

# NORTHERN TERRITORY LIQUOR COMMISSION

## DECISION NOTICE

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**MATTER:** COMPLAINTS AGAINST 2SCCP PTY LTD T/A JUMP INN  
[2024] NTLiqComm 36

**REFERENCE:** LC2024/018, LC2024/026 and LC2024/033

**LICENCE NUMBER:** FLL1018

**LICENSEE:** 2SCCP Pty Ltd

**NOMINEE:** Mr Sachindra Chaurasiya

**PREMISES:** Jump Inn – Alice Springs  
4 Traeger Avenue  
ALICE SPRINGS NT 0870

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

**HEARD BEFORE:** Mr Russell Goldflam (Chairperson)  
Ms Ebony Abbott-McCormack (Health Member)  
Mr Denys Stedman (Community Member)

**DATE OF HEARING:** 8, 9, 27 August 2024

**DATE OF DECISION:** 6 September 2024

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### DECISION

1. Following a public hearing conducted on 8, 9 and 27 August 2024 of three complaints against 2SCCP Pty Ltd (**the licensee**), the Northern Territory Liquor Commission (**the Commission**) is satisfied that grounds for disciplinary action exist arising from the licensee's management of liquor licence FLL1018 (**the licence**) over premises known as "Jump Inn – Alice Springs" at 4 Traeger Avenue Alice Springs (**the premises**).
2. The Commission has decided to take disciplinary action against the licensee pursuant to s 165(2) of the *Liquor Act 2019* (NT) (**the Act**) by varying the conditions of the licence, imposing additional conditions on the licence, directing the licensee to take specific action, and imposing a monetary penalty on the licensee, as follows.
3. The existing Trading Hours are replaced with the following:

Trading hours for **Jump Inn – Alice Springs** shall be between:

Sunday 16:00 and Monday 01:00  
Monday 16:00 and Tuesday 01:00

Tuesday 16:00 and Wednesday 01:00  
Wednesday 16:00 and Thursday 01:00  
Thursday 16:00 and Friday 01:00  
Friday 16:00 and Saturday 01:00  
Saturday 16:00 and Sunday 01:00

4. The conditions of the licence are varied by omitting:

Meals

Liquor may only be served or consumed between 11:30 and 16:00 hours ancillary to a meal

Meals must be available on request from 16:00 until close of business

and substituting:

Meals

A full meal must be available on request from 16:00 until 1.5 hours before the close of the licensed premises.

A light meal must be available at all times when the licensed premises are open.

5. The conditions of the licence are varied by omitting:

Noise

The licensee will at all times ensure that the locality is not disturbed by noise from the premises

Outdoor Entertainment

The licensee will provide the neighbours in vicinity with no less than 24 hours' notice in writing of any outdoor entertainment

and substituting:

Noise

**1 Introduction and Interpretation**

1.1 The object of this special condition is to ensure that the licensee does not cause or permit its employees or patrons to cause undue or unreasonable noise on or in the licensed premises that affects the amenity of the neighbourhood.

1.2 For the purpose of this Condition:

1.2.1 "Director" means the Director of Liquor Licensing or their delegate

1.2.2 "a musical event" means an occasion at the licensed premises when live or pre-recorded music is played using amplified sound emitted by a loudspeaker

1.2.3 “the approved maximum sound pressure level” means the maximum sound pressure level approved by the Director

1.2.4 “special function” means a musical event for which prior written approval has been given by the Director in accordance with paragraph 5.2 below

## **2 Arrangements for noise management**

2.1 The licensee must install a noise limiting device to prevent noise being emitted in excess of the approved maximum sound pressure level measured at front of house (4 metres from the stage), even if the volume is turned up by the sound system operator.

2.2 The licensee shall only cause or permit music to be played at events or functions with the noise limiting device engaged.

2.3 The licensee must not cause or permit any musical events or special functions to take place at the licensed premises unless and until the Director has provided the licensee with written confirmation that it is satisfied that the noise limiting device has been properly installed, engaged and locked.

## **3 Advertising and notice of events**

3.1 Notification of all musical events and special functions including the time of the event or function must be given at least five days in advance on the licensee’s website, Facebook page and any other social media platform the licensee uses to promote the event and the licensed premises.

## **4 Noise Complaint management**

4.1 The licensee shall publish on its website, Facebook and Social Media pages an email address to which noise complaints can be addressed.

4.2 The licensee must monitor that email address daily, and acknowledge receipt to the complainant.

4.3 The licensee must print out all noise complaints received and place them in a noise complaints register that the licensee must produce to a Licensing Inspector upon request.

4.4 In addition, the licensee must document at the time of receipt any noise complaint received by telephone or in person and place the documented record of the complaint in the noise complaints register.

## **5 Hours of operation of music**

5.1 Subject to paragraph 5.2, the licensee must ensure that no live or pre-recorded music is played after 22:00.

- 5.2 The licensee must, by prior written notice to the Director, seek the Director's consent to a special function at which music will be played after 22:00 hours. The notice must be given at least seven business days before the proposed date of the special function. The licensee must not hold a special function if the Director gives the licensee written notice that they refuse to consent to the holding of the special function. The Director is taken to have consented to a special function if the licensee has sought the Director's consent with at least seven business days notice, and the Director has not, within two business days of receiving the notice, notified the licensee that they refuse to consent to the holding of the special function. The licensee must not hold more than six special functions in a calendar year.

## **6 Director's review**

The Director on their own initiative may review noise issues pertaining to the licensed premises, and notwithstanding compliance by the licensee with the foregoing, the licensee shall implement such sound attenuation and noise mitigation measures as the Director in their discretion may notify to the licensee in writing at any time as having become in the Director's view a reasonable requirement in the circumstances then prevailing.

### 6. The licensee is directed:

- a. only to operate the licence when Mr Sachindra Chaurasiya is personally managing the business and residing at the premises, unless and until the licensee has, with the written approval of the Director, appointed another person resident in Alice Springs to be a joint licence nominee, and that person has commenced to manage the business; and
- b. to co-operate and comply with any harm minimisation audit of the premises undertaken by the Director pursuant to Part 6 Division 4 of the Act.

7. A monetary penalty of five penalty units is imposed on the licensee payable within 28 days after this notice is given to the licensee.

## **STATEMENT OF REASONS**

### **BACKGROUND**

8. The premises, 1 km south of the Alice Springs CBD, were constructed and opened in 1965 as the Midland Motel. The premises are on the corner of Willshire St, a suburban residential street, and Traeger Avenue, the entire south side of which is a boundary of the Traeger Park sporting complex, and most of the north side of which is a boundary of a middle school (Years 5 to 8) campus.

9. By 1993 the Midland Motel was trading with a liquor licence, some conditions of which the Commission infers were included in the licence with the object of ensuring that Willshire St residents would be afforded quiet enjoyment of their homes. Those conditions, which have continued unchanged ever since, included:

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|-------|---|
| (i)   | The Licensee will at all times ensure that the locality is not disturbed by noise from the premise;                                 |
| (ii)  | The Licensee will provide the neighbours in the vicinity with no less than 24 hours notice in writing of any outdoor entertainment; |
| (iii) | The Licensee shall not conduct "Happy Hour" discount liquor sales;  |

10. Following the commencement of the Act in 2019, the premises, which had by then been renamed the Jump Inn, commenced to trade with a restaurant bar authority, a lodging authority and a late night authority. On 11 April 2023, the licensee acquired the licence. Mr Sachindra Chaurasiya (**Mr Chaurasiya**), a principal executive officer of the licensee, was appointed as the licence nominee. Mr Chaurasiya had previously worked in various licensed premises in Alice Springs for nine years. In 2020 or 2021, he acquired the Pizza Hut franchise in Gladstone, Queensland, where he has since lived with his wife and their family.

11. Meanwhile, also in 2020 or 2021,<sup>1</sup> Mr John Bailey (**Mr Bailey**) and his wife purchased a house in Willshire St next door to the premises. Mr Bailey gave evidence to the Commission that before committing to the purchase, he obtained a copy of the licence, read the condition referring to noise set out above (**the noise condition**), and spent time in Willshire St to see whether the licensed premises next door would be a source of disturbance to neighbours. Having conducted these investigations, and being satisfied that it was prudent to complete the purchase of his home, Mr Bailey did so.

12. Unfortunately, however, once he had moved in, Mr Bailey testified he experienced substantial disturbance as a result of noise emanating from the premises. At times, he testified, "doof doof" music continued through the night until as late as six o'clock in the morning. At that time, it should be noted, the premises were owned and operated by a previous licensee, and Mr Chaurasiya had no association with the premises.

## THE COMPLAINTS

### The noise complaint

13. On 15 November 2023, through his solicitors, Mr Bailey lodged an "Application to make a complaint about a licensee"<sup>2</sup> with the Director of Liquor Licensing (**the Director**), alleging that the licensee had breached the noise condition and various provisions of the Act.

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<sup>1</sup> Mr Bailey's evidence on which year he took up residence in Willshire St was somewhat uncertain.

<sup>2</sup> Exhibit One, p. 101

14. Having received and investigated this application, on 29 November 2023 Senior Compliance Officer Wingrove laid a complaint (**the noise complaint**) against the licensee on the ground at s 160(1)(a) of the Act, that the licensee had contravened a condition of the licence, namely the noise condition.<sup>3</sup> The particulars of the complaint were, in summary, that the licensee had caused excessive noise by playing loud music and by operating an excessively noisy kitchen air extractor fan.
15. On 5 December 2023, having been notified of the noise complaint, Mr Chaurasiya responded by email as follows:
- I feel sorry to hear the complaint. Our venue usually closes at around 10pm or even earlier. Our live music only happens on every Tue and Fri and will be finished at 10pm. We are pretty sure that was not too loud and we always make sure music does not continue on till late.
- Regarding the kitchen air extractor factor, I am sure that is not an issue as our kitchen always closes at around 8:30pm which is not late at all.
16. Three aspects of the noise complaint are noted. Firstly, as the named complainant was Officer Wingrove rather than Mr Bailey, at the hearing counsel for the licensee appeared to suggest that Mr Bailey might not have the same right to cross-examine witnesses and make submissions as a person entitled to appear at a disciplinary action hearing.<sup>4</sup> The Commission did not accept this submission, and afforded Mr Bailey the same procedural rights as if he had been the complainant.
17. Secondly, the complaint included reference to s 293 of the Act, which establishes as an offence conduct that results in contravention of a licence condition. In the view of the Commission, s 293 has no application to a complaint based on the ground set out at s 160(1)(a). Had the complaint been based on the ground at s 160(1)(b), that the licensee or the licensee's employee had contravened a provision of the Act, s 293 would have been engaged. However, in the view of the Commission, this technical irregularity did not cause any prejudice or unfairness to either the licensee or Mr Bailey in the circumstances of this complaint.
18. Thirdly, the complaint did not capture some of the issues identified by Mr Bailey, which may have resulted in unfairness to him had he not made the following further complaint.

### **The disturbance complaint**

19. On 23 February 2024, Mr Bailey's solicitors lodged a further complaint (**the disturbance complaint**), on the ground set out at s 160(1)(m), that the licensee was using the premises in a way that caused disorderly conduct or annoyance or disturbance to persons living in the vicinity. In summary, the particulars of this complaint were that intoxicated Jump Inn patrons had on repeated occasions trespassed on Mr Bailey's property, damaged his property, and disturbed, annoyed, threatened and assaulted him and his wife, Mrs Makharom.

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<sup>3</sup> Exhibit One, p 32

<sup>4</sup> See s 22(2) of the Act.

20. On 23 February 2024, Principal Compliance Officer Sowerby, a delegate of the Director, notified Mr Chaurasiya of the disturbance complaint, and invited the licensee to respond to it. The licensee did not provide a response. In his evidence, Mr Chaurasiya said that he had missed Ms Sowerby's email. The Commission does not consider this to be a satisfactory explanation.
21. On 24 May 2024 the Director referred the noise and disturbance complaints to the Commission, with a single brief including:
- a. Statutory declaration Senior Compliance Officer Brian Wingrove, 25 March 2024
  - b. Application to make a complaint, 15 November 2023
  - c. Draft unsigned letter Robyn Lambley MLA, 3 August 2021
  - d. Correspondence between De Silva Hebron and Our Lady of the Sacred Heart College
  - e. Liquor Licence FLL1018
  - f. Certificate of transfer of licence to 2SCCP Pty Ltd 11 April 2023
  - g. The noise complaint
  - h. Licensee's response to the noise complaint
  - i. 54 audio files recorded by Mr Bailey, 3 to 31 October 2023
  - j. Wingrove's summary of 28 of Mr Bailey's audio files 3 to 17 October 2024
  - k. NT Police summary of incidents near Jump Inn April to November 2023
  - l. Statutory declaration John Bailey, 21 December 2023
  - m. 22 audio files recorded by Mr Bailey, 10 December 2023 to 1 January 2024
  - n. Police case summaries: 27 August, 19 – 20 September, 26 September 2023
  - o. 3 audio recordings of Mr Bailey's calls to police
  - p. Licensing NT inspection records Jump Inn, 22 April 2023 to 9 February 2024
  - q. 8 audio files recorded by Licensing NT, 26 May 2023 to 9 February 2024
  - r. Liquor Licence 80105018 for Midland Hotel, 24 December 1993
  - s. Aerial photograph of premises
  - t. The disturbance complaint and associated correspondence
22. On 21 May 2024, Senior Compliance Office Takotohiwi laid a complaint (**the child employee complaint**) on the ground set out at s 160(1)(b) of the Act, that the licensee or the licensee's employee had contravened a provision of the Act. The particular of the complaint was that the licensee had contravened s 297 of the Act, which prohibits a licensee from employing a child to sell liquor, unless the Director has given the licensee permission to do so. The complaint alleged that the licensee had employed a 16 year old Charles Darwin University (**CDU**) hospitality student as a bar attendant.
23. On 23 May 2024, having been notified of the child employee complaint, Mr Chaurasiya provided a detailed response in which he admitted the alleged breach, provided an explanation of its circumstances, and identified steps taken by the licensee to address the breach.
24. On 18 June 2024 the Director referred the child employee complaint to the Commission, with a brief including:
- a. Evidence matrix
  - b. Correspondence between Licensing NT, licensee and CDU
  - c. The child employee complaint
  - d. Licensee's response to complaint

e. Statutory declaration, Corrin Takotohiwi, 7 June 2024

### **The service of food complaint**

25. On 19 July 2024, Liquor Inspector Armour laid a complaint (**the service of food complaint**) on the ground set out at s 160(1)(a) of the Act, that the licensee had contravened a condition of the licence, namely “Meals must be available on request from 16:00 until close of business”.<sup>5</sup> The complainant alleged that on 14 July 2024 at 00:03, a liquor inspector approached the main bar of the premises and requested to purchase a meal. An employee informed the inspector that the kitchen had closed and meals were not available as they stopped serving at 20:30.

26. On 31 July 2024, having been notified of the service of food complaint, Mr Chaurasiya provided the following response:

I can assure you that the request for a meal was not passed on to the chef, who would have provided a meal, in accordance with the conditions of the liquor license for Jump Inn as he always does. Even though the kitchen fan is switched off at 8:30pm, the fryer is not switched off and hot chips are available from that time until closing time at 1am the next morning. I am unsure as to why the liquor inspector was informed as such, as the information is not correct. In order to ensure that everybody knows that food is available after 8:30pm, we have since placed signs in the venue to advertise this service.

All staff members have also been reminded of their obligations in terms of the liquor license for Jump Inn at a staff meeting. I apologise for this unfortunate situation, it was certainly not an intentional breach of the Jump Inn liquor license condition to provide food until closing time.

27. On 23 August 2024, the Director referred the service of food complaint to the Commission, with a brief including:

- a. Evidence matrix
- b. Investigation running sheet
- c. The service of food complaint
- d. Licensee’s response to complaint
- e. Statutory declaration, liquor inspector Imogen Constable, 1 August 2024

### **THE HEARING**

28. The matter commenced as a public hearing on 8 August 2024, and continued on 9 and 27 August 2024. Mr Wood appeared on behalf of the Director. Mr Stirk, instructed by Libertas Legal, appeared on behalf of the licensee. Dr Ford, instructed by De Silva Hebron, appeared for Mr Bailey. Mr Chaurasiya, Mr Bailey and officers of Licensing NT attended the hearing.

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<sup>5</sup> As with the noise complaint, the service of food complaint included an inapplicable reference to s 293 of the Act.



29. The Commission had previously fixed the hearing to commence on two earlier dates, but vacated those dates following unopposed applications on behalf of Mr Bailey and the licensee, both of which were made on the reasonable ground that a participant in the hearing was unavailable because of poor health. The Commission however refused an application by the licensee that Mr Chaurasiya be permitted to attend the hearing remotely from Queensland, where he now resides.

30. During the hearing, the Commission received the following documents into evidence:

- a. Exhibit One: Brief for the noise and disturbance complaints<sup>6</sup>
- b. Exhibit Two: Statutory declaration Michael Sumang, 21 July 2024
- c. Exhibit Three: Statutory declaration Yu-Jan Huang, 16 July 2024
- d. Exhibit Four: 8 audio-visual recordings 26 May 2023 to 9 February 2024
- e. Exhibit Five: Plan and 3 photographs of the premises
- f. Exhibit Six: Plan of Mr Baileys home
- g. Exhibit Seven: Exhibit Six marked by Mr Bailey to show position of external doors
- h. Exhibit Eight: Audio-recordings made by Mr Bailey from 3 to 31 October 2023
- i. Exhibit Nine: Audio-recordings of telephone calls from Mr Bailey to NT Police, 27 August, 20 September and 26 September 2023
- j. Exhibit Ten: Affidavit Nicholas Dakis, 21 August 2024 with two audio-visual recordings 17 August 2024
- k. Exhibit Eleven: Affidavit Nicholas Dakis, 26 August 2024
- l. Exhibit Twelve: Statutory declaration Sy Browne, 21 August 2024
- m. Exhibit Thirteen: "Jump Inn live music/events and trading hours" 26 May 2023 to 9 February 2024
- n. Exhibit Fourteen: Statutory declaration Benjamin Erin, 21 August 2024
- o. Exhibit Fifteen: Brief for the child employee complaint<sup>7</sup>
- p. Exhibit Sixteen: Brief for the service of food complaint, together with statutory declaration Lorraine Armour, 1 August 2024

31. The following persons gave oral evidence under oath or affirmation at the hearing:

- Brian Wingrove
- Holly Sowerby
- Mark Wood
- John Bailey
- Sachindra Chaurasiya
- Nicholas Dakis
- Sy Browne
- Michael Sumang
- Benjamin Erin
- Yu-Jan Huang
- Lorraine Armour
- Imogen Constable

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<sup>6</sup> With the consent of the parties, the Commission declined to admit into evidence the item in the brief described at paragraph 21(c) above.

<sup>7</sup> The Commission ordered that the name of the child the subject of the child employee complaint not be published.

32. On 9 August 2024 two members of the Commission attended both the Jump Inn and the exterior of Mr Bailey’s home to conduct a view (**the view**). As Member Stedman, Dr Ford, Mr Dakis (Mr Bailey’s solicitor) and Ms Laan (the licensee’s solicitor) had been participating in the hearing remotely, none of them was able to attend the view. The view was attended by Chairperson Goldflam, Member Abbott-McCormack, Mr Wood, Mr Stirk, Mr Chaurasiya and Mr Bailey. The Commission thanks Mr Chaurasiya for inviting the Commission to attend the premises, and Mr Bailey for allowing the Commission to enter his property. This exercise was of considerable assistance to the Commission.
33. Following final submissions on 27 August 2024, Mr Chaurasiya accepted an invitation from the Commission to provide an undertaking in terms substantially similar to the direction set out at paragraph 6(a) above. The Commission then reserved its decision.

## **EVIDENCE AND FINDINGS**

34. Section 23(3) provides that the Commission is not bound by the rules of evidence and may inform itself in any manner it considers appropriate.
35. The complainants have the burden of proving that the allegations they make in support of their complaint are true, on the balance of probabilities. In this matter, the Commission applies the ‘Briginshaw test’, which is to say that the Commission must be satisfied that an 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>8</sup>

### **The noise complaint**

36. Mr Bailey’s oral evidence was forthright:

Every room in our house is just ‘boom boom boom boom’... The whole bed pulsates with the noise... Even with ear muffs we can’t stop it. It’s driving us nuts. It gets louder and louder and louder as the night goes on.... The extractor fan is the noisiest one in town.

37. Mr Bailey’s evidence was that the noise at night from the Jump Inn was so disruptive to his sleep that in March 2024 he was forced to take on a permanent night shift with his employer, a non-government supported accommodation provider.
38. The Commission considers that the following additional evidence, which it accepts, supports the noise complaint:
- a. Officer Wingrove listened to, logged and analysed 28 of the 45 recordings made by Mr Bailey at his back door or front door of noise from the premises in October 2023, and assessed five of them as “loudish”, and four of them as featuring sporadic, intermittent, or (in one case) continuous “loud bursts of percussion” at various times between 20:32 and 22:48 on three different days.
  - b. Officer Armour gave evidence that on Saturday 13 July 2024 she was a member of a three person team who conducted a compliance inspection of the premises,

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<sup>8</sup> *Briginshaw v Briginshaw* (1930) 60 CLR 336 per Dixon J.

arriving at 23:45. Ms Armour's oral evidence was that when she arrived the pre-recorded music that was playing was so loud it impeded ordinary conversation, and that to talk to someone you had to have your ear up close to the person. The music could be heard from the street. The volume was slowly reduced after that, and that by the time the team left the premises after half an hour, the noise level was "compliant". Another member of the inspection team, Officer Constable, gave evidence that the music was "very loud" when they arrived.

39. The Commission considers that the following additional evidence, which it also accepts, militates against a finding that the noise complaint is made out:

- a. In the course of conducting the view, two members of the Commission listened to the noise of the Jump Inn kitchen extractor fan from inside the premises, and then from Mr Bailey's back yard. The extractor fan noise was audible but not considered to be intrusive from the public areas of the premises, and only faintly audible from Mr Bailey's yard. Chairman Goldflam recorded these events on his mobile phone. On the recording, the extractor fan was audible inside the premises, but inaudible in Mr Bailey's yard.
- b. In support of Mr Bailey's case, a recording made on 18 August 2024, when the extractor fan was operating, was admitted into evidence and played at the hearing.<sup>9</sup> Mr Dakis, who made the recording in Mr Bailey's back yard, gave evidence that at the time he made the recording he could hear the extractor fan. However, the sound of the fan was inaudible on the recording.
- c. Mr Sumang, who was employed by the licensee as the manager of the venue for about twelve months until 30 June 2024, produced contemporaneous notes he had made of 17 music events conducted at the premises between 26 May 2023 and 9 February 2024. The music never continued past 22:30, except on 28 October 2023, when it ended at around midnight.<sup>10</sup> It is unclear, however, whether or not these notes documented every music event conducted at the premises during this period.
- d. Although Mr Bailey gave evidence that intrusive "techno" music had been frequently played at the premises until the early hours of the morning, when invited by the Commission to produce audible samples of this type of music from the numerous recordings he had made, he did not do so. The Commission accepts that when the premises had operated under its previous licensee before April 2023, there had been occasions on which rave parties and the like were held at the premises until the early hours of the morning.
- e. Mr Bailey's evidence that "we can hear every single noise in the place, even a burp" was inconsistent with the Commission's observations when conducting the view. At the Commission's request, the licensee arranged for the venue's sound system to be set up, and played moderately loud pre-recorded music in the beer garden. Commission members then walked next door to Mr Bailey's yard, and observed that the music, which was still apparently playing at the same volume,

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<sup>9</sup> Exhibit Ten

<sup>10</sup> Exhibit Thirteen

was so soft that it was inaudible on the recording Chairman Goldflam made on his mobile phone.

- f. Mr Bailey's property abuts the northern boundary of the Jump Inn. However, the reception at Mr Bailey's home of noise emanating from the premises is not uninterrupted. Within the premises, live and recorded music using the licensee's sound system is played only in the beer garden, which is on the south side of the premises. The sound system has two speakers, which are set up on stands on a stage on the north side of the beer garden, pointing south, directly away from Mr Bailey's property. The rear of the stage is lined with six 2.5 m x 1 m acoustic foam panels that were installed by Mr Chaurasiya after he had been notified of the noise complaint referred to in paragraph 14. The panels are affixed to the north concrete block wall of the beer garden, the stage of which is covered with a roof, and to the north of which is a substantial masonry building containing motel rooms. The transmission of sound from the beer garden is obstructed by several concrete block walls.

40. The Commission also has regard to evidence called by the licensee from another neighbour, Mr Benjamin Erin, who lives directly across the road from Mr Bailey, on the west side of Willshire St. Mr Erin, whose home is partially shielded from the premises by dense vegetation, declared "we enjoy leaving our doors open to hear the vibrant sound of live music in the background".<sup>11</sup>

41. The noise complaint does not allege that the licensee contravened s 93 of the Act, which prohibits a licensee from causing or permitting its employees or patrons to cause undue or unreasonable noise that affects the amenity of the neighbourhood. In this case, the bar for the complainant was significantly lower: is the Commission satisfied that the licensee contravened the noise condition of the licence, namely that "the Licensee will at all times ensure that the locality is not disturbed by noise from the premises"?

42. The evidence of Mr Chaurasiya was that shortly after acquiring the licence he walked along Willshire St as far as the boundary of the premises to check the noise level while music was playing. It appears, however, that he took no other steps to ensure that the locality was not disturbed by noise. He made no inquiries with any local residents about noise disturbance. He did not check with Licensing NT or NT Police to see if there was any history of noise complaints against Jump Inn. (Mr Bailey's evidence was that he had complained to Licensing NT and police on multiple occasions about the noise from the premises during the tenure of the previous licensee.)

43. The Commission finds that before being notified of the noise complaint, the licensee failed to take any significant steps to ensure that the locality was not disturbed by noise from the premises.

44. On being notified of the complaint, Mr Chaurasiya installed the acoustic foam panels in the beer garden. He also gave evidence that he directed the staff member responsible for setting up the sound system to start recording noise levels at Open Mic nights, and to reduce the volume. This was inconsistent with the evidence of Mr Sy Browne, who has been the sound technician at the venue since February 2023, and who was called in the licensee's case. Mr Browne declared that he has never done a "full decimal [sic]

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<sup>11</sup> Exhibit Fourteen

reading”, and confirmed in his oral evidence that he does not take decibel readings. He declared that he keeps the music at “a respectful level so that people can hear each other talk. In fact I have been asked a few times to turn the music UP by the customers.”<sup>12</sup> Mr Browne did not say that he had ever been asked by his manager to turn the music down. Mr Browne’s evidence was in turn inconsistent with the evidence of Officer Armour summarised above at paragraph 38(b). On this issue, the Commission prefers Officer Armour’s detailed evidence, which was supported by contemporaneous notes and corroborated by the evidence of Officer Constable.

45. On becoming aware that its next-door neighbour had complained about being disturbed by noise from the premises, the licensee took no steps to communicate with Mr Bailey. In his evidence, Mr Chaurasiya stated that the first time he had ever met Mr Bailey was when they both attended the Commission hearing that day.
46. The Commission finds that after being notified of the complaint, the licensee failed to take sufficient steps to ensure that the locality was not disturbed by noise from the premises.
47. The Commission has given careful consideration to Mr Bailey’s evidence. As has been set out above, Mr Bailey’s account of the level of noise disturbance he has experienced was contradicted by the Commission’s own observations and other evidence. Some of the distress Mr Bailey has experienced, which the Commission acknowledges was extreme, is attributable to the operation of the premises before the licence was acquired by the licensee. Some of his distress is attributable to the matters the subject of the disturbance complaint. From Mr Bailey’s perspective, the specific causes of the real harm he has suffered are perhaps of no great relevance. For the purpose of considering the noise complaint, however, the Commission is required to consider whether he was disturbed, specifically, by noise caused or permitted by this licensee.
48. The Commission is satisfied that Mr Bailey has been disturbed by noise. It may well be that after approximately four years of living next door to the Jump Inn, Mr Bailey has become hypersensitive to noise from the premises. However, whether or not he has always been or has recently become hypersensitive, the Commission finds that he has been disturbed by noise that has emanated from the premises since they were acquired by the licensee.
49. The licensee submitted that Mr Bailey does not constitute “the locality”. In addition to Mr Bailey and his wife, the Commission admitted hearsay evidence from Mr Bailey’s solicitor that two other neighbours of Mr Bailey have also been disturbed by noise from the premises, but were unwilling to give evidence to that effect, for reasons that were explained to the Commission.<sup>13</sup> The Commission gives scant weight to this evidence, which could not be tested by cross-examination. The Commission does however give weight to the evidence of loud music described at paragraph 38 above.

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<sup>12</sup> Exhibit Twelve

<sup>13</sup> Exhibit Eleven

50. In addition, in considering whether there has been disturbance to the locality, the Commission has had regard to the Northern Territory Noise Management Framework Guideline (**the Guideline**),<sup>14</sup> which provides that the noise levels from indoor entertainment should be limited “so that activities such as talking, reading and watching television can occur without undue interference”.<sup>15</sup>
51. The Commission is satisfied that at times the noise emanating from the premises is disturbing, not only to Mr Bailey, but to the locality.
52. Having taken into account all these matters, the Commission upholds the noise complaint.

### **The disturbance complaint**

53. Mr Bailey gave graphic and disquieting evidence of repeated occasions on which intoxicated persons had trespassed onto his property, damaged both of his family’s vehicles, and disturbed, annoyed, threatened and assaulted him and his wife. He said:

Where else could they have got drunk? It’s the only licensed premises near there. In last 15 months, I’ve seen drunks on many occasions. Once, they drove straight through our front gate, put holes in the fence. I’ve grown the grass on the verge to deter people parking out the front. Bottles smashed on the road. They’re intoxicated before they go into the Jump Inn. They drink in the street.

54. In the six month period commencing April 2023, police recorded 24 alcohol-related incidents near Jump Inn.<sup>16</sup>
55. The Commission finds that the southern end of Willshire St has been the site of frequent anti-social, criminal and violent conduct, and Mr Bailey and his wife have suffered significant disturbance, distress and harm as a result.
56. The Commission is satisfied that there has been disorderly conduct in the vicinity of the premises, and annoyance and disturbance to persons residing in the vicinity of the premises.
57. However, to uphold the disturbance complaint, the Commission must also be satisfied that this was caused by the way the licensed premises were used. Applying the Briginshaw test, the Commission is not so satisfied. No direct or specific evidence was received linking the way in which the premises were used to the misconduct that so adversely impacted Mr Bailey and his wife. The persons who engaged in misconduct in Willshire St may well have become intoxicated elsewhere. The Commission is not satisfied that the bottles they smashed were supplied by the Jump Inn, which does not have a takeaway authority.

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<sup>14</sup> Accessed at [https://ntepa.nt.gov.au/\\_data/assets/pdf\\_file/0004/566356/noise\\_management\\_framework\\_guideline.pdf](https://ntepa.nt.gov.au/_data/assets/pdf_file/0004/566356/noise_management_framework_guideline.pdf)

<sup>15</sup> Ibid, p 74

<sup>16</sup> Exhibit One, p 48

58. The Commission dismisses the disturbance complaint.

### **The child employee complaint**

59. The licensee indicated that it did not intend to contest the complaint. Accordingly, the hearing proceeded by a recital of the following facts relied on by the Director in support of the complaint. The Commission has pseudonymised the name of the child.

It is alleged the licensee contravened Section 297 of the *Liquor Act 2019*, by employing a child to sell or supply liquor without written notice from the Director granting permission to do so.

Following a trial conducted on 6 April 2024, it is alleged that on 12 April 2024 the licensee officially employed a Charles Darwin University (CDU) Hospitality student by the name of Alice. With a date of birth of 11 August 2007, Alice is considered a child by definition in the *Liquor Act 2019*.

On 1 May 2024, Franco Mure, VET Lecturer CDU requested permission for Alice to be employed as a minor at the Jump Inn – Alice Springs, the request was backdated to 12 April 2024. To the date of the complaint submission, the Director has not approved the employment of Alice at the Jump Inn. The licensee has confirmed since 12 April 2024 Alice had been working on Fridays and Saturdays providing bar service at the venue. On 4 May 2024 a review of the Jump Inn’s electronic records indicated Alice was rostered on 6, 12, 13, 19 and 20 April 2024.

The licensee provided a response to the complaint by email on 23 May 2024. As part of their response, the licensee has not disputed the allegation.

60. The licensee admitted the truth and accuracy of the recited facts and admitted the alleged breach. The Commission accordingly finds the recited facts to be proved, the breach to have been committed, and a ground for disciplinary action to have been established to the satisfaction of the Commission.

### **The service of food complaint**

61. Liquor Inspector Constable was a member of a team of three Licensing NT officers who conducted a compliance inspection of the premises on 13 July 2024. She declared:<sup>17</sup>

I said:

“Can I order some food from the menu please?”

She said:

“Sorry, we stopped serving meals at 8:30.”

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<sup>17</sup> Exhibit Sixteen, p 21

62. In her oral evidence at the hearing, Officer Constable confirmed this account. Her colleague, Officer Armour gave evidence that there were 59 patrons on the premises, none of whom were eating meals, and most of whom were standing. None of this evidence was challenged in cross-examination.
63. The Commission is comfortably satisfied that the alleged contravention of the condition of the licence requiring meals to be available until the close of business has been proven, and accordingly the Commission upholds the service of food complaint.
64. As stated at paragraph 26 above, the licensee's response to the complaint was "I can assure you that the request for a meal was not passed on to the chef, who would have provided a meal...". Mr Yu-Jan Huang, the Jump Inn chef, gave evidence that at 20:30 full meal service is stopped, but that he remains on duty in the kitchen and continues to fill orders for hot chips and parathas using "the small fryer" until closing time. He also gave evidence that customers are alerted by a buzzer when their order is ready and pick their order up from a servery hatch that opens onto the kitchen. He said that the servery hatch is always open and cannot be closed. Officer Armour, however, was unshaken in her evidence that on the occasion of this breach the servery hatch was closed with a shutter or cover that appeared to be timber.
65. Mr Sumang's evidence was that as the manager of the bar he encouraged staff to upsell drinks with crackers and chips. Officer Constable, however stated that she did not see any snacks behind the bar when she attempted to order food at around midnight.
66. As the food service complaint has been upheld (and was never denied by the licensee), it is unnecessary to resolve these factual disputes. However, the Commission considers that the disputed evidence of the licensee's staff on these relatively peripheral issues was unconvincing, and consistent with an overall picture emerging from the evidence regarding the management and operation of the licence. As will be discussed below, that picture is of concern to the Commission.
67. On behalf of the Director it was submitted that hot chips and parathas are not a "meal", and that the meal condition would have been breached even if Officer Constable had been offered this food at midnight. The term "meal" is not defined in the Act or the *Liquor Regulations 2019 (the Regulations)*, but the Regulations define "light meal" as "a meal that may be eaten with the hands while standing", with examples given of "Finger food, canapé style plates, sandwiches, pies and tapas". The Commission, with some hesitation, accepts that hot chips and parathas fit within this definition, and are therefore a type of meal.

### **Additional contraventions of conditions**

68. Section 166(4) of the Act confers power on the Commission to hear a matter not referred to it but which arises from a matter that was referred to it. A ground for complaint specified at s 160(1)(a) is that the licensee contravened a condition of the licence or authority. As the hearing progressed it became apparent that several additional conditions of the licence and authority may have been breached (**the additional contraventions ground**), namely:
- a. The licensee will provide the neighbours in the vicinity with no less than 24 hours' notice in writing of any outdoor entertainment (licence condition).



- b. The licensee shall not conduct “Happy Hour” discount liquor sales (licence condition).
- c. The kitchen must remain open during the hours of operation until 1.5 hours before the close of the licensed premises (reg 83(2)).
- d. Liquor must not be consumed off the premises (other than the unconsumed portion of wine left in a bottle purchased with the meal) (reg 83(5)).
- e. The consumption of liquor without the purchase of a meal must not be advertised or encouraged (reg 83(6)).
- f. The licensed premises must appear to be a café, restaurant or eatery (reg 86(7)).
- g. Patrons must be seated when consuming liquor (other than invitees to a private function at which a light meal is served to them) (reg 83(8)).

69. The Commission now considers these possible breaches.

The licensee will provide the neighbours in the vicinity with no less than 24 hours’ notice in writing of any outdoor entertainment

70. Mr Chaurasiya gave evidence that there is live music in the beer garden (an outdoor entertainment area) on Tuesdays (“Open Mic”) and Fridays (“Blues Night”) from 19:00 to 22:00, and on occasional Saturdays when a booked band may play until later than 22:00. Mr Chaurasiya gave evidence that letterbox drops were done when there was an event scheduled that would go later than 22:00. The Director called for the production of the notices. The licensee did not respond to this call. Mr Bailey gave evidence that he had only ever received two notices in his letterbox about entertainment at the premises.

71. Whether or not Mr Chaurasiya’s account was accurate, the Commission is satisfied that this licence condition was routinely ignored. This ground of complaint is upheld.

The licensee shall not conduct “Happy Hour” discount liquor sales

72. The Commission received unchallenged evidence that the licensee has until recently advertised regular Happy Hours on its Facebook page:<sup>18</sup>

Sip and savour the savings at Jump Inn Craft Beer Bar & Restaurant! Join us for Happy Hour, Monday to Saturday, from 5pm. Quench your thirst with our finest craft beers at discounted prices. Cheers to good times and great deals!

73. The Commission is satisfied that this licence condition was routinely ignored. This ground of complaint is upheld.

The kitchen must remain open during the hours of operation until 1.5 hours before the close of the licensed premises

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<sup>18</sup> Exhibit Ten

74. The licensee's evidence is that full meal service closes at 20:30, and that after this time a small fryer is used to fill orders for hot chips and parathas. Arguably, this means that the kitchen "remains open" until close of business. The Commission also has regard to reg 83(1), that a light meal must be available for purchase by patrons during the hours of operation. Construed in that context, the Commission considers that reg 83(2) requires restaurant bar licensees to maintain a full meal service until 1.5 hours before close.

75. The Commission is satisfied that this licence condition has been contravened on nights when the premises remain open until midnight. This ground of complaint is upheld.

#### Liquor must not be consumed off the premises

76. The Commission received uncontradicted evidence that on 17 August 2024 Mr Dakis (Mr Bailey's solicitor) purchased a beer at the bar of the premises, drank a portion of it, and then walked out of the premises carrying the partially full bottle.<sup>19</sup>

77. Although this was only a single breach, and, moreover, one instigated by Mr Bailey's solicitor apparently for the purpose of entrapping the licensee, it raises a significant concern for the Commission, namely the lack of effective security staff on duty at the entrance/exit of the premises. The Commission encourages the licensee to review its security operations and procedures.

78. The Commission is satisfied that this licence condition has been contravened on at least one occasion. This ground of complaint is upheld.

#### The consumption of liquor without the purchase of a meal must not be advertised or encouraged

79. The Commission refers to the "Happy Hour" promotions referred to above.

80. The Commission is satisfied that this licence condition was routinely contravened. This ground of complaint is upheld.

#### The licensed premises must appear to be a café, restaurant or eatery

The licensee introduced photographs of the premises in operation into evidence, including this one:<sup>20</sup>



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<sup>19</sup> Exhibit Ten

<sup>20</sup> Exhibit Five

81. Having considered the photographs, having conducted the view (when the premises were closed), and having considered the testimony of all the witnesses who gave evidence of their observations of the premises when the premises were open, the Commission is satisfied that this licence condition has been routinely contravened. This ground of complaint is upheld.

#### Patrons must be seated when consuming liquor

82. Similarly, and with particular regard to the evidence of Officer Armour, the Commission is satisfied that this licence condition has been routinely contravened. This ground of complaint is upheld.

83. In summary, the Commission finds that despite the fact that the licensee holds a restaurant bar authority, it has effectively operated as if it held a public bar authority. The distinction between a restaurant bar authority and a public bar authority, particularly when the premises are located in a suburban residential street, is not merely technical or bureaucratic.

#### **Are the licensee and the nominee fit and proper persons to hold the licence?**

84. On the basis of the limited evidence it has received, the Commission infers that the licensee is jointly controlled by Mr Chaurasiya and his wife. The Director authorised the transfer of the licence to the licensee on 11 April 2023. Section 73(1A) of the Act provides that before doing so, the decision-maker must have been satisfied that the proposed transferee was a fit and proper person. Similarly, the Commission infers that the Director satisfied himself that Mr Chaurasiya was a fit and proper person to be the transferee's nominee. In the licence transfer application he submitted to the Director, Mr Chaurasiya gave his Queensland address. Accordingly, the Commission also infers that at the time the transfer was authorised, the Director was aware that the principals of the licensee resided in Queensland.

85. The Act does not define either the term "nominee" or expressly set out the role and responsibilities of a nominee. Section 53 provides that a body corporate that applies for a licence or authority must designate an individual to be the licensee's nominee, that the nominee is to be taken to be a joint licensee with the body corporate, that the nominee can only be changed with the approval of the Director, and:

If a nominee is unable or unwilling to *manage the business of the licensee*, the body corporate must not sell liquor until... the nominee is able or willing to resume *conduct of the business of the licensee* [emphasis added].

The Commission infers from the terms of s 53 that the legislature intended a licence nominee to be an individual who manages or conducts the business of the licensee. This view is supported by reference to s 76 ("Acting licensee"), which requires a licensee who is or expects to be unable "to conduct the business of the licensee" for more than 7 consecutive days to appoint a person as acting licensee.

86. The Act does not expressly require a licensee or nominee to reside in the Northern Territory, and the Commission does not consider that it is a necessary implication of the scheme of the Act that such a limitation be imposed on licensees.

87. The licensee's arrangements for conducting the business were, from the outset, unusual. As stated above, when the licensee acquired the licence, Mr Chaurasiya and his wife were already resident in Queensland, where they own the Gladstone Pizza Hut franchise. Mr Chaurasiya's only previous experience as the manager of a liquor licence was as the nominee of the Café Bella Rossa licence at the Alice Springs airport, a position he appears to have held for about a year. Under cross-examination, Mr Chaurasiya conceded that the licensed airport café is "vastly different" from the Jump Inn.
88. In about May 2023, soon after the licensee had acquired the licence, Mr Chaurasiya engaged Mr Michael Sumang as manager of the premises. Mr Sumang had some prior experience in the hotel industry interstate more than two years previously, but this was his first position as the manager of licensed premises. Mr Chaurasiya said that it was his role to train Mr Sumang, and that he did so quickly.
89. In his oral evidence, Mr Chaurasiya said that at first he travelled to Alice Springs every three weeks to establish the new business, but once things "were going smoothly" he ceased those visits, and prior to the hearing had not returned to Alice Springs since about December 2023. Until July 2024, according to Mr Chaurasiya, he was in daily contact with Mr Sumang, and spoke with him by phone every second day. Mr Chaurasiya and his wife were in charge. For example, if business was slow Mr Sumang did not have the authority to close the bar early: he had to obtain approval first from his boss in Queensland.
90. On 30 June 2024 Mr Sumang ceased his full-time employment at the Jump Inn, but continued to work part-time at the premises. On the first day of the hearing, Mr Chaurasiya said that another staff member named "Emma" was acting as manager, and that responsibility for control of the premises was shared with the head chef and other staff, under Mr Chaurasiya's oversight. By the conclusion of the hearing, despite its efforts to recruit a manager, the licensee had not been successful in doing so, and Mr Chaurasiya had taken up temporary residence at the Jump Inn and was managing the business himself.
91. Both Mr Chaurasiya and Mr Sumang were cross-examined about their understanding of the conditions of the licence and their responsibilities under the Act. Mr Sumang conceded that he was only familiar with the cover page of the licence and the hours of operation, and was unaware of the "Happy Hour" condition and the "meal" condition. He also demonstrated a lack of understanding of the prescribed restaurant bar authority conditions. For example, he was unaware that it was a condition that patrons be seated when consuming liquor. Similarly, Mr Chaurasiya was unable to identify any of the prescribed restaurant bar conditions at reg 83.
92. Mr Wood submitted on behalf of the Director that neither Mr Chaurasiya nor Mr Sumang had a proper knowledge of the licence conditions, the applicable regulations, or their management responsibilities under the Act. The Commission accepts this submission.
93. However, Mr Wood stopped short of submitting that the licensee or the nominee were not fit and proper persons to hold the licence. The Commission has previously reviewed the applicable authorities and concluded that the question of whether a person is fit and proper to hold a liquor licence involves a determination of whether or not a person "has

a proper appreciation of the responsibilities required to fulfil the role of being the holder of the liquor licence, and whether he has the qualities – the character, knowledge, ability and honesty – needed to discharge the responsibilities of a liquor licensee.”<sup>21</sup>

94. After careful consideration, the Commission has come to view that although Mr Chaurasiya – and by extension the licensee – did not have a proper appreciation of his responsibilities when the hearing commenced, by the time the hearing concluded his understanding of the role of a nominee had been significantly enhanced. Moreover, the Commission considers that Mr Chaurasiya has the character, knowledge, ability and honesty to continue to upgrade his skills as a nominee. The Commission notes that Mr Wood has offered mentoring by his office to Mr Chaurasiya, and the Commission strongly encourages Mr Chaurasiya to take up that offer. The Commission accepts Mr Chaurasiya’s evidence that when he is successful in recruiting an Alice Springs-based manager, he will seek to have that person appointed as a co-nominee. The Commission also notes his undertaking that while the premises continue to operate, he will remain in Alice Springs to manage the business himself until a co-nominee has been recruited and appointed.
95. Nevertheless, Mr Chaurasiya should be under no misapprehension: in the event that any further complaints against the licensee are upheld, a readily foreseeable outcome may be that the licence is cancelled and the licensee disqualified from holding a licence on the ground that it is not a fit and proper person to hold the licence.

## **DISCIPLINARY ACTION**

96. In considering what disciplinary action to impose, the Commission has had regard to the following circumstances that are adverse to the licensee:
- a. the persistence and frequency of the contraventions of numerous conditions of both the licence and the restaurant bar authority;
  - b. the serious distress to Mr Bailey and his wife have suffered, in part as a result of the contravention by the licensee of the noise condition; and
  - c. the failure of the licensee and the nominee to conduct the business of the licensee with a proper appreciation of the responsibilities required to fulfil the role of being the holder of the liquor licence.
97. In considering what disciplinary action to impose, the Commission has had regard to the following circumstances that are favourable to the licensee:
- a. in the main, the licensee did not intend that conditions of the licence and the authority would be contravened by its conduct, but rather was reckless in relation to the contraventions that resulted from its conduct;
  - b. in the main, the misconduct of the licensee and the nominee was a continuation of the business practices and patterns of the previous licensee; and

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<sup>21</sup> *Disciplinary action against Wagait Beach Supermarket* [2024] NTLiqComm 10 at [73]

- c. the licensee and its nominee have indicated a willingness to improve compliance with the conditions of the licence and the restaurant bar authority.

98. The Commission now turns to the specific disciplinary actions it has determined to take.

### **Operating hours**

99. The Commission has varied the operating hours of the licence by fixing 16:00 as the opening time each day rather than 11:30. The Commission notes that Mr Chaurasiya's evidence was that his unvarying practice has been not to commence operating the licence until 16:00 in any event. Accordingly, this reduction in authorised operating hours will not have any practical effect on the licensee's current trade. However, the Commission is satisfied that this disciplinary action is appropriate in relation to the additional contraventions ground for two reasons. Firstly, it will reinforce the message to the licensee that the licence does not authorise the premises to be operated as a de facto public bar. Secondly, it will deter and indeed prevent the licensee from altering its business model by opening earlier in order to attract drinkers, a business model that would, in the view of the Commission, be inconsistent with the requirement that the premises operate as a restaurant bar, as distinct from a public bar.

### **Meals**

100. The Commission has varied the licence conditions in relation to the service of meals so as to align these conditions with the conditions prescribed by reg 83(1) and (2), and to clarify the meaning of these conditions. Although the Commission has accepted the licensee's submission that hot chips and paratha qualify as a "light meal", the Commission strongly encourages the licensee to increase the variety and quality of food it provides at times when full meals are not available. The Commission is satisfied that this disciplinary action is appropriate in relation to the service of food ground.

### **Noise**

101. The Commission has substituted a lengthy and detailed noise condition for the current noise and outdoor entertainment conditions. On behalf of Mr Bailey it was submitted that a noise condition be imposed that is consistent with the Guideline. The Commission accepts that submission. The applicable provision is at paragraph 3.4.7 of the Guideline ("Recommended project specific assigned noise levels for indoor entertainment venues"),<sup>22</sup> which recommends that until 23:30, the noise level at "a sensitive noise receptor" (in this case, at Mr Bailey's back door) be limited to 5dB(A) in excess of background noise. The Guideline identifies background evening noise levels in suburban residential area as typically being up to 40dB(A).<sup>23</sup>

102. The Commission has received no evidence as to the decibel level of noise emanating from the Jump Inn, so is unable to specify the decibel limit on music that should be fixed. In order for the Director to determine and approve "the approved maximum sound

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<sup>22</sup> The Commission has previously found that this is the applicable standard for a beer garden: Northern Territory Liquor Commission, *Disciplinary action pursuant to the Liquor Act 1978* (LC2019/059 & LC2019/121, 17 March 2020), at [74] – [75].

<sup>23</sup> Guideline, p. 56

pressure level” referred to in the new noise condition, the Commission requests the Director (subject to the agreement of Mr Bailey, whose co-operation the Commission also requests), to measure, over a period of fifteen minutes of continuous music, the noise level as measured in the evening 4 metres from the front of the stage in the beer garden, that results in an LAeq (i.e. average) noise level of 45 dB(A) at Mr Bailey’s back door.

103. It is in the licensee’s interest to co-operate with this exercise, as he is henceforth not permitted to cause or permit music to be played at events or functions until the Director has determined the approved maximum sound pressure level, and the licensee has obtained and installed a noise limiting device.
104. The requirement to letterbox neighbours is outdated, and the Commission has replaced it with a requirement that the licensee use its social media platforms to notify the neighbourhood of upcoming musical events.
105. In his evidence, Mr Bailey expressed his frustration at the lack of a system for lodging complaints and having them followed up. To address this aspect of the noise complaint, the Commission has imposed conditions requiring the licensee to establish and maintain a noise complaints register. An added advantage of this measure is that in the event of future noise complaints, there is likely to be better documentary evidence of the background to and substance of the complaints, which will simplify their investigation and determination.
106. The Commission has determined to require the playing of music to cease by 22:00, except when there is a “special function”, for which prior approval must be obtained from the Director. No more than 6 such special functions are permitted in a calendar year. The Commission considers that this measure strikes an appropriate balance between the interests of musicians, music-lovers and the licensee to continue to utilise the premises as a live music venue, and the interests of residents of the locality to live without undue and unreasonable noise disturbance.
107. Finally, the Commission has conferred on the Director the power to impose further noise mitigation measures if the need arises.
108. The Commission is satisfied that this disciplinary action is appropriate in relation to the noise ground.

## **Management**

109. The Commission has directed Mr Chaurasiya to, in effect, comply with the undertaking he gave to the Commission at the conclusion of the hearing. Once a locally based co-nominee who has been approved by the Director has been appointed, there is a reasonable prospect that the conduct of the business of the licensee will be substantially improved, and in particular, that compliance with the licensee’s statutory duties will be achieved.
110. The Commission has also directed the licensee to co-operate and comply with a harm minimisation audit, which the Commission expects the Director will undertake.

111. The Commission is satisfied that this disciplinary action is appropriate in relation to the additional contraventions ground.

### **The child employee**

112. The Commission has imposed a monetary penalty of five penalty units (which is somewhat less than \$1,000) on the licensee. The Director recommended that the licence be suspended for a short period, which the Commission considers would be sterner action than a monetary penalty. In the view of the Commission, a monetary penalty is appropriate in relation to this ground because it accepts that in making the poor decision to employ a child to work behind the bar both Mr Chaurusiya and Mr Sumang had relied in good faith on representations made by the child's CDU lecturer.

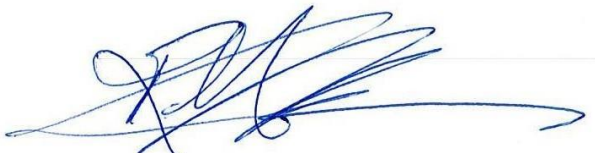
### **OBJECTS OF THE ACT**

113. Section 3(4) of the Act requires the Commission to have regard to the primary and secondary purposes of the Act when dealing with these complaints. The Commission has done so, and considers that it has dealt with these complaints in a way consistent with the purposes of the Act.

### **NOTICE OF RIGHTS**

114. 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.

115. 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, the licensee and Mr Bailey.



RUSSELL GOLDFLAM  
CHAIRPERSON  
NORTHERN TERRITORY LIQUOR COMMISSION  
6 September 2024

On behalf of Commissioners Goldflam, Abbott-McCormack and Stedman