a view to resolving the matter in an alternative fashion. However, an issue that requires determination is whether or not the statutory scheme requires that any such resolution be subject to the Commission’s approval. In other words, after 31 August 2025, was a decision about whether to take disciplinary action or to proceed in an alternative fashion one for the Director to make, or one for the Commission?
40. After considering the statutory scheme of Part 7 of the Act and the Act as a whole read in conjunction with the *Liquor Commission Act*, the Commission has reached the conclusion that the exercise of the discretion conferred on the Director by s 159(1) is subject to an implied condition that, if the Director has previously referred the matter to the Commission, the making of a decision by the Director to accept an enforceable undertaking from a licensee as an alternative to disciplinary action is subject to a decision by the Commission not to take disciplinary action against the licensee. To adopt the terminology of the High Court in the passage from *Blue Sky* cited above, the Commission has determined that s 166 is the leading provision, s 159 is the subordinate provision, and s 159 must give way to s 166. The Commission finds that this construction, which has been arrived at by considering the “hierarchy of provisions” within Part 7, gives “each provision the meaning which best gives effect to its purpose and language while maintaining the unity of the statutory scheme”.
41. The Commission now turns to consider whether, after having elected to refer the matter to the Commission, the Director had jurisdiction to accept an enforceable undertaking. If the Director had no such jurisdiction, her decision to accept an enforceable undertaking was affected by jurisdictional error, and void. As the plurality of the High Court held in

*LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] HCA 12; 280 CLR 321, at [2] – [8].<sup>6</sup>

Jurisdictional error can refer to breach of an express or implied condition of a statutory conferral of decision-making authority which results in a decision made in the purported exercise of that authority lacking the legal force attributed to exercise of that authority by statute. Though a decision affected by jurisdictional error is a decision in fact, it is "in law ... no decision at all" and is in that sense "void".

42. Not all administrative or judicial decisions made in breach of an implied statutory condition are void for jurisdictional error. In *Blue Sky*, at [93], the plurality provided authoritative guidance on how to identify whether a breach is such as to invalidate a decision:

A better test for determining the issue of validity is to ask whether it was a purpose of the legislation that an act done in breach of the provision should be invalid... In determining the question of purpose, regard must be had to "the language of the relevant provision and the scope and object of the whole statute" [citations omitted].

43. Having taken that approach, the Commission has determined that the breach of the implied condition by the Director amounted to jurisdictional error. Notwithstanding the submissions of both the Director and the licensee, the Commission considers that it would subvert the statutory scheme of the Act and sterilise the Commission in the performance of its statutory functions if the Director were at liberty to accept a post-referral enforceable undertaking, and thereby prevent the Commission from carrying out the duty imposed on it by s 166(1) to decide whether or not to take disciplinary action. The Commission's view is fortified by the words of s 166(6), which provides that the Commission "may" – and not "must" – dismiss a matter that has been withdrawn. It is further fortified by the words of s 166(5), which provide that on completing the hearing the Commission "must" either dismiss the matter or take disciplinary action.

44. Accordingly, the Commission concludes that the enforceable undertaking entered into on 3 November 2025 was of no legal effect, and, accordingly, did not deprive the Commission of either power or jurisdiction to decide whether to take disciplinary action against the licensee. The Commission is also of the view that there is another pathway that leads to the same destination. Section 159(2) provides that no disciplinary action may be taken against a licensee if an enforceable undertaking "is in force". On the Commission's construction of s 159 and s 166, the enforceable undertaking executed by the Director and the licensee on 3 November 2025 can not and does not come "into force" unless and until the Commission has discharged its obligation under s 166(1) to decide whether to take disciplinary action against the licensee. The enforceable undertaking is enlivened only if and when the Commission decides not to take disciplinary action.

45. It is not suggested that in this instance the terms of the enforceable undertaking were inappropriate or ill-considered. As will be seen, on the contrary. However, to accept the parties' submissions on the jurisdictional issue would have opened the door to less

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<sup>6</sup> Cited in *Canstruct Pty Ltd v Floreani KC & Anor* [2024] NTSC 104 at [96] per Burns J

scrupulous Directors and licensees who, for whatever reason, connived to avoid the scrutiny of the Commission, even after a matter had been found by the Director to be sufficiently serious to warrant referral to the Commission for disciplinary action.

46. At the commencement of the hearing on 5 November 2025, on behalf of the Director Mr Wood formally withdrew the matter, an action that is contemplated by s 166(6)(a), and which the Commission accepts is within the discretion of the Director to take. Having determined, for the reasons set out above, that it is within the discretion of the Commission not to dismiss the matter and cancel the hearing as a consequence of the withdrawal of the matter, the Commission now turns to consider how to exercise that discretion.

47. Unlike the defaulting licensees in *Munupi*, *Tennant Creek Golf Club* and *Hill*, this licensee has continued to trade under its licence at the premises. Having found that the enforceable undertaking is void and not in force, the Commission considers that the complaint must be determined on its merits, by the Commission. In light of this decision (subject to the outcome of any NTCAT or judicial review), it appears most unlikely that the unprecedented sequence of events in this matter will reoccur.

## **THE SUBSTANTIVE HEARING**

48. The Commission received the following documents into evidence:

- Brief provided by the Director to the Commission with the referral, 3 September 2025
- Statutory Declaration of Rebeca Polley, 17 October 2025, with attachments
- Enforceable undertaking between the Director and the Licensee, 3 November 2025
- Statement of Agreed Facts, 26 September 2025

49. The licensee admitted the truth and accuracy of the facts in the Statement of Agreed Facts, which are summarised at paragraph 9 above. The Commission finds that the contraventions were committed and that grounds for disciplinary action are made out.

## **DISPOSITION**

50. If the Commission had received evidence capable of supporting a finding that in response to the complaint the licensee has engaged in a course of conduct calculated to avoid or minimise disciplinary action, the Commission would have been inclined to consider that it was appropriate to take disciplinary action against the licensee.

51. However, the Commission has received no such evidence. Indeed, the licensee's communications with the Commission since the commencement of the proceedings have been consistently constructive, co-operative, responsible and responsive. Similarly, on the basis of the material provided to the Commission, the Commission considers that the licensee's communications with the Director since being informed of the complaint have been likewise exemplary. It was the licensee's own conduct of a thorough review of the operation of its premises that enabled the full extent of the contraventions to be identified and disclosed.

52. If the Commission were of the view that the actions the licensee has taken in response to the contraventions fall short of disciplinary action that in all the circumstances of the

licensee and the contravening conduct it would have been appropriate to impose, this too would have inclined the Commission to consider that it was appropriate to take disciplinary action against the licensee.

53. However, that is not the view of the Commission. As the Commission has previously observed, the primary if not sole purpose of imposing civil penalties is deterrence.<sup>7</sup> The actions in response to this matter taken by the licensee and its parent company, the Endeavour Group, together with the commitments contained in the enforceable undertaking, are in the view of the Commission appropriate to advance the purpose of deterring both this licensee and other licensees from further contraventions of this nature. Section 159(6) provides that enforceable undertakings must be published on the Director's website. In addition, this decision notice will be published on the Commission's website. In the unusual circumstances of this matter, the Commission is satisfied that the Commission's decision not to take disciplinary action will not impair the deterrent effect of these proceedings.

54. The Commission acknowledges that the licensee has taken significant remedial action, including:

- (a) reminding store managers and team members of the importance of compliance with liquor licensing conditions and obligations, including in relation to permitted trading hours;
- (b) providing additional training to the Bell Bar BWS store manager who was that store's manager during the Sunday sales period and continues to be so;
- (c) fixing the software that the licensee uses as one of its methods of detecting trading outside of permitted hours;
- (d) further enhancing the licensee's capability to detect trading outside of permitted hours by, amongst other things:
  - i. amending existing store manager reporting requirements; and
  - ii. imposing additional store manager reporting requirements;
- (e) initiating three monthly reviews of store compliance with liquor licensing conditions at the area manager level, including in relation to trading hours; and
- (f) donating \$20,400, which was equivalent to the revenue generated from the unlawful Sunday sales, to local charities in the Northern Territory.

55. The Commission further acknowledges that by entering into the enforceable undertaking, the licensee has:

- (a) admitted the contraventions and made an appropriate statement of contrition;
- (b) undertaken to pay \$20,350 by way, in effect, of a monetary penalty;
- (c) undertaken to suspend its takeaway sales for a 24 hour period on a Sunday; and

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<sup>7</sup> *Complaint against 2SCCP Pty Ltd t/a Jump Inn* [2025] NTLiqComm 7 at [68]

(d) undertaken to develop and provide a training module to be delivered to licence nominees (whether or not employed by Endeavour Group), covering compliance with the Act and harm minimisation liquor trading practices.

56. Section 165(1)(b) provides that the Commission must not take disciplinary action against a licensee, even if a ground for the disciplinary action exists, unless it is satisfied that “the disciplinary action is appropriate in relation to that ground”. In the highly unusual circumstances of this matter, including the Director’s handling of the complaint, the licensee’s conduct over the course of these proceedings, the remedial actions the licensee has taken, and the undertakings the licensee has given, the Commission is not satisfied that it is appropriate to take any disciplinary action.

57. The Commission has found that the Director’s decision to accept the enforceable undertaking was made beyond jurisdiction, or in the alternative, that the enforceable undertaking was not in force at the time of the hearing of this matter. However, the Commission has now discharged its duty under s 166(1) to decide whether to take any disciplinary action against the licensee, and, pursuant to s 166(5)(a), has dismissed the matter. As a consequence, this removes the impediments the Commission has identified that have precluded the Director from accepting the enforceable undertaking, and that have prevented the enforceable undertaking from coming into force.

58. For these reasons, the Commission has determined to dismiss the matter.

#### **NOTICE OF RIGHTS**

59. 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.

60. 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  
CHAIRPERSON  
NORTHERN TERRITORY LIQUOR COMMISSION

12 November 2025

On behalf of Commissioners Goldflam, Carson and Stedman

**ENFORCEABLE UNDERTAKING**

*Liquor Act 2019 (NT)*  
Section 159

The commitments in this undertaking are offered to the Director of Liquor Licensing for the Northern Territory by:

Australian Leisure and Hospitality Group Pty Limited (ACN 067 391 511)  
of Level 3, 10 Shelley Street, Sydney, NSW 2000

**1. BACKGROUND:**

- 1.1. The Northern Territory Liquor Commission (**Commission**) is charged with the performance of various functions under the *Liquor Act 2019 (NT)* (**Act**), including taking disciplinary action against licensees.
- 1.2. The Director of Liquor Licensing for the Northern Territory (**Director**) is charged with the performance of various functions under the Act, including the investigation of complaints made under section 160 of the Act and the referral of matters under section 164 of the Act to the Commission for disciplinary action.
- 1.3. Australian Leisure and Hospitality Group Pty Limited (ACN 067 391 511) (**Licensee**) is the licensee for the Bell Bar & Bistro, which is located at 127 Flynn Circuit, Bellamack in the Northern Territory (**Premises**). The BWS store the subject of this matter is situated on the Premises (**BWS Bell Bar**).
- 1.4. The Licensee holds liquor licence 80319095 in respect of the Premises (**Licence**) and has done so since October 2019. The Licence contains, amongst other things:
  - (a) a takeaway liquor authority; and
  - (b) a condition that takeaway liquor is not to be sold before 10.00am on Sundays (other than Sundays that are also Public Holidays).
- 1.5. On 3 September 2025, the Director referred the Licensee to the Commission for disciplinary action in respect of the matters referred to in paragraph 2.1 below, matter number LC2025-030 (**Action**).
- 1.6. The Director has agreed to, upon the Licensee executing this undertaking:
  - (a) withdraw the Action as soon as possible before 5 November 2025; and
  - (b) take no further action in respect of the matters referred to in paragraph 2.1 below.

**2. LICENSEE'S ACKNOWLEDGEMENTS:**

- 2.1. The Licensee acknowledges that between 28 May 2023 and 1 September 2024 (inclusive), it sold takeaway liquor from the BWS Bell Bar on Sundays between the hours of 9.00am and 10.00am.
- 2.2. The Licensee acknowledges that adherence to the conditions of the Licence, including the condition referred to in paragraph 1.4(b) above, is of the utmost importance and that non-compliance with those conditions is a serious matter that has the potential to, amongst other things, increase the risk of anti-social behaviour and other harm.
- 2.3. The Licensee is committed to ensuring that it does not trade outside of its permitted hours on Sundays or on any other day again.

### 3. LICENSEE'S STATEMENT OF CONTRITION:

3.1. The Licensee, and the broader Endeavour Group, is sorry for the conduct referred to in paragraph 2.1 above and takes full responsibility for what has occurred. The Licensee and the broader Endeavour Group take pride in its compliance with the laws throughout Australia and in being good corporate citizens and exemplary licensees. The Licensee and the broader Endeavour Group recognise the importance of strict compliance with its obligations under the Act and its liquor licences across the Northern Territory, and, as noted in paragraph 2.2 above, very much understands that non-compliance with those obligations increases the risk of, amongst other things, anti-social behaviour and other harm to the community. Further, as noted in paragraph 2.3 above, the Licensee and the broader Endeavour Group are committed to taking all reasonable steps to minimise the risk that the matters the subject of these proceedings do not happen again.

### 4. LICENSEE'S UNDERTAKING:

4.1. The Licensee undertakes to:

- (a) pay to the Director, to an account nominated by the Director, the amount of \$20,350.00 within 7 business days of receiving details of the Director's nominated bank account;
- (b) not sell any takeaway liquor from the Premises between the hours of 12.01am and 11.59pm on Sunday 23 November 2025;
- (c) prepare a training module for nominees of liquor licences issued under the Act (**Module**). The Module is to cover the following topics: (i) compliance with liquor licence conditions, the Act and Liquor Regulations 2019 (NT); and (ii) harm minimisation practices for the sale, supply, service and consumption of liquor in the Northern Territory; and
- (d) provide a copy of the Module to the Director within 6 months of the Effective Date. The Licensee agrees that the Director may make the Module available for use by any person and may otherwise publish the Module.

### 5. NON-COMPLIANCE:

- 5.1. Should the Director form the view that the Licensee has failed to materially comply with any term of this undertaking, the Director shall give written notice of that non-compliance to the Licensee (**Notice**).
- 5.2. The Licensee will have 14 days from the date the Notice is issued to the Licensee to provide evidence to the Director that it has remedied such non-compliance.
- 5.3. If the non-compliance referred to in the Notice is not remedied within the time period referred to in paragraph 5.2 above, the Director may then (but not before) refer the Licensee to the Commission for disciplinary action in respect of that non-compliance.

### 6. EFFECTIVE DATE:

6.1. This undertaking is effective from the date on which it is duly executed by the Licensee.

### 7. ADDRESS FOR SERVICE:

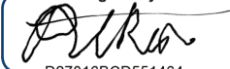
7.1. All notices and other documents are to be served on the Director by:

- (a) physical copy to: GPO Box 1154, Darwin, NT 0801; and
- (b) email to: directorliquorlicensing@nt.gov.au

7.2. All notices and other documents are to be served on the Licensee by:

- (a) physical copy to: Level 3, 10 Shelley Street, Sydney, NSW 2000; and
- (b) email to: legal@edg.com.au

**EXECUTED BY:**

DocuSigned by:  
  
D27816B0D551464.....  
For and on behalf of the Licensee

on 3 November 2025



.....  
For and on behalf of the Director

on 3 November 2025

