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Mr Dominic Kaikaty  
Manager  
Déjà Vu, Kings Cross  
7 Kellett Street  
POTTS POINT NSW 2011

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Dear Sirs

**Disciplinary Complaint under Section 139 of the *Liquor Act 2007* against  
Mr Dominic Kaikaty, close associate of Mr John Barakat,  
former licensee of Déjà Vu, Kings Cross**

**INTRODUCTION**

1. The abovementioned disciplinary complaint (Complaint) under section 139 of the *Liquor Act 2007* (Act) made by Mr Anthony Keon, (then) Acting Director of the Compliance Division of the Office of Liquor, Gaming and Racing (OLGR) in his capacity as delegate of the Secretary (Secretary) of NSW Trade and Investment (Complainant) was received by the Independent Liquor and Gaming Authority (Authority) on 13 March 2014.
2. The Complaint is made in relation to Mr Dominic Shoukry Kaikaty (Respondent), who the Complainant contends is a "close associate" of Mr John Barakat, who was the licensee of the licensed premises trading until April 2014 as "Déjà Vu", located at 7 Kellett Street, Potts Point (Premises). An on-premises liquor licence number LIQO624004412 attaches to the Premises, which has the designated primary purpose of a "restaurant".
3. The licence has the benefit of an extended trading authorisation (ETA) that enables the sale or supply of liquor on the Premises to continue beyond the standard licensed trading hours prescribed by section 12 of the Act. In this case, licensed trading may occur from 7:00am to 3:00am the following morning on Monday through Saturday and from 7:00am to 12:00 midnight on Sunday.
4. The licence is also endorsed with an authorisation under section 24(3) of the Act (known in the industry as a "primary service authorisation") which allows liquor to be sold or supplied for consumption on the licensed premises to individual patrons otherwise than with, or ancillary to, another designated product or service (PSA). In the case of an on-premises licence for a restaurant, the PSA enables liquor to be sold or supplied to individual patrons with or without the service of a meal.

5. As of the date of the Complaint, the owner of the freehold in the Premises was Mr James Farrugia (Premises Owner). Mr Farrugia remains the Premises Owner at this time.
6. As of the date of the Complaint, the licensee of the Premises (since 25 January 2013) was Mr John Barakat (Licensee) and the manager of the Premises was Mr Dominic Kaikaty.

[The Authority notes that Mr Kaikaty is described by the Complainant as the "manager" in the lay sense of the word, as distinct from an "approved manager" appointed pursuant to section 66 of the Act. An approved manager is a natural person who is responsible under the Act for a licensed premises when a licence is held by a corporation.]

7. The corporate business owner of the licensed business operating on the Premises at the time of the Complaint was Diamond Events Pty Limited (Business Owner), whose sole director is Mr Timothy Bali.
8. Since the Complaint was made to the Authority, the Premises Owner proceeded to terminate the lease by giving notice to the Business Owner on 2 April 2014. The Premises was vacated by the Business Owner on 16 April 2014.
9. Since the date of the Complaint, the former Licensee, John Barakat, was disqualified from being a licensee of licensed premises for a period of three months by Downing Centre Local Court from 7 August 2014.
10. Upon assuming possession of the Premises in his capacity as Premises Owner, Mr Farrugia applied to have the licence transferred to him as an owner in possession. A transfer of the licence to Mr Farrugia was provisionally approved by the Authority on 30 June 2014.
11. On 24 August 2014, Mr Grant Collins lodged an application to transfer the licence from Mr Farrugia to himself. This transfer was provisionally approved with effect from 22 October 2014 and the licence transfer was confirmed on 1 April 2015.
12. As of the time of this letter, Mr Farrugia remains the Premises Owner and Mr Grant Collins holds the licence.
13. The Authority notes that although a separate disciplinary complaint has been made against the Licensee Mr John Barakat, in this matter the Complainant seeks that the Authority exercise its power under part 9 of the Act to take disciplinary action against Mr Dominic Kaikaty in his capacity as *close associate* of the Licensee.

## **THE COMPLAINT MATERIAL**

14. The Complaint comprises a nine page letter setting out the Particulars of the single ground of Complaint under section 139(3)(j) of the Act. The Complaint is accompanied by a brief of evidence (Brief of Evidence), an Index to the documents submitted with the Complaint and a Guide to the documents submitted with the Complaint.
15. The Brief of Evidence comprises several hundred pages of submissions, evidence and other material upon which the Complainant relies. This material has been prepared by OLGR, a large part of which comprises reports sourced from the NSW Police Computerised Operational Policing System database (COPS Reports) detailing numerous adverse incidents (Events) which the Complainant alleges are directly attributable to the Premises or to the operation or management of the Premises.

[The Authority notes that COPS Reports typically comprise contemporaneous reports entered into the NSW Police Computerised Operational Policing System database by individual Police officers. COPS Reports usually provide a narrative of observations made by Police while engaging the person or persons who are the subject of the Event in question and may also record reports of the incident provided to Police by the victim of an alleged offence or witnesses to the Event. COPS Reports will usually indicate the time and date when the Event occurred and (if the Event is alcohol related) the extent to which the person(s) engaged with by Police were affected by alcohol.]

16. Other material upon which the Complainant relies includes copies of the liquor licence attaching to the Premises at various points in time; communications between the Authority, the Complainant and the Respondent; statements of evidence by Police officers and OLGR Inspectors; documentation recording the issue of Penalty Notices by Police and Compliance Notices by OLGR; OLGR Guidelines and Fact Sheets; Court Attendance Notices and the associated facts sheets; Certificates of Conviction in relation to the Respondent; screenshots of Facebook posts uploaded by staff at the Premises and other miscellaneous documents gathered during the course of the investigation.

## THE COMPLAINT

17. The full text of the single ground of the Complaint (Ground) as specified in the Complaint dated 13 March 2014 is set out below, along with a summary of the evidence and particulars alleged by the Complainant in support of the Ground.

### GROUND OF COMPLAINT – s.139(3)(j)

**That the close associate, Mr Dominic Kaikaty, is not a fit and proper person to be a close associate of a licensee, within the meaning of section 139(3)(j).**

#### *Particular 1*

18. John Barakat has been the Licensee of the Premises under an "on-premises" liquor licence LIQO624004412 since 25 January 2013.

#### *Particular 2*

19. The Business Owner in respect of the Premises is Diamond Events Pty Limited, which is solely owned by Mr Timothy Bali.

#### *Particular 3*

20. Dominic Kaikaty has been a close associate of the Licensee of the Premises, John Barakat, since on or about 25 January 2013. As such, he has been involved in the management and running of the licensed business operating on the Premises.

### Disqualification of Dominic Kaikaty as liquor licensee

#### *Particular 4*

21. Between 2009 and 2011, Dominic Kaikaty was the licensee of the Eye Bar in Kings Cross. As the licensee of the Eye Bar in Kings Cross, Dominic Kaikaty was the respondent to a disciplinary complaint under section 139 of the Act lodged by the Commissioner of Police with the then Casino, Liquor and Gaming Control Authority, now known as the Independent Liquor and Gaming Authority.

*Particular 5*

22. On 6 December 2011, the Authority determined the above complaint and disqualified Dominic Kaikaty from holding the position of liquor licensee for a period of five years commencing on 6 December 2011. The Authority considered, among other things, the criminal history of Dominic Kaikaty, and found that the following grounds of that previous complaint had been established:
- (a) Section 139(3)(a) – that the licensee has, while holding a licence, been convicted of an offence under this Act or the Regulations or of an offence prescribed by the Regulations
  - (b) Section 139(3)(b) – that the licensee has failed to comply with any of the conditions to which the licence is subject
  - (c) Section 139(3)(d) – that the licensee has failed to comply with any other requirements under this Act or the Regulation
  - (d) Section 139(3)(i) – that the licensee is not a fit and proper person to be the holder of a licence
  - (e) Section 139(3)(s) – that the licence has not been exercised in the public interest.

**Criminal history**

*Particular 6*

23. The Complainant alleges that Dominic Kaikaty has an extensive criminal history which includes convictions for breaches of liquor licensing legislation while he was a holder of a liquor licence in respect of the Eye Bar in Kings Cross, including convictions for failing to comply with various conditions of the licence, failing to comply with a requirement under the Act, supplying liquor to minors and also a conviction for furnishing false or misleading information.

*Particular 7*

24. The Complainant alleges that in December 2010, Dominic Kaikaty was convicted of three counts of "larceny as a bailee". The circumstances of this offence are as follows:
- (a) Between 24 August 2009 and 17 September 2009, while assuming a number of pseudonyms and false identities, Dominic Kaikaty fraudulently obtained a total of **\$100,505.53** worth of property from various "party hire companies". At the time, Dominic Kaikaty had a financial interest in the business at the Grand Barclay Restaurant and Reception Centre at Rockdale and the property was used for the purposes of this business. Upon closure of the Grand Barclay Restaurant and Reception Centre, the fraudulently obtained property was then stored at the residential premises of Dominic Kaikaty, and it was only returned to the hire companies with the intervention of Police.

*Particular 8*

25. The Complainant alleges that since being disqualified from holding a liquor licence, Dominic Kaikaty has been convicted in respect of two further charges for breach of licence conditions. These charges were laid prior to the Authority's decision on the

disciplinary complaint against Dominic Kaikaty dated 6 December 2011. The circumstances of these offences are as follows:

- (a) On 11 August 2011, Police attended the Eye Bar in Kings Cross and requested to view CCTV footage for trade on 21 July 2011 (21 days prior to the inspection). Dominic Kaikaty was unable to supply Police with the requested footage as the CCTV system only contained footage from 25 July 2011. Police subsequently issued Dominic Kaikaty with a Court Attendance Notice for failing to comply with a licence condition that required CCTV recordings to be kept for a minimum period of 30 days
- (b) On 18 September 2011, Police attended the Eye Bar in Kings Cross and observed two patrons walk away from the bar area with liquor after the Premises was required to cease service. Police requested CCTV footage and on 22 September 2011 and 11 October 2011, Dominic Kaikaty provided Police with a USB containing the footage. Police inspected the footage and observed that it did not have a time and date stamp and did not cover all areas requested. Police subsequently issued Dominic Kaikaty with a Court Attendance Notice for failing to comply with licence conditions relating to the time and date stamp and the provision of CCTV footage.

#### *Particular 9*

26. The Complainant alleges that on 1 March 2013, Dominic Kaikaty, while apprehended by Police on the Premises in relation to a warrant, was subjected to a search by Police. Police located in his possession six small re-sealable bags, each containing a quantity of cocaine. Consequently, Dominic Kaikaty was convicted of an offence under the *Drug Misuse and Trafficking Act 1985*.

#### **Matters before the Court (as of the time of the Complaint)**

#### *Particular 10*

27. The Complainant contends in the initial complaint that Mr Kaikaty has been charged with the following offences currently before the Downing Centre Local Court:
  - (a) One charge of "driving with high range concentration of alcohol" and two counts of "not giving particulars to other driver" in respect of incidents which occurred on 13 May 2012. On this day a vehicle with registration number LIM069 (**Vehicle**) allegedly driven by Dominic Kaikaty was observed to be driven in a southerly direction on General Holmes Drive, Mascot. The Vehicle impacted with the rear of a taxi, causing it to spin. The driver of the Vehicle made no attempt to stop and render assistance or exchange particulars with the driver of the taxi. A short time later, while in the Airport Tunnel, the Vehicle collided with the rear of another vehicle, causing it to spin and collide with the wall of the tunnel. The driver of the Vehicle did not make any attempt to stop to render assistance and exchange particulars with the other driver. Police located the Vehicle parked not far from Dominic Kaikaty's home. Dominic Kaikaty was found sitting in the driver's seat of the Vehicle. Police identified that he had a significant blood alcohol concentration level. This matter is listed for appeal before the District Court on 26 March 2014
  - (b) On 2 March 2013, a warrant was executed for Dominic Kaikaty's arrest in relation to his failure to appear at Waverley Local Court in respect of the traffic offences outlined in Particular 10(a) above. While in custody, he was subjected to a search by Police. Police located in his possession six small re-sealable bags, each containing white powder which Police believe to be a prohibited drug. Police

identified that the quantity of the drug fell within the deeming provisions of the *Drug Misuse and Trafficking Act 1985* and charged Dominic Kaikaty with the offence of "supplying prohibited drug". This matter has been listed for hearing at the Downing Centre Local Court on 25 November 2014.

### **Outstanding fines (as of the time of the Complaint)**

#### *Particular 11*

28. The Complainant contends that while he previously held the licence in respect of the premises known as "Eye Bar" in Kings Cross, Dominic Kaikaty was issued with numerous Penalty Notices for failing to comply with the liquor licensing legislation. He also incurred fines in relation to various traffic offences. Dominic Kaikaty has failed to pay a significant portion of these fines. Information received by the Complainant from the State Debt Recovery Office (**SDRO**) on 24 June 2013 shows that Dominic Kaikaty has outstanding Enforcement Orders with an outstanding balance of **\$77,794.43**. He has entered into a Payment Plan which commenced on 27 November 2012.

#### *Particular 12*

29. The Complaint contends that Mr Kaikaty has undertaken the management and operation of the Premises while disqualified from holding the position of liquor licensee. Due to the disqualification, Dominic Kaikaty could not be appointed as an approved manager under section 66 of the Act, but was engaged in the position of a manager and as such has undertaken the management and the running of the business on the Premises, which the Complainant contends satisfies the definition of a "close associate" within the meaning of the *Gaming and Liquor Administration Act 2007* (**GALA**).

30. In support of this particular the Complainant refers to the following information provided by Mr Kaikaty, Timothy Bali and John Barakat when interviewed by Police and/or OLGR officers and the observations made by Police during inspections conducted at the Premises and by Council staff who have prosecuted the Premises:

- (a) On 26 January 2013, Police attended the Premises and noted that Dominic Kaikaty seemed to have full management control of the Premises. He assisted the director of the Business Owner, Timothy Bali, in locating the liquor licence, RSA register and incident register which were requested by Police, and was the only person on the Premises who could operate the CCTV
- (b) On a number of occasions on 4 April 2013, Police attended the Premises and observed that Dominic Kaikaty was in effect supervising and operating the Premises. He provided Police with a copy of CCTV footage and was served with a form of demand in relation to the provision of other CCTV. On all of those occasions, John Barakat and Timothy Bali were not present
- (c) On 7 April 2013, Dominic Kaikaty assisted Police with their enquiries during their inspection at the Premises while the Licensee and the director of the Business Owner were in attendance
- (d) On 20 April 2013, Police attended the Premises. The Licensee was not present and Police were informed that he would not be attending the Premises. Police were assisted in their enquiries by Dominic Kaikaty. Timothy Bali was present, but stood in the background

- (e) On 3 May 2013, Police attended the Premises and noted that the "under 18" sign near the bar was completely obstructed by a flat screen TV. Dominic Kaikaty informed Police that he had only installed the flat screen TV that evening. The Licensee was not present at this time
- (f) On 29 January 2014, City of Sydney Council (Council) prosecuted the Business Owner for contraventions of the *Environmental Planning and Assessment Act 1979* (EPAA) in relation to breaches of the Premises' development consent. Council staff noted that the director of the Business Owner, Mr Timothy Bali, did not attend Court and that Mr Dominic Kaikaty attended in his stead.

*Particular 13*

- 31. The Complainant contends that during inspections conducted at the Premises, Police and officers from OLGR and Council identified a number of breaches of licence conditions occurring at the Premises and breaches of other requirements of the *Liquor Regulation 2008* (Regulation) and the EPAA.
- 32. The Complainant contends that on the following occasions Mr Kaikaty was present and actively participated in the commission of the following contraventions of legislation:
  - (a) At about 8:30pm and 10:20pm on 26 January 2013, NSW Police attended the Premises. On both occasions the Licensee was not present. However, Timothy Bali and Dominic Kaikaty were at the Premises. Police inspected the Premises' CCTV and identified that one of the CCTV servers was displaying a time one hour ahead of real time. Also, the RSA Certificate for the Licensee could not be produced. Police have issued the Licensee with two Compliance Notices in relation to the above breaches of licence conditions
  - (b) On 4 April 2013, NSW Police attended the Premises in relation to a report of an assault on a male patron. When questioned by Police, Dominic Kaikaty initially denied knowledge of the incident. After further questioning, he acknowledged that an incident had occurred. Police examined CCTV footage of the Premises and observed the victim conversing with Dominic Kaikaty shortly after the incident. Police noted that no record of the incident had been made in the incident register. Police have issued the Licensee with a Penalty Notice in relation to the breach of the licence condition imposed by clause 53J of the Regulation
  - (c) At about 12:25am on 7 April 2013, Police attended the Premises and observed three patrons each consuming a "shot" of liquor. Police performed an audit of the Premises' CCTV and identified that there was not full CCTV coverage of the outdoor courtyard area, and a tree branch was obstructing a large portion of the CCTV coverage of the front footpath. Police observed that there was no mandatory "under 18" signage present around the bar. The Licensee has been issued with two Penalty Notices in relation to the above breaches of the licence conditions imposed by clause 53F and clause 53H of the Regulation and a Penalty Notice for breach of clause 31(1) of the Regulation (prescribed notice to be displayed in licensed premises)
  - (d) On 20 April 2013, Police attended the Premises and inspected the physical positioning of the CCTV cameras within the Premises. Police identified that certain areas were not covered by CCTV, in particular a large portion of the southern side of the rear bar area and a small area in the corridor outside the kitchen. Police have issued the Licensee with a Penalty Notice in relation to the above breach of the licence condition imposed by clause 53H of the Regulation

- (e) At about 1:10am on 25 April 2013, Police attended the Premises and in the courtyard they observed a male patron and a female patron each drinking from a glass bottle of *Tooheys Extra Dry* beer. The two patrons stated to Police that they had purchased the drinks from the Premises bar a short time earlier. The attending Police then spoke to Timothy Bali and Dominic Kaikaty. Neither Timothy Bali nor Dominic Kaikaty attempted to remove the glass bottles from the two patrons. The two patrons were then observed to enter the Premises bar, still holding the two glass bottles. Again, no effort was made to remove the glass bottles until Police pointed out to Timothy Bali that the glass bottles should be removed. Police have issued the Licensee with a Penalty Notice in relation to the above breach of the licence condition imposed by clause 53E of the Regulation
- (f) On 3 May 2013, Police attended the Premises and noted that they could not see any "under 18" sign. Upon closer inspection, Police identified that the sign was hanging on a wall near the bar, but had been almost completely obstructed by a newly installed flat screen TV. Dominic Kaikaty informed Police that he had only installed the flat screen TV that evening. Police have issued the Licensee with a Penalty Notice in relation to the above breach of clause 31(1) of the Regulation (prescribed notice to be displayed in licensed premises)
- (g) On 8 June 2013, OLGR conducted an inspection at the Premises to test compliance with the Kings Cross special licence conditions prescribed under part 5A of the Regulation and general compliance with the requirements of the Act. At approximately 12:08am on 8 June 2013, OLGR Inspector Sarina Wise was able to purchase two "shots" of liquor served by Dominic Kaikaty. In a conversation with OLGR Inspectors Sarina Wise and Darren Duke on 8 June 2013 and during an interview conducted by OLGR with Dominic Kaikaty on 1 August 2013, he conceded that he served shots in breach of the licence condition imposed by clause 53F of the Regulation, which prohibits shots to be sold or supplied on licensed premises in the Kings Cross Precinct after midnight. The Licensee has been issued with two Penalty Notices in relation to the above contravention
- (h) On 20 July and 4 August 2013, Council officers attended nearby residences in response to reports of noise disturbance from the Premises. During the inspections, Council officers determined that the level of noise being emitted from the Premises was not in accordance with the conditions of the Premises' development consent. The level of noise emitted from the Premises on 4 August 2013 was causing a resident's floors to vibrate. On both occasions, Dominic Kaikaty represented the Premises and conversed with Council officers. The matter was heard at the Downing Centre Local Court on 29 January 2014 and the Business Owner was fined \$16,200 for the offences.

#### *Particular 14*

- 33. The Complainant here contends that on 2 March 2013, Dominic Kaikaty was arrested at the Premises pursuant to a warrant issued for his arrest. He repeatedly asked Police to be allowed to return to the kitchen to speak with fellow staff, but this request was refused. While in custody, Mr Kaikaty was found in possession of 4.2 grams of cocaine. On 13 February 2014, the matter was heard at the Downing Centre Local Court and Dominic Kaikaty was convicted of supplying prohibited drugs and sentenced to an eight (8) month suspended sentence.



*Particular 15*

34. The Complainant contends that during an inspection at the Premises on 25 April 2013, Police observed that Dominic Kaikaty appeared to be under the influence of alcohol or drugs.

*Particular 16*

35. The Complaint contends that on 25 May 2013, Police reviewed the Licensee's (John Barakat) Facebook page and noticed he posted the following comment: "Fuc u kings Cros police!" [sic]. Dominic Kaikaty had "liked" the comment on Facebook.
36. The Complainant contends that on 31 December 2013, Police reviewed the Premises' (Déjà Vu) Facebook page and observed an entry posted by "Dylan Dvs" which was offensive toward the Kings Cross Local Area Command. The photograph was a group shot of the Premises staff, including the Licensee, director of the Business Owner and Mr Dominic Kaikaty, all posing with their middle fingers positioned in an offensive manner toward the camera. A caption was linked to the photograph which read: "On behalf of #DEJAVU kingscross we would like to say a big #FUCKYOU to Kings Cross Police LAC #kingscross #staff #police #LAC #taskforce #pigs #dogs #ftp #ftw #baws #nofilter".
37. The Complainant further contends that several days later, Police engaged with the venue, which resulted in the Licensee posting a retraction message on the venue's Facebook page. The Licensee advised Police that the photograph was not posted on the Premises' Facebook page and was a result of a rogue staff member who undertook the actions of his own accord, with respect to which the Licensee had no knowledge. However, it is the Complainant's contention that the Licensee only posted the retraction after Police engaged with him. The Complainant notes that the Licensee, the Premises, Dominic Kaikaty and other staff members were "tagged" in the photograph via Facebook and had "liked" the photograph and caption when it was originally posted.

**COMPLAINANT'S SUBMISSIONS**

38. Without purporting to recount here all of the submissions and attachments provided by the Complainant, the Complaint letter dated 13 March 2014 makes the following submissions in support of the Complainant's request for disciplinary action to be taken against Mr Kaikaty.
39. The Complainant submits that the question of fitness and propriety should be directed to the nature and purpose of the activities that a person will undertake. A consideration of whether a person is fit and proper involves an assessment of their knowledge, honesty and ability in the context of the role they are seeking to undertake. In *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, Toohey and Gaudron JJ said at 380:

*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 the 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 indication of likely future conduct) or reputation (because it provides 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.*

40. In *Frugeniet and Anor v Commissioner for Fair Trading; Commissioner for Fair Trading v Travel Action Pty Ltd and Anor (GD)* [2004] NSWADTAP 12, the Appeal Panel of the Administrative Decisions Tribunal agreed with Counsel for the Commissioner that the summary of the principles extracted from the decision of the Commercial Tribunal in *Young Taek Chong v Tomazin* (1994) ASC 56-283 is as follows:

*The question must be determined with reference to the particular purposes of the regulatory regime involved; that account must be taken of the minimum standards of the profession or occupation being regulated; that matters such as 'character', 'suitability', 'integrity' and 'trustworthiness' – indeed, any aspect of 'fitness and propriety that is relevant to the public interest' – must be considered; that while an isolated act may suffice to show lack of fitness and propriety, this will not necessarily be the case, and 'deliberate prolonged conduct or a course of conduct' stands on a different footing; and finally that the 'evaluation of fitness involves a wide discretion'.*

41. Therefore, matters such as the person's character, reputation, criminal history, the nature of offences and any other improper conduct are matters to be evaluated in determining whether that person is fit and proper to carry on a profession or occupation. In addition, where a person has been convicted of offences, the decision maker must consider the circumstances of those convictions, the general reputation of the person apart from convictions and the likelihood of repetition (*Clarahan v Register of Motor Vehicle Dealers in the ACT* (1994) 17 FLR 445).
42. The Complainant submits that Dominic Kaikaty has been disqualified from holding the position of a liquor licensee by the Authority and to circumvent this disqualification, Dominic Kaikaty has acted as a close associate of the Licensee, John Barakat, and has been involved in the management and the running of the licensed business operating on the Premises. The Complainant submits that Dominic Kaikaty is not a fit and proper person to be a close associate of a licensee or to hold a liquor licence.

### **Complainant's Recommendations on Disciplinary Action**

43. For the reasons set out above, the Complainant believes that the Authority should, in respect of the Ground of the Complaint, take the following disciplinary action against Dominic Kaikaty under section 141 of the Act:
- (i) Disqualify, under section 141(2)(j), Dominic Kaikaty from being a close associate of a licensee for such period as the Authority thinks fit
  - (ii) Disqualify, under section 141(2)(k), Dominic Kaikaty from holding a licence for such period as the Authority thinks fit
  - (iii) Order, under section 141(2)(l), Dominic Kaikaty to pay the amount of any costs incurred by the Secretary in carrying out any investigations or enquiry under section 138 of the Act in relation to Dominic Kaikaty
44. The Complainant notes that a separate disciplinary complaint under section 139 of the Act has been made to the Authority in relation to the Licensee of the Premises, John Barakat.

### **SUBMISSION FROM DOMINIC KAIKATY DATED 1 AUGUST 2014**

45. On 17 April 2014, the Authority issued a notice to Mr Kaikaty inviting him to show cause as to why disciplinary action should not be taken against him on the basis of the Ground of Complaint. That Show Cause Notice requested any written submissions by 15 May 2014.

46. On 12 May 2014, Mr Ronny Malouf, a solicitor, requested an additional 28 days from that date to make submissions due to his receiving late instructions from his client, the Respondent. Mr Malouf advised that he was also acting for the Licensee of the Premises, Mr John Barakat, in relation to the separate complaint against him that was also before the Authority. That extension was granted by the Authority's Chief Executive.
47. On 10 June 2014, Mr Malouf sought a further extension of 21 days. The Chief Executive granted that further extension on the basis that Mr Malouf file submissions addressing the merits of the case against his client by 1 July 2014.
48. However, Mr Malouf failed to make any submissions by this time and his latest request was to make submissions by 21 July 2014.
49. Contrary to Mr Malouf's representations to the Authority's General Counsel, no submissions were made by him, notwithstanding the repeat extensions of time granted to him.
50. On 23 July 2014, Mr Malouf was given a final warning to complete submissions by 28 July 2015. On 28 July 2015, Mr Malouf provided late advice to the Authority that his clients (Mr Barakat and Mr Kaikaty) had ceased instructing him. Mr Malouf was on that day advised that his clients had until 1 August 2015 to make submissions directly to the Authority.
51. On 1 August 2014, Mr Dominic Kaikaty provided what purported to be his own submissions to the Authority addressing the Ground of Complaint. These submissions refer to Mr Kaikaty in the third person.
52. Briefly, the observations and contentions made by Mr Kaikaty may be summarised as follows:
  - (i) The "copious" amount of material presented with this Complaint is "irrelevant", with the vast majority of the material "regurgitated" from former disciplinary action as a result of a complaint made against him almost three years ago in relation to the Eye Bar in Kings Cross
  - (ii) Mr Kaikaty submits that "it is only in the interest of fairness and justice that although it might be relevant to look at one's history when assessing a letter of complaint, it must also look at what new issues have arisen to provoke a new complaint"
  - (iii) Mr Kaikaty submits that in the past three years, he has not been "directly involved" with any "serious breaches" of the Act which would warrant such a Complaint; nor are his criminal convictions "of any relevance" as they are currently listed before the District Court for appeal
  - (iv) Mr Kaikaty contends that it is "evident" that the issues surrounding the Déjà Vu business in Potts Point are what have "resurrected" negative views on Mr Kaikaty. Mr Kaikaty submits, however, that any issues or disciplinary action with that venue cannot and should not result in an employee of that business being prosecuted and "further unduly penalised"
  - (v) Mr Kaikaty submits that he is a fit and proper person to be a close associate of a licensee. In the past three years, he has "shown initiative to improve his character" since he was declared by the Authority as "not a fit and proper person" in December 2011

- (vi) Mr Kaikaty states that he has "taken full responsibility" to be a sole carer for his disabled mother and is currently enrolled in NSW TAFE studying an Advanced Diploma in Conveyancing
- (vii) Mr Kaikaty states that the Authority "must have regard" to the statutory objects and considerations provided by section 3 of the Act when determining this matter and submits that the Complainant "clearly fails to prove the abovementioned ground", based on the statutory objects and considerations of the Act
- (viii) Mr Kaikaty notes that he has been disqualified from holding a liquor licence as a result of the disciplinary action taken against him in 2011, and argues that to take further action, the Authority must also have regard to "whether the general public will benefit from such action". He contends that "the short answer is absolutely not"
- (ix) Mr Kaikaty submits that taking further action against him will have "no benefit to the community" and will only "continue to hurt and prosecute one individual without having any benefits"
- (x) Mr Kaikaty contends that in his employment, he "always acted with high regard" to the abovementioned statutory objects and considerations, and that "no point made in the Complaint contests that".

53. The specific submissions made by Mr Kaikaty in response to the Complainant's Particulars of the Ground of the Complaint may be summarised as follows:

*Kaikaty on Particular 1*

54. In response to the Complainant's contention that Mr John Barakat has been the Licensee of the Premises under an on-premises liquor licence number LIQO624004412 since 25 January 2013, Mr Kaikaty agrees.

*Kaikaty on Particular 2*

55. In response to the Complainant's contention that the corporate Business Owner in respect of the Premises is Diamond Events Pty Limited, which is solely owned by Mr Timothy Bali, Mr Kaikaty agrees.

*Kaikaty on Particular 3*

56. Mr Kaikaty submits that he has not been a "close associate of the licensee of the Premises". He submits that he has "been involved in" the management and running of the business at the Premises "to the degree of any employee at any business". Mr Kaikaty notes that he had "no financial interest" in the business.

*Kaikaty on Particulars 4 and 5*

- 57. Mr Kaikaty submits that those matters that were found by the Authority to be relevant and proven for the purposes of the 2011 disciplinary action "should not automatically be accepted as proven" for the purposes of the matter now before the Authority.
- 58. Mr Kaikaty contends that the 2011 disciplinary action itself "should not constitute as grounds for this [Complaint] and should hold no merit" because a person who is found to be not a fit and proper person to hold a licence does not automatically mean that they are not a fit and proper person to be a close associate of a licensee.

59. Mr Kaikaty submits that his "ability" to be a close associate has "never truly been tested" and therefore, this Complaint "immediately loses all its fundamental merits" by not being able to test whether or not he is indeed a fit and proper person to be a "close associate".

60. Mr Kaikaty notes that a "close associate" within the meaning of section 5(1) of the *Gaming and Liquor Administration Act 2007* is defined as follows:

*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.*

61. The GALA provides in section 4 that the "gaming and liquor legislation" includes the *Liquor Act 2007*.

62. "Relevant financial interest" is defined in section 5(2) of the GALA as follows:

*...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).*

63. "Relevant position" is defined in section 5(2) of the GALA as follows:

*...relevant position means:*

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

64. "Relevant power" is defined in section 5(2) of the GALA as follows:

*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.*

65. Mr Kaikaty contends that his position at the Premises has been "restricted" to that of a "bartender, waiter and at the very most, supervisor" – never a "manager" or above.

66. Mr Kaikaty concedes that the term "manager" has been "loosely used" in the past, but he now submits that he had "no right or power of a manager or close associate".

67. Mr Kaikaty submits that the Complainant "fails to evidently prove" that Mr Kaikaty held any financial interest in the business, nor did he "exercise any relevant power" to a degree that resulted in any serious breach of the Act.

68. Mr Kaikaty notes that while he may have been involved in NSW Police records of interview or been recorded in statements made by Police as making representations that

he was an employee of the Premises, this "does not confirm any negligence on [his] part" that resulted in offences against the Act being committed; nor has the Complainant been able to "evidently prove" that Mr Kaikaty had any "substantial influence" upon the business.

*Kaikaty on Particular 6*

69. In response to Particular 6, Mr Kaikaty refers to those points he has made in response to Particulars 4 and 5 of the Complaint, concerning his criminal history and the convictions recorded against him during the time that he was the holder of a liquor licence in respect of the Eye Bar in Kings Cross.

*Kaikaty on Particular 7*

70. In response to Particular 7, Mr Kaikaty concedes that he was in fact convicted of larceny. However, he submits that the "context" of this matter was as follows:
71. Mr Kaikaty contends that he did not use aliases to obtain goods by deception. The Court was "satisfied" that Mr Kaikaty did not obtain these items under false pretences. However, by reason that he retained the goods as "collateral" for money owed to him for a function that was being conducted on his former licensed premises (the "Grand Barclay Restaurant and Reception Centre" in Rockdale), this ultimately led him to enter a plea of guilty and not to defend these matters – because he had deprived the owners of their goods "with or without intention to keep them for himself".
72. Mr Kaikaty contends that in respect of his conviction for the larceny offence, the Local Court was satisfied by a "comprehensive evaluation" that the value of goods in his possession was reduced to under \$20,000. Therefore, he submits that he has "only one" conviction for a larceny involving goods valued at "greater than" \$15,000 and two other convictions for larceny involving goods valued at "less than" \$15,000.
73. Mr Kaikaty submits that he has "paid the price" for his actions and ultimately, this conviction supported the 2011 disciplinary complaint against him alleging that he was not a fit and proper person to be a liquor licensee.
74. Mr Kaikaty submits that he has had no prior convictions "of this kind" and over four years later, he has "no pending issues of this kind". He submits that this "does not show a pattern of a repeat offender or something that is likely to re-occur [*sic*]".
75. Mr Kaikaty contends that this matter is "simply being prejudicially regurgitated" for the purpose of this Complaint and asks that "no weight" be placed on this matter.

*Kaikaty on Particulars 8(a) and 8(b)*

76. In response to Particulars 8(a) and 8(b), Mr Kaikaty submits that these matters, which concern breaches of licence conditions pertaining to the storage and provision of CCTV footage to Police, "are of the smallest, technical breaches" and are "not serious offences".
77. Mr Kaikaty submits that these offences regarding a failure to produce material to Police upon request occurred prior to the decision that was made by the Authority on 6 December 2011 concerning the disciplinary action taken against him in his capacity as licensee of the Eye Bar in Kings Cross.

78. Mr Kaikaty argues that any "pending matter" from that time frame, whether or not a conviction was recorded before or after the date of the Authority's previous disciplinary decision, should "not be considered new offences" – that is, these offences should not be treated as matters that have occurred subsequent to the Authority's 2011 disciplinary action and are therefore relevant to this Complaint.

*Kaikaty on Particular 9*

79. In response to Particular 9, Mr Kaikaty states that he was found in possession of illicit drugs when he was searched on 1 March 2013. However, Mr Kaikaty "maintains his innocence" and submits that the drugs were located in the Premises, a contention that he submits is supported by CCTV footage of the Premises.
80. Mr Kaikaty states that this matter is currently listed on appeal before the District Court and asks that "no weight" be placed on this matter until an outcome is reached.

*Kaikaty on Particular 10(a)*

81. In response to Particular 10(a), regarding an alleged high range prescribed concentration of alcohol offence on 13 May 2012 Mr Kaikaty submits that he was not the driver of the vehicle at the time of these offences. Mr Kaikaty notes that he was found "sleeping" in the car after the offences occurred and submits that this "should not be seen as an admission of guilt".
82. Mr Kaikaty states that the Court has suspended his driving licence for a period of "only 18 months", instead of the "mandatory" 36 months that "would automatically" have been imposed.
83. Mr Kaikaty submits that this matter is still currently before the District Court on appeal and submits that his driving record bears "absolutely no relevance" to his ability to be a close associate of a liquor licensee.

*Kaikaty on Particular 10(b)*

84. In relation to Particular 10(b), regarding a charge for the offence of supplying a prohibited drug, Mr Kaikaty refers to the submissions made in response to Particular 9 of the Ground of Complaint.

*Kaikaty on Particular 11*

85. In response to Particular 11, Mr Kaikaty submits that he has received and is paying a "multitude" of fines as a result of his role as licensee of the Eye Bar in Kings Cross between 2009 and 2011. He submits that he is "clearly paying the price in the most literal sense" and that further disciplinary action "would not be justified".

*Kaikaty on Particular 12*

86. Mr Kaikaty argues that the Complainant makes an "extremely prejudicial assumption" that Mr Dominic Kaikaty was "engaged in the position of a manager".
87. Mr Kaikaty contends that it was "never intended" for him to be an "appointed manager" or for him to act in the manner of one. Mr Kaikaty contends that he "never had the power" of a manager and acted "under the strict guidelines of his superiors" (Mr John Barakat and Mr Timothy Bali).

88. Mr Kaikaty submits that while he had "many responsibilities", the final decisions were always ultimately in the hands of the director of the Business Owner or the Licensee, and not Mr Kaikaty himself.
89. Mr Kaikaty argues that this "does not satisfy" the definition of "close associate" within the meaning of the GALA and refers to his submissions addressing Particulars 4 and 5 of the Ground of Complaint.

*Kaikaty on Particulars 12(a)-(d)*

90. In relation to Particulars 12(a)-(d), regarding the role that Mr Kaikaty played in assisting Police with their enquiries during business inspections on 26 January 2013, 4 April 2013, 7 April 2013 and 20 April 2013, Mr Kaikaty submits that the Complainant "clearly wishes to capitalise on such minor instances to add weight to this [Particular of the Complaint]".
91. Mr Kaikaty contends that he was the licensee of a venue nearby to the Premises and is "well known" to the local authorities. He submits that it is his previous relationship with the local authorities that has "forced him to replay his role and assist them with any enquiries".
92. Mr Kaikaty contends that "in all instances" the Licensee (Mr John Barakat) and more often, the director of the Business Owner (Mr Timothy Bali) supervised his discussions with Police and OLGR officers during business inspections.
93. Mr Kaikaty contends that he was an "employee" of the Premises with "well known background experience" in assisting local authorities with their enquiries, and submits that this "does not support" the argument that he was a close associate, simply because of his "familiarity" with the way in which the business was operated.

*Kaikaty on Particular 12(e)*

94. In relation to Particular 12(e), concerning the alleged obstruction of the "under 18" sign by a flat screen TV, Mr Kaikaty contends that he advised Police that a new TV had been installed recently and not that it had been specifically installed by himself. Mr Kaikaty submits that this is "another attempt to throw [him] into the bandwagon" of owner/licensee/close associate and that these are "highly prejudicial statements" which are "false and misleading".

*Kaikaty on Particular 12(f)*

95. In relation to Particular 12(f), concerning his involvement in breaches of the EPAA, Mr Kaikaty states that he attended Court on those occasions as he was "prepared to be a witness in the matter". However, due to Mr Bali's (the director of the Business Owner) illness, Mr Bali's solicitor did not proceed to defend the matter and instead advised Mr Bali that it was "in his best interest" to plead guilty with mitigating circumstances. Mr Kaikaty notes that this matter was originally dealt with by way of two Penalty Notices of approximately \$3,000 and contends that it was "due to incorrect legal advice" that the matters proceeded to be dealt with by the Court.

*Kaikaty on Particular 13*

96. In response to this Particular, Mr Kaikaty "refutes" the Complainant's use of the words: "On the following occasion Dominic Kaikaty was present and actively participated in these breaches".



*Kaikaty on Particular 13(a)*

97. In response to Particular 13(a), concerning breaches of licence conditions relating to CCTV and the RSA register, Mr Kaikaty submits that he "may have been present" during the detection of these breaches, but the Complainant "clearly identifies" both the director of the Business Owner and the Licensee as also being present.
98. Mr Kaikaty questions his alleged "participation" in the conduct that gave rise to this breach and questions how he has "directly affected the occurrence of these breaches". He contends that he has not.

*Kaikaty on Particular 13(b)*

99. Particular 13(b) of the Ground of Complaint concerns a report of an assault on a male patron on the Premises on 4 April 2013, where the Complainant contends that Police examined CCTV footage of the Premises and "observed the victim conversing with" Mr Kaikaty shortly after the incident. In response to this contention, Mr Kaikaty submits that it is "clearly a false statement" and "demands" that CCTV footage of this incident be submitted to identify Mr Kaikaty "conversing" with the victim of the alleged incident of assault. Mr Kaikaty submits that this incident may have been "confused" with Mr Bali's "involvement" in the incident.

*Kaikaty on Particular 13(c)*

100. In response to Particular 13(c), concerning a business inspection on 7 April 2013 where Police detected several breaches of the Regulation including "shots" of liquor being served after midnight contrary to a licence condition, inadequate coverage by CCTV cameras and the absence of any mandatory "under 18" signage around the Premises bar, Mr Kaikaty questions the relevance of this incident to the Complaint.

*Kaikaty on Particular 13(d)*

101. In response to Particular 13(d), concerning a business inspection on 20 April 2013 where Police identified that certain areas were not covered by CCTV cameras, Mr Kaikaty questions the relevance of this incident to the Complaint.

*Kaikaty on Particular 13(e)*

102. In response to Particular 13(e), concerning the service of liquor in glass vessels contrary to a licence condition on 25 April 2013, Mr Kaikaty submits that this is another example where the Complainant "clearly identifies" the director of the Business Owner, Mr Timothy Bali as being on the Premises during the time of the incident, yet "draws [Mr Kaikaty] into the equation" to make it appear as though he is a "close associate". Mr Kaikaty notes that there were "several" other employees, but contends that the Complainant "continues to try and capitalise on meaningless examples" of Mr Kaikaty's presence on the Premises.
103. Mr Kaikaty submits that there is "no question" that he was employed at the Premises and that he was there on a regular basis; however he submits that the Complainant "makes no attempt to make a direct connection" between this offence and Mr Kaikaty, to identify whether or not Mr Kaikaty had "any involvement or influence" on the occurrence of the breach.

*Kaikaty on Particular 13(f)*

104. In response to Particular 13(f), concerning the obstruction of "under 18" signage required by the legislation on 3 May 2013, Mr Kaikaty refers to his submissions made in response to Particular 12(e) of the Ground of Complaint, where he submits that this is "another attempt to throw [him] into the bandwagon" of owner/licensee/close associate and that these are "highly prejudicial statements" which are "false and misleading".

*Kaikaty on Particular 13(g)*

105. In response to Particular 13(g), Mr Kaikaty "has admitted" to serving shots to undercover OLRG Inspectors on 8 June 2013, but submits that he "made every attempt" to "rectify" this issue. Mr Kaikaty contends that he "immediately" rushed to collect the beverages that were served as a 30mL nip of liqueur on ice with a straw and added a mixer to them, submitting that this action "demonstrates a degree of conscientiousness" on his part.

*Kaikaty on Particular 13(h)*

106. In response to Particular 13(h), concerning reports of noise disturbance from the Premises on 20 July 2013 and 4 August 2013, Mr Kaikaty refers to his submissions in response to Particulars 12(a)-(d) and 13(a)-(e) of the Complaint.

*Kaikaty on Particular 14*

107. In response to Particular 14, concerning Mr Kaikaty's arrest for possession of 4.2 grams of cocaine on 2 March 2013 and subsequent conviction on 13 February 2014 for supplying a prohibited drug, Mr Kaikaty refers to his submissions in response to Particular 9 of the Complaint where he notes that the matter is listed before the District Court on appeal and submits that "no weight" should be placed on this matter until an outcome is reached.

*Kaikaty on Particular 15*

108. In response to Particular 15, where Police observed during a business inspection on 25 April 2013 that Mr Kaikaty "appeared to be under the influence of alcohol or drugs", Mr Kaikaty submits that this is a "ridiculous, false and highly prejudicial statement" made with "no corroborating evidence".

*Kaikaty on Particular 16*

109. In response to Particular 16, concerning a comment posted on the Licensee's (John Barakat) Facebook page on 25 May 2013 and a photograph posted on the Premises' (Déjà Vu) Facebook page on 31 December 2013, Mr Kaikaty submits that the Complainant "continues to rely on juvenile instances" to make Mr Kaikaty "appear less favourable". Mr Kaikaty submits that his conduct in "liking" certain Facebook comments is not a "sign of impropriety" when it comes to determining whether someone is a fit and proper person for the purposes of the Act.
110. Mr Kaikaty "assures" the Authority that whether a "silly" 'like' button has been pressed on a social media website, this "does not automatically constitute" his views. Mr Kaikaty submits that the way in which he conducts himself on social media, through his own personal Facebook page, is a matter that is "up to his discretion".
111. Mr Kaikaty notes that the Complainant "draws no attention" to Mr Kaikaty's personal Facebook page because Mr Kaikaty "does not have any negative views of the local

authorities" and would "never write anything derogatory" on his personal Facebook page, which he submits shows "understanding [and] maturity".

### **Submissions seeking leniency with regard to disciplinary action**

112. Mr Kaikaty submits that it is "understood" that a close associate of a licensee must possess the following:
- One must be a fit and proper person
  - One must have a requisite knowledge of the Act
  - Where a person has been convicted of offences, the decision maker must consider the circumstances of those convictions, the general reputation of the person apart from the convictions and the likelihood of repetition.
113. Mr Kaikaty states that he is now 26 years of age and submits that he has "matured tremendously" since he was last the licensee of a venue. He argues that his decision to further his education and take full caring responsibilities of his mother "demonstrates growth".
114. Mr Kaikaty states that he "does not intend" to be a licensee or a "close associate of a licensee" in the future but submits that taking action against him "would severely diminish employment opportunities in the future and continue to tarnish his name by exploiting him in the media – causing him great embarrassment and humiliation".
115. Mr Kaikaty submits that he is "now working hard to repair the damages of his past" and is "trying his very best" to prove himself to be a "model citizen" and a fit and proper person.
116. Mr Kaikaty argues that the convictions that have been recorded against him since 2011 are "not particularly pertinent" to this Complaint, especially with regard to the drink driving incident. He submits that the drug charges against him are "currently being appealed".
117. Given that he is currently declared "not a fit and proper person" to hold a liquor licence for a period of five years until December 2016, Mr Kaikaty submits that it is "understandable" that the Authority might wish to declare him not a fit and proper person to be a close associate as well, until that time. However, he submits that extending that period any further would be an "unwarranted punishment".
118. Mr Kaikaty submits that if the Authority wishes to exercise its powers and extend the period of time that Mr Kaikaty is declared not a fit and proper person either to hold a liquor licence or to be a close associate of a licensee, then he asks that the Authority wait until the end of the current period, which is 6 December 2016, and review this Complaint at that time.
119. Mr Kaikaty submits that this will give him sufficient time to "continue to improve on his good behaviour and character" so that the Authority may determine whether or not he is a fit and proper person; and ultimately, whether or not extending this period any further is justified because at this stage, it is "simply unjustified" to extend the period any longer than it already is.
120. On the issue of monetary penalties, Mr Kaikaty submits that there "simply should be none" as he "has not provoked this [Complaint]" and "should not incur any costs". Mr Kaikaty submits that he is currently a student and full-time carer for his mother, and is already paying a "multitude of fines and legal fees" which has left him in a "devastated financial situation".

121. Mr Kaikaty submits that it is "understood" that this Complaint has been "sparked" due to his employment at the Premises. He notes that the licensed venue is "currently no longer in operation" and that if the Authority "has any doubts" about this venue reopening, he agrees to a condition stating that he is no longer allowed to enter the Premises. Mr Kaikaty "assures" the Authority that there is "absolutely no intention" by Mr Timothy Bali or Mr John Barakat to recommence trading on the Premises.
122. Mr Kaikaty requests that the Complaint made in relation to him under section 139 of the Act be "rejected" so that he "may resume recuperating his life".
123. On 21 December 2014, Mr Barakat and Mr Kaikaty contacted the Authority by email requesting the opportunity to make a round of further submissions on the respective complaints against them arising from the Déjà Vu licensed business. The stated purpose of this extension was to deal with recent outcomes in Local Court prosecutions and/or appeals to the District Court involving those men. The Authority's Chief Executive gave them until 5 January 2015 to do so.
124. That deadline was not observed.
125. On 5 January 2015, Mr Barakat and Mr Kaikaty again contacted the Authority by email requesting further time to make submissions on the respective complaints against them to deal with recent outcomes in Local Court prosecutions and/or appeals to the District Court. The Authority's Chief Executive gave them until 19 January 2015 to do so.
126. On 11 February 2015, Mr Barakat and Mr Kaikaty were advised that the Authority would be shortly determining the respective complaints against them and that any final submission on these issues must be made by 12 February 2015. No further submissions were made.

## **FINDINGS ON GROUND OF COMPLAINT**

127. As an administrative matter, the Authority's findings are made on the civil standard of proof (the balance of probabilities) although the Authority is mindful of the need to take care when fact finding in response to allegations of the commission of offences or other serious moral wrongdoing – pursuant to the principle in *Briginshaw v Briginshaw* (1938) 60 CLR 336.
128. The Authority notes that on 20 November 2014, OLGR provided to the Authority a table of matters which details all Court outcomes for Dominic Kaikaty, as of that date.
129. The Authority is satisfied that the sole Ground of Complaint has been established, and that Mr Dominic Kaikaty is not a fit and proper person to be a close associate of a liquor licensee in New South Wales.

### *Finding on Particular 1*

130. The Authority accepts, on the basis of the information provided in the Complaint and the GLS licence record dated 11 June 2013 provided by the Complainant, that John Barakat was the licensee of the Premises under an on-premises liquor licence number LIQO62400412 from 25 January 2013 until 16 April 2014, when the then Business Owner, Diamond Events Pty Limited, was requested to vacate the Premises and the Premises Owner, Mr James Farrugia, took possession of the licence.

[The Authority notes that the transfer of the licence from Mr James Farrugia to Mr Grant Collins was provisionally approved on 22 October 2014.]

### *Finding on Particular 2*

131. The Authority accepts, on the basis of the information provided in the Complaint, the GLS licence record dated 11 June 2013 and the ASIC company search extract dated 24 April 2013 provided by the Complainant, that the business owner of the Premises as of the date of the Complaint was Diamond Events Pty Limited, a corporation which is solely owned and directed by Mr Timothy Bali.

### *Findings on Particular 3*

132. This Particular alleges that Mr Kaikaty was a close associate of the (now former) licensee of the Premises, John Barakat. The related Particular 12 of this Complaint (discussed below) also concerns Mr Kaikaty's status as a close associate and alleges that he was managing and running the business while disqualified from holding a licence. The Authority notes that a "close associate" within the meaning of section 5(1) of the *Gaming and Liquor Administration Act 2007* is defined as follows:

*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.*

133. The GALA provides in section 4 that the "gaming and liquor legislation" includes the *Liquor Act 2007*.

134. "Relevant financial interest" is defined in section 5(2) of the GALA as follows:

*...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).*

135. "Relevant position" is defined in section 5(2) of the GALA as follows:

*...relevant position means:*

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

136. "Relevant power" is defined in section 5(2) of the GALA as follows:

*...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.*

137. The Authority is satisfied, as alleged by the Complainant, that Dominic Kaikaty has, since on or about 25 January 2013, been a close associate of the former licensee of the

Premises, John Barakat, within the meaning of section 5(1) of the GALA while Mr Barakat held the licence.

138. The Authority is satisfied, on the basis of information provided in the record of interview between OLGR Inspector Sarina Wise and Dominic Kaikaty on 1 August 2013 (Kaikaty Interview), the record of interview between OLGR Inspector Sarina Wise and John Barakat on 23 July 2013 (Barakat OLGR Interview), the record of interview between Constable Michael Foot and John Barakat on 6 April 2013 (Barakat Police Interview) and the record of interview between Constable Michael Foot and Timothy Bali on 5 April 2013 (Bali Interview), that Mr Kaikaty was not merely an employee but was in practice involved in the management and running of the Déjà Vu licensed business formerly operating on the Premises.
139. With regard to the Kaikaty Interview, when questioned by Inspector Wise about his role at the Premises, Mr Kaikaty described his position as "just below the licensee...[looking] after all the day-to-day operations", including, *inter alia*, running the bar and restaurant areas of the Premises and assisting Mr Bali with rostering, timetables, scheduling and procuring stock.
140. With regard to the Barakat OLGR Interview, when questioned by Inspector Wise about who was in charge of the Premises on occasions when the Licensee was absent, Mr Barakat noted that "it [would] be Tim Bali or Dominic [Kaikaty]". Mr Barakat also stated that Dominic Kaikaty was responsible for maintaining sales records for the Premises and that he (Mr Barakat) did not know how this was done.
141. With regard to the Barakat Police Interview, when questioned by Constable Foot about whether Mr Kaikaty had any input in relation to the preparation of the Plan of Management for the Premises, Mr Barakat stated that he "got some advice" from Mr Kaikaty by reason of his "experience in the Eye Bar". However, when questioned about Mr Kaikaty's level of involvement with other aspects of the operation or management of the Premises, Mr Barakat stated that Mr Kaikaty's role was "just working behind the bar, making sure people are doing what they are supposed to do, that's it". Mr Barakat indicated that Mr Timothy Bali was responsible for registering the business, financial record keeping, managing staff rosters, hiring and remunerating staff and supervising the Premises in his (Mr Barakat's) absence – contrary to the information provided by Mr Bali in the Bali Interview.
142. With regard to the Bali Interview, when questioned by Constable Foot about which staff members had access to the business bank account used by the Premises, Mr Bali indicated that he "sometimes" gave the business ATM card and PIN for that account to Mr Kaikaty to purchase soft drinks, cleaning products, and occasionally pay bills. When questioned by Constable Foot about who was in charge of the Premises when he was not there, Mr Bali stated that it would be "either Dominic Kaikaty or John Barakat". Mr Bali also noted that Mr Kaikaty conducted interviews and hired staff for the Premises, and that he (Mr Kaikaty) "closes my tills for me, so he does the expenditures sheet and pays the staff" – including Mr Barakat. Mr Bali also indicated that Mr Kaikaty "helps with the training of staff, he does web design for the Facebook posts, he sorts out the music we play at the venue, makes sure the place is nice and clean", and agreed with the proposition that Mr Kaikaty "take[s] care of all the requests that come in from the Police" in relation to CCTV and other licensing requirements.
143. The Authority is satisfied, on the basis of the statements made in the Kaikaty Interview, the Barakat OLGR Interview, the Barakat Police Interview and the Bali Interview, that Dominic Kaikaty held a "relevant position" within the meaning of section 5(1)(b) of the GALA with respect to the licensed business.

144. Notwithstanding Mr Kaikaty's description of his role as being "restricted" to that of a "bartender, waiter and at the very most, supervisor" and his contention that he had "no right or power of a manager or close associate", the Authority finds, on the balance of probabilities, that Mr Kaikaty was, in practice, acting in a managerial capacity with respect to this licensed business.
145. The Authority is satisfied, on the basis of the COPS Reports which form part of the Brief of Evidence provided by the Complainant, that the narratives of NSW Police COPS Event numbers E51947571, E51211847, E51259218, E50923806 and E97846902 record Dominic Kaikaty as being apparently responsible for the operation of the licensed business. These COPS Reports also indicate that the Licensee and/or the business owner of the Premises, Mr Bali was absent on each of these five (5) occasions. The Authority has read the full text of these COPS Reports and is satisfied that Mr Kaikaty was in reality left responsible for the Premises.
146. The Authority notes and accepts as credible the contemporaneous observations recorded by the attending Police officer in COPS Report E51947571 that in relation to the obstruction of the "under 18" sign at the rear bar of the Premises by a new flat screen TV, Mr Kaikaty "stated he had only installed the new flat screen TV that evening". Mr Kaikaty then "apologised...removed the sign and re-positioned it beneath the screen". The Authority notes and accepts that the Licensee was not present at the time, but was subsequently spoken to by Police and declined to be interviewed in relation to this matter.
147. The Authority notes and accepts as credible the contemporaneous observations recorded by the attending Police officer in COPS Report E51211847 that Dominic Kaikaty was "believed to be more than merely an employee of the venue" and that he assisted Police with their enquiries.
148. The Authority notes and accepts as credible the contemporaneous observations recorded by the attending Police officer in COPS Report E51259218 that the business owner, Mr Bali "was present, however simply stood in the background or intermittently wandered off, leaving [Mr Kaikaty] to deal with Police" in relation to the production of CCTV footage which had not been provided by the Premises pursuant to a previous written request.
149. The Authority notes and accepts as credible the contemporaneous observations recorded by the attending Police officer in COPS Report E50923806 that neither the Licensee nor the business owner was present on any of the three occasions when Police attended, and that Mr Kaikaty "was in effect supervising the operation of the Premises". The Authority notes and accepts that Mr Kaikaty provided to Police copies of some CCTV footage for the Premises and was served with a form of demand in relation to the provision of other CCTV footage.
150. The Authority notes and accepts as credible the contemporaneous observations recorded by the attending Police officer in COPS Report E97846902 that it was "obvious" that the business owner, Timothy Bali, had "little experience or knowledge" of regulatory requirements, and that Dominic Kaikaty "seemed to have full management control" of the Premises. The Authority notes and accepts that Mr Kaikaty assisted the business owner, Timothy Bali, in locating the liquor licence, RSA register and incident register which were requested by Police, and was the only person on the Premises who could operate the CCTV.

151. The Authority is satisfied, on the basis of the information and observations provided in the abovementioned NSW Police COPS Report numbers E51947571, E51211847, E51259218, E50923806 and E97846902, that Mr Kaikaty represented the business to third parties, particularly Police with regard to various regulatory affairs, including liaising with Police and attending Court matters.
152. The Authority is satisfied that Mr Kaikaty was apparently in control of the licensed business on numerous occasions between January 2013 and early 2014 when Police attended the Premises to conduct business inspections as detailed in COPS Report numbers E51947571, E51211847, E51259218, E50923806 and E97846902.
153. Having considered all of the material going to Mr Kaikaty's role with the licensed business and despite Mr Kaikaty's unsworn submissions to the contrary, the Authority is satisfied that Mr Kaikaty was more likely than not a close associate of the Licensee and not a mere employee of the business.

#### *Finding on Particular 4*

154. The Authority accepts, on the basis of the information provided in the Complaint and Authority records, that Dominic Kaikaty, in his capacity as licensee of the Eye Bar in Kings Cross between 2009 and 2011, was the respondent to a disciplinary complaint made under section 139 of the Act lodged by the Commissioner of Police with the then named Casino, Liquor and Gaming Control Authority (CLGCA).

#### *Findings on Particular 5*

155. The Authority accepts, on the basis of the information provided in the Complaint and the published decision entitled *Decision and Statement of Reasons on Complaint under Section 139 Liquor Act 2007 against Mr Dominic Kaikaty, licensee of the Eye Bar, Kings Cross*, that the above disciplinary complaint was determined by the CLGCA on 6 December 2011 and Dominic Kaikaty was disqualified from holding the position of liquor licensee for a period of five (5) years commencing on 6 December 2011. The Authority accepts that the following grounds of complaint were established in that matter:
  - (i) Section 139(3)(a) – that the licensee has, while holding a licence, been convicted of an offence under this Act or the Regulations or of an offence prescribed by the Regulations
  - (ii) Section 139(3)(b) – that the licensee has failed to comply with any of the conditions to which the licence is subject
  - (iii) Section 139(3)(d) – that the licensee has failed to comply with any other requirements under this Act or the Regulations
  - (iv) Section 139(3)(i) – that the licensee is not a fit and proper person to be the holder of the licence
  - (v) Section 139(3)(s) – that the licence has not been exercised in the public interest.
156. The Authority will take into account, for the purposes of this Complaint, the fact that Mr Kaikaty has been disqualified from holding a liquor licence and remains disqualified until 6 December 2016.



*Findings on Particular 6*

157. The Authority is satisfied, as alleged by the Complainant in Particular 6 of the Ground of Complaint, that Dominic Kaikaty has an extensive criminal history which includes convictions for breaches of licensing legislation while he was the holder of a liquor licence in respect of the Eye Bar in Kings Cross, including convictions for failing to comply with various conditions of the licence, failing to comply with a requirement under the Act, supplying liquor to minors and also a conviction for furnishing false or misleading information.
158. The Authority is satisfied, on the basis of the information provided in the Complaint and *JusticeLink* records of Court outcomes provided by OLGR to the Authority on 20 November 2014, that on 6 May 2011, Mr Kaikaty was convicted at Downing Centre Local Court for the offence of failing to comply with a condition of the licence contrary to section 11(2) of the Act – ensure immediate access for Police and OLGR to CCTV system, for which he received a fine of \$750 and Court costs in the sum of \$79. This offence was committed on 8 March 2011.
159. The Authority is satisfied, on the basis of the information provided in the Complaint and *JusticeLink* records of Court outcomes provided by OLGR to the Authority on 20 November 2014, that on 14 June 2011, Mr Kaikaty was convicted at Downing Centre Local Court for the offence of failing to comply with a condition of the licence contrary to section 11(2) of the Act – sell or supply liquor not in accordance with authority (sale of takeaway liquor), for which he received a fine of \$2,500 and Court costs in the sum of \$79. This offence was committed on 20 March 2010.
160. The Authority is satisfied, on the basis of the information provided in the Complaint and *JusticeLink* records of Court outcomes provided by OLGR to the Authority on 20 November 2014, that on 14 June 2011, Mr Kaikaty was convicted at Downing Centre Local Court for the offence of failing to comply with a condition of the licence contrary to section 11(2) of the Act – kitchen to be accessible to staff only, with door latch operational, for which he received a fine of \$3,000 and Court costs in the sum of \$79. This offence was committed on 1 August 2010.
161. The Authority is satisfied, on the basis of the information provided in the Complaint and *JusticeLink* records of Court outcomes provided by OLGR to the Authority on 20 November 2014, that on 23 June 2011, Mr Kaikaty was convicted at Downing Centre Local Court for four (4) counts of the offence of failing to comply with a condition of the licence contrary to section 11(2) of the Act, for which he received a fine of \$600 and Court costs in the sum of \$79 for each count. These offences were committed on 21 March 2011.
162. The Authority is satisfied, on the basis of the information provided in the Complaint and *JusticeLink* records of Court outcomes provided by OLGR to the Authority on 20 November 2014, that on 23 June 2011, Mr Kaikaty was convicted at Downing Centre Local Court for the offence of furnishing false or misleading information in response to a Notice pursuant to section 34(1) of the GALA, for which he received a fine of \$600 and Court costs in the sum of \$79. This offence was committed on 21 March 2011.
163. The Authority is satisfied, on the basis of the information provided in the Complaint and *JusticeLink* records of Court outcomes provided by OLGR to the Authority on 20 November 2014, that on 4 July 2011, Mr Kaikaty was convicted at Downing Centre Local Court for the offence of refusing or failing to comply with a requirement pursuant to section 34(1) of the GALA – fail to produce business records required under notice, for

which he received a fine of \$4,000 and Court costs in the sum of \$79. This offence was committed on 23 March 2011.

164. The Authority is satisfied, on the basis of the information provided in the Complaint and *JusticeLink* records of Court outcomes provided by OLGR to the Authority on 20 November 2014, that on 4 July 2011, Mr Kaikaty was convicted at Downing Centre Local Court for the offence of failing to comply with a condition of the licence contrary to section 11(2) of the Act – breach of condition relating to CCTV, for which he received a fine of \$5,000 and Court costs in the sum of \$79. This offence was committed on 6 April 2011.
165. The Authority is satisfied, on the basis of the information provided in the Complaint and *JusticeLink* records of Court outcomes provided by OLGR to the Authority on 20 November 2014, that on 28 July 2011, Mr Kaikaty was convicted at Downing Centre Local Court for the offence of failing to comply with a condition of the licence contrary to section 11(2) of the Act – breach of condition relating to CCTV, for which he received a fine of \$1,500 and Court costs in the sum of \$79. This offence was committed on 16 June 2011.
166. The Authority is satisfied, on the basis of the information provided in the Complaint and *JusticeLink* records of Court outcomes provided by OLGR to the Authority on 20 November 2014, that on 9 November 2011, Mr Kaikaty was convicted at Downing Centre Local Court for six (6) counts of the offence of supplying liquor to a minor on licensed premises contrary to section 117(2) of the Act, for which he received a fine of \$81 and a Community Service Order of 50 hours for each count (to be served concurrently). He was also disqualified by the Local Court from holding a liquor licence for a period of twelve (12) months as an additional penalty under Part 10 of the Act.
167. This Particular is established. The Authority notes that these convictions were taken into account by the Authority when determining the 2011 disciplinary complaint against Dominic Kaikaty in his capacity as licensee of the Eye Bar in Kings Cross. Although it may be open to the Authority to revisit these older matters for the purposes of this decision, by reason of their age combined with the fact that Police could have, but did not, seek disqualification of Mr Kaikaty as a close associate in 2011, the Authority has decided, for the purposes of determining this Complaint, to rely upon convictions recorded against Mr Kaikaty that were *not* relied upon by the Authority in the 2011 decision.

#### *Findings on Particular 7*

168. The Authority is satisfied, as alleged by the Complainant in Particular 7 of the Ground of Complaint, that Dominic Kaikaty was convicted of three counts of "larceny as a bailee".
169. The Authority is satisfied, on the basis of the information provided in the Complaint and *JusticeLink* records of Court outcomes provided by OLGR to the Authority on 20 November 2014, that on 7 December 2010, Mr Kaikaty was convicted at Burwood Local Court for two counts of the offence of larceny as a bailee for property with a value of greater than \$15,000 under section 630 of the *Crimes Act 1900*, for which he received a 2 year good behaviour bond pursuant to section 9 of the *Crimes (Sentencing Procedure) Act 1999*. These offences were committed on 24 August 2009.
170. The Authority is satisfied, on the basis of the information provided in the Complaint and *JusticeLink* records of Court outcomes provided by OLGR to the Authority on 20 November 2014, that on 7 December 2010, Mr Kaikaty was convicted at Burwood Local Court for the offence of larceny as a bailee for property with a value of greater than

\$5,000 and less than \$15,000 under section 631 of the *Crimes Act 1900*, for which he received a 2 year good behaviour bond pursuant to section 9 of the *Crimes (Sentencing Procedure) Act 1999*. This offence was committed on 24 August 2009.

171. The Authority notes that these convictions were taken into account by the Authority when determining the 2011 disciplinary complaint against Dominic Kaikaty in his capacity as licensee of the Eye Bar in Kings Cross. While this Particular is established, for the reasons noted in relation to Particular 6, the Authority has decided *not* to take into account these matters for the purposes of the Complaint currently before the Authority.

#### *Findings on Particular 8*

172. The Authority is satisfied, as alleged by the Complainant in Particular 8 of the Ground of Complaint, that since being disqualified from holding a liquor licence on 6 December 2011, two further convictions have been recorded against Mr Kaikaty for breaches of liquor licence conditions that were *not* taken into account by the Authority in the 2011 Authority decision to disqualify Mr Kaikaty from holding a licence.

173. The Authority is satisfied, on the basis of the information provided in Particular 8(a) of the Ground of Complaint and *JusticeLink* records of Court outcomes provided by OLGR to the Authority on 20 November 2014, that on 23 November 2011, Mr Kaikaty was convicted at Downing Centre Local Court for the offence of failing to comply with a condition of the licence contrary to section 11(2) of the Act – breach of condition relating to CCTV, for which he received a fine of \$8,000 and Court costs in the sum of \$81. This offence was committed on 18 August 2011.

[The Authority notes that Particular 8(a) of the Ground of Complaint states that this offence was committed on 11 August 2011.]

174. The Authority is satisfied, on the basis of the information provided in Particular 8(b) of the Ground of Complaint and *JusticeLink* records of Court outcomes provided by OLGR to the Authority on 20 November 2014, that on 16 January 2012, Mr Kaikaty was convicted at Downing Centre Local Court for the offence of failing to comply with a condition of the licence contrary to section 11(2) of the Act – breach of condition relating to CCTV, for which he received a fine of \$7,500 and Court costs in the sum of \$81. This offence was committed on 16 November 2011.

[The Authority notes that Particular 8(b) of the Ground of Complaint states that this offence was committed on 18 September 2011.]

175. This Particular is established and the Authority will take these matters into account for the purposes of determining this Complaint. The Authority notes the substantial penalties issued by the Local Court in respect of these convictions, reflecting the relative seriousness of the matters before the Court and Mr Kaikaty's recalcitrance with regard to CCTV requirements, which constitute important harm minimisation requirements.

#### *Findings on Particular 9*

176. The Authority is satisfied, as alleged by the Complainant in Particular 9 of the Ground of Complaint, that subsequent to a search by Police of Mr Kaikaty's person on 2 March 2013, six small re-sealable bags each containing a quantity of cocaine were detected.

177. The Authority is satisfied, on the basis of the information provided in the Complaint and in Mr Kaikaty's submission addressing the merits of the Complaint, that on 13 February

2014, Mr Kaikaty was convicted at Downing Centre Local Court for the "Table 1" offence of supply of prohibited drugs under section 25(1) of the *Drug Misuse and Trafficking Act 1985*, for which he received an eight month suspended sentence pursuant to section 12 of the *Crimes (Sentencing Procedure) Act 1999*. A drug destruction order was also made.

178. The Authority is satisfied, on the basis of *JusticeLink* records of Court outcomes provided by OLGR to the Authority on 20 November 2014, that Mr Kaikaty's appeal to the District Court was dismissed on 11 November 2014, and that the orders of the Local Court stand.
179. This Particular is established and the Authority will take these matters into account for the purposes of determining this Complaint. These drug offences are of relevance to Mr Kaikaty's fitness to be a close associate of a licensee, in that the facts indicate that the drugs were detected on Mr Kaikaty's person while he was *on the Premises*. This type of conduct, when committed by a person who is a close associate of licensee of a licensed premises, may well expose a licensee to prosecution for an offence against section 74 of the Act, in relation to permitting the possession, use or sale of prohibited drugs on licensed premises.

#### *Findings on Particular 10*

180. The Authority is satisfied, as alleged by the Complainant in Particular 10 of the Ground of Complaint, that Mr Kaikaty was charged with two additional offences that were before Downing Centre Local Court as at the date of the Complaint.
181. The Authority is satisfied, on the basis of the information provided in Particular 10(a) of the Ground of Complaint and *JusticeLink* records of Court outcomes provided by OLGR to the Authority on 20 November 2014, that subsequent to the occurrence of certain events on 13 May 2012, Mr Kaikaty was convicted at Downing Centre Local Court for the offence of driving with high range prescribed concentration of alcohol pursuant to section 9(4)(a) of the *Road Transport (Safety and Traffic Management) Act 1999*, for which he received a Community Service Order of 150 hours and had his driver's licence disqualified for a period of 18 months from 20 February 2014 to 19 August 2015.
182. The Authority is satisfied, on the basis of the information provided in Particular 10(b) of the Ground of Complaint and *JusticeLink* records of Court outcomes provided by OLGR to the Authority on 20 November 2014, that Mr Kaikaty was also, on the same occasion, convicted at Downing Centre Local Court of two counts of the offence of failing to give particulars to the other driver pursuant to section 287(1) of the *Australian Road Rules 2008*, for which he received a fine of \$500 for each count.
183. The Authority is satisfied, on the basis of *JusticeLink* records of Court outcomes provided by OLGR to the Authority on 20 November 2014, that Mr Kaikaty's appeal to the District Court was dismissed on 11 November 2014, and that the orders of the Local Court stand.
184. This Particular is established and the Authority will take these matters into account for the purposes of determining this Complaint. These are matters that go more generally to Mr Kaikaty's character and are relevant to an assessment of whether he is a fit and proper person to be a close associate of a liquor licensee. The high range prescribed concentration of alcohol offence is regarded by the Authority to be a particularly irresponsible form of unlawful conduct.

*Findings on Particular 11*

185. The Authority is satisfied, as alleged by the Complainant in Particular 11 of the Ground of Complaint, that Dominic Kaikaty was issued with numerous Penalty Notices for failing to comply with licensing legislation while he was the licensee of the Eye Bar in Kings Cross. He was also issued with numerous fines for various traffic offences, a significant portion of which he has failed to pay.
186. The Authority accepts, on the basis of the information provided in the Complaint and business records provided by the SDRO on 24 June 2013, that Dominic Kaikaty has thirty-two (32) outstanding enforcement orders with an outstanding balance of **\$77,794.43**. The Authority notes that he has since entered into a Payment Plan in respect of those outstanding fines, which commenced on 27 November 2012.
187. This Particular is established. However, for the reasons noted in respect of Particular 6 of the Ground of Complaint, the Authority will *not* take into account Penalty Notices that were before the Authority at the time of its 2011 decision.

*Findings on Particular 12*

188. The Authority is satisfied, as alleged by the Complainant in Particular 12 of the Ground of Complaint, that Dominic Kaikaty has undertaken the management and operation of the business operating on the Premises (Déjà Vu). This has occurred subsequent to his disqualification from holding a liquor licence for a period of five years commencing from 6 December 2011.
189. The Authority notes that due to his prior disqualification, Dominic Kaikaty could not be appointed as an approved manager under section 66 of the Act but is satisfied, as alleged by the Complainant, that Mr Kaikaty more likely than not worked in a managerial capacity and was a "manager" of the business within the ordinary meaning of that word.
190. The Authority is satisfied, on the basis of information provided in the Kaikaty Interview, the Barakat OLGR Interview, the Barakat Police Interview and the Bali Interview and as outlined in the findings for Particular 3 of the Ground of Complaint, that Mr Kaikaty was involved in the management and running of the Déjà Vu business operating on the Premises.
191. The Authority is further satisfied, as alleged by the Complainant, that Mr Kaikaty's work as manager satisfies the definition of a "close associate" within the meaning of section 5(1) of the GALA by reason that Mr Kaikaty held a "relevant position" within the meaning of section 5(1)(b) of the GALA with respect to the licensed business.
192. As further indicia that Mr Kaikaty was in practice working in a managerial capacity, the Authority is satisfied, as alleged by the Complainant, that Dominic Kaikaty assisted Police with their enquiries on a number of occasions during business inspections conducted by Police on the Premises, and that Mr Kaikaty also attended Downing Centre Local Court on behalf of the Déjà Vu licensed business.
193. The Authority is satisfied, on the basis of the material provided in relation to Particular 12(a) of the Ground of Complaint and the narrative of NSW Police COPS Event number E97846902, that on 26 January 2013, Police attended the Premises and noted that Dominic Kaikaty seemed to have full management control of the Premises. He assisted the business owner, Timothy Bali, in locating the liquor licence, RSA register and incident register which were requested by Police, and was the only person on the Premises who could operate the CCTV.

194. The Authority is satisfied, on the basis of the information provided in Particular 12(b) of the Ground of Complaint and the narrative of NSW Police COPS Event number E50923806, that on a number of occasions on 4 April 2013, Police attended the Premises and observed that Dominic Kaikaty was in effect supervising and operating the Premises. He provided Police with a copy of CCTV footage and was served with a form of demand in relation to the provision of other CCTV. On all these occasions, John Barakat and Timothy Bali were not present.
195. The Authority is satisfied, on the basis of the information provided in Particular 12(c) of the Ground of Complaint and the narrative of NSW Police COPS Event number E52869082, that on 7 April 2013, Dominic Kaikaty assisted Police with their enquiries during their inspection at the Premises while the Licensee and the business owner were in attendance.
196. The Authority is satisfied, on the basis of the information provided in Particular 12(d) of the Ground of Complaint and the narrative of NSW Police COPS Event number E51259218, that on 20 April 2013, Police attended the Premises. The Licensee, Mr Barakat, was not present and Police were informed that he would not be attending the Premises. Police were assisted in their enquiries by Dominic Kaikaty. The business owner, Timothy Bali, was present, but stood in the background.
197. The Authority is satisfied, on the basis of the information provided in Particular 12(e) of the Ground of Complaint and the narrative of NSW Police COPS Event number E51947571, that on 3 May 2013, Police attended the Premises and noted that the "under 18" sign near the bar was completely obstructed by a flat screen TV. Dominic Kaikaty informed Police that he had only installed the flat screen TV that evening. The Licensee was not present at this time.
198. The Authority is satisfied, on the basis of the information provided in Particular 12(f) of the Ground of Complaint and correspondence between OLGR and City of Sydney Council staff, that on 29 January 2014, Council prosecuted the corporate Business Owner, Diamond Events Pty Limited, for contraventions of the EPAA in relation to breaches of the Premises' development consent. Council staff noted that the director of the Business Owner, Mr Timothy Bali, did not attend Court and that Mr Dominic Kaikaty attended in his stead.
199. This Particular is established and the Authority will take these matters into account for the purposes of determining this Complaint.

### *Findings on Particular 13*

200. Particular 13 alleges that Mr Kaikaty "actively participated" in the commission of several offences committed by the licensed business or the Licensee, arising from business inspections on the Premises whereby Police, OLGR officers and City of Sydney Council officers identified breaches of licence conditions and other contraventions of the Act, the Regulation or the *Environmental Planning and Assessment Act 1979*.
201. The Authority notes that in respect of the relevant environmental planning offences regarding noise disturbance, it is the occupier or corporate Business Owner, Diamond Events Pty Limited, who was responsible and liable for prosecution. In the case of liquor licensing offences, it was the Licensee who was responsible and liable for prosecution. Nevertheless, in light of the Authority's satisfaction that Mr Kaikaty was acting in a managerial capacity and that he was present on the Premises at the times of the relevant business inspections, the Authority accepts that Mr Kaikaty can be said to have played a role in contributing to the commission of these offences by the Business Owner

or the Licensee (as the case may be) on the relevant occasions. These matters are further adverse indicia of the suitability of Mr Kaikaty to be a close associate of a liquor licensee, albeit not decisive factors.

202. The Authority is satisfied, on the basis of the information provided in Particular 13(a) of the Ground of Complaint and the narrative of NSW Police COPS Event number E97846902, that on 26 January 2013, Police attended the Premises at about 8:30pm and 10:20pm. On both occasions the Licensee was not present; however Timothy Bali and Dominic Kaikaty were at the Premises. Police initially questioned Mr Bali with regard to regulatory requirements and noted that he was unable to locate the RSA or incident registers or the liquor licence, and could not operate the Premises' CCTV. Police noted that it was "obvious that [Mr Bali] had little experience or knowledge" of regulatory requirements and that Dominic Kaikaty "seemed to have full management control of the venue" and was the only person who could assist Police with their enquiries. Police inspected the Premises' CCTV and identified that one of the CCTV servers was displaying a time one hour ahead of real time. Additionally, the RSA Certificate for the Licensee, Mr Barakat, could not be produced. Police issued the Licensee with two Compliance Notices in relation to these breaches of licence conditions.
203. The Authority is satisfied, on the basis of the information provided in Particular 13(b) of the Ground of Complaint and the narrative of NSW Police COPS Event number E50923806, that on 4 April 2013, Police attended the Premises on three occasions in relation to a report of an assault on a male patron. Police spoke with Dominic Kaikaty, noting that neither the business owner nor the Licensee was present on any of these occasions. When questioned by Police, Dominic Kaikaty initially denied knowledge of the incident. After further questioning, he acknowledged that an incident had occurred. Police examined CCTV footage from the Premises and observed the victim conversing with Dominic Kaikaty shortly after the incident. Police noted that no record of the incident had been made in the incident register. Police issued the Licensee with a Penalty Notice in relation to the breach of the licence condition imposed by clause 53J of the Regulation.
204. The Authority is satisfied, on the basis of the information provided in Particular 13(c) of the Ground of Complaint and the narrative of NSW Police COPS Event number E52869082, that at about 12:25am on 7 April 2013, Police attended the Premises and observed three patrons each consuming a "shot" of liquor. The Licensee, business owner and Dominic Kaikaty were all present at the Premises; however Dominic Kaikaty represented the business on this occasion. Police performed an audit of the Premises' CCTV system and identified that there was not full CCTV coverage of the outdoor courtyard area, and a tree branch was obstructing a large portion of the CCTV coverage of the front footpath. Police observed that there was no mandatory "under 18" signage on display around the bar. The Licensee was issued with two Penalty Notices in relation to the above breaches of the licence conditions imposed by clause 53F and clause 53H of the Regulation and a Penalty Notice for breach of clause 31(1) of the Regulation (prescribed notice to be displayed in licensed premises).
205. The Authority is satisfied, on the basis of the information provided in Particular 13(d) of the Ground of Complaint and the narrative of NSW Police COPS Event number E51259218, that on 20 April 2013, Police attended the Premises. The Licensee was not present at that time, and Police were informed that he "would not be attending" the Premises. Police noted that the business owner, Mr Bali was present, however he "simply stood in the background or intermittently wandered off", leaving Dominic Kaikaty to deal with Police. After an inspection of the physical positioning of the CCTV cameras within the Premises, Police identified that certain areas were not covered by CCTV, in particular a large portion of the southern side of the rear bar area and a small area in the

corridor outside the kitchen. Police issued the Licensee with a Penalty Notice in relation to the above breach of the licence condition imposed by clause 53H of the Regulation.

206. The Authority is satisfied, on the basis of the information provided in Particular 13(e) of the Ground of Complaint and the narrative of NSW Police COPS Event number E51211847, that at about 1:10am on 25 April 2013, Police attended the Premises and in the courtyard they observed a male patron and a female patron each drinking from a glass bottle of *Tooheys Extra Dry* beer. The two patrons stated to Police that they had purchased the drinks from the Premises bar a short time earlier. When questioned by the attending Police, both Timothy Bali and Dominic Kaikaty appeared uncertain as to who was the manager at the Premises. The Licensee was not present on that occasion and Police were informed that he "was not working" that night. Neither Timothy Bali nor Dominic Kaikaty attempted to remove the glass bottles from the two patrons. The two patrons were then observed to enter the Premises bar, still holding the two glass bottles. Again, no effort was made to remove the glass bottles until Police pointed out to Timothy Bali that the glass bottles should be removed. Police issued the Licensee, Mr Barakat, with a Penalty Notice in relation to the above breach of the licence condition imposed by clause 53E of the Regulation.
207. The Authority is satisfied, on the basis of the information provided in Particular 13(f) of the Ground of Complaint and the narrative of NSW Police COPS Event number E51947571, that on 3 May 2013, Police attended the Premises and noted that they could not see any "under 18" sign on display. Upon closer inspection, Police identified that the sign was hanging on a wall near the bar, but had been almost completely obstructed by a newly installed flat screen TV. Dominic Kaikaty informed Police that he had only installed the flat screen TV that evening. Neither the Licensee nor the business owner was present at the time. Police issued the Licensee, Mr Barakat, with a Penalty Notice in relation to the breach of clause 31(1) of the Regulation (prescribed notice to be displayed in licensed premises).
208. The Authority is satisfied, on the basis of the information provided in Particular 13(g) of the Ground of Complaint and the statements of OLGR Inspectors Sarina Wise and Darren Duke dated 14 June 2013 and 17 June 2013 respectively, that on 8 June 2013, OLGR conducted an inspection at the Premises to test compliance with the Kings Cross special licence conditions prescribed by part 5A of the Regulation and general compliance with the requirements of the Act. At approximately 12:08am on 8 June 2013, OLGR Inspector Sarina Wise was able to purchase two "shots" of liquor served by Dominic Kaikaty. The OLGR Inspectors noted that while four staff members were present at the Premises, only Dominic Kaikaty represented the licensed business on that occasion. In a conversation with OLGR Inspectors Sarina Wise and Darren Duke on 8 June 2013 and during an interview conducted by OLGR with Dominic Kaikaty on 1 August 2013, he conceded that he served shots in breach of the licence condition imposed by clause 53F of the Regulation, which prohibits shots to be sold or supplied on the Premises after midnight. The Licensee was issued with two Penalty Notices in relation to the above contravention.
209. The Authority is satisfied, on the basis of the information provided in Particular 13(h) of the Ground of Complaint and City of Sydney Council records, that on 20 July and 4 August 2013, Council officers attended nearby residences in response to reports of noise disturbance from the Premises. During the inspections, Council officers determined that the level of noise being emitted from the Premises was not in accordance with the conditions of the Premises' development consent. The level of noise emitted from the Premises on 4 August 2013 was causing a resident's floors to vibrate. On both occasions, Dominic Kaikaty represented the Premises and conversed with Council officers. Neither the Licensee nor the business owner spoke to Council officers



on these occasions. The matter was heard at the Downing Centre Local Court on 29 January 2014 and the corporate Business Owner, Diamond Events Pty Limited, was fined \$16,200 for the offences.

#### *Findings on Particular 14*

210. The Authority is satisfied, as alleged by the Complainant in Particular 14 of the Ground of Complaint, and on the basis of the information provided in the Complaint and the narrative of NSW Police COPS Event number E744443490, that Dominic Kaikaty was arrested by Police on the Premises on 2 March 2013 pursuant to a warrant issued for his arrest and that whilst in custody, he was found in possession of 4.2 grams of cocaine.
211. The Authority is satisfied, on the basis of the information provided in the Complaint and in Mr Kaikaty's submission addressing the merits of the Complaint, that on 13 February 2014, Mr Kaikaty was convicted at Downing Centre Local Court for the "Table 1" offence of supply of prohibited drugs under section 25(1) of the *Drug Misuse and Trafficking Act 1985*, for which he received an eight (8) month suspended sentence pursuant to section 12 of the *Crimes (Sentencing Procedure) Act 1999*. A drug destruction order was also made.
212. The Authority is satisfied, on the basis of *JusticeLink* records of Court outcomes provided by OLGR to the Authority on 20 November 2014, that Mr Kaikaty's appeal to the District Court was dismissed on 11 November 2014, and that the orders of the Local Court stand.

#### *Findings on Particular 15*

213. The Authority notes the contemporaneous observations recorded by NSW Police in COPS Event number E51211847, which records that during a business inspection conducted on the Premises on 25 April 2013, Police observed that Dominic Kaikaty appeared to be "under the influence of alcohol or drugs".
214. The Authority notes that Police observations included that at the time of the business inspection, Dominic Kaikaty "had a glazed look as if dazed, he was unsteady on his feet, his speech was slurred and he appeared to be confused". The Authority is satisfied that Mr Kaikaty was visibly affected by some unknown substance while on the Premises.
215. The Authority accepts the Police opinion recorded in this contemporaneous report, noting that Police officers have considerable experience in dealing with persons intoxicated by alcohol or drugs. In light of the absence of any admission or other evidence corroborating that Mr Kaikaty was under the influence of prohibited drugs, the Authority is satisfied that Mr Kaikaty was under the influence of alcohol when he was engaged by Police.

#### *Findings on Particular 16*

216. The Authority is satisfied, as alleged in Particular 16 of the Ground of Complaint, that staff or other persons associated with the Premises have posted material on social media that was derogatory toward Kings Cross Local Area Command Police.
217. The Authority is satisfied, on the basis of the information provided in the Complaint and Facebook screenshots provided by OLGR in the Brief of Evidence, that on 25 May 2013, Police reviewed the Licensee's (John Barakat) Facebook page and noticed he posted the following comment: "Fuc u kings Cros police!" [*sic*]. Dominic Kaikaty "liked" this comment on Facebook.

218. The Authority is satisfied, on the basis of the information provided in the Complaint and Facebook screenshots provided by OLGR in the Brief of Evidence, that on 31 December 2013, Police reviewed the Premises' (Déjà Vu) Facebook page and observed an entry posted by a "Dylan Dvs" which was offensive toward the Kings Cross Local Area Command. The photograph was a group shot of the Premises staff, including the Licensee (Mr John Barakat), business owner (Mr Timothy Bali) and Mr Dominic Kaikaty, all posing with their middle fingers positioned in an offensive manner toward the camera. A caption was linked to the photograph which read: "On behalf of #DEJAVU kingscross we would like to say a big #FUCKYOU to Kings Cross Police LAC #kingscross #staff #police #LAC #taskforce #pigs #dogs #ftp #ftw #baws #nofilter".
219. The Authority is satisfied, on the basis of the information provided in the Complaint that several days later, Police engaged with the venue, which resulted in the Licensee posting a retraction message on the venue's Facebook page. The Licensee told Police that the photograph was not posted on the Premises' Facebook page and was a result of a "rogue" staff member who undertook the actions of his own accord, in respect of which the Licensee had no knowledge. While accepting that a staff member published the material on Facebook, the Authority accepts the Complainant's contention that the Licensee only posted the retraction after Police had engaged with him about the issue. The Authority accepts the Police contention that the Licensee (John Barakat), the Premises (Déjà Vu), Mr Dominic Kaikaty and other staff members were "tagged" in this photograph via Facebook and that they had "liked" the photo and caption when it was originally posted.
220. The Authority is satisfied that Dominic Kaikaty did not *post* to Facebook the offending media that is referred to in Particular 16 of the Ground of Complaint. However, the Authority is satisfied that Dominic Kaikaty was aware of and endorsed this activity, as evident from his "liking" the derogatory comments that were posted by staff at the Premises and his being "tagged" in a photograph that was offensive toward Kings Cross Local Area Command Police.
221. This conduct is relevant in that it occurred in connection to the licensed business in respect of which Mr Kaikaty was working in a managerial capacity. It also goes to Mr Kaikaty's personal maturity and suitability to be associated with a licensed business and indicates that Mr Kaikaty does not appear to take his relationship with law enforcement seriously.

### **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 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 – *Clarahan v Register of Motor Vehicle Dealers in the ACT* (1994) 17 FLR 44.
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. The Authority is satisfied, on the basis of the Authority's findings on Particulars 1 to 16 above, that even if those convictions recorded and those Penalty Notices issued against Mr Kaikaty that were taken into account during the Authority's previous disqualification of Mr Kaikaty are *not* taken into account again for the purposes of this decision, the balance of convictions recorded against Mr Kaikaty are indicative of a serious and ongoing disregard for laws and regulations that have been developed in order to protect the public interest. While some of the conduct (such as his use of social media) occurred in his private capacity, they are relevant matters that go to a general assessment of Mr Kaikaty's character and his suitability to be involved as a close associate to a licensee.
226. All of these matters, considered cumulatively and occurring against the background of Mr Kaikaty's disqualification from holding a licence (which remains in effect), satisfy the Authority that Dominic Kaikaty is not a fit and proper person to be a close associate of a licensee of licensed premises.
227. The Authority notes that since the making of this Complaint, subsection 45(5A) has been inserted into the Act and provides that when the Authority is determining the fitness of an *applicant* for a liquor licence, the Authority must, without limitation, consider whether the licence applicant (a) is of good repute having regard to character, honesty and integrity and (b) is competent to carry on "that business or activity".
228. The Authority is not persuaded that Mr Kaikaty's submissions going to his character and competence establish that he is a fit and proper person to be a close associate of a liquor licence.

## **DISCIPLINARY ACTION**

### **No Final Submissions on Disciplinary Action from Mr Kaikaty**

229. The Authority's Chief Executive wrote a letter to Mr Kaikaty dated 20 February 2015 advising the Authority's preliminary findings on the Grounds of Complaint and inviting Mr Kaikaty to make a final round of written submissions on the question of what, if any, disciplinary action should be taken in light of those findings.
230. Submissions were requested from Mr Kaikaty before 19 March 2015, but no further submissions were made.

### **Final Submissions on Disciplinary Action from Complainant**

231. On 6 March 2015, the Complainant made final submissions on disciplinary action. The Complainant submits that the disciplinary orders appropriate for the Authority to make are:

1. Disqualify, under section 141(2)(j) of the Act, Dominic Kaikaty for life from:
  - a. Holding a licence
  - b. Being a close associate of a licensee
  - c. Being the manager of a licensed premises.
2. Order, under section 141(2)(l)(i) of the Act, that Dominic Kaikaty pay the amount of **\$4,028.13**, being the costs incurred by the Office of Liquor, Gaming and Racing in carrying out the investigation under section 138 of the Act.

[The Authority notes that "Annexure A" attached to the Complainant's submission provides a schedule detailing the costs incurred by each OLGR officer involved in making, reviewing and finalising the Complaint.]

232. The Complainant submits that in the preliminary decision notified to the parties on 20 February 2015, the Authority accepts that Mr Kaikaty was acting in a managerial capacity during his time at Déjà Vu, and that "multiple serious offences" were committed whilst Mr Kaikaty was personally managing the venue. The Complainant submits that these offences add to the "already extensive criminal history" of Mr Kaikaty (which includes numerous prior convictions for breaches of licensing legislation) and that the conduct displayed "paints an alarming picture of the mismanagement of the Premises and a blatant and sustained disregard for the law".
233. The Complainant also submits that in the preliminary findings notified to the parties, the Authority accepts that Mr Kaikaty was convicted of committing a serious offence involving the supply of a prohibited drug, which occurred whilst Mr Kaikaty was managing the licensed premises. Additionally, there is an "array of other serious offences" attributed to Mr Kaikaty, including being under the influence of alcohol whilst on duty at the licensed premises and driving with a high range prescribed concentration of alcohol, which the Complainant submits demonstrates that Mr Kaikaty is not a fit and proper person to be associated with a licensed premises in any relevant position, and is a "clear threat to the public interest" if he is continued to be permitted to do so.
234. The Complainant notes that the above conduct has occurred while Mr Kaikaty is currently serving a period of disqualification as a result of previous disciplinary action against him. The Complainant submits that Mr Kaikaty was afforded "ample" time to remedy his conduct following intervention by the Authority, OLGR, Police and Council; however his "failure" to do so serves to "aggravate the risk of harm" arising from his presence within the industry. The Complainant submits that in this context, Mr Kaikaty's "continued contribution to offences under the Act" and his conduct while at the licensed premises suggest that he is "incapable of reform" and that the likelihood of future contraventions is "extreme", should he remain in or re-enter the industry.
235. The Complainant submits that it is "not in the public interest" to have licensed venues operated or managed in a manner that presents an increased risk of contributing to alcohol related violence and other harm, including illicit drug use, whilst "posing an unnecessary drain on regulatory resources". Noting the previous disciplinary action taken against Mr Kaikaty and his "continued adverse conduct", the Complainant is therefore of the view that a "life" disqualification is the "only appropriate action in this instance".

## DECISION

236. The Authority notes with concern that notwithstanding that Mr Kaikaty is currently disqualified from holding a liquor licence, he has elected to occupy a managerial position

in a licensed business, which the Authority is satisfied qualifies as a "close associate" of a liquor licensee.

237. Notwithstanding his disqualified status Mr Kaikaty has, through his managerial role at the Déjà vu business, contributed to the commission by that business of further serious offences against the Act and environmental planning legislation while acting as a personal manager of the business.
238. He has been convicted of other serious offences, including high range prescribed concentration of alcohol offence and prohibited drug supply offences that indicate that he is a person of bad character and cannot be trusted with any regulated position in the liquor industry.
239. The Authority accepts the Complainant's uncontested final submission on disciplinary action that the offences that are the subject of this Complaint add to the "already extensive criminal history" of Mr Kaikaty (which includes numerous prior convictions for breaches of licensing legislation) and that his further role as close associate of the Déjà Vu business "paints an alarming picture of the mismanagement of the Premises and a blatant and sustained disregard for the law".
240. The Authority notes Mr Kaikaty's failure to provide submissions in response to the Table of Offences provided by the Complainant on 9 December 2014 (notwithstanding his request for extensions of time to do so, which were granted), his failure to make submissions in response to the Authority's preliminary dispositions on the Grounds of Complaint and his failure to provide any submissions on the question of disciplinary action in response to the Authority's letter dated 20 March 2015.
241. This conduct satisfies the Authority that Mr Kaikaty does not take the regulatory process seriously. The Authority's findings with regard to the operation of Déjà Vu Facebook page in respect of the licensed business as alleged in Particular 16 of the Complaint provide a further indication that Mr Kaikaty does not take his relationship with law enforcement seriously either.
242. While disqualifying a person for life from participation in an industry is a serious matter, it is an option that is available to the Authority, in the most serious cases, if that action is reasonably necessary to protect the public.
243. The Authority is satisfied that Mr Kaikaty has learned nothing from his previous disqualification as a liquor licensee, which is still in effect.
244. The Authority is satisfied, on the basis of the Table of Offences, *JusticeLink* records of Court outcomes and SDRO business records provided by the Complainant, that Mr Kaikaty has a serious and ongoing history of convictions for criminal, traffic and licensing offences.
245. The Authority is satisfied that as pleaded in the Complaint, Mr Kaikaty still owes an extraordinary quantum of unpaid fines to the SDRO, notwithstanding that he has entered into a payment plan. It is not in the public interest for that abundance of unpaid fines to be increased through any future exposure of Mr Kaikaty to fines for offences against the Act, or other offences, which the Authority considers quite likely to occur should Mr Kaikaty continue to be involved in the closely regulated liquor industry.
246. Even if the Authority only takes into account only those further convictions that did not form the basis of the Authority's decision of 6 December 2011 to disqualify Mr Kaikaty as a liquor licensee, the ongoing pattern of convictions that is evident from the Court

records provided by the Complainant satisfies the Authority that Mr Kaikaty is not fit and proper to be the close associate of any licensed business in New South Wales.

247. The Authority has taken into consideration Mr Kaikaty's submissions that he is studying at TAFE and caring for his sick mother but accepting that this is the case does not impact the Authority's assessment that Mr Kaikaty is not a reformed character who is likely to be able to participate in the liquor industry without committing further offences.
248. The Authority accepts the Complainant's submission that Mr Kaikaty has a considerable and ongoing record of criminal, traffic and licensing offences, including a high range prescribed concentration of alcohol conviction in 2012 (which gave rise to the cancellation of his driver's licence) and a drug supply conviction in 2013 for which Mr Kaikaty received a suspended sentence of 8 months' imprisonment. The Authority notes with concern that the 2013 drug supply conviction occurred *on the licensed premises* of which he was acting in the role of a personal manager.
249. The Authority accepts the Complainant's uncontested final submission that it is "not in the public interest" to have any licensed venues operated or managed in a manner that presents an increased risk of contributing to alcohol related violence and other harm, including illicit drug use.
250. The Authority accepts the Complainant's uncontested submission that Mr Kaikaty poses an unacceptable drain upon regulatory resources. Mr Kaikaty's involvement in the liquor industry has come at some significant cost to the community through the law enforcement resources expended by Police and OLGR, Court time and the investigation and prosecution of repeat complaints to this Authority.
251. The Authority considers that the five year disqualification imposed by the Authority in 2011 has proved inadequate to protect the public interest in respect of the liquor legislation. Mr Kaikaty took advantage of the fact that NSW Police did not, in the previous complaint, seek Mr Kaikaty's disqualification as a close associate.
252. Rather than proving that Mr Kaikaty is now capable of acting responsibly in regard to licensed premises, the Authority is satisfied that Mr Kaikaty's involvement as manager of the Déjà Vu business has contributed to the adverse regulatory action taken in respect of that licensed business, as established by this Complaint. The Authority is satisfied that Mr Kaikaty was present on the Premises as a personal manager of the business during the adverse events described in Particulars 8, 9, 12, 13 and 15 of the Complaint.
253. While the licensee of Déjà Vu, Mr John Barakat, was the person liable for contravention of Act by the licensed business, the Authority is also satisfied that, as a close associate and manager of the business, Mr Kaikaty played a major role in the conduct of that business in a manner contrary to the public interest in respect of both the Act and the *Environmental Planning and Assessment Act 1979*.
254. In the present circumstances and on all the material before the Authority, the Authority is not satisfied that it will be in the public interest for Mr Kaikaty to participate in the liquor industry in New South Wales again. The Authority accepts the Complainant's uncontested submission that a "life" disqualification is the "only appropriate action in this instance".
255. The Authority is also satisfied that Mr Kaikaty should pay the costs of OLGR on the investigation of this Complaint, which has now been established. The Complainant has provided material substantiating and explaining its calculation of costs in this matter and Mr Kaikaty has not seen fit to respond to that.

256. In its previous decision of 6 December 2011 the Authority noted Mr Kaikaty's concession to the Authority that he was completely out of his depth and that "maybe this is not for me". The Authority considers that the only appropriate course to protect the public interest is to ensure that Mr Kaikaty does not hold a regulated role in the New South Wales liquor industry again.
257. In making this decision, the Authority has considered all of the statutory objects and considerations prescribed by section 3 of the Act. It notes subsection 3(2)(a) – the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour), subsection 3(2)(b) – the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor and subsection 3(2)(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. All of these considerations point to the permanent removal of Mr Kaikaty from the New South Wales liquor industry.

## ORDERS

258. The Authority makes the following orders:

- (i) Pursuant to section 141(2)(l)(i) of the Act, that Mr Dominic Kaikaty pay to the Authority, within 28 days from the date of this decision, the amount of **\$4,028.13**, being the costs incurred by the Office of Liquor, Gaming and Racing in carrying out the investigation under section 138 of the Act
- (ii) Pursuant to section 141(2)(j) of the Act, that Mr Dominic Kaikaty be **disqualified for life** from:
  - (a) Holding a licence
  - (b) Being a close associate of a licensee
  - (c) Being the approved manager...of any licensed premises in New South Wales.

Yours faithfully



Micheil Brodie  
**Chief Executive**

14 May 2015