



Superintendent Robert Allison C/o Sergeant John Kisa Kings Cross Police Station 1-15 Elizabeth Bay Road Elizabeth Bay NSW 2011 <a href="mailto:kisa1joh@police.nsw.gov.au">kisa1joh@police.nsw.gov.au</a> Cc: <a href="mailto:pric2mat@police.nsw.gov.au">pric2mat@police.nsw.gov.au</a>	Mr Ulysses Flevotomos Former Licensee C/o Ms Sarina Roppolo Kardos Scanlan Level 5 151 Castlereagh Street SYDNEY NSW 2000 <a href="mailto:sarina.roppolo@kardosscanlan.com.au">sarina.roppolo@kardosscanlan.com.au</a>	Mr Timothy Williams Current Licensee C/o Ms Sarina Roppolo Kardos Scanlan Level 5 151 Castlereagh Street SYDNEY NSW 2000 <a href="mailto:sarina.roppolo@kardosscanlan.com.au">sarina.roppolo@kardosscanlan.com.au</a>
Iguana Bar & Restaurant Pty Ltd Business Owner C/o Ms Sarina Roppolo Kardos Scanlan Level 5 151 Castlereagh Street SYDNEY NSW 2000 <a href="mailto:sarina.roppolo@kardosscanlan.com.au">sarina.roppolo@kardosscanlan.com.au</a>	Sven Pty Ltd Premises Owner C/o Ms Sarina Roppolo Kardos Scanlan Level 5 151 Castlereagh Street SYDNEY NSW 2000 <a href="mailto:sarina.roppolo@kardosscanlan.com.au">sarina.roppolo@kardosscanlan.com.au</a>	

20 March 2019

Dear Sir/Madam,

<b>Complaint reference No.</b>	DOC19/014160
<b>Matter</b>	Disciplinary Complaint
<b>Licence name</b>	Dollhouse Nightspot
<b>Licence No.</b>	LIQO624006713
<b>Complainant</b>	A/Superintendent Robert Allison of the Kings Cross Local Area Command of New South Wales Police on behalf of the Commissioner of Police
<b>Premises</b>	13-15 Kellett Street Potts Point NSW 2011
<b>Issue</b>	Whether the grounds of the complaint have been established
<b>Legislation</b>	Part 9 of the <i>Liquor Act 2007</i> (NSW)

**Decision on Complaint to the Independent Liquor and Gaming Authority in relation to Mr Ulysses Flevotomos, the former licensee of Dollhouse Nightspot, under Part 9 of the *Liquor Act 2007***

On 10 December 2017, Acting Superintendent Robert Allison of the Kings Cross Local Area Command in his capacity as a delegate of the Commissioner of Police ("Complainant"), submitted to the Independent Liquor and Gaming Authority ("Authority") a disciplinary complaint ("Complaint") in relation to Mr Ulysses Flevotomos, the former licensee of the licensed premises known as Dollhouse Nightspot (LIQO624006713) located at 13-15 Kellett Street, Potts Point NSW 2011 ("Premises")

The Complaint is made under Part 9 of the *Liquor Act 2007* (NSW) ("Act") and specifies four grounds ("Grounds") that are available under section 139(3) of the Act. The Authority has considered the Complaint

material (briefly listed in Schedule A below) and all submissions received in relation to the Complaint and is satisfied that:

1. Ground 1 of the Complaint, being a ground available under section 139(3)(a) of the Act, is established in that the former licensee Mr Flevotomos has, while holding a licence, been convicted of an offence under this Act or the regulations (or under the former Act) or of an offence prescribed by the regulations.
2. Ground 2 of the Complaint, being a ground available under section 139(3)(b) of the Act, is established in that the former licensee Mr Flevotomos has failed to comply with conditions to which the licence is subject.
3. Ground 3 of the Complaint is established, being a ground available under:
  - (a) Section 139(3)(i) of the Act, in that the former licensee of the Premises, Mr Flevotomos, is not a fit and proper person to be a holder of a licence
  - (b) Section 139(3)(m) of the Act, in that Mr Flevotomos as a person who is interested in the business, or in the conduct or profits of the business, carried on under the licence is not a fit and proper person to be so interested.
  - (c) Section 139(3)(j) of the Act, in that Mr Flevotomos as a close associate is not a fit and proper person to be a close associate of a licensee.
4. Ground 4 of the Complaint is established, being a ground available under:
  - (a) Section 139(3)(s) of the Act, in that the licence has not been exercised in the public interest.
  - (b) Section 139(3)(t) of the Act, in that the continuation of the licence is not in the public interest.

Having considered final submissions from the Complainant and respondents dated 7 February 2019 and 26 February 2019 respectively, the Authority has determined to take the following disciplinary action:

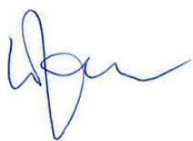
1. Pursuant to section 141(2)(c)(i) of the Act, the former licensee Mr Ulysses Flevotomos is ordered to pay to the New South Wales Department of Industry a monetary penalty in the amount of **\$10,000.00** within 28 days, by **17 April 2019**.
2. Pursuant to section 141(2)(e) of the Act, impose the following condition on the licence of Dollhouse Nightspot, LIQO624006713:

With effect from 20 May 2019, Mr Ulysses Flevotomos and any other person who has held an interest in Iguana Bar & Restaurant Pty Ltd ABN 41 129 898 942 between 29 October 2014 and 20 March 2019 will not be permitted to enter the Premises nor have any involvement whatsoever with the business conducted on the Premises. For the avoidance of doubt, this does not include the licensee Mr Timothy Williams.

3. Pursuant to section 141(2)(f) of the Act, the former licensee Mr Ulysses Flevotomos is disqualified from holding a liquor licence and from being the approved manager in respect of any licensed premises in New South Wales **for life** from **21 March 2019**.
4. Pursuant to section 141(2)(f) of the Act, the former licensee Mr Ulysses Flevotomos is disqualified from being a close associate of a licence for a period of **ten (10) years** commencing on 20 May 2019 in respect of licence number LIQO624006713 and commencing on 21 March 2019 in respect of any other licence in New South Wales.

Enclosed is a statement of reasons. Rights to seek review of this decision by the New South Wales Civil and Administrative Tribunal are noted at the end of the statement of reasons. If you have any questions about this letter, please contact the Authority Secretariat via [ilga.secretariat@liquorandgaming.nsw.gov.au](mailto:ilga.secretariat@liquorandgaming.nsw.gov.au).

Yours faithfully



Philip Crawford  
**Chairperson**

For and on behalf of the **Independent Liquor and Gaming Authority**

## FINDINGS ON COMPLAINT

### INTRODUCTION

1. On 10 December 2017, Acting Superintendent Robert Allison of the Kings Cross Local Area Command, in his capacity as a delegate of the New South Wales Commissioner of Police ("Complainant") made a disciplinary complaint ("Complaint") to the Independent Liquor and Gaming Authority ("Authority") under Part 9 of the *Liquor Act 2007* (NSW) ("Act"). The Complaint was made in relation to Mr Ulysses Flevotomos, the former licensee of the licensed premises known as Dollhouse Nightspot ("Dollhouse") trading pursuant to on-premises liquor licence LIQO624006713 that is located at 13-15 Kellett Street, Potts Point NSW 2011 ("Premises").

### Grounds of Complaint

2. The Complaint specifies four grounds of complaint ("Grounds") that are available under section 139 of the Act. Relevantly to this matter, the Authority notes that section 137(1)(a) of the Act provides that in Part 9 of the Act, a reference to a licensee includes a former licensee.
3. **Ground 1** is based upon section 139(3)(a) of the Act and alleges that the former licensee Mr Flevotomos has, while holding a licence, been convicted of an offence under this Act or the regulations (or under the former Act) or of an offence prescribed by the regulations. The Complainant specifies 9 Particulars alleging 11 separate convictions for liquor legislation offences arising from breaches of conditions of the licence in support of this Ground.
4. **Ground 2** is based upon section 139(3)(b) of the Act and alleges that the former licensee, Mr Flevotomos, has failed to comply with any of the conditions to which the licence is subject. The Complainant here repeats the allegations that are the subject of Ground 1, Particulars 1 to 9 while also specifying a further 10 Particulars alleging approximately 13 incidents involving the contravention of licence conditions by Mr Flevotomos.
5. **Ground 3** is based upon sections 139(3)(i), 139(3)(m) and 139(3)(j) of the Act, respectively alleging that:
  - The former licensee, Mr Flevotomos, is not a fit and proper person to be a holder of a licence.
  - Mr Flevotomos, being a person interested in the business or in the conduct or profits of the business carried on under the licence, is not a fit and proper person to be so interested.
  - Mr Flevotomos, being a close associate of the licence, is not a fit and proper person to be a close associate of a licensee.
6. The Complainant repeats the allegations made in Grounds 1, 2 and 4 in support of Ground 3 while also specifying 7 further Particulars going to Mr Flevotomos' fitness to act in the above capacities.
7. **Ground 4** is based upon sections 139(3)(s) and 139(3)(t) of the Act, respectively alleging that:
  - The licence has not been exercised in the public interest, in that the former licensee, Mr Flevotomos, has permitted the licensed premises to be used for indecent conduct and drug use (contrary to section 73(1)(b) in respect of indecent conduct and 74(2) and (4) in respect of prohibited drugs).
  - The continuation of the licence is not in the public interest.
8. The Complainant here repeats the allegations in Ground 1 Particulars 1, 4 and 5, Ground 2 Particulars 2, 4, 5, 6, 7, 8, 9 and 10 and specifies 25 further Particulars in support of Ground 4.

### BACKGROUND

9. A brief summary of the Particulars alleged in the Grounds of Complaint are set out in the Findings section of this letter below. The Authority notes the following matters by way of background to the licensed Premises.

#### Licensed trading hours

10. A OneGov record for the Dollhouse liquor licence number LIQO624006713 as at 16 August 2018 indicates that this on-premises licensed venue is permitted to sell liquor for consumption on premises between 5:00 am to 5:00 am Monday to Friday, between 5:00 am and 6:00 am Saturday and between 10:00 am and 5:00 am Sunday.

#### History of the licensee and business owner

11. OneGov licence records provided to the Authority by licensing staff as at 7 December 2016 and 16 August 2018 indicate that:
  - Mr Flevotomos held the position of licensee from 1 November 2006 until 1 December 2017 which is when Mr Timothy Williams commenced the role of licensee ("Current Licensee")
  - Iguana Bar & Restaurant Pty Ltd is the current corporate business owner and has been the business owner in respect of the Premises since 19 June 2015 ("Business Owner").
  - Mr Flevotomos is also recorded as a current business owner, having commenced in that role on 1 November 2006.
12. Noting that some of the historical material provided with the Complaint refer to the Premises as Iguana Bar & Restaurant, information provided by licensing staff indicates that the venue previously traded as Iguana Bar & Restaurant.
13. The Authority also notes, on the basis of the Australian Securities and Investments Commission ("ASIC") Current & Historical Organisation Extract for the current Business Owner, Iguana Bar & Restaurant Pty Ltd as at 17 August 2018, that the sole director and secretary of this business is Mr Flevotomos.

#### Change of business model and Secretary Decision dated 29 October 2014

14. The forty-page complaint letter ("Complaint Letter") provides information establishing that in August 2014 (after attending the Premises on 16 August 2014) Police identified that the Premises had undergone a change of business model from what was formerly a restaurant/nightclub to an adult entertainment venue providing female strippers performing striptease and podium dancing on a stage in the bar area of the Premises and also in private rooms. In September 2014 Police wrote to the Secretary of the then NSW Department of Trade and Investment ("Secretary") advising that the primary purpose/business model of the Premises had changed.
15. Annexure 8 to the Complaint comprises a copy of a decision made by the Secretary under section 54(1) of the Act dated 29 October 2014 ("Secretary Decision") in response to a submission from Police seeking the imposition of new licence conditions, in light of the change of business model.
16. The Secretary Decision (Annexure 8 to the Complaint) records that the Secretary determined to impose the following new conditions upon the licence, effective from 30 October 2014:

Whenever live adult entertainment is provided at the venue the licensee must ensure that there is no physical contact between performers and patrons

("Contact Condition")

Whenever live adult entertainment is provided at the venue the licensee must ensure that all performances must be limited to a defined stage area

("Stage Condition")

Whenever live adult entertainment is provided at the venue the licensee must ensure that when performers leave the stage area they must wear at least a G-string

("G String Condition")

There is to be no spruiking or touting for business immediately outside the premises or in the near vicinity of the premises

("Spruiking Condition")

Any place within the licensed premises shall not be partitioned to prevent observation of the activity in that place

("Visibility Condition")
17. The Secretary Decision records that the Secretary determined not to impose a CCTV condition on the licence.

## **COMPLAINT MATERIAL**

18. A list of the material, comprising one-page of contact details, the five-page official disciplinary complaint form, a forty-page Complaint Letter and the annexures of material in support of the Complaint, are set out in Schedule A to this letter ("Complaint Material").

## **CONSULTATION**

### **Show Cause Notice dated 28 March 2018**

19. On 28 March 2018, the Authority issued a Show Cause Notice via the Authority's Reviews and Secretariat Unit ("Authority Secretariat") providing the entire bundle of Complaint Material to the former licensee Mr Flevotomos, the Current Licensee Mr Timothy Williams, the current corporate Business Owner, Iguana Bar & Restaurant Pty Ltd, and the current premises owner, Sven Pty Ltd ("Premises Owner") collectively referred to as the Respondents ("Respondents").

### **Requests for Further and Better Particulars dated 17 May 2018**

20. On 17 May 2018, the Authority received a one-page letter from Ms Kim Stapleton of JDK Legal attaching a six-page letter of the same date sent to the Complainant seeking further and better particulars.
21. Following an apparent change of solicitors, on 17 May 2018 Kemp Strang Lawyers, advising that they act for all of the Respondents, sent a further three-page letter to the Complainant seeking further and better particulars ("Request for Particulars").

### **Response to Request for Particulars dated 22 June 2018**

22. In a two-page letter dated 22 June 2018 the Complainant responded to the Request for Particulars, attaching a copy of the Show Cause Notice signed by Mr Flevotomos acknowledging receipt of the Notice and Complaint Material on 28 March 2018.

### **Submission on Merits of the Complaint dated 19 July 2018**

23. In a ten-page letter dated 19 July 2018 Mark Seymour, Counsel for the Respondents, provided a submission addressing the merits of the Complaint ("Respondents Counsel Submission") supported by the following material:
- (a) A nine-page statutory declaration from the Current Licensee, Mr Williams, sworn on 18 July 2018, accompanied by the following exhibits:
    - An email dated 4 September 2015 containing the Dollhouse Rules and Regulations ("Rules and Regulations").
    - 51 photographs of the inside of the Premises.
    - Two screenshots from the Dollhouse website.
    - 14 photographs of CCTV stills including both interior areas and the street front outside the Premises.
    - Application to Transfer Liquor Licence LIQO624006713 from Mr Flevotomos to Mr Williams dated 11 November 2017.
    - Then Office of Liquor Gaming and Racing ("OLGR") (now Liquor and Gaming NSW ("LGNSW")) Licence Checklist completed by Mr Chris Pickard of Chris Pickard & Associates (an independent liquor licensing consultant engaged by Mr Flevotomos) for Dollhouse dated 26 November 2016 ("Pickard Licence Checklist").
  - (b) A nine-page statutory declaration from Mr Flevotomos sworn on 18 July 2018 ("Flevotomos Declaration") accompanied by the following material:
    - A document titled "Request by licensee to impose conditions under Section 54 of the Liquor Act 2007" for Iguana Bar & Restaurant effective 1 October 2014 ("Request to Impose Conditions") including hand written annotations made by Sergeant Stanford. This document was apparently prepared by the licensee in consultation with Police about the imposition of new licence conditions.
    - Request to Impose Conditions.
    - Plan of Management for Iguana Bar & Restaurant ("Plan of Management") dated July 2014.
    - Rules and Regulations.
    - Pickard Licence Checklist.
  - (c) A five-page statutory declaration from Ms Samantha Southwell (described as a "manager" of Dollhouse) sworn on 18 July 2018 describing the history of her employment, becoming a "high-

risk” manager of the Premises, events occurring between 2016-2017, Mr Williams becoming licensee, changes in running the venue and Mr Flevotomos’ current involvement with the business.

(d) An eight-page statutory declaration from Mr Pickard sworn on 19 July 2018 accompanied by the following material:

- A report titled *Detailed Observations of RSA Practices & Policies* in relation to Dollhouse prepared by Mr Pickard dated 2016.
- *Dollhouse Nightspot Performers House Policy* and *Drug and Alcohol Policy* both dated 15 June 2018 (“Dollhouse Policies”).
- A bundle of further compliance related material including:
  - Pickard Licence Checklist.
  - An email from Mr Pickard dated 25 October 2016 regarding example house rules.
  - A fourteen-page letter from Hatzis Cusack dated 9 May 2014 in relation to the Sefton Hotel, used as an example of legal advice for adult entertainment venues complying with license conditions.
  - Plan of Management dated July 2014.
  - Dollhouse Policies.
  - Department of Industry, LGNSW document titled *Kings Cross approved ID scanner requirements* dated April 2017.
  - Then OLGR, now LGNSW, Kings Cross Precinct map.
  - Request to Impose Conditions including hand written annotations made by Sergeant Stanford.
  - Request to Impose Conditions.
  - Plan/diagram containing the floor layout of the Premises.
  - Copies of various signage.
  - LGNSW *Summer Festive Season Tips* Fact Sheet.
  - LGNSW *ID checklist*.
  - OLGR *Special license conditions for premises in the Sydney CBD* Fact Sheet dated July 2014 including Annexures 1 to 3 (a table of conditions, map of the Sydney CBD Entertainment Precinct and Crime Scene Preservation Guidelines).
  - Dollhouse Performers Agreement with Iguana Bar & Restaurant Pty Ltd (undated).
- Request to Impose Conditions including hand written annotations made by Sergeant Stanford.
- An on-premises licence self-audit checklist completed by Mr Pickard on 25 May 2018 and three Kings Cross Precinct self-audit checklists completed by Mr Pickard on 25 May 2018, 10 March 2018 and 19 January 2018.

24. The Respondents submit that the Complaint may be dismissed on the basis that the events that are the subject of the Grounds of Complaint are confined to a distinct period in which there were “managerial failures” arising from the introduction of a new operation of adult entertainment.
25. They submit that the licensed business has since been subject to many new physical and managerial measures to ensure that it is not conducted in a manner likely to cause harm to the public or raise concern for the Authority. In the alternative, the Respondents submit that the Authority could impose “only minimal orders” that would be appropriate condemnation of that past conduct while giving due weight to Mr Flevotomos’ remorse and contrition, as expressed in his pleas of guilty and payment of fines for the events in which he was charged and convicted.
26. The Respondents submit that the Authority should not make findings or orders that assume that those past operations will continue into the future, arguing that there is no evidential or substantive basis for any adverse findings concerning the *current* operations. They contend that the current operations do not feature in this Complaint at all, that the Complaint has been drafted in overly broad terms and has omitted important information relevant to the Authority’s findings.
27. In this submission the Respondents provide their account of the operation of the venue between 2014 to 2017. They contend that Mr Flevotomos has conducted a licensed business on the Premises for a period of around 35 years, since 1982, “without Complaint”. During August 2014, a “managerial decision” was made to change the nature of the venue to an adult entertainment business by reason of a decline in revenue. Mr Flevotomos accepts that he “lacked experience” in undertaking this type of operation. The Respondents submit that an external consultant, Mr Pickard, was hired in “about October 2016”, which bought about “immediate beneficial changes” in the operation of the Premises.
28. The Respondents further submit that Mr Flevotomos accepts there were breaches of licence conditions while he was the licensee and that he has been “honest in accepting that responsibility”

through making pleas of guilty to charges arising from those breaches. They contend that this was not a situation of wilful blindness and Mr Flevotomos was “genuinely shocked when the events the subject of the Complaint were brought home to him”. This, they contend, resulted in immediate changes to the operations of the business, including terminating non-compliant staff and implementing new house policies. Mr Flevotomos accepts that the regulatory breaches resulted from “some negligence” on his part but they should be considered in light of Mr Flevotomos’ personal circumstances, which included a serious deterioration in his mother’s health.

29. The Respondents contend that negligence on Mr Flevotomos’ part may have been induced, in part, by a misunderstanding in respect of the conditions of the licence. Mr Flevotomos states in the Flevotomos Declaration dated 18 July 2018 that some time shortly after August 2014, Sergeant Stanford of Kings Cross Police said to him words like:

“Your employees will not be able to spruik people from outside into the club, the performers have to be in a g-string when not on stage, any performances need to be localised to a stage and no sexual conduct is to be performed between employees and patrons. They can grind and lap dance though. I will write to the office of Liquor and Gaming and request the changes.”
30. Mr Flevotomos further claims in the Flevotomos Declaration that in or about 2015 he had another conversation with Sergeant Stanford and that when he asked the officer whether dancers are prohibited to engage in touching, Sergeant Stanford said words like “they are allowed to touch to some degree”.
31. The Respondents submit that Mr Flevotomos has not, in his response to this Complaint or the charges made against him in the Local Court, sought to rely upon such conversations with Police to “avoid liability”. Rather he relies on these conversations to explain, in part, how some of the non-compliant conduct during 2015 could have occurred.
32. The Respondents outline changes in operation of the venue. Mr Flevotomos claims that “in or about 2016” he invested approximately \$500,000 to change the physical layout and management of the Premises. Briefly, these changes included: commissioning Mr Pickard to provide compliance advice and auditing; terminating non-compliant staff; changing security contractors; installing a full body scanner with 32 CCTV cameras; removing private rooms; explicitly advertising the Premises as “non-contact” internally and externally; and changing the internal layout to a single stage physically separated from patrons. Further changes included a more extensive induction process for staff and the installation of CCTV, which the Respondents contend has allowed for “more extensive” surveillance. The Respondents refer to the “expert opinion” of Mr Pickard that the operation is “highly compliant with its licence conditions and does not offend any community standards”.
33. The Respondents contend that following the events of 2014-2016 Mr Flevotomos made his own decision to remove himself from management of the Premises. The Respondents contend that he is not involved in the operations, aside from visiting in a “social capacity” The Respondents advise that the licence has been transferred to the Current Licensee (Mr Williams) and that Mr Pickard has continued to advise and audit the Premises.
34. The Respondents submit that the purpose of disciplinary proceedings are protective and not retributive and that the focus must be on the risk of some harm to the public or the public interest in conduct to be carried out in the future in order that any order made is properly attentive to the “reasonable needs of protection”. The Respondents contend that this Complaint is focused on past events and makes no proper basis for the Authority to make findings about the future operations.
35. The Respondents concede that predictions as to future behaviour may be based upon past behaviour but submit that any failure by the Authority to properly consider the basis for those predictions will not only produce a legal error but an outcome that is substantively unfair if there have been relevant changes in operations such that the past conduct is no longer indicative of future operations.
36. They submit that a person (or operation) that changes itself for the better *promotes* the objects and purposes of the Act. Such a person responds to “the needs and aspirations of the community” in a “responsible” way. The Respondents submit that a properly “balanced development” for the liquor industry should recognise that “mistakes can be made” but internally corrected without there then being a need for disciplinary action. Changes in operation of a venue should be considered when assessing a person’s fitness and propriety and a person’s character may change over time.
37. The Respondents further submit that unless it can be shown that the level of control by Mr Flevotomos over current operations is significant, there would be no warrant to find that Mr Flevotomos’ character be identified automatically with that of the Current Licensee. To the extent that the Complainant seeks

to allege an influence of Mr Flevotomos upon the Current Licensee, it is necessary to show "some element of malfeasance, maladministration, misconduct or breach of" the Act by the Current Licensee. The Respondents submit that the Complaint includes no Ground or Particulars to identify such conduct by the Current Licensee, Mr Williams.

38. In summary, the Respondents conclude that:

- Ground 1 "must be dismissed" by reason that the Particulars do not identify a "conviction" for any offence, in that the payment of a Penalty Notice is not a "conviction".
- Those parts of Grounds 2-4 identifying objectively poor management of the Premises that occurred between 2014 and 2017, while the venue was under the control of Mr Flevotomos, can be upheld in general terms. However, such findings should not then form the basis for making any orders.
- Mr Flevotomos has admitted responsibility for these "historical" events in pleas of guilty to specific offences.
- Poor management was a consequence of Mr Flevotomos' inexperience and has been addressed by changes in the operations and management.
- Poor management is not a feature of the current operations. No part of this Complaint, the Grounds or Particulars specify any deficiency with the current operations.
- There is no basis in the Complaint for the Authority to find that Mr Flevotomos participates in the decision-making processes of the Current Licensee and procures the making of reprehensible decisions designed to enhance and protect his own interests.
- Operations since 2017 have "changed in fundamental ways".
- Events since 2017 show that there is "no risk of harm" to the community in respect of Mr Flevotomos remaining as a close associate of the operations.
- By reason that Mr Flevotomos is not presently a licensee and does not intend to hold any licence there is no need to make an order to ban him from that position. There need be no concern for Mr Flevotomos occupying the role in the future. Indeed, should he apply for a licence, a proper consideration could then be given to the historical events the subject of the Complaint though this would need to be assessed against the background of many decades of successful operation of a licence.
- No order should be made to prevent Mr Flevotomos from being a close associate of the business given the limited role he has in that capacity.
- No order should be made against the licence itself which is under the control of the Current Licensee who is not the subject of any Complaint, Ground or Particular. Similarly, no complaint is made against the corporate Business Owner or Premises Owner yet each of these persons (including staff and families of those persons) would all be unfairly affected if such an order is made when no proper basis for that order has been established in the Complaint.

39. The Respondents submit that the Complaint should be dismissed. In the alternative, if the Authority makes adverse findings under Grounds 2-4 concerning the historical operations of the Premises while under the control of Mr Flevotomos between 2014 and 2017 a "narrowly tailored" order could be made banning Mr Flevotomos from the position of licensee for a "short period". This would ensure that Mr Flevotomos keeps an appropriate distance from having direct control over the Premises or any other licenced premises.

40. However, it is submitted that the conduct of Mr Flevotomos - and the successful and complaint free running of operations at the Premises - since 2017 demonstrates that there is no need for such an order, and, in particular, an order affecting Mr Flevotomos' role as a close associate. The Premises are responsibly run with Mr Flevotomos having only "minor and indirect roles" in administration (as opposed to management) and the Premises is now being successfully run under the control of the Current Licensee with appropriate management separate from Mr Flevotomos.

41. Finally, the Respondents submit that there should be "no concern in the Authority that the licence needs to be suspended for any reason".

#### **Submission In Reply From the Complainant dated 26 July 2018**

42. The Complainant replied to the Respondents Counsel Submission in a two-page letter dated 26 July 2018.

43. In relation to Ground 1, the Complainant submits that the Authority must treat the relevant paid Penalty Notices as a "conviction" through the operation of section 150(4)(b) of the Act, which expressly *excludes* the operation of section 22A(2) of the *Fines Act 1996* (NSW) ("Fines Act") and provides that when a Penalty Notice to a person is paid that person is, for the purposes of a complaint



under Part 9 of the Act, *taken to have been convicted* of the offence to which the Penalty Notice relates.

44. In relation to Ground 2, the Complainant submits that payment of Penalty Notices supports that Mr Flevotomos was involved in the permission of many incidents that breached the licence conditions specified in this Ground. Transfer of the licence to the Current Licensee does not prevent the Authority from determining this Complaint. The disciplinary action proposed by Police is designed to prevent *any* further breaches of licence conditions by removing *any* capacity of Mr Flevotomos to influence the current operation of the licence. Police submit that it is open to the Authority to find that the transfer of this licence is an attempt to circumvent the objects of the Act and/or circumvent the operation of the Authority.
45. In relation to Ground 3, the Complainant expresses concern that without an order or the imposition of licence conditions excluding/disqualifying Mr Flevotomos from holding a liquor licence, a management position, or acting as a 'close associate', he will retain the *capacity* to significantly influence the operation of the licence or the business conducted pursuant to it. Police refer to the Respondents submissions that he has around 35 years of experience as a licensee, while also claiming inexperience with the business model in place when the adverse incidents arose. Police also refer to the submissions that Mr Flevotomos has expressed contrition and remorse. In the Complainant's view, the Authority should reject these submissions having regard to the volume, nature and period over which these breaches occurred and by reason of the "contemporaneous" contact with police as these breaches occurred, which included the issuing of Penalty Notices.
46. The Complainant further submits that while disciplinary action cannot be considered as merely punitive, the action proposed by the Complainant gives effect to the objects of the Act and is protective of the community.
47. In relation to Ground 4, the Complainant submits that the Complaint material demonstrates that the licence was not operated in the public interest because of the acts or omissions of Mr Flevotomos. While taking action may impact other parties, this should not weigh against the Authority making adverse findings on the events that are the subject of this Complaint, nor should it prevent the Authority from taking action.

#### **Further Material from the Complainant dated 11 October 2018**

48. In an email to the Complainant dated 4 October 2018 the Authority Secretariat invited the Complainant to provide an update on the outcome of certain Court matters that were referred to as before the Courts at the time of the Complaint Letter.
49. In a five-page letter dated 11 October 2018, the Complainant advised that the Court Attendance Notices H243133596 (with 42 sequences) and H64103320 (with 3 sequences) were finalised on 21 February 2018 at the Downing Centre Local Court with sentences delivered on that day. The Complainant provides information specifying the outcome of matters that were said to be before the Courts in Ground 2 Particulars 3, 4, 5, 6, 8, 9, 10; Ground 3 Particulars 4 and 5 and Ground 4 Particulars 14, 15, 16, 17, 18, 20, 21 and 22. Accompanying this letter was the following material:
  - (a) A five-page NSW Police Force Criminal History – Bail Report for Mr Flevotomos extracted from Police records on 10 October 2018 recording all offences Mr Flevotomos was charged with, the corresponding court dates and sentence outcomes from between 14 March 2000 and the date of the report.
  - (b) A one-page document containing the NSW Police Criminal Infringement Notice History for Mr Flevotomos extracted on 10 October 2018 outlining no criminal infringement notice records were found.
  - (c) A one-page document containing the NSW Police Force Computerised Operational Policing System ("COPS") Breach Bail Alternatives Report for Mr Flevotomos, extracted on 10 October 2018 outlining that no breach of bail alternatives were found.
  - (d) A one-page document containing the NSW Police Force COPS List of Breach of Bail Charges for Mr Flevotomos extracted on 10 October 2018 outlining that no breach of bail charges were found.
50. On 18 October 2018, the Authority Secretariat sent this material to the solicitors for the Respondents, advising that if Mr Flevotomos wished to make any submissions in reply, he may do so by 25 October 2018. The Authority Secretariat advised the Respondents that the Authority will not have regard to any information about spent convictions.

51. On 25 October 2018, the Authority Secretariat received a very brief email from Kemp Strang Lawyers on behalf of the Respondents, simply advising that they do not wish to make any submissions in reply to this material, while noting that they have not been asked to “comment on any potential adverse inference” intended to be drawn by the Authority concerning the information sought.

#### **Licensed Premises Records and Publicly Available Information Sourced by the Authority Secretariat**

52. A list of all material sourced by the Authority Secretariat in relation to this Complaint that was before the Authority, is set out in Schedule B to this letter.

#### **FINDINGS**

53. A disciplinary complaint under Part 9 of the Act is an administrative matter and findings are made to the civil standard of proof. However, in accordance with the principle enunciated by the High Court of Australia in *Briginshaw v Briginshaw* (1938) 60 CLR 336, the seriousness of the allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are matters that are relevant to deciding whether an allegation has been proved on the balance of probabilities.

#### **Ground 1 – Licensee convicted of offence against the Act or Regulations**

54. Ground 1 alleges that Mr Flevotomos, the former licensee of Dollhouse, has while holding a licence, been convicted of an offence under this Act or the regulations (or under the former Act) or of an offence prescribed by the regulations within the meaning of section 139(3)(a) of the Act.
55. Section 139(3)(a) of the Act states:
- (3) *The grounds on which a complaint in relation to a licensee, manager or close associate may be made are as follows:*
    - (a) *that the licensee or manager has, while holding a licence or managing licensed premises, been convicted of an offence under this Act or the regulations (or under the former Act) or of an offence prescribed by the regulations*
56. Ground 1 contains 9 Particulars, which specify events that occurred between 9 February 2013 and 29 November 2015. On the basis of information provided by licensing staff from licensing records for the Premises, including OneGov licensing database records as at 7 December 2016 and 16 August 2018, the Authority is satisfied that Mr Flevotomos commenced as licensee on **1 November 2006** and held that position up until **1 December 2017** when Mr Timothy Williams commenced as the Current Licensee. The Authority is satisfied that Mr Flevotomos was the licensee at the time of all events specified in Ground 1, Particulars 1 through 9.
57. The Authority does not accept the argument advanced in the Respondents Counsel Submission that Ground 1 must fail by reason that the Particulars identify and rely upon the issue of Penalty Notices, and that sections 22A(1) and (2) of the Fines Act provide that an amount specified in a Penalty Notice is not a conviction for an offence but merely a claim that the person to whom the Notice is issued has committed the Penalty Notice offence.
58. The Authority notes that section 150(4) of the Act states:
- (4) *However:*
    - (a) *section 22A (1) of the Fines Act 1996 does not apply in relation to disciplinary action under Part 9 or 9A of this Act, and*
    - (b) *despite section 22A (2) of the Fines Act 1996, when an amount is paid under this section in respect of a penalty notice issued to a person, the person is, for the purposes of Part 9 of this Act, taken to have been convicted of the offence to which the penalty notice relates.*
59. On this basis, the Authority is satisfied that the evidence of Mr Flevotomos’ payment of the Penalty Notices specified in this Ground below establish convictions against Mr Flevotomos for the purposes of this Complaint.

#### **Ground 1 Particular 1**

60. The Secretary Decision dated 29 October 2014 (in evidence at Annexure 8 of the Complaint) records that the Secretary imposed the Contact Condition on the licence, effective from 30 October 2014 which states:

*Whenever live adult entertainment is provided at the venue the licensee must ensure that there is no physical contact between performers and patrons*

61. The Authority is satisfied, as alleged in this Particular, that Police issued Mr Flevotomos with two Penalty Notices for breaching a condition of the liquor licence on 25 October 2015.
62. The Authority notes that a contravention of a licence condition is an offence against section 11(2) of the Act which states:

*A licensee must comply with any conditions to which the licence is subject.*

*Maximum penalty: 100 penalty units or imprisonment for 12 months, or both.*

63. The Authority accepts, on the basis of Annexures 1.1.2 and 1.1.3 of the Complaint, that NSW Police issued Penalty Notice 4931956013 in the amount of \$1100 and Penalty Notice 4931956004 in the amount of \$1100 to Mr Flevotomos for *Licensee fail to comply with conditions of licence* on 25 October 2015 in respect of breaching the Contact Condition. Penalty Notice 4931956013 (Annexure 1.1.2 of the Complaint) describes the offence as "Police observing a male patron with his pants down & his penis exposed. The male patron was previously dancing on the podium with the female dancer with his hands around her & touching her breasts & buttocks". Penalty Notice 4931956004 (Annexure 1.1.3 of the Complaint) describes the offence as "Police observing a male patron with his pants down & his penis exposed. The male patron had his hands touching the female dancers genitalia appearing to move his hand in & out of her, whilst she is on her all fours".
64. The Authority notes the payment summary at Annexure 1.1.4 of the Complaint produced by the then State Debt Recovery Office, now Revenue NSW, which records the payment status of the Penalty Notices issued against Mr Flevotomos ("Revenue NSW Payment Summary"). The Revenue NSW Payment Summary at Annexure 1.1.4 indicates that \$550 was paid for Penalty Notice 4931956013 and \$1100 was paid for Penalty Notice 4931956004. While there is a discrepancy between the penalty amount specified in the actual Penalty Notice 4931956013 (\$1100) and the Payment Summary for this Notice (\$550) it is clear that the amount owing in relation to Notice 4931956013 is nil. Pursuant to section 150(4)(b) of the Act, payment of these two Penalty Notices is taken, for the purposes of this Complaint, to be convictions of the offence of *Licensee fails to comply with conditions of licence* contrary to section 11(2) of the Act.
65. Ground 1 Particular 1 is established.

#### Ground 1 Particular 2

66. The Secretary Decision establishes the imposition of the Contact Condition, Stage Condition and G String Condition with effect from 30 October 2014.
67. The Authority is satisfied, as alleged in this Particular, that Police issued Mr Flevotomos with a Penalty Notice for breaching conditions of the liquor licence on 6 November 2015.
68. The Authority accepts, on the basis of Annexure 1.2.3 of the Complaint, that NSW Police issued Penalty Notice 4936397135 in the amount of \$1100 to Mr Flevotomos for the offence of *Licensee fails to comply with conditions of licence* on 6 November 2015 in respect of breaching the Contact Condition, Stage Condition and G-string Condition. This Penalty Notice records the description of the offence as "in private room in premises female performer leaves stage on number of occasions and straddles male patron whilst naked making contact with patron body – moving naked crotch up and down on patrons lap".
69. CCTV footage of the inside of the Premises on 6 November 2015 between 23.05.27 and 23.28.41 (Annexure 1.2.1 of the Complaint) indicates that at time code 23.05.30 a male patron and female dancer enter a private room, at about 23.14.36 the female dancer removes her g-string and at about 23.17.42, the naked female dancer leaves the stage and straddles the male patron.
70. Annexure 1.2.4 of the Complaint provides the Revenue NSW Payment Summary, indicating that \$1100 has been paid for Penalty Notice 4936397135. Pursuant to section 150(4)(b) of the Act, payment of this Penalty Notice is taken, for the purposes of this Complaint, to be a conviction of the offence of *Licensee fails to comply with conditions of licence* contrary to section 11(2) of the Act.
71. Ground 1 Particular 2 is established.

### Ground 1 Particular 3

72. The Authority is satisfied, as alleged in this Particular 3, that Police issued Mr Flevotomos with a Penalty Notice for breaching a condition of the liquor licence on 6 November 2015.
73. The Authority accepts, on the basis of Annexure 1.3.3 of the Complaint, that NSW Police issued Penalty Notice 4936397171 in the amount of \$1100 to Mr Flevotomos for *Licensee fails to comply with conditions of licence* on 6 November 2015 in respect of breaching the Contact Condition, which commenced effect from 30 October 2014. This Penalty Notice records the description of the offence as "In private room in premises performer seated on male patrons lap only wearing g-string. Performer kisses patron for 30 to 40 seconds. Performer remains on patrons lap they converse and continue to kiss intermittently".
74. CCTV footage of the inside of the Premises on 6 November 2015 between 23.38.37 and 23.45.45 (Annexure 1.3.1 of the Complaint) depicts at time code 23.38.38 a female dancer (who is wearing a g-string) sitting in a male patrons lap with the male patron and female dancer kissing and conversing intermittently.
75. Annexure 1.3.4 of the Complaint contains the Revenue NSW Payment Summary, indicating that \$1100 has been paid for Penalty Notice 4936397171. Pursuant to section 150(4)(b) of the Act, payment of this Penalty Notice is taken, for the purposes of this Complaint, to be a conviction of the offence of *Licensee fails to comply with conditions of licence* contrary to section 11(2) of the Act.
76. Ground 1 Particular 3 is established.

### Ground 1 Particular 4

77. The Authority is satisfied, as alleged in this Particular, that Police issued Mr Flevotomos with a Penalty Notice for breaching a condition of the liquor licence on 7 November 2015.
78. The Authority accepts, on the basis of Annexure 1.4.3 of the Complaint, that NSW Police issued Penalty Notice 4936397218 in the amount of \$1100 to Mr Flevotomos for *Licensee fails to comply with condition of licence* on 7 November 2015 in respect of breaching the Contact Condition, which commenced effect from 30 October 2014. The Authority is unable to interpret the description of the offence from the Penalty Notice at Annexure 1.4.3. However, the Authority is satisfied, on the basis of the CCTV footage of the inside of the Premises on 7 November 2015 between 01.56.38 and 02.19.28 (Annexure 1.4.1 of the Complaint) which depicts physical contact occurred at the following time codes:
- 02.11.26 a male and female patron enter a private room with a female dancer
  - 02:12:08 the female dancer sits on the male patrons lap
  - 02.12.13 the female dancer starts moving her bottom in a circular motion whilst sitting on the male patron's lap
  - 02.13.31 the male patron undoes the dancer's bra
  - 02.16.34 the female patron and female dancer kiss one another as the male patron watches.
79. Annexure 1.4.4 of the Complaint contains the Revenue NSW Payment Summary, indicating that \$1100 has been paid for Penalty Notice 4936397218. Pursuant to section 150(4)(b) of the Act, payment of this Penalty Notice is taken, for the purposes of this Complaint, to be a conviction of the offence of *Licensee fails to comply with condition of licence* contrary to section 11(2) of the Act.
80. Ground 1 Particular 4 is established.

### Ground 1 Particular 5

81. The Authority is satisfied, as alleged in this Particular, that Police issued Mr Flevotomos with a Penalty Notice for breaching a condition of the liquor licence on 7 November 2015.
82. The Authority accepts, on the basis of Annexure 1.5.3 of the Complaint, that NSW Police issued Penalty Notice 4936397227 in the amount of \$1100 to Mr Flevotomos for the offence of *Licensee fails to comply with condition of licence* on 7 November 2015 in respect of breaching the Contact Condition, which commenced effect from 30 October 2014. This Penalty Notice records the description of the offence as "In private room performer allows patron to rub her body under g-string later straddles patron later other patron".
83. CCTV footage of the inside of the Premises on 7 November 2015 between 02.33.59 and 02.56.47 and of the inside of the Premises on 7 November 2015 between 02.56.48 and 03.04.21 (Annexure 1.5.1 of the Complaint) indicates that physical contact occurred at the following time codes:

- 02.34.42 a female dancer enters a private room on the left of the screen where a male and female patron are located.
- 02.37.12 the male undoes the dancer's bra and removes it, during the performance the dancer allows the male to rub his hands over her body and under her G-string.
- 02.45.35 the female dancer and female patron begin kissing.
- 02.48.20 the female patron rubs and touches the dancer's breasts.
- 02.50.54 the female dancer removes her G-string and sits in the male's lap, facing away from him whilst he moves his hands over her body including her breasts.
- 02.52.12 a second male patron enters the room.
- 02.54.24 and 02.55.16 the female dancer sits on the second male's lap and he kisses her breast.

84. Annexure 1.5.4 contains the Revenue NSW Payment Summary, indicating that \$1100 has been paid for Notice 4936397227. Pursuant to section 150(4)(b) of the Act, payment of this Penalty Notice is taken, for the purposes of this Complaint, to be a conviction of the offence of *Licensee fail to comply with condition of licence* contrary to section 11(2) of the Act.

85. Ground 1 Particular 5 is established.

#### Ground 1 Particular 6

86. The Authority is satisfied, as alleged in this Particular, that a Special Inspector from the then OLGR (now LGNSW) issued Mr Flevotomos with a Penalty Notice for breaching a condition of the liquor licence on 29 November 2015.

87. The Authority accepts, on the basis of Annexure 1.6.1 of the Complaint, that the former OLGR (now LGNSW) issued Penalty Notice 3108013105 in the amount of \$1100 to Mr Flevotomos for the offence of *Licensee fail to comply with condition of licence* on 29 November 2015 in respect of breaching the Contact Condition, which commenced effect from 30 October 2014. This Penalty Notice records the description of the offence as "OLGR inspectors observed a female entertainer on the main stage & whilst performing on the stage kneeled down and grabbed a male patron sitting at the edge of stage & pulled his head into her breasts at the same time shaking her breast whilst the patron's face was in her cleavage".

88. Annexure 1.6.2 contains the Revenue NSW Payment Summary, indicating that \$1100 has been paid for Notice 3108013105. Pursuant to section 150(4)(b) of the Act, payment of this Penalty Notice is taken, for the purposes of this Complaint, to be a conviction of the offence of *Licensee fails to comply with condition of licence* contrary to section 11(2) of the Act.

89. Ground 1 Particular 6 is established.

#### Ground 1 Particular 7

90. The OneGov licence record as at 7 December 2016 indicates that from 7 December 2012 the licence recorded the following condition "2250" which stated:

*Licence conditions imposed by Part 5A of the Liquor Regulation 2008 (relating to the Kings Cross Precinct) apply to this licence.*

91. At the time of this findings letter ("Findings Letter"), the relevant regulation is the *Liquor Regulation 2018* (NSW) ("2018 Regulation"). However, at the time of this alleged offence, the regulation was the *Liquor Regulation 2008* (NSW) ("2008 Regulation").

92. At the time of the alleged offence on Saturday 9 February 2013 [which pre-dates the time when the licensed business is stated by the Complainant to have changed to an adult entertainment venue, during August 2014], clause 53A of the 2008 Regulation prescribed, by reference to Part 5A of that Regulation that: "for the purposes of section 116A of the Act, conditions to which a licence relating to premises situated in the Kings Cross precinct is subject". The licence conditions set out in Part 5A ("Kings Cross Precinct Conditions") applied to the Premises.

93. One of the Kings Cross Precinct Conditions in effect at that time was provided by Clause 53I of the 2008 Regulation requiring a round the clock incident register ("Incident Register Condition").

94. At the time of the matters the subject of Particular 7, clause 53I(1) of the 2008 Regulation required that the licensee maintain a register, in the form approved by the then Director-General (now Secretary of the Department), in which the licensee is to record, in the manner approved by the Director-General,

the details of any of the following incidents and any action taken in response to any such incident: any incident involving violence or anti-social behaviour occurring on the premises; any incident of which the licensee is aware that involves violence or anti-social behaviour occurring in the immediate vicinity of the premises and that involves a person who has recently left, or been refused admission to, the premises; any incident that results in a person being turned out of the premises under section 77 of the Act; any incident that results in a patron of the premises requiring medical assistance.

95. Clause 53I(2) of the 2008 Regulation stated that the licensee must, if requested by a police officer or inspector: make any such incident register immediately available for inspection by a police officer or inspector, and allow a police officer or inspector to take copies of the register or to remove the register from the premises. Clause 53I(3) of the 2008 Regulation stated that the licensee must ensure that the information recorded in an incident register under this clause is retained for at least 3 years from when the record was made. Clause 53I(4) states that section 56 of the Act does not apply in relation to the licence for any subject premises.
96. The Authority is satisfied, as alleged in this Particular, that Police issued Mr Flevotomos with a Penalty Notice for breaching a condition of the liquor licence on 9 February 2013.
97. The Authority accepts, on the basis of Annexure 1.7.2 of the Complaint, that NSW Police issued Penalty Notice 4919296425 in the amount of \$1100 to Mr Flevotomos for the offence of *Licensee fail to comply with conditions of licence* on 9 February 2013 in respect of breaching the Incident Register Condition by failing to record details of an incident that occurred on the Premises on 9 February 2013. This Penalty Notice records the description of the offence as:

“an assault occurred inside the premises. Security & manager escorted 2 males outside where the mgr punched 1 male to the head knocking him unconscious on footpath. The 2nd male apologised to mgr. The mgr then hit 2nd male knocking him semi-unconscious. This incident was not recorded in incident register”.
98. The Authority notes on the basis of then clause 53I(4) of the 2008 Regulation that the Penalty Notice incorrectly referred to section 56 of the Act in the description of the offence. It should have referred to clause 53I of the 2008 Regulation. Nevertheless, the Notice was issued to Mr Flevotomos under section 11(2) of the Act for breaching a licence condition.
99. Annexure 1.7.3 of the Complaint contains the Revenue NSW Payment Summary, indicating that \$1100 has been paid for Penalty Notice 4919296425. Pursuant to section 150(4)(b) of the Act, payment of this Penalty Notice is taken, for the purposes of this Complaint, to be a conviction of the offence of *Licensee fails to comply with condition of licence* contrary to section 11(2) of the Act.
100. Ground 1 Particular 7 is established.

#### Ground 1 Particular 8

101. At the time of the alleged offence on Sunday 10 February 2013, the Kings Cross Precinct Conditions were imposed on the licence and the applicable regulation was the 2008 Regulation.
102. Two of the Kings Cross Precinct Conditions in effect at that time were the Incident Register Condition provided by Clause 53I of the 2008 Regulation and a condition provided by Clause 53J of the 2008 Regulation requiring the preservation and reporting to Police of a crime scene in the event of an act of violence on the Premises (“Crime Scene Condition”).
103. The Crime Scene Condition required a licensee to (immediately after the licensee or a staff member becomes aware of an incident on the premises involving an act of violence that has caused an injury to a person) ensure that: all reasonable steps are taken to preserve and keep intact the area where the incident occurred and that any implement or other thing associated with the act of violence is retained in accordance with guidelines issued by the NSW Police Force relating to the preservation of crime scenes, and that the Local Area Commander of the local police area in which the premises are situated is advised by a staff member of the incident, and that any directions given by the Commander to the licensee or a staff member to preserve or keep intact the area where the incident occurred are complied with.
104. The Authority is satisfied, as alleged in this Particular, that Police issued Mr Flevotomos with two Penalty Notices for breaching conditions of the liquor licence on 10 February 2013.
105. The Authority accepts, on the basis of Annexures 1.8.2 and 1.8.3 of the Complaint, that NSW Police issued Penalty Notice 4919296416 in the amount of \$1100 and Penalty Notice 4919296398 in the

amount of \$1100 for the offences of *Licensee fail to comply with conditions of licence* on 10 February 2013 in respect of breaching the Incident Register Condition (contrary to clause 53I of the 2008 Regulation) and the Crime Scene Condition (by failing to take all reasonable steps to preserve and keep intact an area where a violent incident has taken place contrary to clause 53J(1)(a) of the 2008 Regulation and failing to advise the Kings Cross Local Area Commander contrary to clause 53J(1)(b) of the 2008 Regulation).

106. Penalty Notice 4919296416 (Annexure 1.8.2 of the Complaint) records the description of the offence as “an assault causing the vic to sustain a broken jaw occurred inside the premises. This incident was not recorded in the premises incident register”. Penalty Notice 4919296398 (Annexure 1.8.3 of the Complaint) records the description of the offence as “a male punched another male in the face outside the toilets, immediately after punch security escorted poi out of venue. The venue’s staff or licensee did not contact police to investigate the incident”.
107. The Authority notes on the base of then clause 53I(4) of the 2008 Regulation that the Penalty Notice 4919296416 incorrectly refers to section 56 of the Act in the description of the offence, whereas it should have referred to clause 53I of the 2008 Regulation. Nevertheless, the Notice was issued to Mr Flevotomos under section 11(2) of the Act for breaching a licence condition.
108. Annexure 1.8.4 of the Complaint contains the Revenue NSW Payment Summary, indicating that \$1100 has been paid for Penalty Notice 4919296416 and \$1100 has been paid for Penalty Notice 4919296398. Pursuant to section 150(4)(b) of the Act, payment of these Penalty Notices is taken, for the purposes of this Complaint, to be convictions of the offence of *Licensee fails to comply with condition of licence* contrary to section 11(2) of the Act.
109. Ground 1 Particular 8 is established.

#### Ground 1 Particular 9

110. At the time of the alleged offence on Thursday 14 February 2013, the Kings Cross Precinct Conditions were imposed on the licence and the applicable regulation was the 2008 Regulation, including the Incident Register Condition provided by Clause 53I of the 2008 Regulation.
111. The Authority accepts as alleged in this Particular, that Police issued Mr Flevotomos with a Penalty Notice for breaching a condition of the liquor licence on 14 February 2013.
112. The Authority accepts, on the basis of Annexure 1.9.2 of the Complaint, that NSW Police issued Penalty Notice 4919296434 in the amount of \$1100 to Mr Flevotomos for the offence of *Licensee fail to comply with conditions of licence* in respect of breaching the Incident Register Condition (specifically the then clause 53I(1)(b) which required the licensee to record the details of any incident, of which the licensee is aware, that involves violence or anti-social behaviour occurring in the immediate vicinity of the Premises, and that involves a person (referred to as the victim or “vic”) who has recently left, or been refused admission to, the Premises) for conduct that occurred on 14 February 2013. This Penalty Notice records the description of the offence as:

“the vic had just left inside the premises when he was told to ‘Move away, fuck off’ by security. The vic was then assaulted by a male & the licensee. As a result the vic received a cut lip, dislocated & fractured ankle. This incident was not recorded in the premises incident reg.”
113. The Authority notes on the base of then clause 53I(4) of the 2008 Regulation that the Penalty Notice incorrectly refers to section 56 of the Act in the description of the offence. Nevertheless, the Notice was issued to Mr Flevotomos under section 11(2) of the Act for breaching a licence condition and does not appear to have been disputed by Mr Flevotomos.
114. Annexure 1.9.3 of the Complaint contains the Revenue NSW Payment Summary, indicating that \$1100 has been paid for Penalty Notice 4919296434. Pursuant to section 150(4)(b) of the Act, payment of this Penalty Notice is taken, for the purposes of this Complaint, to be a conviction of the offence of *Licensee fail to comply with conditions of licence* contrary to section 11(2) of the Act. The Authority also notes from the description in this penalty notice, that Mr Flevotomos was involved in the assault himself, as well as being responsible for failing to record this assault in the venue’s incident register.
115. Ground 1 Particular 9 is established.

## Findings on Ground 2 – licensee failed to comply with conditions to which the licence is subject

116. Ground 2 alleges that Mr Flevotomos, the former licensee of Dollhouse, has failed to comply with any of the conditions to which the licence is subject within the meaning of section 139(3)(b) of the Act.
117. Section 139(3)(b) of the Act states:
- (3) *The grounds on which a complaint in relation to a licensee, manager or close associate may be made are as follows:*
- ...
- (b) *that the licensee or manager has failed to comply with any of the conditions to which the licence is subject*
118. Ground 2 contains 10 Particulars, which specify events alleged to have occurred between 12 October 2014 and 22 January 2017. Unlike the matters in Ground 1, the allegations specified in this Ground are not predicated upon the occurrence of a conviction for an offence against the Act. The Authority makes the following findings, on the balance of probabilities, that the former licensee did in fact contravene a condition of the licence, whether or not any prosecution or conviction ensued.
119. On the basis of the licensing records noted above establishing that Mr Flevotomos held the licence from 1 November 2006 until 1 December 2017, the Authority is satisfied that Mr Flevotomos was the licensee at the time of all of the matters specified in Ground 2, Particulars 1 through 10.

### Ground 2 Particular 1

120. At the time of the events that are alleged in this Particular, on 12 October 2014, the Kings Cross Precinct Conditions were imposed upon the licence and the applicable regulation was the then 2008 Regulation.
121. One of the Kings Cross Precinct Conditions in force on this licence was a condition prescribed by Clause 53E of the 2008 Regulation prohibiting the use of glass drinking vessels on the Premises during the “general late trade period” (“Glass Condition”). Clause 3 of the 2008 Regulation defined the general late trading period as the period between midnight on any day of the week and such later time at which the premises are required to cease trading or in the case of premises that are not required to cease trading at any time after midnight on any day of the week – the period between midnight and 7 am.
122. Pursuant to clause 53E(1)(c) of the 2008 Regulation the Glass Condition applies to subject premises if the licence is for an on-premises licence relating to a public entertainment venue (other than a cinema) or Karaoke bar. The OneGov licence record as at 7 December 2016, indicates that the business type is “Other public entertainment venue, Restaurant”.
123. Clause 53E(2) of the 2008 Regulation stated that during the general late trading period, any drink (whether or not it contains liquor) sold or supplied for consumption on the premises must not be served or supplied in a glass. Clause 53E(3) stated that during this period glasses must be removed from patrons on the premises and from any area of the premises to which patrons have access. Clause 53E(4) defined “glass” to mean a drinking vessel, a container (such as a bottle or jug) from which drinks can be poured that is wholly made or principally of glass.
124. On the basis of the information in COPS Report E54870610 (Annexure 2.1.1), the Authority accepts, as alleged in in this Particular, that Police attended the Premises at 12:43 am on 12 October 2014 during a business inspection and observed two male patrons standing by the bar each holding a beer bottle, which were identified as glass, when seized by Police. The Report records that CCTV footage was obtained that showed the sale and possession of the glass beer bottles to the patrons after midnight.
125. The Authority is satisfied, as alleged in Ground 2 Particular 1, that Mr Flevotomos was issued a Penalty Notice for breaching the Glass Condition on 12 October 2014. The Authority is satisfied as alleged in this Particular that NSW Police issued Penalty Notice 4924255710 in the amount of \$1100 (Annexure 2.1.2) to Mr Flevotomos for the offence of *Licensee fail to comply with conditions of licence* on 12 October 2014. On the basis of the Certificate of Order from the Downing Centre Local Court dated 7 December 2016 (Annexure 2.1.3 of the Complaint), the Authority is satisfied that on 13 April 2015 Mr Flevotomos was found guilty of the offence *Licensee fail to comply with conditions of licence* contrary to section 11(2) of the Act without proceeding to conviction and directed to enter into a good



behaviour bond for 12 months pursuant to section 10(1)(b) of the *Crimes (Sentencing Procedure) Act 1999* (NSW).

126. On the basis of this evidence or material the Authority accepts that Mr Flevotomos failed to comply with the Glass Condition on 12 October 2014.
127. The Complainant further alleges in Ground 2 Particular 1 that during this business inspection on 12 October 2014 Police observed six recently installed private dance rooms that were not covered by any CCTV footage. Police did not observe any person to be wearing clothing identifying them as a Responsible Service of Alcohol ("RSA") Marshal.
128. Although the Complainant does not here specify which clauses of the 2008 Regulation were contravened, the Authority notes that these factual matters pertain to the then clause 53G of the 2008 Regulation ("RSA Marshal Condition") and clause 53H of the 2008 Regulation ("CCTV Condition") being further Kings Cross Precinct Conditions that applied to this licence.
129. Clause 53G(2) stated that in the case of a "class 1" subject premises, the licensee must ensure that at least 2 RSA Marshals are carrying out RSA supervisory duties on the premises at all times during the supervised trading period. Clause 53G(5)(c) identifies a "Class 1" premises as an on-premises licence for a public entertainment venue (other than a cinema or a theatre) and thus this requirement applies to this licence.
130. Clause 53G(4) required that the licensee must ensure that any person who is carrying out RSA supervisory duties as required by this clause is, while carrying out those duties, wearing clothing that identifies the person as an RSA marshal. Clause 53G defined the supervised trading period as the period between midnight on any Friday, Saturday or public holiday night or night before a public holiday and such later time at which the premises are required to cease trading or 3am, whichever first occurs.
131. The Authority accepts the information in COPS Report E54870610 (Annexure 2.1.1) that this event occurred at about 12.43 am on Sunday 12 October 2014 and that Mr Flevotomos was not wearing any clothing that identified him as an RSA Marshal and after conducting observations of the main bar/stage area "it was apparent" there were "no readily identifiable" RSA marshals monitoring this room. The Authority further accepts the information that Police asked Mr Flevotomos to identify the RSA Marshals and Mr Flevotomos advised that one of the RSA Marshals had "just left" to "get a sandwich". After advising Mr Flevotomos that no RSA Marshal had been monitoring the main bar/stage area, Mr Flevotomos went to the back of house where an RSA Marshal emerged explaining that he had been having a smoke. This Report further indicates that the whereabouts of the other RSA marshal "remained unknown" with Mr Flevotomos "reiterating that he had gone for a sandwich and would return soon". The Report then records that "after some time", the missing RSA Marshal "had still not returned" and as a result of Police pressing the point, Mr Flevotomos stated that he would act as the RSA Marshal, "producing a name-plate type badge" with the words RSA Marshal, which he affixed to his shirt. The Report states that upon exiting the Premises, Police found Mr Flevotomos in the front corridor and reminded him that the role of RSA Marshal involved actually monitoring patrons, not sitting in an empty point of ingress/egress. The Report also states that CCTV footage was obtained which showed Mr Flevotomos "preoccupied with other duties" and that in an electronically recorded interview, Mr Flevotomos advised that he had "actually sent" the RSA Marshal home that night "as it was quiet" and that he believed that the presence of a name-plate was "sufficient identification".
132. The CCTV Conditions prescribed by clause 53H(1) of the 2008 Regulation required the licensee to maintain a closed-circuit television system on the premises. Clause 53H(1)(d)(iii) required the cameras to cover all publicly accessible areas (other than toilets) on the licensed premises while clause 53H(3)(c) provided that clause 53H applies to an on premises licence relating to a public entertainment venue (other than a cinema) or karaoke bar.
133. The Authority accepts in the information provided in COPS Report E54870610 (Annexure 2.1) that during their attendance on 12 October 2014 Police noted a new private booth area comprising 6 cubicles partitioned by fabric and that from the angle and location of the one CCTV camera covering this "entire area" that the interior of these 6 booths could not be covered by CCTV. Mr Flevotomos told Police that he had been "given an exemption from coverage of this area" which had been "relayed to him by a member of the Kings Cross licensing unit". The Report establishes that CCTV was obtained which shows not all areas of the private cubicles were covered by CCTV while there "appeared to be some genuine confusion over the CCTV condition".

134. The Authority further accepts, as stated in COPS Event E54870610 that Mr Flevotomos was issued with two Compliance Notices with respect to non-compliance with the CCTV and RSA Marshal Conditions on 12 October 2014. The Authority is satisfied, as alleged in this Particular of the Complaint Letter, that NSW Police issued Compliance Notices 141189 and 141190 (which are provided at Annexure 2.1.2) to Mr Flevotomos for *Licensee fail to comply with conditions of licence* on 12 October 2014.
135. On the basis of this evidence and material the Authority is satisfied that Mr Flevotomos failed to comply with the RSA Marshal Condition and the CCTV Condition to which the licence is subject on 12 October 2014.
136. Ground 2 Particular 1 is established.

#### Ground 2 Particular 2

137. The Secretary Decision (Annexure 8 of the Complaint) records that the Secretary imposed the Contact Condition upon the licence with effect from 30 October 2014.
138. On the basis of CCTV footage of the inside of the Premises on 26 May 2016 between 23.25.50 and 23.30.59 and on 26 May 2016 between 23.30.59 and 23.41.35 (Annexure 2.2.1 of the Complaint), the Authority is satisfied, as alleged in this Particular, that at 23.26.37 on 26 May 2016 a male patron and a female dancer were recorded in a private room. This footage clearly indicates the Contact Condition was breached through physical contact between the male patron and female dancer at the following time codes:
- 23.27.18 when the male patron kisses the dancer's inner right thigh
  - 23.29.12 when the female dancer removes her underwear
  - 23.29.19 when the male patron rubs the female dancer's vagina with his right hand
  - 23.38.22 when the male patron performs oral sex on the female dancer.
139. The Authority is satisfied on the basis of this evidence and material that Mr Flevotomos failed to comply with the Contact Condition to which the licence is subject on 26 May 2016. The Authority notes that a contravention occurs when the licensee *fails to ensure* that no physical contact between performers and patrons occurs when live entertainment is provided.
140. Ground 2 Particular 2 is established.

#### Ground 2 Particular 3

141. At the time of the events that are alleged in this Particular, on Thursday 9 June 2016, the former section 116AC of the Act applied to this licence and imposed a condition ("ID Scanning Condition") with section 116AC(1)(c) stating:
- (1) Patron photo IDs to be scanned  
The licence for a high-risk venue is subject to the following conditions:
- ...
- (c) the use of a patron ID scanner as required by this section (including the procedures for scanning and the time of use) must comply with such requirements as are approved by the Secretary and notified to the licensee,
142. The Authority notes that the former section 116AC(1)(c) of the Act incorporates the scanning requirements approved by the Secretary. The Authority has before it a copy of the publicly available LGNSW Kings Cross Approved ID Scanner Requirements as at March 2016 (approximately 3 months prior to this incident), sourced by the Authority Secretariat. This document states that High-Risk venues are subject to the requirements of this document when using a patron ID scanner. Paragraph 2 states that "the approved patron ID scanner must be used between 9pm and 5am every night of the week when the venue is trading" while paragraph 8 states that "only evidence of age documents, as defined by the *Liquor Act 2007*, are acceptable for the purpose of ID scanning". The Authority further notes that at the time of this conduct that is the subject of this Particular, clause 53R of the 2008 Regulation specified Iguana Bar & Restaurant as a high risk venue for the purposes of Division 3 of Part 6 of the Act.
143. The Authority accepts the information provided in COPS Event E61345245 (Annexure 2.3.1) which establishes, as alleged in this Particular, that at 9:55 pm on Thursday 9 June 2016 a male patron entered the Premises and when later asked by Police for his identification stated: "I don't have any". The patron showed a Police officer a NSW Firearms licence to explain how he gained entry.

144. The affidavit of Michael Giannak, a technical manager for Group Security Solutions Pty Ltd trading as PatronsCan (the Approved System Provider for the Kings Cross ID Scanner System) dated 14 June 2016 (Annexure 2.3.3) establishes that this patron was in fact scanned into Dollhouse at 9:55 pm on 9 June 2016 using a NSW Firearms Licence.
145. The Authority notes that this type of identification was not an “evidence of age” document within the meaning of section 4 of the Act at that time.
146. The Authority further accepts, as alleged by the Complainant in this Particular, that Mr Flevotomos was issued with Court Attendance Notice H243133596 Sequence “1” (Annexure 2.3.5 of the Complaint) for *Licensee fail to comply with conditions of licence* contrary to section 11(2) of the Act for failing to comply with the then section 116AC of the Act between 9:55 pm and 9:56 pm on 9 June 2016.
147. The Authority is satisfied on the information provided by the Complainant in their submission dated 11 October 2018, that this prosecution was finalised on 21 February 2018 at the Downing Centre Local Court with Mr Flevotomos fined \$1100, with the *JusticeLink* reference 2017/00167239-001.
148. On the basis of this evidence and material, the Authority is satisfied that Mr Flevotomos failed to comply with the ID Scanning Condition on 9 June 2016.
149. Furthermore, noting that the Contact Condition was in effect from 30 October 2014, CCTV footage of the inside of the Premises on 9 June 2016 between 22.37.48 and 23.48.08 (Annexure 2.3.4) establishes that, as alleged at Ground 2 Particular 3, at 23.17.04 on that date a male patron entered a private room with Mr Flevotomos, Mr Flevotomos then left the room before re-entering at 23.18.43 with a female dancer. This CCTV footage clearly indicates the Contact Condition is breached through physical contact between the male patron and female dancer at the following time codes:
- 23.18.59 when the female dancer kisses the male patron in the presence of Mr Flevotomos, who makes no attempt to stop her.
  - 23.26.00 when the female dancer sits in the male patrons lap.
150. This same CCTV footage indicates that at time code 23.33.17, Police enter the private room and observe the male sitting on a lounge with the dancer on his lap. This is further supported by COPS Report E61345245 (Annexure 2.3.1), which records that Police entered the VIP room and saw the accused sitting on a couch with a female dancer “sitting on his knees”.
151. The Authority further notes, as alleged in this Particular, that Mr Flevotomos was issued with Court Attendance Notice H 243133596 Sequence “4” (Annexure 2.3.5) for the offence of *Licensee fail to comply with conditions of licence* contrary to section 11(2) of the Act between 11:19 pm and 11:23 pm on 9 June 2016.
152. The Authority accepts the information provided in the Complainant submission dated 11 October 2018, that this prosecution was finalised on 21 February 2018 at the Downing Centre Local Court with Mr Flevotomos fined \$1100, with the *JusticeLink* reference 2017/00167239-004.
153. On the basis of the above evidence and material, the Authority is satisfied that on 9 June 2016 Mr Flevotomos failed to comply with the Contact Condition to which the licence is subject. Notably, the CCTV footage (Annexure 2.3.4) shows that Mr Flevotomos was present at the time that this female dancer kissed the male patron.
154. Ground 2 Particular 3 is established.

#### Ground 2 Particular 4

155. The Authority notes that at the time of the alleged events that are the subject of this Particular (Saturday 18 June 2016), the licence was subject to the Kings Cross Precinct Conditions imposed by the 2008 Regulation, in particular a CCTV Condition imposed through the operation of clause 53H of the 2008 Regulation.
156. In addition to maintaining a CCTV system in accordance with the requirements in Clause 53H(1) of the 2008 Regulation, Clause 53H(2) of the 2008 Regulation stated that the licensee of subject premises to which clause 53H applies must keep all recordings made by the CCTV system for at least 30 days, ensure that the system is accessible by at least one member of staff at all times it is in operation, and provide any recordings made by the system to a police officer or inspector within 24 hours of any request by a police officer or inspector to provide such recordings. Clause 53H(3)(c) stated that this clause applies to subject premises if the licence is an on-premises licence relating to a public

entertainment venue (other than a cinema) or karaoke bar. As noted above, the OneGov licence record as at 7 December 2016 indicates that the business type is "Other public entertainment venue, Restaurant".

157. On the basis of the Court Attendance Notice H243133596 Sequence "37" (a copy of which is provided at Annexure 2.4.5 of the Complaint) the Authority accepts, as alleged in Ground 2 Particular 4, that Mr Flevotomos was issued with a Court Attendance Notice for the offence of *Licensee fail to comply with conditions of licence* contrary to section 11(2) of the Act in respect of non-compliance with the requirements of clause 53H(1), 53H(2)(a) and (c) of the 2008 Regulation between 12:01 am and 12:35 am on 23 October 2016.
158. The Authority accepts the information provided in the Complainant submission dated 11 October 2018 that this prosecution was finalised on 21 February 2018 at Downing Centre Local Court with Mr Flevotomos fined \$1100, with the *JusticeLink* reference 2017/00167239-037.
159. While the date specified in this Particular seems to be in error in that the conduct specified in the Court Attendance Notice (23 October 2016) differs from the date specified in this Particular, COPS Reports for Events E62107862 and E120900002 (Annexures 2.4.2 and 2.4.3 respectively) and the Work Sheet/Tax Invoice provided by Sure Security Systems Pty Ltd dated 7 July 2016 ("Sure Systems Invoice") (Annexure 2.4.4) establish that the relevant non-compliance with CCTV requirements actually occurred between 18 June and 4 August 2016.
160. The Authority accepts the information provided in COPS Report E62107862 (Annexure 2.4.2) that on 7 July 2016 Police attended the Premises, spoke with Mr Flevotomos and furnished him with requests for CCTV footage. COPS Report E120900002 (Annexure 2.4.3) states that Police had previously requested footage for 18 June 2016 but the footage from "4 cameras were blank/missing from the footage received". This Report notes that Police were able to request the footage at a later date than usual by reason of the CCTV systems being upgraded, meaning that the footage was not being overwritten every 30 days. The Report further records that when raising this concern with Mr Flevotomos during a business inspection on 4 August 2016, Mr Flevotomos told Police that "the hard-drive was gone and all footage relating to the old system had been destroyed". The Sure Systems Invoice stated that a "new IP system has been installed", that "the amount of hard drive was increased on 21<sup>st</sup> July 2016" and that "all hard drives were formatted and all recordings start from this day" and "all old equipment has been destroyed for privacy reasons".
161. On the basis of COPS Reports E62107862 and E120900002 and the Sure Systems Invoice the Authority is satisfied that Mr Flevotomos failed to comply with the CCTV Condition to which the licence is subject in relation to CCTV for Saturday 18 June 2016.

162. Ground 2 Particular 4 is established.

#### Ground 2 Particular 5

163. The Authority notes that at the time of the events referred to in this Particular (Friday 23 September 2016) the former section 116AC of the Act was in force and imposed the ID Scanning Condition upon the licence.
164. The Authority refers to the provisions from the LGNSW Kings Cross Approved ID Scanner Requirements as at March 2016 as noted in the Authority's findings on Ground 2 Particular 3 above.
165. As alleged in Ground 2 Particular 5 the Authority finds, on the basis of the information provided in COPS Report E62643657 (Annexure 2.5.1) and the CCTV footage of the entrance of the Premises on 23 and 24 September 2016 between 21.00.00 and 03.30.01 (Annexure 2.5.2) that on Friday 23 September 2016 at 22.04.25 a male patron ("First Patron") (who is known to Police to be an associate of the Rebels Outlaw Motorcycle Gang ("OMCG")) passed an identification document to security staff at the door for scanning before entering the Premises. He was followed immediately thereafter by a second male patron ("Second Patron") who is also known to Police as a Rebels OMCG associate at 22.04.40, who also gains entry to the Premises by using the identification of the First Patron.
166. An affidavit of Michael Giannak, technical manager for Group Security Solutions Pty Ltd, trading as *Patronscan*, dated 20 October 2016 (Annexure 2.5.4) establishes that on 23 September 2016 the First Patron used identification in the form of a NSW Photo Card in the name of the First Patron to enter the Premises at 10:03 pm. The First Patron's name is also recorded as having entered at 10:03 pm using a NSW Personal Watercraft Licence. It is clear from the photographs attached to this affidavit that the two patrons who entered the Premises using the First Patron's identification documents are different people.

167. The Authority notes that the Watercraft Licence was not an “evidence of age” document within the meaning of section 4 of the Act as in force at this time.
168. The Authority accepts, as alleged at Ground 2 Particular 5 of the Complaint, that Mr Flevotomos was issued with Court Attendance Notice H243133596 Sequence “2” (Annexure 2.5.6) for the offence of *Licensee fail to comply with conditions of licence* contrary to section 11(2) of the Act between 10:03 pm and 10:04 pm on 23 September 2016.
169. The Authority further accepts the information provided in the Complainant submission dated 11 October 2018, that this prosecution was finalised on 21 February 2018 at Downing Centre Local Court with Mr Flevotomos fined \$1100, with the *JusticeLink* reference 2017/00167239-002.
170. On the basis of this evidence and material the Authority is satisfied that on 23 September 2016 Mr Flevotomos failed to comply with the ID Scanning Condition to which the licence is subject.
171. Ground 2 Particular 5 is established.

#### Ground 2 Particular 6

172. The Authority notes that at the time of the events specified in this Particular (24 September 2016) the former section 116AC of the Act was in force imposing the ID Scanning Condition upon the licence.
173. At that time, section 116AC(1)(a)(ii) of the Act stated:
  - (2) Patron photo IDs to be scanned  
The licence for a high risk venue is subject to the following conditions:  
...
    - (a) a person must not be permitted to enter the venue as a patron unless:  
...
      - (ii) the photo ID is scanned by a staff member using a patron ID scanner.
174. The Authority accepts, as alleged by the Complainant at Ground 2 Particular 6 of the Complaint Letter, that a male patron (the same Rebels OMCG associate referred to as the “Second Patron” in Ground 2 Particular 5 above) gained entry to the Premises by appearing to pass something to the ID scanner operator at 00.55.24 on 24 September 2016; that the staff member operating the ID scanning machine has gone through the motions of scanning an identification document yet records from the *Patronscan* system for this date indicate no record of the patron entering the Premises and no real time photograph of entry recorded by the ID scanner. The *Patronscan* records further record that all patrons that entered just prior to and shortly after this Second Patron were scanned and photographed correctly.
175. The Authority finds this Particular established on the information provided in COPS Event E62643657 (Annexure 2.6.1); the CCTV footage of the entrance of the Premises on the 23 September 2016 and 24 September 2016 between 21.00.00 and 03.30.01 (Annexure 2.6.2); the affidavit of Michael Giannak from Patronscan dated 2 November 2016 (Annexure 2.6.3) providing names and photographs of each patron entering the Premises between 12:54 am and 12:57 am on 24 September 2016 and the still CCTV photographs which the Complainant has annotated to identify patrons entering the Premises between 00.54.50 and 00.56.02 (Annexure 2.6.4).
176. The Authority further accepts, as alleged in this Particular, that Mr Flevotomos was issued with a Court Attendance Notice for failing to scan the identification document of the relevant patron, in contravention of the ID Scanning Condition, on 24 September 2016. Court Attendance Notice H 243133596 Sequence “3” (Annexure 2.6.5) was issued to Mr Flevotomos for the offence of *Licensee fail to comply with conditions of licence* contrary to section 11(2) of the Act between 12:55 am and 1:05 am on 24 September 2016.
177. The Authority further accepts the information provided in the Complainant submission dated 11 October 2018, that this prosecution (referred to here as “Sequence 6”) was finalised on 21 February 2018 at the Downing Centre Local Court with Mr Flevotomos fined \$1100, with the matter bearing the *JusticeLink* reference of 2017/00167239-006.
178. On the basis of the above evidence and material the Authority is satisfied that on 24 September 2016 Mr Flevotomos failed to comply with the ID Scanning Condition.
179. Ground 2 Particular 6 is established.

## Ground 2 Particular 7

180. As noted above, the Contact Condition commenced effect from 30 October 2014.
181. On the basis of CCTV footage of inside the Premises on 24 September 2016 between 02.20.00 and 02.55.15 and between 2.55.15 and 03.29.13 (Annexure 2.7.1) the Authority is satisfied, as alleged in this Particular, that on Saturday 24 September 2016 a male patron and a female dancer were recorded in a private room and CCTV footage indicates that the following conduct occurred at the following time codes:
- 02.41.41 the male patron removes his penis from his underpants and the dancer rubs and touches the penis while a drinks waiter looks on.
  - 02.51.37 the female dancer performs oral sex on the male patron
  - 02.52.25 the female dancer performs oral sex on the male patron which continues on and off until 2.54.31.
  - 02.57.35 the female dancer performs oral sex on the male.
  - 02.59.28 the male patron masturbates while the female dancer places her face in his crotch at which time a security guard can be seen outside the curtain doorway for about 10 seconds before walking away.
  - 03.00.42 a drinks waiter enters the room and the dancer moves away from the male until the waitress leaves.
  - 03.01.03 the same security guard appears at the curtain doorway and the show ends at 03.01.15.
182. The Authority accepts, as alleged in in this Particular, that Mr Flevotomos was issued with Court Attendance Notice H243133596 Sequence "7" (Annexure 2.7.2) for the offence of *Licensee fail to comply with conditions of licence* contrary to section 11(2) of the Act between 1:59 am and 3:05 am on 24 September 2016.
183. The Authority further accepts the information provided in the Complainant submission dated 11 October 2018 that this prosecution was finalised on 21 February 2018 at Downing Centre Local Court with Mr Flevotomos fined \$2200, with the matter having *JusticeLink* reference 2017/00167239-007.
184. On the basis of this evidence and material the Authority is satisfied that on 24 September 2016 Mr Flevotomos failed to comply with the Contact Condition to which the licence is subject.
185. Ground 2 Particular 7 is established.

## Ground 2 Particular 8

186. On the basis of CCTV footage of the inside of the Premises on 24 September 2016 between 02.09.20 and 02.44.33 (Annexure 2.8.1 of the Complaint) the Authority is satisfied, as alleged in this Particular, that on Saturday 24 September a male patron and female dancer were recorded in a private room engaging in physical contact in breach of the Contact Condition. This CCTV footage clearly indicates, at the following time codes:
- 02.18.57 a male patron enters a private room with a female dancer and removes his jumper
  - 02.20.13 the male patron undoes his pants.
  - 02.23.42 the male patron undoes the crotch snap on the body suit worn by the female dancer and performs oral sex on her.
  - 02.24.46 the male patron removes his trousers, including his underpants.
  - 02.26.01 the female dancer performs oral sex on the male patron.
  - 02.28.39 security looks into the room and then walks away.
  - 02.32.12 the male patron performs oral sex on the female dancer.
  - 02:32:20 security guard can be seen in the hallway.
  - 02.32.30 the male patron and female dancer stop what they are doing and the dancer throws a jumper over the male's naked penis.
  - 02.32.57 the female dancer performs oral sex on the male patron.
  - 02.35.00 the male patron digitally penetrates the female dancer.
  - 02.36.42 the male patron appears to ejaculate in the female dancer's mouth.
187. The Authority accepts, as alleged in this Particular, that Mr Flevotomos was issued with Court Attendance Notice H243133596 Sequence "8" (Annexure 2.8.2) for the offence of *Licensee fail to comply with conditions of licence* contrary to section 11(2) of the Act between 2:18 am and 2:38 am on 24 September 2016.

188. The Authority further accepts the information provided in the Complainant submission dated 11 October 2018, that this prosecution was finalised on 21 February 2018 at the Downing Centre Local Court with Mr Flevotomos fined \$2200, the matter having the *JusticeLink* reference of 2017/00167239-008.
189. On the basis of this evidence and material the Authority is satisfied that on 24 September 2016 Mr Flevotomos failed to comply with the Contact Condition to which the licence is subject.
190. Ground 2 Particular 8 is established.

Ground 2 Particular 9

191. The Authority notes that at the time of the events the subject of this Particular (Saturday 24 September 2016) the Kings Cross Precinct Conditions were in effect pursuant to the (then) 2008 Regulation.
192. One of the Kings Cross Precinct Conditions was imposed by clause 53C of the 2008 Regulation which states:

- (1) *In this clause:  
subject premises means the following subject premises:*  
...  
(c) *premises to which an on-premises licence relating to a public entertainment venue (other than a cinema or theatre) or karaoke bar applies,*  
...  
(2) *The licensee of any subject premises must not permit patrons to enter the premises during the lock out period.*  
...

("Lockout Condition")

193. As noted above, the Onegov licence record as at 7 December 2016 indicates that the licensed business type is "Other public entertainment venue, Restaurant". The lock out period was defined by clause 3 of the 2008 Regulation as the period on any day of the week between 1:30 am and the commencement of the standard trading period referred to in section 12(1)(a)(i) of the Act (which the Authority notes is 5:00 am).
194. The Authority accepts the information provided in COPS Report E62643657 (Annexure 2.9.1) and further notes the CCTV footage from 24 September 2016 of the street in front of the Premises between 01.39.37 and 02.37.09; the backdoor and courtyard of the Premises between 01.45.36 and 02.37.59; the backdoor and courtyard of the Premises between 02.38.22 and 03.30.00 and the inside of the Premises between 02.24.57 and 03.12.41 (Annexure 2.9.2) in addition to still photographs provided by the Complainant from the CCTV footage, identifying relevant patrons and Mr Flevotomos (Annexure 2.9.4). The Authority is satisfied, as alleged in this Particular, that the following conduct occurred on the morning of 24 September 2016 at the following time codes:
- 02.31.43: two males (one which has a distinct neck tattoo, the other is unknown) approach the front of the Premises.
  - 02.31.54: the two males are refused entry at the principal entry door to the Premises by security staff.
  - 02.37.37: the licensee Flevotomos is recorded on CCTV exiting the rear door of the Premises, walking through the courtyard toward the rear gate and out of view of the camera.
  - 02.38.38 the licensee, the two males (the male with the distinct neck tattoo and the unknown male) alongside a number of other males, reappear on the CCTV footage in the rear courtyard, where they engage in a brief conversation before entering the rear door of the Premises and going inside at 02.38.56.
  - 02.39.02 the male with the neck tattoo appears inside the Premises at the bottom left of the screen and greets a number of people before being served a drink at the bar.
  - 02.44.11 the tattooed male picks his drink up from a table at the top right of the screen (framed by the circular swing) and at 02.44.55 sits at the table and consumes the drink.
195. The Authority accepts the information provided by Police in COPS Report E62643657 (Annexure 2.9.1) that entry to the rear yard is only able to be gained if a person opens a rear gate internally to allow access. Although there is no CCTV footage clearly depicting Mr Flevotomos opening the rear gate, the evidence is sufficient to satisfy the Authority that this occurred.

196. The Authority further accepts, as alleged in this Particular, that Mr Flevotomos was issued with Court Attendance Notice H243133596 Sequence "10" (Annexure 2.9.5) for the offence of *Licensee fail to comply with conditions of licence* contrary to section 11(2) of the Act between 2:31 am and 2:39 am on 24 September 2016.
197. The Authority accepts the information provided in the Complainant submission dated 11 October 2018, that this prosecution was finalised on 21 February 2018 at Downing Centre Local Court with Mr Flevotomos fined \$2200, the matter having *JusticeLink* reference of 2017/00167239-010.
198. On the basis of this evidence and material the Authority is satisfied that on 24 September 2016 Mr Flevotomos failed to comply with the Lockout Condition to which the licence is subject.
199. Ground 2 Particular 9 is established.

#### Ground 2 Particular 10

200. The Authority notes that at the time of the occurrence of the events that are the subject of this Particular, the licence was subject to the operation of the Kings Cross Precinct Conditions, including the Lockout Condition specified by clause 53C of the then 2008 Regulation.
201. The Authority is satisfied, on the basis of COPS Report E123621502 (Annexure 2.10.1) and the Police Statement of Senior Constable Handley dated 23 February 2017 (Annexure 2.10.3), that at about 2:30 am on 22 January 2017 Police observed 25 people walking on Kellett Street towards the Premises. After circling the block Police saw a couple of people on the front porch area and then saw one or two people walk inside the Premises. Senior Constable Handley's statement establishes that Police approached the security guard, who responded with the words "what group?" when asked by Police if he saw where the large group of people had gone. Police then spoke to Mr Flevotomos who denied knowing anything. After Police entered the Premises and viewed the CCTV footage, Mr Flevotomos is recorded as stating "I take responsibility. It was my wife's 30<sup>th</sup> birthday party and I said to let them in". The COPS Report E123621502 establishes that Mr Flevotomos told Police that he "had made a stupid mistake", that the patrons were "friends of his wife" and he had allowed them in because it was his wife's birthday and she had pressured him to let them inside.
202. The Authority accepts, as alleged by the Complainant in Ground 2 Particular 10, on the basis of CCTV footage of the entrance of the Premises on 22 January 2017 between 02.31.59 and 02.55.03 and CCTV footage of the inside of the Premises between 02.31.58 and 02.55.01 (Annexure 2.10.2 of the Complaint) that on this date the following events occurred per the following time codes:
  - 02.32.17 the licensee was looking up and down the street as a large group of people approach the front door of the Premises. As they enter they can be seen shaking hands with the licensee.
  - 02.33.52 two patrons are turned away from the Premises as a Police vehicle comes into view on the external camera.
  - 02.35.34 (inside the Premises) the large group is seen entering one of the larger private rooms.
  - 02.37.51 a dancer commences performing on stage
  - 02.40.53 a drinks waitresses enters the room and appear to be taking drink orders, a drinks waitress can also be seen taking orders at 02.45.05.
  - 02.44.08 a second dancer commences performing on stage.
  - 02.40.17 a male patron appears to be well intoxicated, pushing over an ottoman as he tries to move it out of his way and resting his head on the back of the seating booth several times between 02.40.30 and 02.43.53.
  - 02.44.34 a female dancer allows the intoxicated male patron to share her drink.
  - 02.49.38 a security guard enters the room and appears to ask people to leave the room.
  - 02.52.50 all people in the VIP room have left the VIP room.
203. The Authority further accepts, as alleged in this Particular, that Court Attendance Notice H 243133596 Sequences 11-35 (Annexure 2.10.4) was issued to Mr Flevotomos for the offence of *Licensee fail to comply with conditions of licence* contrary to section 11(2) of the Act between 2:30 am and 2:45 am on 22 January 2017. The Authority notes that 21 of these Court Attendance Notices concern a breach of clause 53C of the 2008 Regulation.
204. The Authority accepts the information provided in the Complainant submission dated 11 October 2018, that these prosecutions were finalised on 21 February 2018 at Downing Centre Local Court with Mr Flevotomos fined \$2200 for Sequence 11 while Sequences 12 to 35 were withdrawn by Police. *JusticeLink* references for these matters are 2017/00167239-011 and 2017/00167239-012 to 2017/00167239-035.



205. While Sequences 12-35 were withdrawn and only sequence “11” resulted in a fine, the Authority is satisfied, on the basis of this information that on 22 January 2017 Mr Flevotomos failed to comply with the Lockout Condition to which the licence is subject.

206. Ground 2 Particular 10 is established.

Reliance on Particulars 1 to 9 of Ground 1 Repeated with Respect to Ground 2

207. In addition to the 10 Particulars set out above, the Complainant refers to and relies upon the matters specified in Ground 1 Particulars 1 through 9 in support of this Ground 2. The Authority has found the allegations in Ground 1 Particulars 1 through 9 to be established on the evidence or material noted above.

208. The Authority accepts, as alleged in Ground 2, that the convictions established in Ground 1 Particulars 1 through 9 arose from breaches of licence conditions by Mr Flevotomos, and in this sense are relevant to both Grounds of Complaint.

Mr Flevotomos’ response to Ground 2

209. Mr Flevotomos’ primary response to Ground 2 is contained in the Respondents Counsel Submission. The Respondents accept that “in part” it would be open to the Authority to make findings that Mr Flevotomos as former licensee was involved in incidents whereby there was a failure to comply with licence conditions. These events are “historically confined” to between 2014 and 2015 and ending by 2016. The Respondents submit that they do not attempt to minimise or understate the seriousness of the breaches occurring in that period. Rather, they contend that it would be inappropriate for the Authority to give these “historical events” significant weight when assessing how the Premises is likely to be run in the future and that changes made to the venue “since 2017” must be considered.

210. The Authority is nevertheless satisfied, on the basis of the Complaint Material in support of Ground 2 that while holding the licence Mr Flevotomos in fact failed to comply with conditions to which the licence was subject on numerous occasions **extending from October 2014 to January 2017**. These events cannot be dismissed as historical in nature and they weigh heavily in favour of a finding that Mr Flevotomos is not a fit and proper person to hold a liquor licence.

211. Ground 2 is established.

**Findings on Ground 3 – not a fit and proper person**

212. Ground 3 is based on three sections of the Act, being section 139(3)(i), 139(3)(m) and 139(3)(j), and alleges that Mr Flevotomos

- (a) as the former licensee of the Premises is not a fit and proper person to be a holder of a licence;
- (b) as a person who is interested in the business or in the conducts or profits of the business, carried on under the licence, is not a fit and proper person to be so interested;
- (c) as the close associate is not a fit and proper person to be a close associate of a licensee.

213. Section 139(3)(i) of the Act states:

- (3) *The grounds on which a complaint in relation to a licensee, manager or close associate may be made are as follows:*

...

- (i) *that the licensee is not a fit and proper person to be the holder of a licence (whether for the same reason as that set out in section 45 (5) or otherwise) or the manager is not a fit and proper person to be the manager of the licensed premises (whether for the same reason as that set out in section 68 (4A) or otherwise),*

214. Section 139(3)(m) of the Act states:

- (3) *The grounds on which a complaint in relation to a licensee, manager or close associate may be made are as follows:*

...

- (m) *that a person who is interested in the business, or in the conduct or profits of the business, carried on under the licence is not a fit and proper person to be so interested,*

215. Section 139(3)(j) of the Act states:

- (3) *The grounds on which a complaint in relation to a licensee, manager or close associate may be made are as follows:*

...

- (j) *that the close associate is not a fit and proper person to be a close associate of a licensee,*

216. Section 4 of the Act defines a close associate as a close associate within the meaning of the *Gaming and Liquor Administration Act 2007* (NSW) ("GALA Act"). Section 5 of the GALA Act states as follows:

- (1) *For the purposes of the gaming and liquor legislation, a person is a **close associate** of an applicant for, or the holder of, a gaming or liquor licence if the person:*
- (a) *holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in his or her own right or on behalf of any other person), in the business of the applicant or licensee that is or will be carried on under the authority of the licence, and by virtue of that interest or power is or will be able (in the opinion of the Authority) to exercise a significant influence over or with respect to the management or operation of that business, or*
  - (b) *holds or will hold any relevant position, whether in his or her own right or on behalf of any other person, in the business of the applicant or licensee that is or will be carried on under the authority of the licence.*

- (2) *In this section:*

*relevant financial interest, in relation to a business, means:*

- (a) *any share in the capital of the business, or*
- (b) *any entitlement to receive any income derived from the business, or to receive any other financial benefit or financial advantage from the carrying on of the business, whether the entitlement arises at law or in equity or otherwise, or*
- (c) *any entitlement to receive any rent, profit or other income in connection with the use or occupation of premises on which the business of the club is or is to be carried on (such as, for example, an entitlement of the owner of the premises of a registered club to receive rent as lessor of the premises).*

*relevant position means:*

- (a) *the position of director, manager or secretary, or*
- (b) *any other position, however designated, if it is an executive position.*

*relevant power means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others:*

- (a) *to participate in any directorial, managerial or executive decision, or*
- (b) *to elect or appoint any person to any relevant position.*

217. Ground 3 contains 7 Particulars which specify events between February 2013 and January 2017.

218. For the purpose of the Ground available under section 139(3)(i) of the Act, the Authority is satisfied, on the basis of the OneGov licence documents for Dollhouse as at 7 December 2016 and 16 August 2018, that Mr Flevotomos commenced the position as licensee on 1 November 2006 and held that position up until 1 December 2017 when Mr Timothy Williams commenced as the Current Licensee. The Authority notes that section 137(1)(a) of the Act provides that in Part 9 of the Act, a reference to a licensee includes a former licensee.

219. LGNSW records sourced by licensing staff on 20 August 2018 establish that the current licensed Business Owners on the record are Mr Flevotomos (from 1 November 2006 to date) and Iguana Bar & Restaurant Pty Ltd (from 19 June 2015 to date).

220. An ASIC Current & Historical Organisation Extract for Iguana Bar & Restaurant Pty Ltd sourced by licensing staff as at 17 August 2018 records that Mr Flevotomos is the sole director and company secretary of Iguana Bar & Restaurant Pty Ltd.

221. It follows that Mr Flevotomos is a *person who is interested in the business, or in the conduct or profits of the business, carried on under the licence* for the purpose of section 139(3)(m) of the Act and also *close associate of a licensee* for the purpose of section 139(3)(j) of the Act.

## Fitness and Propriety at General Law

222. It is well established at common law for the purposes of licensing that to be “fit and proper” a person must have a requisite knowledge of the Act (or Acts) under which he or she is to be licensed and the obligations and duties imposed thereby: *Ex parte Meagher* (1919) 36 WN 175 and *Sakellis v Police* (1968) 88 WN (Pt 1) (NSW) 541. Being fit and proper normally comprises the three characteristics of “honesty, knowledge and ability”: *Hughes & Vale Pty Ltd v NSW* (No 2) (1955) 93 CLR 127.
223. Where a person has been convicted of offences, the decision maker must consider the circumstances of those convictions and the general reputation of the person apart from the convictions and the likelihood of repetition – *Clearihan v Registrar of Motor Vehicle Dealers in the ACT* (1994) 117 FLR 455
224. In *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, the High Court of Australia has held that:

*The expression ‘fit and proper person’ standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of ‘fit and proper’ cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of those activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides an indication of likely future conduct) or reputation (because it provides an indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.*

225. Furthermore, section 45(5A) of the Act, prescribes certain non-exhaustive statutory considerations to which the Authority must have regard when determining the fitness and propriety of a licensee, including whether that person:
- (a) Is of good repute, having regard to character, honesty and integrity; and
  - (b) Is competent to carry on that business or activity, being the relevant licensed business in question.

### Ground 3 Particular 1

226. The Authority, on the basis of the findings in Grounds 1 through 4 of the Complaint, accepts as alleged by the Complainant in Ground 3 Particular 1 of the Complaint, that there is a good deal of evidence and material demonstrating non-compliance with licence conditions and other requirements of the legislation over a sustained period of time.
227. Ground 3 Particular 1 is established.

### Ground 3 Particulars 2 and 3

228. The Authority accepts, as alleged by the Complainant in Ground 3 Particular 2 of the Complaint, that Police and LGNSW have taken the regulatory action set out at paragraphs (i) through (xxiv) of Particular 2.
229. The Authority is satisfied that Mr Flevotomos has been issued with the following seven (7) Penalty Notices for breaches of section 11 of the Act, all of which have been paid:
- No. 4931956013 from NSW Police on 25 October 2015 provided at Annexure 1.1.2 of the Complaint and with the Revenue NSW Payment Summary at Annexure 1.1.4. [As noted above, there is a discrepancy between the penalty amount identified in the Penalty Notice (\$1100) and the payment summary for this Penalty Notice (\$550) but the payment summary indicates that the amount owing in relation to Penalty Notice 4931956013 is \$0.00].
  - No. 4931956004 from NSW Police on 25 October 2015 provided at Annexure 1.1.3 of the Complaint and with the Revenue NSW Payment Summary at Annexure 1.1.4.
  - No. 4936397135 from NSW Police on 6 November 2015 provided at Annexure 1.2.3 of the Complaint and with the Revenue NSW Payment Summary at Annexure 1.2.4.

- No. 4936397171 from NSW Police on 6 November 2015 provided at Annexure 1.3.3 of the Complaint and with the Revenue NSW Payment Summary at Annexure 1.3.4.
  - No. 4936397218 from NSW Police on 7 November 2015 provided at Annexure 1.4.3 of the Complaint and with the Revenue NSW Payment Summary at Annexure 1.4.4.
  - No. 4936397227 from NSW Police on 7 November 2015 provided at Annexure 1.5.3 of the Complaint and with the Revenue NSW Payment Summary at Annexure 1.5.4.
  - No. 3108013105 from LGNSW Inspectors on 29 November 2015 provided at Annexure 1.6.1 of the Complaint and with the Revenue NSW Payment Summary at Annexure 1.6.2.
230. The Authority is further satisfied that Mr Flevotomos has been issued with the following five (5) Compliance Notices from NSW Police for contravention of the CCTV Condition that was imposed by clause 53H of the former 2008 Regulation:
- No. 150146 on 5 March 2015 provided at Annexure 3.2.2 of the Complaint and supported by COPS Report for Event E230085295 at Annexure 3.2.1.
  - No. 141104 on 9 November 2014 provided at Annexure 3.2.4 of the Complaint and supported by COPS Report for Event E191343798 at Annexure 3.2.3.
  - No. 141190 on 12 October 2014 provided at Annexure 2.1.2 of the Complaint and supported by COPS Report for Event E54870610 at Annexure 2.1.1.
  - No. 140812 on 16 August 2014 provided at Annexure 3.2.6 of the Complaint and supported by COPS Report for Event E57750889 at Annexure 3.2.5.
  - No. 140813 on 16 August 2014 provided at Annexure 3.2.6 of the Complaint and supported by COPS Report for Event E57750889 at Annexure 3.2.5.
231. The Authority is also satisfied that Mr Flevotomos has been issued with the following single (1) Penalty Notice from NSW Police for contravention of the Glass Condition under clause 53E of the 2008 Regulation:
- No. 492455710 on 12 October 2014 provided at Annexure 2.1.2 of the Complaint with a copy of the Certificate of Order dated 7 December 2016 from the Downing Centre Local Court in relation to this notice at Annexure 2.1.3.
232. Furthermore, the Authority is satisfied that Mr Flevotomos has been issued with the following seven (7) Compliance Notices from NSW Police for contravention of the Kings Cross Precinct Condition prohibiting certain drinks and other types of liquor sales during the weekend late trading period ("Drinks Condition") under clause 53F of the 2008 Regulation:
- No. 131014 on 29 June 2013 provided at Annexure 3.2.8 of the Complaint and supported by COPS Report for Event E52012857 at Annexure 3.2.7.
  - No. 131013 on 29 June 2013 provided at Annexure 3.2.8 of the Complaint and supported by COPS Report for Event E52012857 at Annexure 3.2.7.
  - No. 131012 on 29 June 2013 provided at Annexure 3.2.8 of the Complaint and supported by COPS Report for Event E52012857 at Annexure 3.2.7.
  - No. 131011 on 29 June 2013 provided at Annexure 3.2.8 of the Complaint and supported by COPS Report for Event E52012857 at Annexure 3.2.7.
  - No. 131010 on 29 June 2013 provided at Annexure 3.2.8 of the Complaint and supported by COPS Report for Event E52012857 at Annexure 3.2.7.
  - No. 131009 on 29 June 2013 provided at Annexure 3.2.8 of the Complaint and supported by COPS Report for Event E52012857 at Annexure 3.2.7.
  - No. 131008 on 29 June 2013 provided at Annexure 3.2.8 of the Complaint and supported by COPS Report for Event E52012857 at Annexure 3.2.7.
233. The Authority is also satisfied that Mr Flevotomos has been issued with the following single (1) Compliance Notice from NSW Police for contravention of the RSA Marshal Condition under clause 53G of the 2008 Regulation:
- No. 141189 on 12 October 2014 provided at Annexure 2.1.2 of the Complaint and supported by COPS Report for Event E54870610 at Annexure 2.1.1.
234. The Authority is further satisfied that Mr Flevotomos was issued with the following three (3) Penalty Notices from NSW Police for contravention of the Kings Cross Precinct Condition being the Incident Register Condition under clause 53I of the 2008 Regulation, all of which have been **paid**:
- No. 4919296425 on 9 February 2013 provided at Annexure 1.7.2 of the Complaint with the Revenue NSW Payment Summary at Annexure 1.7.3.

- No.4919296416 on 10 February 2013 provided at Annexure 1.8.2 of the Complaint with the Revenue NSW Payment Summary at Annexure 1.8.4.
- No.4919296434 on 14 February 2013 provided at Annexure 1.9.2 of the Complaint with the Revenue NSW Payment Summary at Annexure 1.9.3.

235. The Authority is satisfied that Mr Flevotomos has been issued with the following single (1) Penalty Notice from NSW Police for contravention of the Kings Cross Precinct Condition being the Crime Scene Condition under clause 53J of the 2008 Regulation, which has been **paid**:

- No.4919296398 on 10 February 2013 provided at Annexure 1.8.3 of the Complaint with the Revenue NSW Payment Summary at Annexure 1.8.4.

236. Ground 3 Particulars 2 and 3 are established.

#### Ground 3 Particular 4

237. This Particular specified matters that Mr Flevotomos had before the Courts at the time of lodging this Complaint.

238. On the basis of the information provided by the Complainant in their submission dated 11 October 2018, the Authority accepts that Mr Flevotomos was issued with the following Court Attendance Notices that were finalised on 21 February 2018 at Downing Centre Local Court, with the following fines issued:

- H 243133596 Sequence "1" - breach of the ID Scanning Condition under the former section 116AC(1)(c) of the Act on 9 June 2016 (Annexure 2.3.5) resulting in a fine of \$1100 – *JusticeLink* reference 2017/00167239-001.
- H 243133596 Sequence "4" - breach of the Contact Condition imposed on the licence by the Secretary effective from 30 October 2014 contrary to section 11 of the Act on 9 June 2016 (Annexure 2.3.5) resulting in a fine of \$1100 – *JusticeLink* reference 2017/00167239-004.
- H 243133596 Sequence "37" - breach of the CCTV Condition under clause 53H(1), 53H(2)(a) and (c) of the 2008 Regulation on 23 September 2016 (Annexure 2.4.5 - noting that the date of events specified in the Court Attendance Notice is 23 October 2016) resulting in a fine of \$1100 – *JusticeLink* reference 2017/00167239-037.
- H 243133596 Sequence "2" - breach of the ID Scanning Condition under the former section 116AC(1)(c) of the Act on 23 September 2016 (Annexure 2.5.6) resulting in a \$1100 fine – *JusticeLink* reference 2017/00167239-002.
- H 243133596 Sequence "3" (described in the 11 October 2018 submission as Sequence "6") - breach of the ID Scanning Condition under the former section 116AC(1)(a)(ii) of the Act on 24 September 2016 (Annexure 2.6.5) resulting in a \$1100 fine – *JusticeLink* reference 2017/00167239-006.
- H 243133596 Sequence "7" - breach of the Contact Condition contrary to section 11 of the Act on 24 September 2016 (Annexure 2.7.2) resulting in a \$2200 fine – *JusticeLink* reference 2017/00167239-007.
- H 243133596 Sequence "8" - breach of the Contact Condition imposed on the licence by the Secretary on 30 October 2014 contrary to section 11 of the Act on 24 September 2016 (Annexure 2.8.2) resulting in a \$2200 fine – *JusticeLink* reference 2017/00167239-008.
- H 243133596 Sequence "10" - breach of the Lockout Condition under clause 53C of the 2008 Regulation on 24 September 2016 (Annexure 2.9.5) resulting in a fine of \$1100 – *JusticeLink* reference 2017/00167239-010.
- H 243133596 Sequence "11" - breach of the Lockout Condition under clause 53C of the 2008 Regulation on 22 January 2017 (Annexure 2.10.4) resulting in a \$2200 fine – *JusticeLink* reference 2017/00167239-011.
- H 243133596 Sequence "5" - breach of the Contact Condition contrary to section 11 of the Act on 23 September 2016 (Annexure 4.14.2) resulting in a \$1100 fine – *JusticeLink* reference 2017/00167239-005.
- H 64103320 Sequence "1" for breach of the Contact Condition contrary to section 11 of the Act on 24 September 2016 (Annexure 4.18.2) resulting in a \$2200 fine – *JusticeLink* reference 2017/00239389-001.
- H 64103320 Sequence "2" - breach of the Contact Condition contrary to section 11 of the Act on 2 October 2016 (Annexure 4.19.2 - noting that the date of events specified in the Court Attendance Notice is 4 October 2016 - differs to the date of events specified in the Complaint) resulting in a \$2200 fine – *JusticeLink* reference 2017/00239389-002.

- H 243133596 Sequence “9” - breach of the Contact Condition contrary to section 11 of the Act on 3 October 2016 (Annexure 4.20.2) resulting in a \$2200 fine – *JusticeLink* reference 2017/00167239-009.
- H 243133596 Sequence “38” - licensee permitting indecent, violent or quarrelsome conduct on the licensed premises contrary to section 73(1)(b) of the Act on 23 October 2016 (Annexure 4.21.2 of the Complaint) resulting in a fine of \$4400 – *JusticeLink* reference 2017/00167239-038.
- H 64103320 Sequence “3” for breach of the Contact Condition imposed on the licence by the Secretary on 30 October 2014 contrary to section 11 of the Act on 30 October 2016 (Annexure 4.22.2 of the Complaint) resulting in a \$1100 fine – *JusticeLink* reference 2017/00239389-003.

239. On the information provided by the Complainant in their submission dated 11 October 2018, the Authority notes that the following Court Attendance Notices were withdrawn by Police:

- H 243133596 Sequence 12-35 for breach of the Lockout Condition under clause 53C of the 2008 Regulation on 22 January 2017 (Annexure 2.10.4 of the Complaint) – *JusticeLink* references 2017/00167239-012 to 2017/00167239-035.
- H 243133596 Sequence “41” for licensee permit the possession or use on the licensed premises of any substance that the licensee suspects of being a prohibited plant or a prohibited drug in contravention of section 74(2) of the Act (“Prohibited Drug Offence”) on 23 September 2016 (Annexure 4.16.2 of the Complaint) – *JusticeLink* reference 2017/00167239-041.
- H 243133596 Sequence “42” for breach of the Prohibited Drug Condition under section 74(2) of the Act on 24 September 2016 (Annexure 4.17.2 of the Complaint) – *JusticeLink* reference 2017/00167239-042.

240. Ground 3 Particular 4 is established to the extent specified in the above findings.

#### Ground 3 Particular 5

241. As alleged by the Complainant at Ground 3 Particular 5 and as established by the ASIC and LGNSW records noted above, Mr Flevotomos is the current business owner on the record both in his personal capacity and as the sole/director and secretary of Iguana Bar & Restaurant Pty Ltd. The Authority accepts the Complainant’s contention that he is in a position to have full control over the conduct of the business conducted pursuant to the licence on the Premises.

242. The Authority further accepts, as alleged by the Complainant, that since the business model changed from a nightclub to a strip club on or about 16 August 2014, the licensee Mr Flevotomos has breached:

- The ID Scanning Condition, as found by the Authority at Ground 2 Particular 3 (on 9 June 2016 resulting in two \$1100 fines); Ground 2 Particular 5 (on 23 September 2016 resulting in a \$1100 fine); Ground 2 Particular 6 (on 24 September 2016 resulting in a \$1100 fine) noting that Ground 2 Particulars 5 and 6 concerned breaches involving patrons who Police allege are associates of the Rebels Outlaw Motorcycle Gang.
- The Lockout Condition, as found by the Authority at Ground 2 Particular 9 (on 24 September 2016 resulting in a \$2200 fine); Ground 2 Particular 10 (on 22 January 2017 resulting in a \$2200 fine) and Ground 2 Particular 10 which the Authority notes was a breach perpetrated to allow friends of Mr Flevotomos to enter the Premises (on 22 January 2017 resulting in one fine of \$2200).

243. Ground 3 Particular 5 is established.

#### Ground 3 Particular 6

244. The Complainant here alleges that the evidence demonstrates Mr Flevotomos has frequently turned a blind eye, contrary to his obligations under section 74 of the Act, to: prohibited drug possession and supply by patrons (particularised in Ground 1 Particular 4 and Ground 4 Particular 17); prohibited drug use and possession by staff and patrons (particularised in Ground 1 Particular 4 and 5, Ground 2 Particular 9 and Ground 4 Particulars 1-17, 20 and 22).

245. The Complainant also refers to evidence of wilful blindness by Mr Flevotomos in relation to obligations under section 73 of the Act as particularised in Ground 1 Particular 1, 2, 3, 4, 5 and 6; Ground 2 particular 2, 3, 7 and 8 and Ground 4 Particular 14, 18, 19, 20 and 21.

246. This Particular invites a conclusion on the basis of the other findings specified in relation to Grounds 1 and 2 regarding non-compliance with section 73 and 74 of the Act. The Authority is satisfied that Mr

Flevotomos more likely than not turned a blind eye to the obligations that he and his staff and agents held under sections 73 and 74 of the Act.

247. While most of the non-compliance with section 74 involved staff or contractors permitting drug use or supplying (mostly involving dancers but also involving some security staff) there was a considerable amount of non-compliance with the licensee's duty to not permit indecent conduct on the licensed premises. The degree and duration of non-compliance with sections 73 and 74 that occurred while Mr Flevotomos was both licensee and business owner from 2014 to 2017 satisfy the Authority that he was turning a blind eye to the non-compliance. Mr Flevotomos was receiving real time feedback from the regular detection of substances reasonably suspected to be prohibited drugs on the Premises, the regular issue of Penalty Notices against Mr Flevotomos in respect of indecent actual sexual activity between dancers and patrons and the blatant nature of their sexual and prohibited drug conduct being carried on in private rooms notwithstanding the extensive CCTV system that was in operation. The Authority does not consider it credible that Mr Flevotomos did not know about this activity.

#### Ground 3 Particular 7

248. The Complainant contends that the "recidivism" of Mr Flevotomos' offending demonstrates his disregard for liquor legislation and Mr Flevotomos has not demonstrated the degree of honesty or ability that is reasonably expected of a licensee in New South Wales.
249. The Authority accepts this contention in light of its findings in respect of Grounds 1 and 2 above. Ground 3 Particular 7 is established.

#### Reliance on Ground 1, Ground 2 and Ground 4

250. In addition to the 7 Particulars specified within Ground 3, the Complainant refers to and relies upon those allegations specified in Grounds 1, 2 and 4. The Authority is satisfied, to the extent that these Particulars have been found by the Authority, that they further support the Complainant's case in Ground 3 that Mr Flevotomos is not a fit and proper person.

#### Mr Flevotomos' Response to Ground 3

251. In response to Ground 3 in the Respondents Counsel Submission, the Respondents describe the matters specified in this Complaint as "historical events" confined to the period between 2014 and 2016. They submit that insufficient information has been provided by the Complainant regarding the structural and management changes implemented on the Premises since 2017 and when that information is properly considered, there should be "no cause for concern" regarding the operation of the Premises.
252. The Respondents further submit that no order should be made against a person (Flevotomos) who is not a licensee and does not propose to be a licensee.
253. The Respondents further submit that the Complainant's failure to produce relevant information about the *current* operations of the licensed business reflects poorly upon the substance of the Complaint as it concerns Mr Flevotomos in his capacity as a "close associate". Mr Flevotomos does not dispute that he is a "close associate" of the licence but disputes whether he is not "fit and proper" to occupy that role. The Respondents submit that no order should be made affecting his current role since there is no need for such orders on the basis of the present operations of the licensed business.
254. The Respondents contend that Mr Flevotomos is now merely a "financial beneficiary" of the licensed business and that he also uses the venue for "social purposes". They submit that Mr Flevotomos "should not be denied these social rights of free association" because of a "confined historical period of poor management" that he has "accepted responsibility for and expressed contrition and remorse for" in circumstances when there was a long history of "good management" during which the Premises were operated "without investigation or complaint".
255. Finally, the Respondents submit that if the licensed business is now being successfully operated, and the Complaint does not contend otherwise, then it is difficult to see why making an order against a close associate will make a difference in terms of protecting the public and that such action is more likely to be "purely punitive" in its purpose.

#### Authority Conclusion on Mr Flevotomos' Fitness and Propriety

256. The adverse events that have been found by the Authority in Grounds 1 and 2 and in Particulars 1-5 of Ground 3, when assessed on a cumulative basis, establish one of the worst records of regulatory non-compliance that the Authority has encountered in any disciplinary proceedings under Part 9 of the Act.
257. These adverse events occurred over an extensive period of time during which Mr Flevotomos was both licensee and business owner of the licensed business conducted on the Premises. The first adverse event in evidence occurred in February 2013 and the latest occurred during January 2017. As licensee and business owner Mr Flevotomos was in complete control of the business and was responsible for the venue's compliance with the liquor legislation.
258. Mr Flevotomos' submissions that he found it difficult to manage the transition to an adult entertainment venue do not provide a satisfactory response. If that was the case he was well placed to transition back to a lower risk mode of operation, such as the bar that he operated on the Premises for many years. It is clear enough from his own submissions that he transitioned to an adult entertainment venue for financial gain, and he persisted with this model notwithstanding the unacceptable accumulation of regulatory action against him that were directly attributable to running a high risk late night operation in this notorious red light district. It is telling that notwithstanding the accumulation of regulatory activity he persists to this day as business owner and has not seen fit to change the business model.
259. This Complaint was filed with the Authority in December 2017. The Respondents seek to characterise the adverse evidence as "historical" in nature. Disciplinary complaints will inevitably be framed by reference to a course of *past events*. A reasonable elapsing of time will be necessary while a complaint is prepared. The Authority accepts that the latest act of non-compliance that has been found by the Authority occurred some 11 months before the making of the Complaint, although numerous matters specified in the Complaint were not finalised until 21 February 2018 when the Downing Centre Local Court finalised a number of prosecutions, as detailed in the Complainant submission dated 11 October 2018.
260. An extensive period of consultation has been undertaken by the Authority in the past 12 months, following some extension of the initial timetable to accommodate requests for further information by the Respondents and replies from the Complainant.
261. The Authority accepts that there is no evidence of adverse events before it regarding 2018 and only limited evidence of non-compliance during 2017. Nevertheless, the period of time covered by the Complaint is sufficiently recent and substantial to make a well-informed assessment of Mr Flevotomos' fitness to hold a licence and be a close associate of a regulated position under the Act.
262. The regulatory non-compliance by Mr Flevotomos and his staff and the criminal or anti-social conduct perpetrated by patrons of the business has given rise to a substantial impost upon local Police resources, generating a broad spectrum of regulatory responses – from 13 Compliance Notices (written warnings for detected non-compliance) to 12 Penalty Notices, through to the commencement of 41 Court prosecutions resulting in 15 separate fines being issued. The amount of fines paid by Mr Flevotomos on Penalty Notices is in the order of around \$11,550 with around another \$27,500.00 in fines arising from Local Court judgments.
263. The Authority accepts the submission that Mr Flevotomos has paid Penalty Notices and pleaded guilty to numerous prosecutions for offences against the Act (noting that some of the charges were withdrawn by Police).
264. The Authority does not accept that this supports a finding that Mr Flevotomos is honest or contrite. While the point might be made, in an appropriate case, that a licensee who promptly pays a Penalty Notice or pleads guilty at an early stage adopts a more responsible course than one who ignores a Notice or unsuccessfully defends a matter, it is difficult to give Mr Flevotomos much credit in circumstances where, as a very experienced licensee, he pursued a course of conduct that generated an unacceptable degree of regulatory intervention arising from the repeated contravention of licence conditions.
265. The Authority further notes that a licensee who neither successfully defends a Penalty Notice nor pays that Notice may become liable to enforcement action under the Fines Act. That is, it was ultimately in Mr Flevotomos' *interests* to pay his fines if he does not have any basis to defend the matters.
266. The Authority accepts the Complainant submission that Mr Flevotomos was receiving contemporaneous information from the regulatory action taken against him by Police. This is evident



from the date and content of the COPS Reports recording Police inspections and regulatory activity, the Compliance Notices and Penalty Notices issued against him for the non-compliance perpetrated by either Mr Flevotomos or his staff.

267. Mr Flevotomos must have been aware that his licensed business was the subject of a substantial amount of adverse regulatory action from February 2013 to January 2017. It cannot be the case that he was taken by surprise when this Complaint was finally served upon him in December 2017. It is apparent that Mr Flevotomos elected to operate what was designated by the Secretary as a “high-risk” late trading adult entertainment venue in Kings Cross, an area notorious for alcohol related anti-social conduct, crime and prohibited drug use. Mr Flevotomos continued to operate in this mode, with the licensee or staff flagrantly breaching the licence conditions with some staff and patrons using or supplying substances reasonably suspected of being prohibited drugs.
268. On his own account, Mr Flevotomos pursued the adult entertainment business *model for financial gain*. He made a large investment in the layout of the Premises, presumably in furtherance of this pursuit of financial gain. He had the choice of opting out of this high-risk business model, if - as he now claims - he was not experienced enough in that type of business. Yet he continued this business model and remains a close associate in ultimate control of a high risk adult entertainment venue to this day.
269. In circumstances when other adult entertainment venues in Kings Cross and the Sydney CBD have been constrained by versions of the Contact Condition imposed by the Authority, the Secretary or predecessor regulators – this venue offered extensive sexual contact to their patrons. This must have made the business more attractive to patrons seeking this kind of enhanced experience in a private room - by comparison to venues that complied with the “no contact” rule.
270. The accumulation of non-compliance with the Contact Condition must have been known to Mr Flevotomos, given the extent to which it was being detected by Police over the period in which he held the licence, noting that the first such breach was detected as early as October 2015.
271. While the Respondents’ submissions are imprecise as to the date, it is apparent from the statutory declaration of the Current Licensee dated 18 July 2018, that some 32 CCTV cameras were installed throughout the Premises at some unspecified time after November 2016, when Mr Pickard was engaged as a consultant. Although these additional CCTV cameras were installed, the footage provided in the Complaint Material indicates that the sexual conduct (and prohibited drug use) was blatant, in the sense that staff and patrons engaged in it in full view of the existing CCTV cameras. That supports the inference that staff had a high degree of confidence that this conduct was tolerated.
272. The Authority does not find it credible that such an extensive CCTV system would be set up with no one tasked to monitor it. However, even if the Authority is wrong and no one was in fact monitoring these cameras then in the circumstances of the high-risk nature of the venue and the adult services provided in private rooms, such failure to monitor would be tantamount to a systemic failure of compliance and wilful blindness on the part of the licensee.
273. The Authority is satisfied that Mr Flevotomos must have been permitting the Contact Condition to be contravened, for financial advantage. In the alternative, if the cameras were not being monitored, it is an unacceptable lack of diligence.
274. The Authority does not give any weight to the explanation proffered by Mr Flevotomos that a conversation with a Police officer Sergeant Stanford causes some confusion about the scope of the Contact Condition. Accepting the comments attributed to this Police officer as stated in the Flevotomos Declaration, it is apparent that the officer was of the view that dancers could grind and lap dance while performing and this would not breach the Contact Condition. That is a far cry from the officer endorsing the skin on skin contact, let alone the extensive sexual interaction that gave rise to multiple Penalty Notices and Court prosecutions against Mr Flevotomos for breach of the Contact Condition by numerous dancers.
275. Second, and more fundamentally, as a licensee of some 35 years it was Mr Flevotomos’ personal responsibility to be aware of and understand all of the conditions in effect upon the liquor licence from time to time. The Contact Condition was imposed upon the licence by the Secretary in a decision dated 29 October 2014 (with the condition taking effect from 30 October 2014). It was imposed as an explicit regulatory response to Police concerns about the transition of the business into an adult entertainment venue and the associated escalation of regulatory risk. A record of the liquor licence, evidencing the Contact Condition, was available at all relevant times from the former OLGR (now LGNSW).

276. There is no indication that Mr Flevotomos checked the status of this condition with the Secretary or licensing staff at OLGR/LGNSW. There is no indication that Mr Flevotomos was misled by any professional legal or expert advice. Reliance upon the commentary of a third party is no substitute for a licensee informing themselves of the conditions to which their licence is subject. This is the bare minimum of diligence that is expected of a liquor licensee, let alone one in charge of a high-risk venue.
277. With regard to the Respondents' submission that there is now no "need" to take action by reference to Mr Flevotomos' status as a close associate, the Authority has yet to consider whether any disciplinary action should be taken and will not do so until it has considered any final submissions from the parties.
278. However, any change in operations at the venue does not dispose of this Complaint with regard to Mr Flevotomos' fitness.
279. Notwithstanding Mr Flevotomos' statements in the Flevotomos Declaration that his only involvement with the Premises since transferring the licence to Mr Williams has been in a social capacity and as an economic beneficiary, the Authority accepts, as alleged by the Complainant in their submission dated 22 June 2018, that Mr Flevotomos continued actual control over the business, since the Current Licensee commenced on 1 December 2017. This is established by the ASIC and licensing records before the Authority and further indicated by Mr Flevotomos' continuing presence on the Premises, including his recorded attendance (as noted by the Complainant in their submission dated 22 June 2018) on the following recent occasions –
- 16 June 2018 – when Police attended Dollhouse and conducted a walk through. Although Mr Flevotomos was not at the Premises, the Current Licensee reported that he had been at the Premises earlier that night.
  - 20 May 2018 – when Police attended Dollhouse and saw Mr Flevotomos inside a newly constructed VIP area.
  - 18 May 2018 – when Police attended Dollhouse and conducted a walk through. Mr Flevotomos was present and spoke to Police, showing them a VIP area which he said he had constructed by performing the necessary carpentry, electrical and tiling works.
  - 14 February 2018 – when Police attended the Dollhouse and spoke to Mr Flevotomos.
  - 10 February 2018 – when Police attended the Dollhouse and spoke to Mr Flevotomos.
  - 10 December 2017 – when Police attended the Dollhouse and spoke to Mr Flevotomos.
  - 6 December 2017 – when Mr Flevotomos dropped venue CCTV to Kings Cross Police in response to a request made of the licensee earlier that evening.
280. The Complainant has also advised in this submission dated 22 June 2018 that Mr Flevotomos, in a number of the above occasions, identified himself as the person in charge of the Premises.
281. It is not in dispute that Mr Flevotomos is actually a close associate. He has had ample opportunity to reorient the business away from this high-risk business model but has elected to remain a business owner and person interested in a high-risk adult entertainment venue with an unacceptable record of regulatory non-compliance.
282. Considered cumulatively, the adverse findings above satisfy the Authority that Mr Flevotomos is not a fit and proper person to hold the licence, be a person interested in a business carried on under the licence or be a close associate of the licence.
283. Notwithstanding the 35 years in which Mr Flevotomos has held a licence, and the absence of any adverse events during 2018, there is an extensive body of evidence or material establishing a lengthy record of contravening the licensing legislation in relation to this licence, that has prompted a range of adverse action by Police – from Compliance Notices to Penalty Notices to prosecutions.
284. If the Authority is wrong about Mr Flevotomos' wilful blindness, at a minimum the systematic failure to observe the Contact Condition, Lockout Condition, ID Scanning Condition, CCTV Condition, RSA Marshal Condition, Glass Condition and Incident Register Condition establish a strong case that Mr Flevotomos does not have the diligence or ability to hold a liquor licence.
285. The Authority accepts on the basis of the Flevotomos Declaration that Mr Flevotomos engaged a compliance consultant (Mr Pickard) in or around October 2016. While Mr Flevotomos does not specify the timing of his response with any greater precision than "in or around 2016", the Authority accepts that at some time after October 2016 he took action to dismiss 14 dancers, changed security contractor, implemented a body scanner, removed private rooms and installed a large private area, installed advertising of the non-contact nature of the business, installed further cameras, ceased using "stripper dollars" and moved the stage to make touching the dancers more difficult.

286. As for the lack of any adverse information pertaining to the most recent months, the Complaint has been considered on the Particulars specified when it was filed with the Authority. The Authority does not consider it surprising that under the glare of regulatory scrutiny and having accumulated an unacceptable personal record, the licence was transferred from Mr Flevotomos to Mr Williams and the venue improved its regulatory performance since 2017.
287. Nevertheless, notwithstanding the change of licensee, Mr Flevotomos remains in ultimate control of the business and the Current Licensee is answerable to him. Looking forward, the Authority cannot give its imprimatur to a person who has been responsible for this extent of regulatory non-compliance. The misconduct perpetrated by Mr Flevotomos and his staff cannot be dismissed as “historical” when the latest event occurred as recently as January 2017.
288. In the absence of any persuasive positive evidence regarding Mr Flevotomos’ good character or competence and given the sustained lack of diligence demonstrated from 2013 to 2017 while licensee, business owner and close associate of this licence, the Authority concludes that Mr Flevotomos is not a fit and proper person to hold any of these regulated roles. Ground 3 is established.
289. The Authority accepts the contention that Mr Flevotomos’ elderly mother was ill at relevant times, but that is not an answer to this Complaint. Mr Flevotomos was not compelled to derive a living from adult entertainment. A diligent licensee who finds himself out of his depth always has the option of divesting himself of any involvement with a high-risk venue that is generating an escalating adverse regulatory history for the licensee month after month. A diligent licensee would not seek to maintain the benefit of operating a rogue enterprise if distracted by the demands of an ailing family member. Mr Flevotomos has not demonstrated the honesty or ability one would expect of a reasonably diligent licensee.

#### **Findings on Ground 4 – Public interest**

290. Ground 4 is based on two sections of the Act, being section 139(3)(s) and 139(3)(t), with the Complainant alleging that:
- The licence has not been exercised in the public interest, in that the former licensee, Mr Flevotomos, has permitted the licensed premises to be used for indecent conduct and drug use (contrary to section 73(1)(b) of the Act in respect of indecent conduct and 74(2) and (4) of the Act in respect of prohibited drugs).
  - The continuation of the licence is not in the public interest.
291. The Authority notes that section 139(3)(s) and 139(3)(t) of the Act states:
- (3) *The grounds on which a complaint in relation to a licensee, manager or close associate may be made are as follows:*
- ...
- (s) *that the licence has not been exercised in the public interest*
- (t) *that the continuation of the licence is not in the public interest*
292. When considering a complaint in respect of sections 139(3)(s) and 139(3)(t) of the Act, the Authority will have regard to the relevant public interest in respect of the Act, which may be determined by reference to the statutory objects and considerations in section 3, but also with regard to specific offence provisions provided by the Act.
293. Section 3 of the Act states:
- (1) *The objects of this Act are as follows:*
- (a) *to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,*
- (b) *to facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality,*
- (c) *to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.*
- (2) *In order to secure the objects of this Act, each person who exercises functions under this Act (including a licensee) is required to have due regard to the following:*
- (a) *the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),*

- (b) *the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor,*
- (c) *the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.*

294. Section 73(1) states:

- (1) *A licensee must not permit:*
    - (a) *intoxication, or*
    - (b) *any indecent, violent or quarrelsome conduct, on the licensed premises.*
- Maximum penalty: 100 penalty units.*

295. Section 74(2) states:

- (2) *A licensee must not permit the possession or use on the licensed premises of any substance that the licensee suspects of being a prohibited plant or a prohibited drug.*
- Maximum penalty: 100 penalty units.*

296. Section 74(4) states:

- (4) *An employee or agent of a licensee or a person (other than the licensee) in charge of licensed premises must not permit the possession or use on the licensed premises of any substance that the employee, agent or person suspects of being a prohibited plant or a prohibited drug.*
- Maximum penalty: 100 penalty units.*

297. Ground 4 specifies 25 Particulars whilst also relying on events that are alleged in Ground 1 Particulars 1, 4 and 5 and Ground 2 Particulars 2, 4, 5, 6, 7, 8, 9 and 10.

#### Ground 4 Particular 1

298. Sections 74(2) and (4) of the Act are directed towards preventing the possession or use, on licensed premises, of any substance that the licensee, employee, or agent (as the case may be) “suspects to be a prohibited drug”. The exact chemical composition of the substance need not be established when making findings in the context of a disciplinary complaint. The Authority is not making findings of criminal guilt but may consider whether these sections of the Act have been contravened, on the balance of probabilities, on the material before it. The Authority will consider whether the substance in question was reasonably suspected of being a prohibited drug and whether its use or possession was actually permitted by a relevant person.

299. The Authority accepts, on the CCTV footage of the inside of the Premises recorded on 6 November 2015 between 23.05.27 and 23.28.41, between 23.28.42 and 23.55.41 and between 23.55.41 and 00.15.20 (Annexure 4.1.1 of the Complaint), that on that date at the following time codes:

- 23.05.30 a female dancer and male patron entered a private room.
- 23.17.25 the female dancer allows the male patron to snort a white powder like substance (alleged in Ground 4 Particular 1 to be cocaine) from between her breasts.
- 23.45.55 the female dancer allows the male patron to snort the white powder from her lower back.
- 00.08.04 the female dancer allows the male patron to snort the white powder from between her breasts.

300. The Authority further accepts, on the transcript of interview between Police and the female dancer involved in this incident dated 27 November 2015 (Annexure 4.1.2 of the Complaint), that the dancer attended Kings Cross Police Station where she was shown the CCTV footage of this event. The following exchange occurred:

Police Officer: “OK well from the footage it’s quite apparent that that’s cocaine. I know you haven’t had any yourself but can you tell me what’s happening here?”

Dancer: “Ok. Oh my gosh I’m scared. I don’t know, they do cocaines all the time but I don’t take it. They ask if they can do it so I’m just like yeah”.

Police: “So you say they do it all the time. What do you mean by that? Does it happen regularly in the venue?”

Dancer: "Yeah well I gotta be honest they do it all the time. They either do it on their phone or they do it on me so I'm just like yeah fuck it do it".

...

Police: "How do you know its cocaine?"

Dancer: Because that's the only drugs I know. Snow I know. I've seen it on TV but they don't you have to inject it? I'm not into drugs".

301. The Authority notes that Police recorded, in relation to these events, in COPS Report E 59615727 (Annexure 1.2.2 of the Complaint) that the dancer informed Police that "she believed the drug was cocaine and that she allowed the accused to sniff it from her breasts willingly".
302. The Authority further notes, on the basis of Annexure 4.1.3 of the Complaint, that Police issued the dancer with Penalty Notice 4924255995 in the amount of \$550 for the offence of *Employee permit use of prohibited drug* on 7 November 2015. Annexure 4.1.4 contains the Revenue NSW Payment Summary indicating that \$550 has been paid for Penalty Notice 4924255995. Pursuant to section 150(4)(b) of the Act, payment of this Penalty Notice is taken, for the purposes of this Complaint, to be a conviction against the dancer for this offence.
303. Ground 4 Particular 1 is established.

#### Ground 4 Particular 2

304. The Authority accepts, on the basis of CCTV footage of the inside of the Premises on 7 November 2015 between 00.40.18 and 00.55.50 (Annexure 4.2.1 of the Complaint), that on 7 November 2015 at the following time codes these events occurred:
- 00.41.15 a male patron in a private room pours a white powder like substance (alleged in Ground 4 Particular 2 to be cocaine) onto a small table adjacent to the lounge.
  - 00.41.26 the male patron divides the white powder like substance into two separate lines.
  - 00.41.44 the male patron rolls, what appears to be a bank note, into a cylinder.
  - 00.42.10 the male patron uses the rolled bank note to snort one line of the white powder through his nose.
  - 00.42.32 the male patron divides the remaining line of the white powder into two lines.
  - 00.42.47 the female dancer enters the private room.
  - 00.43.05 the female dancer snorts one of the lines of the white powder into her nose with the male snorting the remaining line of white powder from the table at 00.43.22.
305. The Authority notes that these events are also recorded at Offence "2" of COPS Report E59615727 at Annexure 4.2.2 of the Complaint. This appears to be the same male patron as described in Ground 4 Particular 1 but involves a different female dancer, with the events occurring later that same evening.
306. The Authority is satisfied that the CCTV footage at Annexure 4.2.1 supports the making of an adverse factual finding, on the balance of probabilities, that an employee or agent of the licensee contravened section 74(4) of the Act by permitting the use of a substance suspected to be a prohibited drug on the Premises.
307. Ground 4 Particular 2 is established.

#### Ground 4 Particular 3

308. The Authority accepts, on the basis of CCTV of the inside of the Premises on 7 November 2015 between 01.38.58 and 01.55.55 (Annexure 4.3.1), that on 7 November 2015 at the following time codes these events occurred:
- 01.39.07 there is a male patron in a private room (on the right hand side of the screen) in possession of a small bag containing a white powder like substance (alleged in Ground 4 Particular 3 to be cocaine), which he is holding in his right hand.
  - 01.40.01 the male patron pours the contents of the bag onto a bench seat in the private room.
  - 01.40.33 the male patron divides the white powder into two lines with a credit card.
  - 01.41.07 the male patron snorts one line of the white powder into his nose using a bank note.
  - 01.41.15 the female dancer snorts the second line of white powder into her nose.
309. The Authority notes that these events are also recorded at Offence "3" of COPS Report E59615727 provided at Annexure 4.2.2. This incident appears to be the same male patron involved with the

events in Ground 4 Particulars 1 and 2 and the same female dancer involved in the events of Ground 4 Particular 2, with these events occurring later that same evening.

310. The Authority is satisfied that the CCTV footage at Annexure 4.3.1 supports the making of an adverse factual finding, on the balance of probabilities, that an employee or agent of the licensee engaged in conduct contrary to section 74(4) of the Act by permitting the use of a substance suspected to be a prohibited drug on the Premises.

311. Ground 4 Particular 3 is established.

#### Ground 4 Particular 4

312. The Authority accepts, on the CCTV footage of the inside of the Premises on 7 November 2015 between 02.33.59 to 02.56.47 and between 02.56.48 to 03.04.21 (Annexure 4.4.1), that on 7 November 2015 at the following time codes these events occurred:

- 02:34.03 a male patron and female patron are in a private room.
- 02:34.40 a female dancer enters the room.
- 02:36.39 and 2:39.09 the male patron can be seen holding keys and a small bag of a white powder like substance (alleged in Ground 4 Particular 4 to be cocaine) in his right hand.
- 02:39.27 it appears as though the female dancer snorts the alleged cocaine, in all likelihood, from the key.
- 02:39.41 the male patron appears to snort the alleged cocaine.
- 02:39.42 the male patron puts the keys on the bench beside him while still holding the bag in his left hand.
- 02:40.53 the male patron puts the bag of alleged cocaine into the left pocket of his shirt.
- 02:52.11 a second male patron enters the private room.
- 02:52.55 the second male can be seen holding a small bag of a white powder like substance (alleged in this Particular to be cocaine) in his right hand.
- 02:56.20 the second male patron snorts the alleged cocaine from the female dancer's lower back.
- 03:01.37 the second male patron removes a small resealable plastic bag of a white powder like substance (alleged in this Particular to be cocaine) from his right front pocket. The male is holding the bag in his left hand as he passes a credit card to a security guard and has a conversation with the guard.
- 03:03.23 the second male patron places the alleged cocaine onto a phone on the dance stage and rolls a banknote. The second male picks up the phone and walks toward the bench seat where he snorts the alleged cocaine from the phone through the banknote at 03.04.06.

313. The Authority accepts that these events are also recorded at Offence 10 of the COPS Report for Event E59615727 provided at Annexure 4.2.2 of the Complaint. The Authority also notes that this appears to be the same female dancer as the events in Ground 4 Particulars 2 and 3 with the events occurring later in the same evening.

314. CCTV footage at Annexure 4.4.1 establishes, on the balance of probabilities, that an employee or agent engaged in conduct contrary to section 74(4) of the Act by permitting the use of a substance suspected to be a prohibited drug on the licensed premises. Notably, the CCTV footage also establishes that a security guard conversed with the male patrons whilst one of the male patrons held a small bag of the alleged cocaine in his hand.

315. Ground 4 Particular 4 is established.

#### Ground 4 Particular 5

316. The Authority accepts, as alleged in this Particular, on the basis of COPS Report E59348870 (Annexure 4.5.1), that about 12:01 am on Friday 1 January 2016 Police entered the Premises, noted the level of intoxication amongst the patrons and recorded that when the issue was raised with Mr Flevotomos he told them that patrons were not spending money behind the bar and it was in fact the use of illicit drugs being the contributing factor to the level of intoxication.

317. The Complainant submits that this information demonstrates that Mr Flevotomos failed to exercise his right to prevent drug use by patrons and allowed it to occur unopposed in contravention of s 74(2) of the Act by doing nothing.

318. The Authority considers that this statement by Mr Flevotomos does not establish any offence of permitting prohibited drug use on the Premises but underscores his awareness of the high risk nature

of the venue in that patrons were in fact taking prohibited drugs, resulting in high levels of intoxication and that Mr Flevotomos recognises the cognitive and physical signs of prohibited drug use by patrons that are different to alcohol intoxication.

319. Notwithstanding that a breach of section 74(2) or 74(4) of the Act has not been established by this Particular, the Authority accepts that this statement was in fact made by Mr Flevotomos and demonstrates his awareness of the risks posed with respect to patron drug use when operating a late trading licensed venue of this character in Kings Cross.
320. Ground 4 Particular 5 is established in this respect.

#### Ground 4 Particular 6

321. The Authority accepts as alleged in this Particular, on the basis of COPS Report E364812292 provided at Annexure 4.6.1 of the Complaint that at about 2:15 am on Friday 15 April 2016 Police patrolling Kellett Street, Potts Point saw a male hunched over in the street breathing loudly and dry retching. The Report establishes that when Police searched the male they located a small plastic bag in his rear right jeans pocket containing 0.87 grams of methylenedioxymethylamphetamine ("MDMA") and a small syringe/plunger and a Dettol bottle containing gamma-hydroxybutyric acid ("GHB") liquid in the front right pocket of his pants. The total weight of the bottle and liquor was 15.82 grams. The condition of the male deteriorated, prompting Police to contact paramedics but after Ambulance officers assessed the male they left him in the care of his friend.
322. The Authority is satisfied, on the basis of the COPS Alcohol Linking Report provided at Annexure 4.6.3 that this male had consumed his last drink on the Premises. The Certificate of Conviction at Annexure 4.6.2 establishes that the male was convicted on 3 May 2016 at Sydney Downing Centre for two counts of possessing a prohibited drug (GHB and MDMA) on 15 April 2016 and was fined \$1400.
323. The Complainant contends that this is further evidence of patrons in possession of and using prohibited drugs on the Premises.
324. While there is insufficient evidence to establish that the licensee or any staff of the licensed business permitted the use or possession of prohibited drugs on the Premises, this incident provides further factual information underscoring the culture of prohibited drug use by patrons of this venue and the high-risk nature of this licensed business with respect to the risk of prohibited drugs on the Premises.
325. On the Complainant's further contention in this Particular that Ground 2 Particular 4 and Ground 4 Particulars 5, 10, 12, 13, 23, and 24 demonstrate Mr Flevotomos' knowledge of drug use by patrons inside the licensed Premises while he was in control of the Premises, the Authority makes the following findings:
- Ground 2 Particular 4: COPS Report E 62359641 (Annexure 2.4.1) establishes that at about 2:35 am on Saturday 18 June 2016 Kings Cross Police attended the Premises and located a small resealable plastic bag containing white powder alleged to be cocaine near the door to the DJ equipment area of the first VIP room; 4 small resealable plastic bags containing a white powder also alleged to be cocaine, secreted among the seating areas of the second VIP room; a drinking straw which had been cut down to a 6cm length; several tables containing marks where the alleged cocaine had been cut into lines. While the report does not record Mr Flevotomos on the Premises at this time, it establishes that Police were readily detecting substances suspected to be prohibited drugs on the Premises.
  - Ground 4 Particular 5: As discussed above, the statements made by Mr Flevotomos during an inspection of the Premises on 1 January 2016 establish that he was aware of patrons not spending money on liquor but being intoxicated on the Premises at least in part from illicit drugs.
  - Ground 4 Particular 10: As discussed below the material provided in support of the allegations in Particular 10 are sufficient to establish that a male patron pleaded guilty to the offence of possessing a prohibited drug whilst on the Premises on 9 June 2016. During his sentencing, this patron's legal representative contended that he must have been sold the cocaine in the club as part of the VIP treatment he was given on the night. While there is no indication that Mr Flevotomos was on the Premises at that time, it provides a further indication of the extent of drug use by patrons on the Premises.
  - Ground 4 Particular 12: As discussed below, the evidence or material provided establishes that on 10 July 2016 Police entered the Premises with a drug detection dog and searched a male patron who was found to be in possession of 0.73 grams of cocaine. The Local Court found this male guilty of possessing a prohibited drug but without proceeding to conviction ordered a 12 months good behaviour bond. While there is no indication that Mr Flevotomos was on the

Premises at that time, it provides a further indication of the extent of drug use by patrons on the Premises.

- Ground 4 Particular 13: As discussed below, the evidence or material establishes that on Sunday 10 July 2016 a drug detection dog located a small clear resealable bag containing white powder believed to be cocaine near the rear bar. While there is no indication that Mr Flevotomos was on the Premises at that time, it provides a further indication of the extent of drug use by patrons on the Premises.
- Ground 4 Particular 23: As discussed below, the evidence or material provided establishes that on Sunday 30 October 2016 Police attended the Premises and spoke with Mr Flevotomos, who told them that he had ejected two patrons that he saw “racking up” cocaine on a table in the main bar area.
- Ground 4 Particular 24: As discussed below, the evidence or material provided establishes that on 6 November 2016 Police searched the Premises, while Mr Flevotomos was present during the entire search, with two males arrested for drug offences, a third male arrested for an outstanding warrant and 9 drug exhibits were seized, 8 of which were white powder and identified as cocaine during presumptive drug testing by scene of crime officers.

326. The Authority is satisfied, on the basis of these events, that Flevotomos was aware that patrons were either using or possessing prohibited drugs on the Premises. The Respondents Counsel Submission provides information about certain measures taken to manage the risk of prohibited drugs on the Premises (discussed below), which further indicates Mr Flevotomos’ awareness of the issue. Plainly enough, these measures were inadequate to prevent the extent of prohibited drug use perpetrated by patrons and his own staff.

327. The Complainant further contends in this Particular that Police have demonstrated, in Ground 1 Particulars 4 and 5, Ground 2 Particular 9 and Ground 4 Particulars 1-17, 20 and 22 that there was a high volume of drug use by patrons and staff on the Premises which was easily detected by Police when reviewing CCTV footage. The Authority makes the following findings, on the basis of the evidence relied upon by the Complainant, with regard to the possession or use on the Premises of substances reasonably suspected to be prohibited drugs:

- Ground 1 Particular 4: On 7 November 2015 a male patron in a private room can be seen holding a bag of white powder (alleged in Ground 1 Particular 4 to be cocaine), whilst in the presence of a female dancer, contrary to section 74(4) of the Act. CCTV footage for that date between 01.56.38 and 02.19.28 (provided at Annexure 1.4.1 of the Complaint) clearly shows that at time code 02.13.03 the male patron removes a resealable bag of white powder from his right pocket and at 02.13.29 the male patron undoes the dancer’s bra with his left hand while he holds the alleged cocaine in his right hand.
- Ground 1 Particular 5: On 7 November 2015 a male patron in a private room snorts a white powder (alleged in Ground 1 Particular 5 to be cocaine), whilst in the presence of a female dancer, contrary to section 74(4) of the Act. CCTV footage for that date between 02.33.59 and 02.56.47 and between 02.56.48 and 03.04.21 (Annexure 1.5.1) shows that at time code 02.55.37 a male patron in a private room pours a white powder (alleged to be cocaine) onto the back of a naked female dancer; at 02.56.22 the same male snorts the white powder from the dancer’s lower back through a rolled-up bank note; at 03.03.23 the same male places a white powder (alleged to be cocaine) onto a mobile phone and rolls a banknote; at 03.03.57 the male picks the phone up and walks toward the bench seat and at 03.04.06 snorts the white powder from the phone into his nose through the banknote.
- Ground 2 Particular 9: On 6 November 2016, a male patron at the Premises was searched and found to be in possession of 0.42 grams of a prohibited drug, cocaine, establishing the contention that drug use was occurring inside the Premises by patrons. COPS Report E 63583265 (Annexure 2.9.1) records that during a search warrant executed at the Premises on that date Police “observed a small plastic bag containing a white powder on the ground” in front of a patron and after searching that patron Police located, “behind his mobile phone in his mobile phone case”, a “small plastic bag of white powder” weighing 0.42 grams. The patron identified the white powder as cocaine and stated that he had “just bought it”.
- Ground 4 Particular 1: As noted above, on 6 November 2015 the female dancer permitted a male patron to snort a white powder from her body, contrary to section 74(4) of the Act.
- Ground 4 Particular 2: As noted above, on 7 November 2015 a male patron and a female dancer, whilst in a private room, snort a white powder contrary to section 74(4) of the Act.
- Ground 4 Particular 3: As noted above, on 7 November 2015 a male patron and a female dancer, whilst in a private room at the Premises, snort a white powder contrary to section 74(4) of the Act.



- Ground 4 Particular 4 – As noted above, on 7 November 2015 two male patrons and a female dancer, whilst in a private room at the Premises, snort a white powder contrary to section 74(4) of the Act.
- Ground 4 Particular 5: As noted above, on 1 January 2016 Mr Flevotomos told Police during an inspection of the Premises that the patrons “were not spending money behind the bar and it was in fact the use of illicit drugs being the contributing factor to the level of intoxication”.
- Ground 4 Particular 6: As noted above, on 15 April 2016 a well intoxicated male who consumed his last drink on the Premises was detected in Kellett Street, Potts Point by Police and subjected to a search in which Police located MDMA and GHB.
- Ground 4 Particular 7: As noted below, on 22 May 2016 during an inspection of the Premises Police observed a female dancer on the Premises under the influence of drugs or alcohol.
- Ground 4 Particular 8: As noted below, on 26 May 2016 a male patron and a female dancer, whilst in a private room, snort a white powder, which the female dancer supplied to the male patron contrary to section 74(4) of the Act.
- Ground 4 Particular 9: As noted below, on 29 May 2016, when Police entered the Premises with a drug detection dog (and prior to any arrests being made) a male patron left the Premises who informed Police that he was a solicitor leaving to get some business cards by reason of all the cocaine users inside the Premises at the time of this inspection.
- Ground 4 Particular 10: As noted below, on 9 June 2016, a male patron of the Premises pleaded guilty to the offence of possessing a prohibited drug whilst on the Premises on 9 June 2016 stating that he believed the cocaine was sold to him in the Premises.
- Ground 4 Particular 11: As noted below, on 24 June 2016 a Police drug detection dog entered the Premises and indicated a positive detection in the airspace surrounding a male patron in the Premises, who after being searched with no drugs located told Police he “had some Cocaine earlier in the night”.
- Ground 4 Particular 12: As noted below, on 10 July 2016 Police entered the Premises with a drug detection dog and searched a male patron who was found in possession of 0.73 grams of cocaine. The Local Court found this male guilty of possessing a prohibited drug without proceeding to a conviction and ordering a 12 months good behaviour bond.
- Ground 4 Particular 13: As noted below, on Sunday 10 July 2016 Police were conducting a drug detection dog operation on the Premises and the dog located a small clear resealable bag containing white powder believed to be cocaine on the floor near the rear bar.
- Ground 4 Particular 14: As noted below, on 23 September 2016 a male patron, whilst in a private room at the Premises, snorts a white powder in the presence of a female dancer, contrary to section 74(4) of the Act.
- Ground 4 Particular 15: As noted below, on 23 September 2016 a male patron and a female dancer, whilst in a private room, snort a white powder contrary to section 74(4) of the Act.
- Ground 4 Particular 16: As noted below, on 23 September 2016 a male patron, whilst in a private room, snorts a white powder, in the presence of a nearby female dancer, contrary to section 74(4) of the Act.
- Ground 4 Particular 17: As noted below, on 23 and 24 September 2016 a female dancer leaves a private room with a male patron in it, re-enters with a second male patron who pays her money before appearing to pay the first male patron money in exchange for a clear bag containing a white powder, contrary to section 74(4) of the Act.
- Ground 4 Particular 20: As noted below, on 3 October 2016 a male patron and two female dancers, whilst in a private room, snort a white powder, contrary to section 74(4) of the Act.
- Ground 4 Particular 22: As noted below, on 30 October 2016 plain clothed Police entered the Premises and observed/overheard suspected drug related activity including hearing a person sniffing in the next toilet cubicle, hearing a person say “get that cake off your face man” and observing a female with a white powder like dusting on her nose and lower face and hastily wiping her nose and mouth several times with the back of her right hand.

328. While the Complainant alleges that a “high volume” of drugs was being consumed, the available evidence establishes the frequent use of prohibited drugs by patrons and staff inside the Premises that was readily detected by Police, especially when viewing CCTV footage.

329. The CCTV footage and COPS Reports provided in support of these Particulars (pertaining to events between 6 November 2015 and 30 October 2016) indicate a great deal of detection of what can reasonably be suspected as prohibited drug *possession and use by patrons and staff* while Mr Flevotomos held the licence. This conduct mainly occurred within private rooms, in the presence of dancers, as established in the video noted in support of the above particulars. As noted above, the conduct was flagrant and in full view of the CCTV cameras indicating a high degree of confidence on the part of staff that this conduct was being tolerated.

330. The Authority is satisfied, as alleged by the Complainant in this Ground 4 Particular 6, that on the balance of probabilities Mr Flevotomos turned a blind eye to the possession and use of prohibited drugs on the Premises in contravention of his responsibilities as licensee under section 74 of the Act.
331. Mr Flevotomos' personal awareness of the high risk nature of this venue for drug use is underscored by the ready detection of drug use by patrons by Police inspecting the venue, the CCTV evidence of staff or agents of the licensee permitting the use, possession and supply of substances suspected to be prohibited drugs demonstrates a lack of any real diligence on the part of the licensee to maintain and enforce a system of controls that were in any way proportionate to the degree of risk posed by this type of venue in this location. Given the weight of evidence of patron drug use and the *potential* for proper surveillance of private rooms that was available to the licensee both before and after the 32 additional cameras were installed- the Authority finds that this licensee maintained a permissive attitude and turned a blind eye to drug use.
332. Ground 4 Particular 6 is established.

#### Ground 4 Particular 7

333. The Authority accepts, as alleged in this Particular, that COPS Report E62222739 (Annexure 4.7.1) establishes that between 2:10 am and 3:15 am on Sunday 22 May 2016 Police entered the Premises and observed a female dancer under the influence of drugs or alcohol, with a blank expressionless face, dilated pupils and red glassy eyes, appeared to be unaware of surroundings, continued to dance extravagantly in the back area and observed dancing excessively on her own in the Premises in front of a mirror (making faces, focused on what she was doing however again unaware of the people walking past/staring at her). The Authority accepts, as recorded by Police in this Report, that the majority of patrons on the Premises at that time appeared to be "moderately to well affected by alcohol and/or drugs". The Authority accepts that Police have considerable experience in assessing persons exhibiting signs of intoxication from alcohol and prohibited drugs and there is no evidence casting doubt upon this contemporaneous assessment.
334. Ground 4 Particular 7 is established.

#### Ground 4 Particular 8

335. The Authority accepts, as alleged in this Particular, that CCTV footage of the inside of the Premises on 26 May 2016 between 23.41.35 and 23.43.52 and between 23.43.52 and 23.46.06 (Annexure 4.8.1 of the Complaint) establishes that on 26 May 2016, the following conduct occurred at the following time codes:
- 23.41.35 a male patron and a female dancer are in a private room on the left of the screen.
  - 23.42.37 the female dancer removes a small resealable plastic bag from within hair extensions.
  - 23.44.21 the female dancer replaces the small plastic bag into her hair
  - 23.44.28 the male patron is recorded with a line of a white powder like substance (alleged in Ground 4 Particular 8 to be cocaine), on a mobile phone.
  - 23.44.31 the male patron rolls a bank note.
  - 23.44.45 the male patron snorts half of the white line of powder, alleged to be cocaine, into his nose.
  - 23.44.53 the male patron offers the phone and the rolled bank note to the dancer.
  - 23.45.01 the female dancer snorts the remainder of the white line of powder, alleged to be cocaine.
336. The Authority is satisfied on the basis of this CCTV footage that an employee or agent of the licensee engaged in conduct contrary to section 74(4) of the Act by permitting the possession and use of a prohibited drug on the Premises

337. Ground 4 Particular 8 is established.

#### Ground 4 Particular 9

338. The Authority accepts, as alleged in this Particular on the basis of COPS Report E61499946 (Annexure 4.9.1) that at about 12.45am on Sunday 29 May 2016 Police were utilising a drug detection dog inside the Premises. Shortly after entry a male patron left the Premises and commenced walking east on Kellett Street. Police approached the male, introduced themselves and asked why he had left and he replied: "I live here, I'm coming to get business cards". The male pointed to the apartments located further along Kellett Street and told police that he was a solicitor and he wanted to get some

business with “all cocaine users inside”. The Report notes that “no one was being charged at that point”.

339. While this incident does not establish any offence by the licensee or staff, it provides further factual information establishing an apparent culture of prohibited drug use by patrons on the Premises, underscoring the high-risk nature of this late trading venue with respect to prohibited drugs.

340. The allegations in Ground 4 Particular 9 are established in this respect.

#### Ground 4 Particular 10

341. The Authority accepts, as alleged in this Particular, on the basis of the sentencing transcript for a prosecution at Downing Centre Local Court on Thursday 29 September 2016 (Annexure 4.10.1) that a male patron pleaded guilty to the offence of possessing a prohibited drug whilst on the Premises on 9 June 2016. The defendant made the following statements to the Court, through his solicitor:

- He had “very little recollection of what occurred in the club”
- He “does not recall purchasing the cocaine, although accepts that he did, and that he was in possession, given where the police found it, and his behaviour on the night”
- He “believes that it must have been sold to him in the club, and that is in part informed by him finding subsequently the following day via his bank account statements that he withdrew a total of about \$1,000 that night, although by the end of the night he had less than \$50 in cash in his wallet”.
- He “was taken to a VIP room in the club and he believes that he must have been sold the cocaine as part of that VIP treatment he was being given on the night and in his heavily intoxicated state, he’s gone along with that”.
- He was “hopelessly drunk”.

342. The Authority notes that the patron received an 18 months good behaviour bond under section 10(1)(b) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) in respect of his proven possession of cocaine on the Premises. This incident provides further evidence of a culture of prohibited drug use by patrons, underscoring the high-risk nature of this late trading venue in this respect.

343. Ground 4 Particular 10 is established.

#### Ground 4 Particular 11

344. The Authority accepts, as alleged in this Particular, on the basis of COPS Report E61801919 (Annexure 4.11.1) that at about 11:28 pm on Friday 24 June 2016 Police entered the Premises with a drug detection dog and the dog indicated a detection of a prohibited drug in the free airspace surrounding a male patron. The Report indicates that the male patron was searched with no drugs located but that the male told Police he had “had some Cocaine earlier in the night”.

345. This incident provides further evidence of a culture of prohibited drug use by patrons on the Premises, underscoring the high-risk nature of this late trading venue in this respect.

346. Ground 4 Particular 11 is established.

#### Ground 4 Particular 12

347. The Authority accepts, as alleged in this Particular, on the basis of COPS Event E221910597 (Annexure 4.12.1) that at about 1:25 am on Sunday 10 July 2016 Police entered the Premises with a drug detection dog and the dog indicated a presence of prohibited drug in the immediate airspace surrounding a male patron. The patron was searched and Police found in his wallet a small clear resealable plastic bag containing 0.73 grams of white powder alleged to be cocaine. Court Order Notice dated 25 October 2017 (Annexure 4.12.2) records that the patron pleaded guilty to the offence of possessing a prohibited drug at the Downing Centre Local Court with the offence proven without proceeding to conviction. The patron received a 12 months good behaviour bond under section 10(1)(b) of the *Crimes (Sentencing Procedure) Act 1999* (NSW).

348. This incident provides further evidence of a culture of prohibited drug use by patrons of the Premises, underscoring the high-risk nature of this late trading venue in this respect.

349. Ground 4 Particular 12 is established.

#### Ground 4 Particular 13

350. The Authority accepts, as alleged in this Particular, on the basis of COPS Report E61971938 (Annexure 4.13.1) that at about 1:05 am on Sunday 10 July 2016 Police were conducting a drug dog operation on the Premises and the dog located a small clear resealable bag containing white powder believed to be cocaine on the floor near the rear bar.
351. This incident provides further evidence of a culture of prohibited drug use by patrons of the Premises, underscoring the high-risk nature of this late trading venue in this respect.
352. These events alleged in Ground 4 Particular 13 are established.

#### Ground 4 Particular 14

353. The Authority accepts as alleged in this Particular, on the basis of CCTV footage of the inside of the Premises on 23 September 2016 between 21.50.30 and 22.25.44 at Annexure 4.14.1 of the Complaint indicates that on 23 September 2016 the following conduct occurred at the following time codes:
- 21.53.25 a heavily tattooed male patron enters a private room on the right of the screen followed by a female dancer.
  - 21.55.18 a female dancer appears to search the male patron, patting down his pockets and around his waist.
  - 21.56.19 the female dancer jumps from the stage into the male patron's lap.
  - 21.57.00 the male patron kisses the female dancer's breasts.
  - 22.02.55 the male patron removes a plastic bag containing a significant amount of a white powder like substance (alleged in Ground 4 Particular 14 to be cocaine), from his "bum bag".
  - 22.04.13 the female dancer indicates to the male patron the location of the CCTV camera above him.
  - 22.04.49 the male patron appears to snort the white powder from his hand into his nose wiping his nose afterward.
  - 22.04.50 the male patron replaces the bag of white powder into his "bum bag".
  - 22.06.45 the male patron holds the female dancer by her throat with his right hand, then pushes her head into the back of the seat while covering her mouth with his left hand at 22.06.53.
  - 22.07.03 the male pushes the female dancer's head toward the floor with his right hand twice.
  - 22.07.58 the male patron grabs the dancer's hair with his left hand pulling her head backwards then lifts her up by the throat with his right hand. Similar behaviour continues to occur throughout the footage including the male pushing the dancer against the wall at 22.18.05 and 22.19.31
354. The Authority further accepts, as alleged by the Complainant, that Court Attendance Notice H243133596 Sequence "5" (Annexure 4.14.2) was issued to Mr Flevotomos for the offence of *Licensee fail to comply with conditions of licence* contrary to section 11(2) of the Act between 9:55 pm and 10:29 pm on 23 September 2016.
355. The Authority notes the information provided in the Complainant submission dated 11 October 2018 that this prosecution was finalised on 21 February 2018 at Downing Centre Local Court with Mr Flevotomos fined \$1100, with the matter having the *JusticeLink* reference of 2017/00167239-005.
356. On the basis of this evidence and material the Authority is satisfied that on 23 September 2016 Mr Flevotomos failed to comply with the Contact Condition, which the licence is subject.
357. The CCTV evidence establishes that a male patron, whilst in a private room at the Premises, snorted a white powder in the presence of the female dancer. It establishes, on the balance of probabilities, that an employee or agent of the licensee engaged in conduct contrary to section 74(4) of the Act by permitting the possession of a substance suspected to be a prohibited drug on the Premises.
358. Ground 4 Particular 14 is established.

#### Ground 4 Particular 15

359. The Authority accepts as alleged in this Particular on the basis of CCTV footage of the inside of the Premises on 23 September 2016 between 23.19.06 and 23.54.21 (Annexure 4.15.1) that on 23 September 2016 the following conduct occurred at the following time codes:
- 23.19.06 a male patron and a female dancer are recorded in a private room on the right of the screen.

- 23.24.08 the male patron removes a clear resealable bag containing a white powder like substance (alleged in Ground 4 Particular 15 to be cocaine) from his pocket
- 23.24.46 the male patron places an amount of the powder onto a section of the bench next to him and at 23.25.29 [although slightly off screen] appears to use a credit card to divide the drug.
- 23.25.46 the male patron wipes residue of the drug from the credit card with his thumb and puts his thumb in his mouth.
- 23.26.31 the male patron texts on his mobile phone.
- 23.27.42 the male patron leaves the private room for a short time returning with a bank note which he rolls into a cylinder at 23.29.22.
- 23.29.41 the female dancer leaves the room leaving the curtain door open.
- 23.31.23 the female dancer returns to the room and the male patron hands her the rolled bank note at 23.31.31.
- 23.32.31 [although slightly off screen] the female dancer uses the rolled-up bank note to snort the powder into her nose.
- 23.32.50 the male patron uses the same rolled up bank note to snort the drug.

360. The CCTV footage supports an inference that a white powder featured in the CCTV and reasonably suspected to be a prohibited drug was consumed by the female dancer and the male patron just off camera. The footage establishes, on the balance of probabilities, that an employee or agent engaged in conduct contrary to section 74(4) of the Act by permitting the possession and use of a substance suspected to be prohibited drug on the Premises.

361. The events alleged in Ground 4 Particular 15 are established.

#### Ground 4 Particular 16

362. The Authority accepts, as alleged in this Particular, on the basis of CCTV footage of the inside of the Premises on 23 September 2016 between 23.19.06 and 23.54.21 (Annexure 4.16.1) that on 23 September 2016 the following conduct was recorded to have occurred at the following time codes:

- 23.44.25 a male patron is with a female dancer in a private room on the left of the screen.
- 23.44.28 the male patron removes a small resealable plastic bag containing a white powder like substance (alleged in Ground 4 Particular 16 to be cocaine) from his bag.
- 23.44.37 the male patron places an amount of the white powder onto his mobile phone.
- 23.45.07 the male patron snorts the white powder through his nose using a rolled up bank note. Whilst the patron is snorting the powder the female dancer is looking out of the room appearing to act as a lookout.

363. Although the Complainant alleged that Court Attendance Notice H243133596 Sequence “41” was issued to Mr Flevotomos for the offence of *Licensee permit possession or use of suspected prohibited plant or drug* contrary to section 74(2) of the Act (Annexure 4.16.2), the Complainant submission dated 11 October 2018 advises that this prosecution was withdrawn, with the matter having JusticeLink reference 2017/00167239-041.

364. Notwithstanding this development, the CCTV footage at Annexure 4.16.1 establishes, on the balance of probabilities, that an employee or agent of the licensee engaged in conduct contrary to section 74(4) of the Act by permitting the possession and use of a substance suspected to be a prohibited drug on the Premises.

365. Ground 4 Particular 16 is established to this extent.

#### Ground 4 Particular 17

366. The Authority accepts, as alleged in this Particular, on the basis of CCTV footage of the inside of the Premises on 23 and 24 September 2016 between 23.54.21 and 00.03.46 (Annexure 4.17.1), that on 23 and 24 September 2016 the following conduct was recorded to have occurred at the following time codes:

- 23.58.54 a female dancer leaves a private room occupied by a male patron on the left of the screen.
- 00.02.06 the female dancer returns to the room in the company of a 2<sup>nd</sup> male patron.
- 00.02.24 the 2<sup>nd</sup> male patron appears to hand a bank note to the female dancer, which she then places inside her boot at 00.02.30.
- 00.02.38 the 2<sup>nd</sup> male patron removes cash from his bag and starts counting it.

- 00.02.42 the 1<sup>st</sup> male patron removes a resealable plastic bag from the right-hand pocket of his pants which contains a white powder like substance (alleged in Ground 4 Particular 17 to be methylamphatamine).
- 00.02.45 the 2<sup>nd</sup> male patron hands the cash to the first male patron as the first male patron places the resealable plastic bag inside the right-hand pocket of the 2<sup>nd</sup> male patron's jeans.
- 00.02.50 the 2<sup>nd</sup> male patron removes the item from his pocket and places it down the front of his pants

367. The Complainant contends, and the Authority accepts, that this appears to be a drug transaction conducted in full view of and likely set up by a staff member or agent of the licensee.

368. Although the Complainant alleged that Court Attendance Notice H243133596 Sequence "42" was issued to Mr Flevotomos for the offence of *Licensee permit possession or use of suspected prohibited plant or drug* [noting that the alleged drug is not specified in this document] contrary to section 74(2) of the Act on 24 September 2016 (Annexure 4.17.2), the Complainant submission dated 11 October 2018 advises that this prosecution was withdrawn, with the matter having *JusticeLink* reference 2017/00167239-042.

369. Notwithstanding this development, the CCTV footage at Annexure 4.17.1 supports a finding, on the balance of probabilities that an employee or agent of the licensee engaged in conduct contrary to section 74(4) of the Act by permitting the possession and use of a substance suspected to be a prohibited drug on the Premises.

370. The events alleged in Ground 4 Particular 17 are established to this extent.

#### Ground 4 Particular 18

371. The Authority accepts, as alleged in this Particular, on the basis of CCTV footage of the inside of the Premises on 24 September 2016 between 00.13.39 and 00.34.17 (Annexure 4.18.1), that on 24 September 2016 the following conduct was recorded to have occurred at the following time codes:

- 00.14.09 a female dancer enters a private room on the left of the screen, with a male patron.
- 00.19.37 the male patron removes his penis from his pants.
- 00.19.59 the female dancer performs oral sex on the male.
- 00.21.01 the female dancer removes her underwear and sits on the male's exposed penis.
- 00.21.42 another female dancer enters the room then leaves.
- 00.22.25 the female dancer removes her bra
- 00.22.30 the male patron sucks the female dancer's breasts and at 00.22.40 touches the female dancer's vagina.
- 00.23.35 the male patron performs oral sex on the female dancer.
- 00.25.49 another employee walks into the room.
- 00.26.16 the female dancer licks the male patron's penis with her tongue and then performs oral sex on him.
- 00.27.30 the male digitally penetrates the dancer, this continues until 00.30.24.
- 00.30.30 the male patron performs oral sex on the female dancer.
- 00.31.36 the female dancer performs oral sex on the male patron.
- 00.32.27 the female performs oral sex on the male at the same time as he performs oral sex on her.
- 00.32.44 the female dancer performs oral sex on the male until 00.33.31 when a security guard enters the room and the show ends.

372. Although the Complaint states these events occurred on "24 September 2017", that is a typographical error in that the CCTV footage and Court Attendance Notice (at Annexure 4.18.2) indicates the event occurred on 24 September 2016.

373. The Authority further accepts, as alleged in this Particular, that Court Attendance Notice H64103320 Sequence "1" (Annexure 4.18.2) was issued to Mr Flevotomos for the offence of *Licensee fail to comply with conditions of licence* (Contact Condition) contrary to section 11(2) of the Act for conduct occurring between 12:14 am and 12:33 am on 24 September 2016.

374. The Complainant submission dated 11 October 2018 establishes that this prosecution was finalised on 21 February 2018 at Downing Centre Local Court with Mr Flevotomos fined \$2200, with the matter having the *JusticeLink* reference of 2017/00239389-001.

375. The events alleged in Ground 4 Particular 18 are established.

#### Ground 4 Particular 19

376. The Authority accepts, as alleged in this Particular, on the basis of CCTV footage of the inside of the Premises on 2 October 2016 and 3 October 2016 between 23.58.59 and 01.43.25 (Annexure 4.19.1), that on 2 October 2016 and 3 October 2016 the following conduct occurred at the following time codes:

- 23.58.59 a male patron is in a private room on the right of the screen, with two female dancers.
- 23.58.59 one of the female dancers performs oral sex on the other dancer, she then proceeds to digitally penetrate the other dancer, whilst this is occurring the male is touching both dancers on their legs.
- 23.59.48 the female dancer removes her fingers from the other dancer's vagina and places those same fingers into the mouth of the male patron, who proceeds to lick her fingers.
- 00.00.16 a security guard is seen looking into the room from the hallway while one dancer performs a sex act on the other dancer.
- 00.02.24 one female dancer performs oral sex on the other female dancer.
- 00.07.01 both female dancers sit on the patron's lap and perform sex acts on each other, whilst this is occurring the patron is groping one of the female's bottoms.
- 00.12.15 a female dancer performs oral sex on another female dancer.

377. The Authority further accepts, as alleged by the Complainant at Ground 4 Particular 19, that Court Attendance Notice H64103320 Sequence "2" (provided at Annexure 4.19.2) was issued to Mr Flevotomos for the offence of *Licensee fail to comply with conditions of licence* (the Contact Condition) contrary to section 11(2) of the Act between 11:59 pm on 3 October 2016 and 12:12 am on 4 October 2016. The Authority notes that the date the offence is alleged to have occurred in this Court Attendance Notice differs from the date in the Complaint and time stamped on the CCTV footage.

378. Notwithstanding this, the Authority accepts the additional information provided in the Complainant submission dated 11 October 2018, that this prosecution was finalised on 21 February 2018 at Downing Centre Local Court with Mr Flevotomos fined \$2200, with the matter having the *JusticeLink* reference of 2017/00239389-002.

379. On the basis of this evidence and material the Authority is satisfied that on 2 October 2016 and 3 October 2016 Mr Flevotomos failed to comply with the Contact Condition, which the licence is subject.

380. Ground 4 Particular 19 is established.

#### Ground 4 Particular 20

381. The Authority accepts, as alleged in this Particular, on the basis of CCTV footage of the inside of the Premises on 2 October 2016 and 3 October 2016 between 23.58.59 and 01.43.25 (Annexure 4.20.1), that on 3 October 2016 the following conduct occurred at the following time codes:

- 00.37.28 a male patron (who is known to Police) and two female dancers are in a private room on the left of the screen.
- 00.37.50 the male patron pours a white powder like substance (alleged in Ground 4 Particular 20 to be cocaine), onto the back of his left hand and offers it to the dark-haired female dancer who at 00.37.52 snorts the drug through her nose, then wipes her nose a number of times.
- 00.44.31 the male patron pours white powder (alleged in this Particular to be cocaine) onto the naked left breast of the dark-haired dancer and at 00.44.33 the blonde dancer snorts the drug by inhaling it through her nose and using her finger to clear up the remnants and place into her mouth.
- 00.44.55 the male patron pours white powder (alleged in this Particular to be cocaine), believed to be cocaine onto the naked left breast of the blonde dancer and snorts the drug into his nose.
- 00.45.00 the dark-haired dancer wipes her nose repeatedly while the blonde dancer removes her underwear at 00.45.04.
- 00.45.48 the dancer with the dark hair performs oral sex on the blonde dancer and digitally penetrates the blonde dancer's vagina at 00.46.48.
- 00.47.44 the male patron touches the blonde dancer's vagina.
- 00.52.45 the dark-haired dancer performs oral sex on the blonde-haired dancer.
- 00.53.47 the dark-haired dancer performs oral sex on the blonde dancer.

382. The Authority further accepts, as alleged by the Complainant at Ground 4 Particular 20, that Court Attendance Notice H243133596 Sequence "9" (provided at Annexure 4.20.2) was issued to Mr

Flevotomos for the offence of *Licensee fail to comply with conditions of licence* (the Contact Condition) contrary to section 11(2) of the Act between 12:37 am and 12:47 am on 3 October 2016.

383. The Authority accepts the information provided in the Complainant submission dated 11 October 2018, that this prosecution was finalised on 21 February 2018 at Downing Centre Local Court with Mr Flevotomos fined \$2200, with the matter having the *JusticeLink* reference of 2017/00167239-009.
384. While the prosecution concerned an offence committed in respect of the Contact Condition, the Authority is satisfied that the CCTV footage at Annexure 4.20.1 supports the making of an adverse factual finding, on the balance of probabilities, that an employee or agent engaged in conduct contrary to section 74(4) of the Act by permitting the possession and use of a prohibited drug on the licensed Premises.
385. Ground 4 Particular 20 is established in this respect

#### Ground 4 Particular 21

386. The Authority accepts, as alleged in this Particular, on the basis of CCTV footage of the inside of the Premises on 22 and 23 October 2016 between 23.21.26 and 00.31.58 (Annexure 4.21.1), that on 23 October 2016 the following conduct occurred at the following time codes:
- 00.01.30 two female dancers and three male patrons enter a larger private room.
  - 00.10.44 one of the female dancers performs oral sex on the other female dancer whilst both are lying naked on the stage.
  - 00.12.02, whilst both females are still engaged in a sex act, a male security guard enters the room and leaves a short time later without taking any action in relation to the indecent conduct occurring on the stage. At the same time a second member of staff, a waitress serving drinks, also enters the room and leaves. The 1<sup>st</sup> female continues to perform oral sex on the 2<sup>nd</sup> dancer intermittently between 00.13.34 and 00.18.13
  - 00.20.37 the two female dancers change positions and at 00.21.12 the 2<sup>nd</sup> dancer performs oral sex on the 1<sup>st</sup> dancer.
  - 00.23.32 a security guard enters the room while the 2<sup>nd</sup> dancer performs oral sex on the 1<sup>st</sup> dancer and leaves without taking any action in relation to the indecent conduct occurring on the stage.
  - 00.31.15 the show ends.
387. The Authority further accepts, as alleged by the Complainant at Ground 4 Particular 21, that Court Attendance Notice H243133596 Sequence “38” (provided at Annexure 4.21.2) was issued to Mr Flevotomos for the offence of *Licensee permit indecent, violent or quarrelsome conduct on licensed premises* (indecent conduct) contrary to section 73(1)(b) of the Act between 12:01 am and 12:35 am on 23 October 2016.
388. The Authority accepts the information provided in the Complainant submission dated 11 October 2018, that this prosecution was finalised on 21 February 2018 at Downing Centre Local Court with Mr Flevotomos fined \$4400, with the matter having the *JusticeLink* reference of 2017/00167239-038.
389. The Authority is satisfied that Mr Flevotomos permitted indecent conduct on the Premises contrary to section 73(1)(b) of the Act on 23 October 2016.
390. Ground 4 Particular 21 is established.

#### Ground 4 Particular 22

391. The Authority accepts, as alleged in this Particular, on the basis of the statements of Sergeant Peter John Bolt, Senior Constable Luke Carter and Senior Constable Robert Pazderka dated 30 October 2016 (Annexure 4.22.1), that about 1:00 am on Sunday 30 October 2016 Police entered the Premises in plain clothes. The statement of Sergeant Peter John Bolt establishes the following matters:
- The general pricing structure for the dancers was \$200 for half an hour or \$100 for around 10 minutes. The house kept half of the costs and the performer received the other half.
  - A female dancer stated: “if you tip extra you can do anything, touch me anywhere, whatever you want baby”.
  - A male, with respect to whom a female performer stated “He’s the boss”, was wearing a t-shirt with the motif Fuck the Clock written on the front. He was associating with many of the males in the Premises.



- After entering a toilet cubicle the officer could “hear sniffing” from the cubicle next to him and heard a door open and a male say “get that cake off your face man”.
- Males and females were loitering in the toilet area.
- After entering the male toilets at a later stage, the officer noticed a large amount of vomit lying in the corner next to the basin.
- During a private show with two female dancers (that both Sergeant Bolt and Senior Constable Carter attended), both girls encouraged “the provision of extra money by way of tips” using words to the effect of “if you pay extra you can touch anything you want” and “come on pay us extra and you can have it all”.
- During the private show “without request or solicitation”, one of the naked female dancers “left the stage area and straddled” both of the officers.

392. The statement of Senior Constable Luke Carter recorded *inter alia* that:

- A male wearing a t-shirt bearing the caption “fuck the clock” was “constantly walking in and around the premises, talking with security, staff members and female performers and patrons”. The officer heard on multiple times female performers referring to this male as “the boss”.
- On each occasion of entering the male bathroom, there was what appeared to be a scattered pile of human vomit in the corner near the hand basin and urinal.
- A male patron “slapped” a female dancer “strongly on the buttocks”. When the officer asked a female dancer if he was allowed to do that, the female dancer stated “No but he’s friends with the boss”.
- During a private show with two female dancers (that both Sergeant Bolt and Senior Constable Carter attended), one of the dancers said: “For \$50 you can touch”.
- During the private show one of the naked female dancers “sat on” both officers’ laps.

393. The statement of Senior Constable Robert Pazderka establishes that:

- The man wearing the “Fuck the Clock” t-shirt was believed by the officer to be Mr Flevotomos because a female dancer would later inform the officer that “he’s the boss, he owns the place. He runs it with his wife”.
- One of the dancers explained that “a private dance for all three (3) of us would be \$200 for one (1) person and \$100 each for the other two (2), being \$400 total”.
- The officer was “startled” to see a female in the cubicle of the male toilets. The female had “a white powder like dusting on her nose and lower face” and as she exited the cubicle, he saw her “hastily wipe her nose and mouth several times with the back of her right hand”. As she did this, she “sniffed loudly several times”.
- The officer noticed what appeared to be vomit under the paper towel dispenser.
- The officer observed a female dancer exit the female toilet in the company of a male patron.
- During a private performance with a female dancer, the dancer at times moved away from the stage area, sat on the officer’s lap and caressed his legs and front with her naked body, rubbing her belly, buttocks and breast against him.

394. As alleged in this Particular, that Court Attendance Notice H64103320 Sequence “3” (Annexure 4.22.2) was issued to Mr Flevotomos for the offence of *Licensee fail to comply with conditions of licence* (the Contact Condition) contrary to section 11(2) of the Act at 1:00 am on 30 October 2016.

395. The Authority accepts the information provided in the Complainant submission dated 11 October 2018, that this prosecution was finalised on 21 February 2018 at Downing Centre Local Court with Mr Flevotomos fined \$1100, with the matter having the *JusticeLink* reference of 2017/00239389-003.

396. Ground 4 Particular 22 is established.

#### Ground 4 Particular 23

397. The Authority accepts, as alleged in this Particular, on the basis of COPS Report E314505793 (Annexure 4.23.1) and the Premises Incident Register 3100261 (Annexure 4.23.2), that at about 2:10 am on Sunday 30 October 2016 Police attended the Premises and spoke with Mr Flevotomos, who told them he had ejected two patrons he saw “racking up” cocaine on a table in the main bar area.

398. The Complainant contends that this disclosure by the licensee is evidence that he is aware that his patrons are using prohibited drugs. The Authority accepts that this incident provides further information establishing that patrons of this venue use prohibited drugs on the Premises and Mr Flevotomos was on notice of this risk.

399. Ground 4 Particular 23 is established to this extent.

#### Ground 4 Particular 24

400. The Authority accepts the allegation in this Particular, on the basis of COPS Report E63568041 (Annexure 4.24.1), that on 6 November 2016 Police executed a search warrant at the Premises and *two* males were arrested for drug offences with a third male arrested for an outstanding warrant. The Report further establishes that Police seized a total of 9 drug exhibits, 8 of which involved white powder and identified as cocaine during presumptive drug testing by scene of crime officers.
401. The allegations in this Particular are not completely supported by the COPS Report in that the Complainant has alleged that *three* patrons were arrested in possession of prohibited drugs and seven other drug detections were made (involving drugs apparently dropped to the floor).
402. The Authority accepts that the evidence provided further establishes the extent of drug possession by patrons on the Premises.
403. Ground 4 Particular 24 is established to this extent.

#### Ground 4 Particular 25

404. The Authority accepts, as alleged in this Particular, on the basis of the application for a Short Term Closure Order in evidence at Annexure 4.25.2, that on 6 November 2016 such application was made to an on-call magistrate at Parramatta Local Court under section 82 of the Act.
405. The Authority is further satisfied on the basis of the Notice of the Short Term Closure at Annexure 4.25.1 that the magistrate was satisfied that a serious breach of the Act has occurred, or is likely to occur, on the Premises – being a breach of Section 73(1)(a), 73(1)(b), 74(2), 74(4) and Division 3 of the Act in that an employee or agent of the licensee has or will permit the Premises to be used for the possession or use of drugs on the Premises, indecent conduct, intoxication and closure of the Premises was necessary to prevent or reduce a significant threat or risk to the public interest. The Order was granted for the 72-hour period between 2:00 am Sunday 6 November 2016 and 2:00 am Wednesday 9 November 2016.
406. The Authority further notes COPS Report for Event E63568041 (Annexure 4.25.3), which states that on 6 November 2016 Police executed a search warrant at the Premises and that a number of forensic swabs were taken from surfaces in the private rooms and other areas to support drug supply charges under investigation. Provided at Annexure 4.25.4 is a NSW Government Health Pathology Clinical and Environmental Toxicology Analyst's Certificate dated 21 November 2016 stating that two of the swabs tested positive for cocaine. The Authority accepts that this establishes the presence of cocaine on the Premises apparent from surfaces inside the Premises on 6 November 2016.
407. The evidence and material relied upon in support of this Particular provides further information demonstrating the use by patrons of prohibited drugs on the Premises and underscores the high-risk nature of the venue with respect to possession and use of prohibited drugs, particularly, cocaine, at the venue.
408. Ground 4 Particular 25 is established to this extent.

#### Ground 1 and Ground 2 repeated with respect to Ground 4

409. In addition to the 25 Particulars that are specified in Ground 4, at the commencement of Ground 4 the Complainant contends that the licence has not been exercised in the public interest by reference to the matters alleged in Ground 1 Particular 1 and Ground 2 Particulars 2, 7, and 8.
410. First, the Complainant submits that these matters establish contraventions of section 73(1)(b) of the Act, which prohibits a licensee from permitting any indecent, violent or quarrelsome conduct on licensed premises.
411. On the basis of the evidence discussed above and relevantly to the public interest case in Ground 4, the Authority is satisfied, on the balance of probabilities, that the following conduct did occur in contravention of section 73(1)(b) with respect to permission of *indecent conduct* on the Premises
- Ground 1 Particular 1 - establishes that two penalty notices were issued for events on 25 October 2015 involving a male patron with his hands around a female dancer touching her breasts and buttocks with a second male patron with his pants down and his penis exposed,

touching the female dancers genitalia, appearing to move his hand in and out of her, whilst she is on her all fours.

- Ground 2 Particular 2 - establishes that on 26 May 2016 a male patron performed oral sex on a female dancer in a private room at the Premises.
- Ground 2 Particular 7 - establishes that on 24 September 2016 a female dancer performed oral sex on a male patron in a private room at the Premises.
- Ground 2 Particular 8 - establishes that on 24 September 2016 a male patron and female dancer performed oral sex on each other in a private room at the Premises.

412. Second, the Complainant further bases its public interest case upon the allegations in Ground 1 Particulars 4 and 5 and Ground 2 Particular 4, submitting that these matters establish contraventions of the prohibition in section 74(1)(b) of the Act against a licensee permitting licensed premises to be used for the sale of a substance suspected of being a prohibited drug.

413. The Authority notes the following:

- Ground 1 Particular 4 establishes that on 7 November 2015 a male patron in a private room at the Premises can be seen holding a bag of what may reasonably be suspected as a prohibited drug, whilst in the presence of a female dancer.
- Ground 1 Particular 5 establishes that on 7 November 2015 a male patron in a private room at the Premises can be seen snorting what may reasonably be suspected as a prohibited drug firstly from the back of a naked dancer and secondly from a mobile phone whilst no agent or employee is present.
- Ground 2 Particular 4 establishes that on Saturday 18 June 2016 Kings Cross Police attended the Premises and located a small resealable plastic bag containing white powder, alleged to be cocaine, near the door to the DJ equipment area of the first VIP room; 4 small resealable plastic bags containing white powder, alleged to be cocaine, secreted among the seating areas of the second VIP room; a drinking straw which had been cut down to a 6cm length; several tables containing marks where the alleged cocaine had been cut into lines.

414. While the matters alleged in Ground 1 Particulars 4 and 5 establish the permission, by *employees or agents* of the licensee, of the possession or use of substances suspected to be prohibited drugs on the Premises, this aspect of Ground 4 is framed by reference to an alleged contravention of section 74(1)(b). Some caution is required when the conduct in relation to prohibited drugs does not involve the direct participation of the licensee himself.

415. However, at the start of Ground 4 the Complainant bases its public interest case by reference to the allegations in the following further Particulars. While these matters primarily involve the permission by staff or agents of the licensee of the use substances suspected to be prohibited drugs, when considered cumulatively they establish that this licence was not exercised in the public interest over a prolonged period of time in that there was a systemic failure to control the possession or use of substances suspected to be prohibited drugs on the Premises:

- Ground 1 Particulars 4 and 5
- Ground 2 Particulars 4 and 9
- Ground 4 Particulars 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 22, 23, 24 and 25.

416. The Complainant also bases its public interest case on the allegations in Ground 2 Particulars 5 and 6 pertaining to contraventions of the (former) section 116AC(1) of the Act. The Authority accepts, on the basis of its findings set out above, that these matters do establish contravention, by the licensee of requirements in section 116AC(1) of the Act, which related to the ID Scanning requirements. As discussed above, the Authority accepts that these contraventions of the Act are established. While section 116AC(1) has since been repealed, the same obligation is now provided by section 116E of the current Act.

417. Finally, the Complainant bases its public interest case upon the allegations in Ground 2 Particulars 9 and 10 regarding contraventions of clause 53C of the (former) 2008 Regulation relating to lockout requirements. As discussed above, the Authority accepts that these contraventions of the 2008 Regulation are established. While the 2008 Regulation has been replaced by the 2018 Regulation with effect from 1 September 2018, this same obligation is maintained by clause 89 of the 2018 Regulation.

#### The Respondents on Ground 4

418. In the Respondents Counsel Submission, the Respondents submit that the “breadth” of Ground 4 is inconsistent with the “narrow” submissions made in the Complaint.
419. The Respondents further submit that the only basis asserted in the Complaint for findings in respect of the licence is that the licence should be cancelled to ensure the Respondents’ financial interest in the business of the liquor licence is removed. The Respondents submit that Ground 4 involves the replication of the allegations made against the former licensee and is based upon the “historical” events between 2014 and 2017.
420. The Respondents contend that the Complaint omits information relevant to the Authority’s consideration of whether the licence is being exercised in the public interest. Counsel submits that upholding Ground 4 would be procedurally unfair to the Current Licensee (Mr Timothy Williams), the current Business Owner and current Premises Owner given that they are not named in the Grounds of Complaint. Counsel submits that correspondence with the Complainant indicates that this Complaint is only made against Mr Flevotomos.
421. The Authority is satisfied that the licence has not been exercised in the public interest. It has made this assessment in light of a substantial course of unlawful conduct that has occurred over a substantial and recent period of time during which Mr Flevotomos has both held the licence and owned the licensed business.
422. While the question of whether disciplinary action should be taken is a forward-looking process, disciplinary complaints are inevitably framed by reference to acts or omissions that have already occurred. The most recent of the adverse events specified in the Particulars occurred on 22 January 2017, 11 months prior to the filing of this Complaint in December 2017. Numerous prosecutions that were before the Courts at the time of the Complaint were not finalised by the Local Court until February 2018.
423. Some time has passed while the Authority has accorded procedural fairness to the parties and assessed the merits of the Complaint. It is inevitable that time will pass while the regulatory process is underway. As noted above, the Authority cannot dismiss the events found by the Authority as “historical” in nature.
424. The Authority does not accept the submission that it is unable to make a finding on whether the licence has been exercised contrary to the public interest or whether continuation of the licence is in the public interest by reason that the Grounds have a focus on Mr Flevotomos. While the licence has now been transferred to a third party, Mr Flevotomos is a former licensee and remains in ownership and control of the business. The Current Licensee, Business Owner and Premises Owner have all had ample opportunity to make submissions on this Complaint including Ground 4. The same licence attaches to the Premises as was the subject of extensive adverse regulatory action from 2013 to 2017. The Premises is still exercised as an adult entertainment venue. Mr Flevotomos remains in ultimate control of the operation, having been involved with the Premises for around 35 years. The new licensee is employed by and accountable to the business owner. There is an unacceptable risk of Mr Flevotomos’ involvement with the operation of the business conducted pursuant to the licence.
425. The systemic failure to observe the Contact Condition, Lockout Condition, ID Scanning Condition, CCTV Condition, RSA Marshal Condition, Glass Condition and Incident Register Condition establish a strong case that the licence has not been exercised in the public interest.
426. The extensive contravention of the licence conditions not only undermines the integrity of the licensing regime, but the flagrant disregard for the Contact Condition poses a real threat to the public interest in respect of the safety of the female dancers, particularly those performing in private rooms, when males in various degrees of intoxication from liquor and or prohibited drugs are on the Premises. It is quite conceivable that patrons encouraged by some workers who partake in sexual contact may “cross a line” and engage in non-consensual conduct with others, resulting in a sexual assault. That condition is also designed to ensure that a licensee does not permit indecent conduct on licensed premises contrary to section 73(1)(b) of the Act. Actual sexual or oral intercourse on licensed premises still amounts to indecent conduct, even at an adult entertainment venue.
427. The Authority is satisfied, on the basis of a cumulative assessment of its findings, that the licence has not been exercised in the public interest over a substantial period of time during recent years. The Authority does not accept the Respondents’ characterisation of these adverse events as “historical”. Moreover, given that the business conducted pursuant to this licence remains under the control of Mr

Flevotomos, who still personally attends the Premises, the Authority is not satisfied, looking forward, that it is in the public interest for this licence to continue to operate in its present configuration. There remains an unacceptable risk of further offences or other conduct contrary to the public interest – occurring on the Premises – particularly once the immediate threat of regulatory action on this Complaint subsides. Notwithstanding that there has been a replacement of licensee and improvement in the performance of the venue in response to mounting enforcement action (and, in particular the making of this Complaint) by Police, the current ownership of the licensed business combined with the unacceptable history of the Premises while under Mr Flevotomos' control satisfy the Authority that the continuation of this licence is not in the public interest.

428. Ground 4 is established.

## **SUBMISSIONS ON DISCIPLINARY ACTION**

429. On 29 January 2019 the Authority sent to the Complainant and Respondents a detailed Findings Letter notifying its findings on the Grounds of Complaint and inviting final submissions confined to the question of what, if any, disciplinary action should be taken in light of those findings.

430. The Authority gave notice to the parties that a finding that the continuation of a licence is not in the public interest will usually result in cancellation of the licence. However, were the following proposed condition imposed upon the licence, this may obviate the need to consider licence cancellation among the options for any disciplinary action that are available to the Authority:

*With effect from 1 March 2019, Mr Ulysses Flevotomos and any other person who has held an interest in Iguana Bar and Restaurant Pty Ltd ABN 41 129 898 942 after 29 October 2014 will not be permitted to enter the Premises nor have any involvement, whatsoever with the business conducted on the Premises.*

431. In a brief two-page letter dated 7 February 2019, the Complainant submits that the following disciplinary action would be appropriate in light of the Authority's findings:

- (a) Order, under section 141(2)(c)(i) of the Act, Mr Flevotomos to pay a monetary penalty (the quantum is not specified).
- (b) Impose, pursuant to section 141(2)(e) of the Act, the condition proposed by the Authority in the Findings Letter.
- (c) Disqualify, under section 141(2)(f) of the Act, Mr Flevotomos from holding a licence, or from being the manager of a licensed premises for such a period as the Authority sees fit.
- (d) Disqualify, under section 141(2)(f) of the Act, Mr Flevotomos from being a close associate of a licensee, for such a period as the Authority sees fit.

432. The Complainant reiterates that Mr Flevotomos is not a fit and proper person to hold a licence or be a close associate of a licensee and under his stewardship, the licence was not exercised in the public interest. The Complainant submits that the consumption of prohibited drugs as well as the sexual and indecent conduct permitted on the Premises harmed the public interest in respect of the Act. The Complainant contends that the misconduct on the Premises that has been found by the Authority was serious and goes beyond simply a lack of supervision or due diligence.

433. The Complainant contends that Mr Flevotomos' long standing involvement with the Premises as both licensee and close associate, carries with it an "entrenched authority" which may be difficult to conclusively divest should Mr Flevotomos be permitted to enter or have any involvement whatsoever with the business conducted on the Premises.

434. The Complainant refers to *Ogilvie v Independent Liquor and Gaming Authority* [2016] NSWCATAD 195 where the New South Wales Civil and Administrative Tribunal held that the jurisdiction under Part 9 of the Act serves a broader protective purpose, by comparison to the penal jurisdiction of the Local Court. The Complainant submits that a substantial regulatory response is now required for the protection of the public and to serve the public interest with respect to the Act.

435. The Complainant submits that their recommended disciplinary action would serve this broader protective purpose and serve to safeguard the objects of the Act by delivering accountability to Mr Flevotomos in addition to acting as a general and specific deterrent to others in the industry.

436. In a four-page letter dated 26 February 2019, the new legal representative for the Respondents, Ms Sarina Roppolo of Kardos Scanlan lawyers, respond to the Findings Letter and the Complainant's final submission as follows.

437. The Respondents submit that cancellation of the licence is not warranted because: this disciplinary action is not sought by the Complainant; there is significant unchallenged evidence that since the events the subject of the findings the Current Licensee has successfully implemented significant compliance and management changes at the Premises, such that the cancellation is not supported by the purposes of the Act; the Complaint did not allege any circumstances of aggravation, nor did the findings address any circumstances of aggravation, as would make it open to the Authority to suspend the license for a period exceeding 12 months, but not exceeding 24 months under 141(2)(b) of the Act and the power to suspend a licence is limited to a period not exceeding 12 months under section 141(2)(b) of the Act. In such circumstances, the Respondents submit that it would be an unreasonable exercise of discretion for the Authority to cancel the licence altogether.
438. The Respondents further submit that significant weight should be given to material changes in the conduct of the licence since October 2016, including the replacement of the licensee, renovation of the Premises (by removal of private dance areas), and the introduction of a new compliance program under the supervision of an independent compliance consultant, Mr Chris Pickard. These changes to business practices were made to ensure that the previous errors in the oversight and management of the licence by Mr Flevotomos are not repeated. The changes in the conduct of the licence since October 2016 are so material that there is now no basis for finding that it is necessary or appropriate to cancel the licence to serve the objects of the Act.
439. Moreover, the Respondents submit that it is not open to the Authority to impose a licence condition that would prevent Mr Flevotomos from entering the Premises where Mr Flevotomos was present only at a small number of events the subject of the findings, those events were at the lower end of seriousness, and were not of sufficient seriousness to warrant such a condition; and there is no finding by the Authority, nor any basis for such a finding, that Mr Flevotomos' presence on the Premises will have the likely effect of causing or contributing to further contraventions of licence conditions or breaches of the Act.
440. While Mr Flevotomos accepts that, pursuant to section 91 of the Act, he was "as a matter of law" responsible for the personal supervision and management of the conduct of the business of the Premises at all times identified in the events the subject of the Complaint, Mr Flevotomos was, as a matter of fact, only found to be directly or personally involved with the following adverse events:
- (a) Two occasions of permitting patrons to enter the Premises during the lock-out period contrary to clause 53C of the 2008 Regulation, on 24 September 2016 (Ground 2 Particular 9) and 22 January 2017 (Ground 2 Particular 10). One of those occasions involved Mr Flevotomos permitting entry of 25 guests who had attended his wife's birthday party. That this breach involved Mr Flevotomos admitting entry to his wife and her friends, rather than members of the public, is a matter that should be taken into account in mitigation of any disciplinary consequence of that breach.
  - (b) One breach of the Incident Register Condition on 14 February 2013 (Ground 1 Particular 9), where the Authority notes from the description in the relevant penalty notice that Mr Flevotomos was involved in the assault not recorded in the register. This incident occurred approximately 18 months before the business was converted into a gentleman's club, and over 6 years prior to the imposition of any disciplinary action. The fact that Mr Flevotomos has not been personally involved in such a breach in that time is a matter that should be taken into account in mitigation of any disciplinary consequence of that breach.
  - (c) Two occasions of breach of the Contact Condition, on 9 June 2016 (Ground 2 Particular 3) and 30 October 2016 (Ground 4 Particular 22). On 9 June 2016 Mr Flevotomos was present when a patron kissed a female dancer. On 30 October 2016 a patron slapped a female dancer "strongly on the buttocks" at a time when Mr Flevotomos was on the Premises. No finding appears to have been made that Mr Flevotomos was present or otherwise aware of this event.
441. The Respondents characterise the Authority's findings in relation to the other particularised matters as involving Mr Flevotomos engaging in culpable wilful blindness. They submit that those matters involve a "lower level of responsibility" than were Mr Flevotomos to have been present on those occasions when licence conditions and the Act were contravened.
442. The Respondents submit that there is no evidence or finding that Mr Flevotomos was present at any time that a patron was recorded by CCTV apparently using prohibited drugs, or a patron or dancer was engaged in an indecent act with another dancer. Any *personal* involvement by Mr Flevotomos would carry a higher level of personal culpability – and a greater need for public protection – than is warranted from the findings the Authority has made.

443. Since these other events occurred when Mr Flevotomos was not present, there is no basis for any finding that the objects of the Act will be served by preventing Mr Flevotomos from entering the Premises. The objects of the Act can be served by a condition that prevents Mr Flevotomos from having any involvement whatsoever with the *business* conducted on the Premises.
444. The Respondents submit that when determining the duration of any period of disqualification, Mr Flevotomos does not have any personal criminal history of involvement in indecent acts, prohibited drug use or supply of prohibited drugs. Mr Flevotomos has assisted with the Authority's investigation and there is no suggestion that Mr Flevotomos has been dishonest, at any time, in his dealings with the Complainant or the Authority. These factors alone make Mr Flevotomos' circumstances readily distinguishable from previous cases where the Authority has imposed life bans upon the licensees of similar establishments who have permitted the premises to be used for the supply of prohibited drugs (such as the Authority's decisions regarding Mr David Lakepa and Mr Michael Amante).
445. The Respondents further note that the Complainant has not specified a lifetime period of disqualification, and submit this should be given significant weight in the exercise of any discretion. Mr Flevotomos relies upon his extensive period of holding a licence without incident, dating back to 1982, prior to the events that are the subject of the Authority's findings. The Respondents conclude that an extended period, but less than a life ban, is appropriate in the circumstances of this case.

## DISCIPLINARY ACTION

446. The Authority has given further consideration to the Complaint and all of the material before the Authority, including the final round of submissions on disciplinary action provided by the Complainant and the Respondents.
447. Section 141(2) of the Act provides the relevant powers of the Authority to take disciplinary action in the event that a disciplinary complaint is established. The section states:

### 141 Disciplinary powers of Authority

...

- (2) If the Authority is satisfied that any of the grounds (other than a criminal organisation associate ground) on which the complaint was made apply in relation to the licensee, manager or close associate, the Authority may decide not to take any action or may do any one or more of the following:
- (a) cancel the licence,
  - (b) suspend the licence for such period not exceeding 12 months (or, if circumstances of aggravation exist in relation to the complaint, not exceeding 24 months) as the Authority thinks fit,
  - (c) order the licensee or manager to pay, within such time as is specified in the order:
    - (i) a monetary penalty not exceeding 500 penalty units (in the case of a corporation) or 200 penalty units (in the case of an individual), or
    - (ii) if circumstances of aggravation exist in relation to the complaint—a monetary penalty not exceeding 1,000 penalty units (in the case of a corporation) or 400 penalty units (in the case of an individual),
  - (d) suspend or cancel any authorisation or other approval (other than the licence itself) held by the licensee under this Act,
  - (e) impose a condition to which the licence, or any authorisation or approval held by the licensee under this Act, is to be subject or revoke or vary a condition to which the licence or any such authorisation or approval is subject,
  - (f) disqualify the licensee from holding a licence, or from being the manager of licensed premises or the close associate of a licensee, for such period as the Authority thinks fit,
  - (g) withdraw the manager's approval to manage licensed premises,
  - (h) disqualify the manager from being the manager of licensed premises, or from holding a licence or being the close associate of a licensee, for such period as the Authority thinks fit,
  - (i) in the case of a limited licence held on behalf of a non-proprietary association—order that a limited licence is not, for a period of not more than 3 years from the date on which the decision takes effect, to be granted to any person on behalf of the non-proprietary association,
  - (j) disqualify the close associate from being a close associate of a licensee or the manager of licensed premises for such period as the Authority thinks fit,

- (k) disqualify the close associate from holding a licence for such period as the Authority thinks fit,
- (l) order the licensee, manager or close associate to pay the amount of any costs incurred by:
  - (i) the Secretary in carrying out any investigation or inquiry under section 138 in relation to the licensee, manager or close associate, or
  - (ii) the Authority in connection with the taking of disciplinary action against the licensee, manager or close associate under this section,
- (m) reprimand the licensee, manager or close associate.

448. The Authority notes that pursuant to section 141(2A) of the Act, any monetary penalty or costs ordered by the Authority are payable to the Secretary of the NSW Department of Industry. Section 141(3) provides that if the Authority orders a licensee or approved manager to pay a monetary penalty and the penalty is not paid within the time specified in the Order, the Authority may either cancel the licence, or suspend the licence until such time as the penalty is paid.

449. The Authority's disciplinary jurisdiction provided by Part 9 of the Act is protective, rather than punitive in nature. As held by the New South Wales Supreme Court in *Seagulls Rugby League Football Club Ltd v Superintendent of Licences* (1992) 29 NSWLR 357 (at paragraph 373):

*The over-riding purpose of the jurisdiction is the protection of the public, and of members of clubs by the maintenance of standards as laid down in the Act.*

450. Nevertheless, as observed by Basten JA of the New South Wales Court of Appeal in *Director General, Department of Ageing, Disability and Home Care v Lambert* (2009) 74 NSWLR 523 ("*Lambert*"), while disciplinary proceedings are protective, that is not to deny that orders made by disciplinary bodies may nonetheless have a *punitive effect*. His Honour observed that a Court (and hence a regulatory decision maker such as the Authority) should be mindful that a protective order is reasonably necessary to provide the required level of public protection.

451. At paragraph 83 of the judgment in *Lambert*, Basten JA states that the "punitive effects" may be relevant to the need for protection in that:

*...in a particular case, there may be a factual finding that the harrowing experience of disciplinary proceedings, together with the real threat of loss of livelihood may have opened the eyes of the individual concerned to the seriousness of his or her conduct, so as to diminish significantly the likelihood of repetition. Often such a finding will be accompanied by a high level of insight into his own character or misconduct, which did not previously exist.*

452. At paragraph 85 of the judgment, Basten JA observes that:

*...the specific message of the disciplinary cases explaining that the jurisdiction is entirely protective is to make clear that the scope of the protective order must be defined by the reasonable needs of protection, as assessed in the circumstances of the case.*

453. The Authority further notes that when determining the nature of the appropriate disciplinary action, the conduct of the respondent to a complaint *up until its final determination* is relevant and should be taken into account: *Sydney Aussie Rules Social Club Ltd v Superintendent of Licences* (SC (NSW) Grove J, No. 16845 of 1990, unreported BC9101830)

#### Non-cancellation of the licence under section 141(2)(a) of the Act

454. The Authority has found that the licence was exercised contrary to the public interest for an extensive period of time while Mr Flevotomos was responsible for the licence and owned the business. While this finding would ordinarily move the Authority to cancel a licence, the Authority has decided not to take that disciplinary action in the particular circumstances of this case.

455. First, as noted by the Respondents, the Complainant has not sought an order that the licence be cancelled.

456. Second, while there will inevitably be a lag between the occurrence of misconduct and the determination of a disciplinary complaint, the latest adverse event particularised in the Complaint occurred on 22 January 2017. While it was not open to the Complainant to re-cast the Grounds of Complaint, submissions on disciplinary action do not provide any further adverse information regarding the exercise of the licence since that time.



457. Third, as indicated in the Findings Letter, the imposition of the below licence condition excluding Mr Flevotomos or any person who held an interest in the licensed business at times from being physically present will provide a strong form of reassurance that the venue will not relapse into the pattern of non-compliance found by the Authority, or come under the influence of persons who may tolerate a permissive environment in respect of those matters.
458. Fourth, the Authority accepts that the licensed business has undertaken certain measures proposed by its compliance consultant, Mr Pickard, to reduce the risk of further contravention of the legislation, including the removal of private rooms, and the introduction of a new compliance program.

Monetary penalty pursuant to section 141(2)(c)(i) of the Act

459. The Authority notes that the Complainant seeks the imposition of a monetary penalty but does not specify the quantum of penalty. The Respondents concede that it is open to the Authority to impose a monetary penalty in this case. The Authority notes the nature and extent of the regulatory contraventions established by this Complaint, and the conscious decision of Mr Flevotomos to reorient the licenced enterprise away from a bar and toward the provision of adult entertainment services, apparently for financial gain. The Authority further notes his election to continue that high risk mode of operation in circumstances where he was receiving consistent feedback that the venue was operating contrary to the public interest, through a range of regulatory and prosecutorial actions taken by Police during his tenure as licensee and business owner.
460. Section 141(2) of the Act provides for a maximum monetary penalty of 200 penalty units or \$22,000.00 for an individual, other than in circumstances of aggravation. Having regard to the number and range of regulatory contraventions found by the Authority and the wilful blindness evident from a CCTV system that was not, it would seem, properly utilised by Mr Flevotomos or his staff, the Authority is satisfied that a monetary penalty of \$10,000.00 is an appropriate signal to Mr Flevotomos and others in the industry that this degree of regulatory non-compliance or laxity in the pursuit of financial gain will have financial consequences.

Disqualification of Mr Flevotomos as a licensee or approved manager under section 141(2)(f) of the Act

461. The Complainant seeks that Mr Flevotomos be disqualified from holding a licence or from being the manager of licensed premises. The Respondents accept that it is open to the Authority to disqualify Mr Flevotomos for an extended period, but the circumstances do not warrant a lifetime ban.
462. The Authority does not accept the Respondents' submissions that Mr Flevotomos' record does not place him in the most serious category of non-compliance. The Respondents submit, and the Authority has no evidence to the contrary, that Mr Flevotomos has an uneventful prior record in the liquor industry since 1982 (including the running of this Premises as a bar since 1998) with no personal history of indecent conduct, drug use or supply. Nevertheless, the Authority considers that his extensive experience in the liquor industry underscores how the non-compliance arose from a conscious decision to pursue a high-risk mode of business, for financial gain. He was wilfully blind to the flagrant and ongoing non-compliance with the liquor legislation by his staff or agents.
463. Under section 11(2) of the Act a licensee who does not comply with any condition of a licence is punishable by a maximum penalty of \$11,000.00, one year's imprisonment or both. While the facts of regulatory non-compliance may vary in seriousness, the breaches of the Contact Condition were relatively serious in this case through their repetition and associated use of prohibited drugs by staff and patrons. As noted above, this conduct placed staff and patrons of the licensed premises in jeopardy. The totality of non-compliance established by this Complaint was systemic in nature and demonstrated a personal lack of willingness and ability to comply with the law. It necessitated the expenditure of substantial resources by local law enforcement officers tasked with monitoring and responding to the permissive environment fostered on the Premises. Looking forward, on the evidence and material before it, the Authority cannot give its imprimatur to Mr Flevotomos being entrusted with another liquor licence in New South Wales again.

#### Disqualification of Mr Flevotomos as a close associate under section 141(2)(f) of the Act

464. The Complainant seeks that Mr Flevotomos be disqualified as a close associate. The Respondents accept that it is open to the Authority to disqualify Mr Flevotomos for an extended period but the circumstances do not warrant a lifetime ban.
465. The Authority notes that through the assumption of a position of business ownership, or the exercise of executive power, a close associate has the real potential to have day to day influence over the affairs of a licensed business.
466. A close associate has a more indirect position of responsibility for the regulatory affairs of a licence but it is a substantial relationship nonetheless and may include the power to hire and fire the licensee. While the Authority cannot entertain Mr Flevotomos holding a licence again, it would not rule out Mr Flevotomos occupying an interest or position in relation to another licensed business that may rise to the level of a close associate.
467. To that end the Authority disqualifies Mr Flevotomos from being the close associate of a licensee for ten (10) years. This will adequately protect the industry and the community from Mr Flevotomos becoming involved with a licensed enterprise in this State in the short to medium term while sending an appropriate signal to other business owners that systemic non-compliance, of the kind demonstrated by Mr Flevotomos, will have consequences for their ability to participate in the industry, not simply hold a licence.
468. While Mr Flevotomos has not indicated that he holds an interest in any other licensed premises in New South Wales, the disqualification will commence on 20 May 2019 in respect of the Premises and on 21 March 2019 in respect of any other licensed premises in New South Wales, to give Mr Flevotomos a period of time to divest his interest in the Premises.

#### Imposition of licence condition under section 141(2)(e) of the Act

469. The Complainant supports the imposition of a condition in terms proposed by the Authority in the Findings Letter. The Respondents submit that while it is open to the Authority to require Mr Flevotomos to be excluded from involvement with the business, the Authority should not impose a condition preventing Mr Flevotomos from entering the Premises.
470. The Authority notes that notwithstanding the change in licensee, Mr Flevotomos has elected to continue to operate a business involving the same high-risk business model (adult entertainment) that facilitated many of the regulatory contraventions found by the Authority. The Authority accepts the Complainant's contention that Mr Flevotomos has an "entrenched" association with the Premises. It is not in dispute that Mr Flevotomos has been involved as a licensee and business owner for a long period of time.
471. Notwithstanding that the licence was transferred to Mr Williams who commenced as licensee in December 2017, with no apparent regulatory issues detected since then, the Authority is mindful that this licence has been at risk of disciplinary action since the Complaint was filed in December 2017.
472. Looking forward, the Authority finds there to be an unacceptable risk that Mr Flevotomos may seek to become involved with the day-to-day affairs of the business conducted on the Premises, even in a non-executive or informal capacity. The risk applies to any other person who may have had an interest in the business conducted pursuant to the licence since it became an adult entertainment venue, on or around 29 October 2014.
473. The Authority has considered the Respondents submissions as to the extent to which Mr Flevotomos has been present during the occurrence of adverse events detected by law enforcement. The Authority repeats its observations as to the flagrant and systemic nature of the misconduct established by this Complaint, for which Mr Flevotomos is responsible. The Respondents have not provided any persuasive reason why Mr Flevotomos would even need to be on the Premises once he has been removed as a licensee and close associate.
474. The Authority considers that it is a prudent regulatory response, in the circumstances of this case, to impose a condition of the kind foreshadowed in the Findings Letter. Short of cancelling the licence altogether, this condition will best ensure that Mr Flevotomos and any other person interested in the business during its recent problematic history may not become involved with the Premises again.

475. The Authority has determined that this condition shall commence effect in two months, as a reasonable period of notice to divest any involvement with the Premises.

## ORDERS

476. Pursuant to section 141(2)(c)(i) of the Act, the former licensee Mr Ulysses Flevotomos is ordered to pay to the Secretary of the New South Wales Department of Industry a monetary penalty in the amount of **\$10,000.00** within 28 days, by **17 April 2019**.

477. Pursuant to section 141(2)(e) of the Act, impose the following condition on the licence of Dollhouse Nightspot, LIQO624006713:

With effect from **20 May 2019**, Mr Ulysses Flevotomos and any other person who has held an interest in Iguana Bar & Restaurant Pty Ltd (ABN 41 129 898 942) between 29 October 2014 and 20 March 2019 will not be permitted to enter the Premises nor have any involvement whatsoever with the business conducted on the Premises. For the avoidance of doubt, this does not include the licensee Mr Timothy Williams.

478. Pursuant to section 141(2)(f) of the Act, the former licensee Mr Ulysses Flevotomos is disqualified from holding a liquor licence and from being the approved manager in respect of any licensed premises in New South Wales **for life** from **21 March 2019**.

479. Pursuant to section 141(2)(f) of the Act, the former licensee Mr Ulysses Flevotomos is disqualified from being a close associate of any licensee in New South Wales for a period of **ten (10) years** from **20 May 2019**.

## REVIEW RIGHTS

480. Pursuant to section 144 of the Act, an application for review of this decision may be made to the New South Wales Civil and Administrative Tribunal ("NCAT") by the Complainant or the person against whom any disciplinary action is taken by the Authority in relation to the Complaint.

481. An application for review should be made within 28 days of the date of notification of this decision. Please visit the NCAT website at [www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au) or contact the NCAT Registry at Level 10, John Maddison Tower, 89-90 Goulburn Street, Sydney for further information.

Yours faithfully



Philip Crawford

**Chairperson**

For and on behalf of the **Independent Liquor and Gaming Authority**

## Schedule A – Complaint Material

1. One-page document containing contact details for the applicant A/Superintendent Robert Allison of the Kings Cross Local Area Command (“Complainant”), the former licensee Mr Ulysses Flevotomos, the case officer Senior Sergeant Donna Murphy of Kings Cross Police Station, the current business owner Iguana Bar & Restaurant Pty Ltd (“Business Owner”) and current premises owner Sven Pty Limited (“Premises Owner”).
2. Official Independent Liquor and Gaming Authority (“Authority”) form titled *Disciplinary complaint against a liquor licence or registered club – application by Commissioner of Police or Secretary* comprising five pages, signed by the Complainant and dated 29 November 2017.
3. A forty-page submission outlining the grounds (“Grounds”) of the complaint (“Complaint”) signed by the Complainant and dated 29 November 2017 (“Complaint Letter”).
4. Annexure 1: Instrument of delegation signed by the Commissioner of Police, A P Scipione APM, on 31 August 2015.
5. Annexure 2: Alcohol Related Crime Information Exchange (“ARCIE”) key licence details as at 13 June 2017 for Dollhouse Nightspot (“Dollhouse”) liquor licence LIQO624006713 located at 13-15 Kellett Street, Kings Cross (“Premises”).
6. Annexure 3: Australian Securities and Investments Commission (“ASIC”) details for Australian Business Number (“ABN”) 41129898942, Iguana Bar & Restaurant Pty Ltd, as at 23 June 2017 and ASIC iASK request 7903268 against Iguana Bar & Restaurant Pty Ltd on 26 June 2017.
7. Annexure 4: ASIC details for ABN 48000095965, Sven Pty Ltd, as at 23 June 2017 and ASIC iASK request 7903287 against Sven Pty Ltd on 26 June 2017.
8. Annexure 5: Plan/diagram outlining the internal floor plan of the Premises, annotated by hand to indicate the location of the CCTV cameras.
9. Annexure 6: Sixteen photographs, annotated to depict the layout of the Premises, including three photographs of the street front of the Premises and thirteen still shots of CCTV footage depicting the inside of the Premises.
10. Annexure 7: Decision of the former Licensing Court of New South Wales granting, on 8 December 1997, the application for “New Grant of a Nightclub Licence” including a copy of the approved plan/diagram of the licensed Premises.
11. Annexure 8: Decision of a delegate of the Secretary of then NSW Trade & Investment under section 54(1) of the *Liquor Act 2007* NSW (“Act”) on whether to impose conditions on the Dollhouse liquor licence in relation to CCTV and adult entertainment dated 29 October 2014.
12. Annexure 1.1.1: Computerised Operational Policing System (“COPS”) Report for Event E59558861.
13. Annexure 1.1.2: NSW Police Force Penalty Infringement Notice 4931956013 issued to Mr Flevotomos for breach of a licence condition on 25 October 2015.
14. Annexure 1.1.3: NSW Police Force Penalty Notice 4931956004 issued to Mr Flevotomos for breach of a licence condition on 25 October 2015.
15. Annexure 1.1.4: State Debt Recovery Office, now Revenue NSW payment summary (“Revenue NSW Payment Summary”) of Penalty Notices 4931956013 and 4931956004.
16. Annexure 1.2.1: CCTV footage of the inside of the Premises on 6 November 2015 between 23.05.27 and 23.28.41.
17. Annexure 1.2.2: COPS Report for Event E59615727.
18. Annexure 1.2.3: NSW Police Force Penalty Notice 4936397135 issued to Mr Flevotomos for breach of a licence condition on 6 November 2015.
19. Annexure 1.2.4: Revenue NSW Payment Summary of Penalty Notice 4936397135.
20. Annexure 1.3.1: CCTV footage of the inside of the Premises on 6 November 2015 between 23.38.37 and 23.45.45.
21. Annexure 1.3.2: COPS Report for Event E59615727.
22. Annexure 1.3.3: NSW Police Force Penalty Notice 4936397171 issued to Mr Flevotomos for breach of a licence condition on 6 November 2015.
23. Annexure 1.3.4: Revenue NSW Payment Summary of Penalty Notice 4936397171.
24. Annexure 1.4.1: CCTV footage of the inside of the Premises on 7 November 2015 between 01.56.38 and 02.19.28.
25. Annexure 1.4.2: COPS Report for Event E59615727.

26. Annexure 1.4.3: NSW Police Force Penalty Notice 4936397218 issued to Mr Flevotomos for breach of a licence condition on 7 November 2015.
27. Annexure 1.4.4: Revenue NSW Payment Summary of Penalty Notice 4936397218.
28. Annexure 1.5.1: CCTV footage of the inside of the Premises on 7 November 2015 between 02.33.59 and 02.56.47 and for inside the Premises on 7 November 2015 between 02.56.48 and 03.04.21.
29. Annexure 1.5.2: COPS Report for Event E59615727.
30. Annexure 1.5.3: NSW Police Force Penalty Notice 4936397227 issued to Mr Flevotomos for breach of a licence condition on 7 November 2015.
31. Annexure 1.5.4: Revenue NSW Payment Summary of Penalty Notice 4936397227.
32. Annexure 1.6.1: Then Office of Liquor, Gaming and Racing ("OLGR") now Liquor and Gaming NSW ("LGNSW") General Penalty Notice 3108013105 issued to Mr Flevotomos for breach of a licence condition on 29 November 2015.
33. Annexure 1.6.2: Revenue NSW Payment Summary of Penalty Notice 3108013105.
34. Annexure 1.7.1: COPS Report for Events E51477716 and E50965649.
35. Annexure 1.7.2: NSW Police Force Penalty Notice 4919296426 issued to Mr Flevotomos for breach of a licence condition on 9 February 2013.
36. Annexure 1.7.3: Revenue NSW Payment Summary of Penalty Notice 4919296425.
37. Annexure 1.8.1: COPS Report for Event E51488839.
38. Annexure 1.8.2: NSW Police Force Penalty Notice 4919296416 issued to Mr Flevotomos for breach of a licence condition on 10 February 2013.
39. Annexure 1.8.3: NSW Police Force Penalty Notice 4919296398 issued to Mr Flevotomos for breach of a licence condition on 10 February 2013.
40. Annexure 1.8.4: Revenue NSW Payment Summary of Penalty Notices 4919296416 and 4919296398.
41. Annexure 1.9.1: COPS Report for Event E50393506.
42. Annexure 1.9.2: NSW Police Force Penalty Notice 4919296434 issued to Mr Flevotomos for breach of a licence condition on 14 February 2013.
43. Annexure 1.9.3: Revenue NSW Payment Summary of Penalty Notice 4919296434.
44. Annexure 2.1.1: COPS Report for Event E54870610.
45. Annexure 2.1.2: NSW Police Force Penalty Notice 4924255710 issued to Mr Flevotomos for breach of a licence condition on 12 October 2014 and NSW Police Force Compliance Notices 141189 and 141190 issued to Mr Flevotomos for failure to comply with a licence condition on 12 October 2014.
46. Annexure 2.1.3: Certificate of Order from the Local Court at Downing Centre Sydney dated 7 December 2016 in R v Flevotomos for licensee fail to comply with conditions of licence.
47. Annexure 2.2.1: CCTV footage of the inside of the Premises on 26 May 2016 between 23.25.50 and 23.30.59 and for inside the Premises on 26 May 2016 between 23.30.59 and 23.41.35.
48. Annexure 2.3.1: COPS Report for Event E61345245.
49. Annexure 2.3.2: Department of Industry LGNSW Kings Cross approved ID scanner requirements dated April 2017.
50. Annexure 2.3.3: Affidavit of Evidence sworn by Michael Giannak, the Technical Manager for Group Security Solutions Pty Ltd trading as Patronscan, dated 14 June 2016 including a one page document depicting the real time photograph taken of a patron entering the Premises on 9 June 2016 and the photograph from the identification document used to gain entry to the Premises.
51. Annexure 2.3.4: CCTV footage of the inside of the Premises on 9 June 2016 between 22.37.48 and 23.48.08.
52. Annexure 2.3.5: Court Attendance Notice H243133596 Sequence "1" issued to Mr Flevotomos for breach of the former section 116AC of the Act on 9 June 2016 and Court Attendance Notice H243133596 Sequence "4" issued to Mr Flevotomos for breach of section 11(2) of the Act on 9 June 2016.
53. Annexure 2.4.1: COPS Report for Event E62359641.
54. Annexure 2.4.2: COPS Report for Event E62107862.
55. Annexure 2.4.3: COPS Report for Event E120900002.
56. Annexure 2.4.4: Work Sheet/Tax Invoice No. 2777 from Sure Security Systems Pty Ltd to Iguana Bar dated 7 July 2016.
57. Annexure 2.4.5: Court Attendance Notice H243133596 Sequence "37" issued to Mr Flevotomos for breach of section 11(2) of the Act on 23 October 2016.

58. Annexure 2.5.1: COPS Report for Event E62643657.
59. Annexure 2.5.2: CCTV footage of the entrance of the Premises on 23 and 24 September 2016 between 21.00.00 and 03.30.01.
60. Annexure 2.5.3: Two still photographs taken from the CCTV footage of the entrance to the Premises on 23 September 2016, annotated to indicate the identity of two patrons.
61. Annexure 2.5.4: Affidavit of Evidence sworn by Michael Giannak, the Technical Manager for Group Security Solutions Pty Ltd trading as PatronsCan, dated 20 October 2016 including a two page document depicting the real time photographs taken of two different patrons entering the Premises on 23 September 2016 and the photographs from the identification documents used to gain entry to the Premises.
62. Annexure 2.5.5: Statement of Police made by Detective Sergeant Paul Roe on 10 November 2016 in relation to the identity of a patron of the Premises. This statement is accompanied by a signed copy of the real time photographs taken of two different patrons entering the Premises on 23 September 2016 and the photographs from the identification documents used to gain entry to the Premises (provided at Annexure 2.5.4 above) and a NSW Police Force Exhibit Photograph taken by Police on 27 October 2016 providing identification for one of the patrons who entered the Premises.
63. Annexure 2.5.6: Court Attendance Notice H243133596 Sequence "2" issued to Mr Flevotomos for breach of section 11(2) of the Act on 23 September 2016.
64. Annexure 2.6.1: COPS Report for Event E62643657.
65. Annexure 2.6.2: CCTV footage of the entrance to the Premises on the 23 and 24 September 2016 between 21.00.00 and 03.30.01.
66. Annexure 2.6.3: Affidavit of Evidence sworn by Michael Giannak, the Technical Manager for Group Security Solutions Pty Ltd trading as PatronsCan, dated 2 November 2016 including a two page document depicting the real time photographs taken of five different patrons entering the Premises on 24 September 2016 and the photographs from the identification documents used to gain entry to the Premises.
67. Annexure 2.6.4: Seven still photographs taken from the CCTV footage of the entrance to the Premises on 24 September 2016, annotated to indicate the identity of patrons and when an exchange occurs between two patrons.
68. Annexure 2.6.5: Court Attendance Notice H243133596 Sequence "3" issued to Mr Flevotomos for breach of section 11(2) of the Act on 24 September 2016.
69. Annexure 2.7.1: CCTV footage of the inside of the Premises on 24 September 2016 between 02.20.00 and 02.55.15 and of the inside of the Premises on 24 September 2016 between 2.55.15 and 03.29.13.
70. Annexure 2.7.2: Court Attendance Notice H243133596 Sequence "7" issued to Mr Flevotomos for breach of section 11(2) of the Act on 24 September 2016.
71. Annexure 2.8.1: CCTV footage of the inside of the Premises on the 24 September 2016 between 02.09.20 and 02.44.33.
72. Annexure 2.8.2: Court Attendance Notice H243133596 Sequence "8" issued to Mr Flevotomos for breach of section 11(2) of the Act on 24 September 2016.
73. Annexure 2.9.1: COPS Reports for Event E62643657 and E63583265.
74. Annexure 2.9.2: CCTV footage of the street in front of the Premises on 24 September 2016 between 01.39.37 and 02.37.09, of the backdoor and courtyard of the Premises on 24 September 2016 between 01.45.36 and 02.37.59, of the backdoor and courtyard of the Premises on 24 September 2016 between 02.38.22 and 03.30.00 and of the inside of the Premises on 24 September 2016 between 02.24.57 and 03.12.41.
75. Annexure 2.9.3: NSW Police Force Report dated 23 November 2016, in relation to a patron at the Premises.
76. Annexure 2.9.4: Five still photographs taken from the CCTV footage of the street frontage outside the Premises, the rear courtyard of the Premises and inside the Premises on 24 September 2016, annotated to identify specific patrons and the licensee.
77. Annexure 2.9.5: Court Attendance Notice H243133596 Sequence "10" issued to Mr Flevotomos for breach of section 11(2) of the Act on 24 September 2016.
78. Annexure 2.10.1: COPS Report for Event E123621502.

79. Annexure 2.10.2: CCTV footage of the street front outside the entrance to the Premises on 22 January 2017 between 02.31.59 and 02.55.03 and from inside the Premises on 22 January 2017 between 02.31.58 and 02.55.01.
80. Annexure 2.10.3: Statement of Police made by Senior Constable Duncan Robert Handley on 23 February 2017 in relation people entering the Premises after lockout. Accompanying this statement is page 68 from Senior Constable Handley's NSW Police Force Notebook F623381.
81. Annexure 2.10.4: Court Attendance Notice H243133596 Sequence 11-35 issued to Mr Flevotomos for breach of section 11(2) of the Act on 22 January 2017.
82. Annexure 3.2.1: COPS Report for Event E230085295.
83. Annexure 3.2.2: NSW Police Force Compliance Notice 150146 issued to Mr Flevotomos for failure to comply with a licence condition on 5 March 2015.
84. Annexure 3.2.3: COPS Report for Event E191343798.
85. Annexure 3.2.4: NSW Police Force Compliance Notice 141104 issued to Mr Flevotomos for failure to comply with a licence condition on 9 November 2014.
86. Annexure 3.2.5: COPS Report for Event E57750889.
87. Annexure 3.2.6: NSW Police Force Compliance Notices 140813 and 140812 issued to Mr Flevotomos for failure to comply with a licence condition on 16 August 2014.
88. Annexure 3.2.7: COPS Report for Event E52012857.
89. Annexure 3.2.8: NSW Police Force Compliance Notices 131014, 131013, 131012, 131011, 131010, 131009 and 131008 issued to Mr Flevotomos for failure to comply with a licence condition on 29 June 2013.
90. Annexure 4.1.1: CCTV footage of the inside of the Premises on 6 November 2015 between 23.05.27 and 23.28.41, of the inside of the Premises on 6 November 2015 between 23.28.42 and 23.55.41 and of the inside of the Premises on 6 November 2015 between 23.55.41 and 00.15.20.
91. Annexure 4.1.2: Transcript of the interview between NSW Police and a female dancer from the Premises dated 27 November 2015 in relation to events that occurred on the Premises on 7 November 2015.
92. Annexure 4.1.3: NSW Police Force Penalty Notice 4924255995 issued to a female dancer from the Premises for employee permit use of prohibited drug on 7 November 2015.
93. Annexure 4.1.4: Revenue NSW Payment Summary of Penalty Notice 4924255995.
94. Annexure 4.2.1: CCTV footage of the inside of the Premises on 7 November 2015 between 00.40.18 and 00.55.50.
95. Annexure 4.2.2: COPS Report for Event E59615727.
96. Annexure 4.3.1: CCTV footage of the inside of the Premises on 7 November 2015 between 01.38.58 and 01.55.55.
97. Annexure 4.3.2: COPS Report for Event E59615727.
98. Annexure 4.4.1: CCTV footage of the inside of the Premises on 7 November 2015 from 02.33.59 to 02.56.47 and of the inside of the Premises on 7 November 2015 from 02.56.48 to 03.04.21.
99. Annexure 4.4.2: COPS Report for Event E59615727.
100. Annexure 4.5.1: COPS Report for Event E59348870.
101. Annexure 4.6.1: COPS Report for Event E364812292.
102. Annexure 4.6.2: Certificate of Conviction from the Local Court at Downing Centre Sydney dated 25 October 2017 recording that the defendant, detected on the street in Potts Point after consuming their last drink at the Premises, was convicted of possessing a prohibited drug on 15 April 2016 and ordered to pay a fine of \$1400.
103. Annexure 4.6.3: COPS Alcohol Linking Report containing Reference Number E364812292.
104. Annexure 4.7.1: COPS Report for Event E 62222739.
105. Annexure 4.8.1: CCTV footage of the inside of the Premises on 26 May 2016 between 23.41.35 and 23.43.52 and of the inside of the Premises on 26 May 2016 between 23.43.52 and 23.46.06.
106. Annexure 4.9.1: COPS Report for Event E61499946.
107. Annexure 4.10.1: The sentencing transcript for a prosecution at Downing Centre Local Court on Thursday 29 September 2016 in relation to a patron of the Premises who was charged with the offence of possess prohibited drug.
108. Annexure 4.11.1: COPS Report for Event E61801919.
109. Annexure 4.12.1: COPS Report for Event E221910597.
110. Annexure 4.12.2: Court Order Notice from the Local Court at Downing Centre Sydney dated 25 October 2017 recording that a patron of the Premises entered a guilty plea for the offence of possess prohibited drug.

111. Annexure 4.13.1: COPS Report for Event E61971938.
112. Annexure 4.14.1: CCTV footage of the inside of the Premises on 23 September 2016 between 21.50.30 and 22.25.44.
113. Annexure 4.14.2: Court Attendance Notice H243133596 Sequence “5” issued to Mr Flevotomos for breach of section 11(2) of the Act on 23 September 2016.
114. Annexure 4.15.1: CCTV footage of the inside of the Premises on 23 September 2016 between 23.19.06 and 23.54.21.
115. Annexure 4.16.1: CCTV footage of the inside of the Premises on 23 September 2016 between 23.19.06 and 23.54.21.
116. Annexure 4.16.2: Court Attendance Notice H243133596 Sequence “41” issued to Mr Flevotomos for breach of section 74(2) of the Act on 23 September 2016.
117. Annexure 4.17.1: CCTV footage of the inside of the Premises on 23 and 24 September 2016 between 23.54.21 and 00.03.46.
118. Annexure 4.17.2: Court Attendance Notice H243133596 Sequence “42” issued to Mr Flevotomos for breach of section 74(2) of the Act on 24 September 2016.
119. Annexure 4.18.1: CCTV footage of the inside of the Premises on 24 September 2016 between 00.13.39 and 00.34.17.
120. Annexure 4.18.2: Court Attendance Notice H64103320 Sequence “1” issued to Mr Flevotomos for breach of section 11(2) of the Act on 24 September 2016.
121. Annexure 4.19.1: CCTV footage of the inside of the Premises on 2 and 3 October 2016 between 23.58.59 and 01.43.25.
122. Annexure 4.19.2: Court Attendance Notice H64103320 Sequence “2” issued to Mr Flevotomos for breach of section 11(2) of the Act on 3 and 4 October 2016.
123. Annexure 4.20.1: CCTV footage of the inside of the Premises on 2 and 3 October 2016 between 23.58.59 and 01.43.25.
124. Annexure 4.20.2: Court Attendance Notice H243133596 Sequence “9” issued to Mr Flevotomos for breach of section 11(2) of the Act on 3 October 2016.
125. Annexure 4.21.1: CCTV footage of the inside of the Premises on 22 and 23 October 2016 between 23.21.26 and 00.31.58.
126. Annexure 4.21.2: Court Attendance Notice H243133596 Sequence “38” issued to Mr Flevotomos for breach of section 73(1)(b) of the Act on 23 October 2016.
127. Annexure 4.22.1: Three Statements of Police made by Sergeant Peter John Bolt, Senior Constable Luke Carter and Senior Constable Robert Pazderka on 30 October 2016.
128. Annexure 4.22.2: Court Attendance Notice H64103320 Sequence “3” issued to Mr Flevotomos for breach of section 11(2) of the Act on 30 October 2016.
129. Annexure 4.23.1: COPS Report for Event E314505793.
130. Annexure 4.23.2: Premises Incident Register containing incident log 3100261, 3100262 and 3100263.
131. Annexure 4.24.1: COPS Report for Event E63568041.
132. Annexure 4.25.1: Notice of Short Term Closure Order in relation to the Premises made by authorised officer John Crittendon on 6 November 2016.
133. Annexure 4.25.2: Application for Short Term Closure Order in relation to the Premises dated 5 November 2016.
134. Annexure 4.25.3: COPS Report for Event E63568041.
135. Annexure 4.25.4: NSW Government Health Pathology Clinical and Environmental Toxicology Analyst’s Certificate dated 21 November 2016.



### **Schedule B – Additional Material Sourced by Authority Secretariat**

1. OneGov licence record for Dollhouse Nightspot LIQO624006713 (“Dollhouse”) as at 16 August 2018.
2. Australian Securities and Investments Commission (“ASIC”) Current & Historical Organisation Extract for Iguana Bar & Restaurant Pty Ltd extracted on 17 August 2018.
3. ASIC Current & Historical Organisation Extract for Sven Pty Ltd extracted on 17 August 2018.
4. A table identifying the various licensees, business owners and premises owner and the dates those roles commenced and ended.
5. Email correspondence dated 20 August 2018 and 4 December 2017 containing the email advising provisional approval for the change of licensee application for Dollhouse and the OneGov licence record for Dollhouse as at 4 December 2017.
6. Email correspondence dated 20 August 2018 and 7 December 2016 in relation to the application to the change of business owner for Dollhouse including a copy of the LGNSW form *Update details or Notify interest in liquor licence business* dated 1 December 2016 and the OneGov licence record for Dollhouse as at 7 December 2016.
7. Email correspondence dated 20 August 2018 providing a screenshot from a OneGov search showing the classes of licences attached to Mr Timothy William’s competency card CCH10164500.
8. LGNSW Kings Cross Approved ID Scanner Requirements as at March 2016.
9. LGNSW Kings Cross Approved ID Scanner Requirements as at April 2017.