



Mr Sean Goodchild Director, Compliance Liquor and Gaming NSW Level 9 323 Castlereagh Street SYDNEY 2000 <a href="mailto:sean.goodchild@liquorandgaming.nsw.gov.au">sean.goodchild@ liquorandgaming.nsw.gov.au</a>	Mr David Fam Director, D2D Creations Pty Ltd Current Business Owner Replay Karaoke Level 1 17 Little Saigon Plaza 462 Chapel Road BANKSTOWN NSW 2200 <a href="mailto:david@faminternational.com.au">david@faminternational.com.au</a>	PT Property Group Services Pty Ltd Current Premises Owner Replay Karaoke Level 1 17 Little Saigon Plaza 462 Chapel Road BANKSTOWN NSW 2200
Mr David Trinh Koi Corp Pty Limited Former Approved Manager and Business Owner, Replay Karaoke 5 Lynesta Avenue FAIRFIELD WEST NSW 2165 <a href="mailto:david@replaykaraokebar.com.au">david@replaykaraokebar.com.au</a>		

9 February 2018

Dear Mr Trinh

**Reference No.** DOC18/024326  
**Matter** Disciplinary Complaint  
**Trading hours** Consumption on premises  
Monday to Saturday 10:00 am to 12:00 midnight  
Sunday 10:00 am to 10:00 pm  
**Licence name** Replay Karaoke  
**Complainant** Sean Goodchild, Director of Compliance Operations, Liquor  
and Gaming New South Wales  
**Premises** Shop 16-17, Level 1  
*Little Saigon Plaza, 462 Chapel Road*  
BANKSTOWN NSW 2200  
**Issue** Fitness and propriety of former approved manager, Mr David  
Trinh, director of Koi Corp Pty Ltd  
**Legislation** Section 3 and Part 9 of the *Liquor Act 2007*

**Determination of Complaint to Independent Liquor and Gaming Authority  
in relation to Mr David Trinh and Koi Corp Pty Limited**

The Independent Liquor and Gaming Authority (Authority) has considered a disciplinary complaint (Complaint) made under Part 9 of the *Liquor Act 2007* (Act) to the Authority on 29 August 2017. The Complaint is made by Mr Sean Goodchild (Complainant), the Director of Compliance

Operations, Liquor and Gaming New South Wales (LGNSW) in his capacity as a delegate of the Secretary of the Department of Industry (Secretary).

The Authority has finalised the Complaint and has made the following determination:

- i. Pursuant to section 141(2)(h) of the Act, the former approved manager Mr David Trinh is disqualified from holding a liquor licence, being the approved manager, or being a close associate of a licensee in respect of any licensed premises in New South Wales, for a period of 10 years from the date of this letter.
- ii. Pursuant to section 141(2)(c)(i) of the Act, the former approved manager Mr David Trinh is ordered to pay to the Secretary of the NSW Department of Industry a monetary penalty of \$10,000 within 28 days from the date of this letter.
- iii. Pursuant to section 141(2)(l)(i) of the Act, Mr Trinh is ordered to pay the Secretary's costs on the investigation in relation to this Complaint in the sum of \$14,544.20 within 28 days from the date of this letter.
- iv. Pursuant to section 141(2)(f) of the Act, the Authority permanently disqualifies the former licensee Koi Corp Pty Ltd from holding a licence of a licensed premises, or being a close associate of a licensee in respect of any licensed premises in New South Wales with effect from the date of this letter, and
- v. Pursuant to section 141(2)(c)(i) of the Act, the Authority orders that the former licensee Koi Corp Pty Ltd pay to the Secretary of the NSW Department of Industry a monetary penalty of \$25,000 within 28 days from the date of this letter.

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

Yours faithfully



Philip Crawford  
**Chairperson**

For and on behalf of the Independent Liquor and Gaming Authority

## STATEMENT OF REASONS

### INTRODUCTION

1. This disciplinary complaint (Complaint) comprises a one-page cover letter dated 29 August 2017 (Cover Letter), the official Liquor and Gaming New South Wales (LGNSW) complaint application form signed and dated 29 August 2017 (Complaint Application Form), a 17-page complaint letter lodged with the Authority on 29 August 2017 (Complaint Letter) and a bundle of supporting evidence or material (Complaint Material). The Complaint was made by Mr Sean Goodchild (Complainant), the Director of Compliance Operations, LGNSW in his capacity as a delegate of the Secretary of the Department of Industry (Secretary).
2. The Complaint is made in relation to Mr David Trinh who was both the former approved manager (Former Manager) and company director of Koi Corp Pty Limited, the former corporate licensee (Former Licensee) of the on-premises licensed karaoke venue known as "Replay Karaoke" (previously known as Koi Corp Pty Limited), currently trading at Shop 16-17, Level 1 of the *Little Saigon Plaza* shopping centre located at 462 Chapel Road, Bankstown NSW 2200 (Premises).
3. The Premises has the benefit of an on-premises (karaoke venue) licence. The liquor licence number LIQO660033192 authorises the sale or supply of liquor for consumption on the Premises from 10:00am until 12:00 midnight on Monday through Saturday and from 10:00am until 10:00pm on Sunday.
4. The Former Licensee held the licence for the Premises from 12 November 2016 until his eviction on 5 May 2017, whereupon through the operation of section 61(1) of the Act, the licence was deemed to have been transferred to PT Property Group Services Pty Ltd, the premises owner (Premises Owner). At the time of this decision, D2D Creations Pty Ltd ATF D2D Creations Trust is the current licensee and the operator of the "Replay Karaoke" licensed business.
5. The subject matter of the Complaint concerns the period in which the Former Licensee, Koi Corp Pty Limited, held the licence and its nominee, Mr Trinh, was appointed as approved manager to the licence.
6. The Complaint Material comprises:
  - Cover Letter and Complaint Application Form both signed and dated 29 August 2017;
  - Disciplinary Complaint Letter specifying the five grounds (Grounds) of Complaint;
  - Short-Term Closure Order decision issued by the Authority requiring Replay Karaoke to close for a period of 72 hours from 5:00pm on 5 May 2017 (Exhibit E01);
  - Application for a Short-Term Closure Order made by Mr Sean Goodchild, Director Compliance Operations, LGNSW in his capacity as a delegate of the Secretary of the Department of Industry to the Authority in relation to Replay Karaoke on 3 May 2017 (Exhibit E02);
  - Current *OneGov* liquor licence record for the Premises as at 11 July 2017 (Exhibit E03);
  - Previous *OneGov* liquor licence record for the Premises as at 27 April 2017 (Exhibit E04);
  - Australian Securities and Investments Commission (ASIC) *Company Extract* for Koi Corp Pty Limited as at 1 May 2017 (Exhibit E05);
  - Screenshots of the website for the "Replay Karaoke" business, screenshots of the Facebook page for the business with postings between January and April 2017 (Exhibit E06);

- Witness statement dated 1 May 2017 of LGNSW inspector (LGNSW Inspector) Ms Frances Arguelles in relation to covert and overt inspections conducted on the Premises on 28 to 29 April 2017 (Exhibit E07);
- Witness statement dated 2 May 2017 of LGNSW Inspector Mr Jian Sim in relation to covert and overt inspections conducted on the Premises on 28 to 29 April 2017 (Exhibit E08);
- Transcript of notebook interview between LGNSW Inspectors and an employee of the licensed business, Mr Alex Lee dated 1 May 2017 (Exhibit E09);
- Transcript of notebook interview between LGNSW Inspectors and an employee of the licensed business, Ms Jenny Phan dated 1 May 2017 (Exhibit E10);
- Witness statement dated 2 May 2017 of LGNSW Inspector Ms Katie Cooke in relation to covert and overt inspections conducted on the Premises on the 29 April 2017 (Exhibit E11);
- *Plan of Management* for the Premises prepared by Koi Corp Pty Limited, updated in December 2016 (Exhibit E12);
- Transcript of record of interview with the Former Manager, Mr Trinh dated 16 May 2017 (Exhibit E13);
- Witness statement dated 2 May 2017 of LGNSW Inspector Mr Joel Carr in relation to covert and overt inspections conducted on the Premises on 28 to 29 April 2017 (Exhibit E14);
- Supplementary report on the operation of the Premises in March 2017 provided by Constable Nathan Dechaufepie of Bankstown Licensing Police dated 14 March 2017 (Exhibit E15);
- "Grand Opening Special" promotional flyer for the Replay Karaoke business scheduled for 4 March 2017, as displayed on the Premises on 1 May 2017 (Exhibit E16);
- Photograph of a promotion in place at the Premises offering a "free shot" to anyone who can balance a gold coin on a lime floating in a glass of water (Exhibit E17);
- Police Statement by Constable Nathan Dechaufepie of Bankstown Licensing Police dated 2 May 2017 in relation to a meeting between Constable Dechaufepie and Mr Trinh on 30 March 2017 (Exhibit E18);
- Response by the current premises owner, PT Property Group Services Pty Limited to a Notice to Produce issued by LGNSW Inspectors under section 21 of the *Gaming and Liquor Administration Act 2007* (GALA Act) on 18 May 2017 (Exhibit E19).

### **Background Information in relation to the Premises**

7. By way of background, the Complainant contends that the Premises was formerly operated by Koi Corp Pty Limited and Mr Trinh under the same on-premises liquor licence that presently attaches to the Premises. Mr Trinh was the sole director/company secretary of the Former Licensee company.
8. The Complainant contends that Mr Trinh became appointed as the approved manager of the Premises on 3 January 2017. At that time, the business underwent extensive renovation and did not operate the licence or trade until 4 March 2017. Mr Trinh continued to manage the Premises until 5 May 2017 when the business was subject to the short-term closure order. Mr Trinh had no previous experience in managing a licensed venue and in early March 2017 attended a meeting arranged by local NSW Police to ensure that he was fully aware of his obligations and compliance with the Act and the prescribed conditions of the licence.

9. On 26 April 2017, LGNSW received information from the Authority that indicated the licence was being operated outside of its approved trading hours and venue staff were selling shots and full bottles of spirits, contrary to prescribed licence conditions. An investigation was commenced by LGNSW that included a review of the website and social media site linked to the licensed business.
10. As detailed in the Grounds of Complaint, LGNSW Inspectors conducted an initial covert inspection of the Premises from 11:00pm on Friday 28 April 2017 until 2:00am on 29 April 2017 (the LGNSW April Inspection) to assess compliance with the Act and service practices. The Complainant contends that during this inspection, multiple offences of the Act were detected including permitting intoxication, selling liquor outside authorised hours and selling shots and bottles of spirits contrary to prescribed conditions. During the latter overt phase of that inspection, Mr Trinh allegedly refused to provide inspectors with relevant CCTV footage and point of sale records.
11. On 1 May 2017, LGNSW Inspectors arranged with Mr Trinh to meet on the Premises with a view to securing the previously requested CCTV footage and point of sale records. Mr Trinh did not attend this meeting and LGNSW Inspectors formally interviewed the two staff members who were present at the venue (Mr Alex Lee and Ms Jenny Phan) in relation to the general operation of the business and breaches detected during the LGNSW April Inspection (the Lee and Phan Interviews).
12. The Complainant notes that on 5 May 2017, the Authority issued a Short-Term Closure Order closing the Premises pursuant to section 82 of the Act (the Closure Order) based on the evidence contained in the short-term closure application submitted by Mr Sean Goodchild, Director Compliance Operations, LGNSW in his capacity as a delegate of the Secretary of the Department of Industry. In making this order, the Authority noted:
  - that on the balance of probabilities, serious breaches of sections 9(1)(b), 11(2) and 73(1) of the Act occurred and/or were likely to occur given the “laxity in controls over the sale or supply of liquor on the Premises”;
  - the sale or supply of liquor on the Premises outside licensed trading hours is an “inherently serious” offence that was not isolated to the failings of individual staff members, but was ongoing conduct permitted and tolerated by Mr Trinh;
  - there was “substantial risk to public health and safety” given the likelihood of patron intoxication arising through “inadequate control over the sale and supply of liquor on the Premises” and breaches of those licence conditions designed to curb the irresponsible service of alcohol; and
  - Mr Trinh's conduct, when refusing to produce evidence requested by LGNSW Inspectors, indicates he is “less than transparent with regard to [his] compliance with [his] licensing requirements”.
13. The Complainant contends that on 9 May 2017, LGNSW Inspectors attended the Premises again, with a view to securing the previously requested CCTV footage and point of sale records. On this occasion, it was established that all CCTV footage and relevant point of sales records were found to have been deleted from the respective systems operating on the venue. LGNSW subsequently conducted a coerced interview under the GALA Act with Mr Trinh on 16 May 2017 (Trinh Interview).

### **Current Position of the Premises**

14. The Complainant contends that after the issue of the Closure Order, the Premises resumed trade on 9 May 2017 and now operates the liquor licence under the management of the corporate Premises Owner, PT Property Group Services Pty Ltd and director Mr David Fam. Mr Fam terminated the lease with the Former Licensee on 5 May 2017 and Mr Trinh has had no further involvement with or influence over the operation of the Premises.

15. Mr Fam continues to manage the Premises as a director of D2D Creations Pty Ltd ATF D2D Creations Trust (Business Owner) as approved on 22 June 2017. Mr Fam is also the current approved manager of the licence.
16. The Complainant states that LGNSW Inspectors conducted inspections of the Premises following its resumption of trade. During those engagements, Mr Fam demonstrated his intent to strengthen internal controls to ensure legal compliance and promote a more responsible service culture.

### Grounds of Complaint in Brief

17. **Ground 1** is based upon section 139(3)(b) of the Act, which provides:

*that the licensee or manager has failed to comply with any of the conditions to which the licence is subject.*

18. Ground 1 alleges that Mr Trinh failed to comply with section 11(2) of the Act, which requires a licensee to comply with any conditions to which the licence is subject. The Complainant alleges that during his tenure as approved manager of the Premises, Mr Trinh breached five (5) separate conditions on the licence restricting the sale of drinks designed for rapid consumption; restricting the sale, supply and/or consumption of full bottles of spirits; requiring the keeping of a security register; regulating the consumption of liquor by patrons outside of the karaoke rooms and requiring the licensed business on the Premises to be operated in accordance with its *Plan of Management*.

19. **Ground 2** is based upon section 139(3)(d) of the Act, which provides:

*that the licensee has failed to comply with any other requirement under this Act or the regulations, relating to the licence or the licensed premises.*

20. Ground 2 alleges that Mr Trinh failed to comply with section 9(2)(b) of the Act, which requires that a licensee must not sell or supply liquor on licensed premises at a time when the licensee is not authorised under the Act to do so. Ground 2 further alleges that Mr Trinh failed to comply with section 73(1)(a) of the Act, which requires that a licensee must not permit intoxication on the Premises.

21. **Ground 3** is based upon section 139(3)(f) of the Act, which provides:

*that the licensee or manager has engaged in conduct or activities that are likely to encourage misuse or abuse of liquor (such as binge drinking or excessive consumption).*

22. Ground 3 alleges that as the approved manager of the Premises, Mr Trinh fostered a culture that permitted the misuse of liquor on the Premises and actively encouraged patrons to engage in excessive alcohol consumption.

23. **Ground 4** is based upon section 139(3)(i) of the Act, which provides:

*that the licensee is not a fit and proper person to be the holder of a licence, or the manager is not a fit and proper person to be the manager of the licensed premises.*

24. Ground 4 alleges that Mr Trinh is not a fit and proper person to be the approved manager of the Premises by reason of Mr Trinh's behaviour when dealing with local Police, his alleged refusal to provide CCTV footage and sales records pertaining to the Premises and his alleged deletion of CCTV footage and sales records. The Complainant submits that Mr Trinh has been "dishonest, obstructive and lacked the requisite knowledge, ability and/or character" to hold a position of authority and responsibility within the liquor industry.

25. **Ground 5** is based upon section 139(3)(q) of the Act, which provides:

*that in the case of a corporation – a person who occupies a position of authority in the corporation is not a fit and proper person to occupy such a position in a corporation that is the holder of the licence.*

26. Ground 5 alleges that Mr Trinh, as the sole director/secretary of the corporate Licensee Koi Corp Pty Limited, held a relevant position of authority within that company. The Complainant alleges that, for the same reasons specified in Ground 4 above, Mr Trinh is not fit and proper to hold a position of authority within the corporation that is the holder of the licence.

### **Complainant Submissions on Mr Trinh's Fitness and Propriety**

27. The Complainant submits that, despite the severing of Mr Trinh's association with the Premises, there is a risk that he will re-enter the liquor industry and a real need to protect the community from his apparent lack of fitness to hold a licence, which the Complainant contends was "fuelled by his irresponsible practices and attitude" towards the running of a licensed premises.
28. The Complainant alleges that over a relatively short period of time, Mr Trinh showed "disregard for regulation, responsible service practice and public safety" and that he also proved to be "uncooperative, obstructive and dishonest in his actions and dealings with the regulator".
29. The Complainant further submits that given the objective seriousness of the breaches identified in the Complaint, the "severity" of his actions, and the risk to public safety, it is appropriate to disqualify Mr Trinh for a "substantial period" of time to afford the industry and public protection from the risk of similar conduct and exposure to a serious and ongoing safety risk. Such a finding will serve as a specific and general deterrent to Mr Trinh and those other industry stakeholders who are engaging in or contemplating similar conduct or behaviour.

### **Preliminary Submission on Disciplinary Action**

30. The Complainant submits that should the Authority find that one or more of the Grounds specified in the Complaint are established, the Complainant seeks an invitation to make further submissions on appropriate disciplinary action. However, a preliminary view of the action that may be appropriate in this case includes:
- (a) A monetary penalty;
  - (b) Disqualification of the licensee from holding a licence, or from being the manager of licensed premises or the close associate of a licensee;
  - (c) Withdrawal of the manager's approval to manage licensed premises;
  - (d) Disqualification of the manager from being the manager of a licensed premises, or from holding a licence or being the close associate of a licensee.

## **PROGRESS OF THE COMPLAINT**

### **Show Cause Notices**

31. On 6 September 2017, the Authority Secretariat sent a notice to the Former Manager Mr Trinh and the Former Licensee Koi Corp Pty Limited (Show Cause Notice) enclosing the entire Complaint Letter and Complaint Material. The Authority invited Mr Trinh to show cause, by way of written submissions, why disciplinary action should not be taken against him or his company on the basis of the Grounds specified in the Complaint.
32. On 6 September 2017, the Authority Secretariat sent similar correspondence to Mr David Fam, the contact person for D2D Creations Pty Ltd ATF D2D Creations Trust, the current Business Owner operating the "Replay Karaoke" licensed business on the Premises and Premises Owner, PT Property Group Services Pty Ltd. While the allegations in the Complaint were not directed to those parties, such consultation was conducted out of caution and pursuant to the consultation requirements in section 140(3) of the Act.
33. No response to the Complaint was received by the Authority from Mr Trinh, Koi Corp Pty Limited, the Business Owner or the Premises Owner.

## FINDINGS

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

### Fitness and Propriety at General Law

36. 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 legislation under which he or she is to be licensed and the obligations and duties imposed thereby: *Ex parte Meagher* (1919) 36 WN 175 and *Sakellis v Police* (1968) 88 WN (Pt 1) (NSW) 541. Being fit and proper normally comprises the three characteristics of “honesty, knowledge and ability”: *Hughes & Vale Pty Ltd v NSW* (No 2) (1955) 93 CLR 127.
37. Where a person has been convicted of offences, the decision maker must consider the circumstances of those convictions and the general reputation of the person apart from the convictions and the likelihood of repetition – *Clearihan v Registrar of Motor Vehicle Dealers in the ACT* (1994) 117 FLR 455.
38. 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.*

39. Furthermore, section 45(5A) of the Act, to which section 139(3)(i) refers, prescribes certain non-exhaustive statutory considerations to which the Authority must have regard when determining the fitness and propriety of a licensee, including whether that person:
- (a) is of good repute, having regard to character, honesty and integrity; and
  - (b) is competent to carry on that business or activity, being the relevant licensed business in question.

### Ground 1 – Mr Trinh failed to comply with a condition on the licence

#### Particular 1 – Breach of Condition “3010” of the Licence

40. Condition “3010” recorded on the *OneGov* licence record dated 11 July 2017 that forms part of the Complaint Material states:
- No drinks commonly referred to as shots, shooters, slammers, and/or bombs are to be sold or supplied at any time.*
41. Paragraph 17 of the Complaint Letter alleges that the evidence gathered by LGNSW Inspectors includes a number of photographs showing patrons consuming shots on the



Premises. Additionally, the drinks menu (available on the website for the Premises) listed a number of “shots”, “shooters” and “bomb” liquor products as available for sale.

42. The Authority is satisfied that this allegation is established on the basis of the screenshots of the webpage for the “Replay Karaoke” business (including drinks menu) and Facebook page for the business for postings between January to April 2017 (Exhibit E06).
43. Paragraph 18 of the Complaint Letter alleges that during the LGNSW April Inspection, LGNSW Inspectors observed shots of liquor being supplied to patrons on the Premises.
44. The Authority is satisfied that this allegation is established on the basis of the information provided in paragraph 22 of the witness statement of LGNSW Inspector Frances Arguelles dated 1 May 2017 (Arguelles Statement) (Exhibit E07) and paragraph 12 of the witness statement of LGNSW Inspector Jian Sim dated 2 May 2017 (Sim Statement) (Exhibit E08).
45. Paragraph 19 of the Complaint Letter alleges that employees of the licensed business operating on the Premises admitted to LGNSW Inspectors during formal interviews to regularly selling shots to patrons at the direction of Mr Trinh.
46. The Authority is satisfied that this allegation is established on the basis of the information provided at page 3 of the transcript of the record of interview between LGNSW Inspectors and employee of the “Replay Karaoke” licensed business Mr Alex Lee dated 1 May 2017 (Lee Interview) (Exhibit E09) and pages 3-4 of the transcript of the record of interview between LGNSW Inspectors and employee of the “Replay Karaoke” licensed business Ms Jenny Phan dated 1 May 2017 (Phan Interview) (Exhibit E10).
47. Particular 1 of Ground 1 is established.

*Particular 2 – Breach of Condition “3120” of the Licence*

48. Condition “3120” as recorded on the OneGov licence record dated 11 July 2017 states:

*The licensee must ensure the sale, supply and consumption of full bottles of spirits is prohibited.*

49. Paragraph 20 of the Complaint Letter alleges that the drinks menu referred to in Particular 1 of Ground 1 also listed a number of “spirits (by the bottle)” for sale on the Premises.
50. The Authority is satisfied that this allegation is established on the basis of the screenshots of the webpage for the “Replay Karaoke” business (including drinks menu) and Facebook page for the business for postings between January to April 2017 (Exhibit E06).
51. Paragraph 21 of the Complaint Letter alleges that during the LGNSW April Inspection, LGNSW Inspectors purchased a full bottle of scotch whiskey which was emptied by venue staff into one jug, without a mixer.
52. The Authority is satisfied that this allegation is established on the basis of the information provided in paragraphs 40 to 41 of the Arguelles Statement (Exhibit E07).
53. Paragraph 22 of the Complaint Letter alleges that employees of the licensed business operating on the Premises subsequently admitted to LGNSW Inspectors, during formal interviews, that they sell full bottles of spirits to patrons at the direction of Mr Trinh.
54. The Authority is satisfied that this allegation is established on the basis of the information provided at page 3 of the Lee Interview (Exhibit E09) and page 4 of the Phan Interview (Exhibit E10).
55. Particular 2 of Ground 1 is established.

*Particular 3 – Breach of Condition “3080” of the Licence*

56. Condition “3080” as recorded on the OneGov licence record dated 11 July 2017 states:

*The licensee must ensure whenever security personnel are engaged a register stating the security officer's full name, security licence number, start date and time, finish date and time and signature is kept and produced to police upon request.*

57. Paragraph 23 of the Complaint Letter states that after LGNSW Inspectors identified themselves during the LGNSW April Inspection, they assessed whether the licensed business on the Premises complied with licence conditions. Paragraph 23 alleges that a review of the security sign-in register indicated that security guards had not recorded their details for that evening, as required by Condition "3080".
58. The Authority is satisfied that this allegation is established, on the evidence provided in paragraphs 61 to 62 of the Arguelles Statement (Exhibit E07) and paragraphs 37 to 39 of the witness statement of LGNSW Inspector Katie Cooke dated 2 May 2017 (Cooke Statement) (Exhibit E11).
59. Particular 3 of Ground 1 is established.

#### *Particular 4 – Breach of Condition "3110" of the Licence*

60. Condition "3110" as recorded on the OneGov licence record dated 11 July 2017 states:

*The licensee must ensure liquor is only sold or supplied with or ancillary to karaoke performances. Liquor is only to be consumed by patrons within karaoke rooms. Patrons are not permitted to consume liquor in the hallways or foyer of the licensed premises.*

61. Paragraph 24(a) of the Complaint Letter alleges that during the LGNSW April Inspection, LGNSW Inspectors observed patrons consuming liquor outside of the karaoke rooms.
62. The Authority is satisfied that this allegation is established on the basis of the information provided in paragraphs 34 to 35 of the Arguelles Statement (Exhibit E07).
63. Paragraph 24(b) of the Complaint Letter further alleges that during the LGNSW April Inspection, LGNSW Inspectors were able to covertly purchase and consume liquor in the "bar/lounge" area of the Premises, outside of the karaoke rooms.
64. The Authority is satisfied that this allegation is established on the basis of the evidence provided in paragraphs 15 to 31 of the Arguelles Statement (Exhibit E07) and paragraphs 14 to 16 of the Cooke Statement (Exhibit E11).
65. Particular 4 of Ground 1 is established.

#### *Particular 5 – Breach of Condition "3060" of the Licence*

66. Condition "3060" as recorded on the OneGov licence record dated 11 July 2017 states:

*The premises are to be operated at all times in accordance with the Plan of Management dated November 2016 as may be varied from time to time in consultation with the Local Area Commander.*

67. Paragraph 25 of the Complaint Letter states that the Premises' *Plan of Management* (provided as part of the Complaint Material as Exhibit E12 – although the Authority notes it is the updated December 2016 version) sets out a number of conditions of operation, of which Mr Trinh contravened.
68. Clause (ii)(b) of the "Purpose" section of the *Plan of Management* states:

*A variety of practices are in place and complied with at all times to ensure that liquor is sold, supplied and consumed responsibly, that intoxicated persons are not permitted entry to the premises, and to minimise the potential for intoxication at the premises.*
69. Paragraph 25(a) of the Complaint Letter alleges that the information set out in Ground 1 and below in Ground 2 (Particulars 1 and 2) and Ground 3 (Particulars 1 and 2) demonstrate that this condition was not observed.

70. The Authority is satisfied that this allegation is established on the basis of the information provided in paragraphs 15 to 35 of the Arguelles Statement (Exhibit E07), paragraphs 14 to 18 of the Sim Statement (Exhibit E08), paragraphs 14 to 16 and 46 to 47 of the Cooke Statement (Exhibit E11) and paragraph 14 of the witness statement of LGNSW Inspector Joel Carr dated 2 May 2017 (Carr Statement) (Exhibit E14); the information provided in pages 3 to 4 of the Lee Interview (Exhibit E09) and pages 2 to 4 of the Phan Interview (Exhibit E10); the information provided at question and answer 163 to 174 and 312 to 317 of the coerced interview between Mr Trinh and LGNSW Inspectors on 16 May 2017 (Trinh Interview) (Exhibit E13); the screenshots of the webpage for the “Replay Karaoke” business (including drinks menu) and Facebook page for the business for postings between January to April 2017 (Exhibit E06); the photograph of the “Grand Opening Special” flyer advertised on the Premises’ bar (Exhibit E16); and the photograph of the “Free Shot” promotion advertised on the Premises’ bar (Exhibit E17).
71. Clause (ii)(c) of the “Purpose” section of the *Plan of Management* states:
- The conditions of any Council approvals and any liquor licence are complied with.*
72. Paragraph 25(b) of the Complaint Letter alleges that the information set out in Ground 1 demonstrates that this condition was not observed and that during the Trinh Interview, Mr Trinh admits that this condition was not met.
73. The Authority is satisfied that this allegation is established, on the basis of its findings on Ground 1 and at question and answer 312 to 317 of the Trinh Interview (Exhibit E13).
74. Clause 3(ii) of the Premises’ *Plan of Management* states as follows:
- As required, any liquor to be sold or supplied pursuant to the licence is to be sold or supplied with or ancillary to the provision of karaoke entertainment/facilities.*
75. Paragraph 25(c) of the Complaint Letter alleges that the information set out in Particular 4 of Ground 1 demonstrates that this condition was not met and that in the Trinh Interview, Mr Trinh admits that this condition was not met.
76. The Authority is satisfied that these allegations are established on the basis of the information provided in paragraphs 15 to 35 of the Arguelles Statement (Exhibit E07), paragraphs 14 to 16 of the Cooke Statement (Exhibit E11) and question and answer 319 to 321 of the Trinh Interview (Exhibit E13).
77. Clause 4(iv) of the *Plan of Management* states:
- Liquor will only be sold or supplied during the hours specified in the on-premises licence.*
78. Paragraph 25(d) of the Complaint Letter alleges that the information set out in Particular 1 of Ground 2 demonstrates that this condition was not met and that during the Trinh Interview, Mr Trinh admits that this condition was not met.
79. The Authority is satisfied that this allegation is established on the basis of the screenshots of the webpage for the “Replay Karaoke” business (including drinks menu) and Facebook page for the business for postings between January to April 2017 (Exhibit E06); the information provided in paragraphs 46 to 47 of the Cooke Statement (Exhibit E11) and paragraph 14 of the Carr Statement (Exhibit E14); the information provided in pages 3 to 4 of the Lee Interview (Exhibit E09) and pages 2 to 3 of the Phan Interview (Exhibit E10); and the information provided at question and answer 163 to 174 and 322 to 324 of the Trinh Interview (Exhibit E13).
80. Clause 6(i) of the *Plan of Management* states:
- As stated above, a primary purpose of this Plan of Management is to ensure that patrons behave in an orderly manner whilst at and when leaving the premises, that liquor is served responsibly and that minors do not gain access to liquor.*

81. Paragraph 25(e) of the Complaint Letter alleges that the information set out in this Ground and below in Grounds 2 and 3 demonstrate that this condition was not met and that during the Trinh Interview Mr Trinh admits that this condition was not met.
82. The Authority is satisfied that this allegation is established on the basis of the screenshots of the webpage for the “Replay Karaoke” business (including drinks menu) and Facebook page for the business for postings between January to April 2017 (Exhibit E06); the photograph of the “Grand Opening Special” flyer advertised on the Premises’ bar (Exhibit E16); the photograph of the “Free Shot” promotion advertised on the Premises’ bar (Exhibit E17); the information provided in paragraphs 19 to 30 of the Arguelles Statement (Exhibit E07), paragraphs 14 to 18 of the Sim Statement (Exhibit E08), paragraphs 46 to 47 of the Cooke Statement (Exhibit E11) and paragraph 14 of the Carr Statement (Exhibit E14); the information provided in pages 3 to 4 of the Lee Interview (Exhibit E09) and pages 2 to 3 of the Phan Interview (Exhibit E10); and the information provided at question and answer 163 to 174 and 325 to 331 of the Trinh Interview (Exhibit E13).
83. Clause 6(b)(ii) of the *Plan of Management* states:
- Management and all staff will take all reasonable steps to restrict activities (such as promotions or discounting) that could encourage misuse or abuse of liquor (such as binge drinking or excessive consumption).*
84. Paragraph 25(f) of the Complaint Letter alleges that the information set out in Ground 3 demonstrates that this condition was not met.
85. The Authority is satisfied that this allegation is established on the basis of the screenshots of the webpage for the “Replay Karaoke” business (including drinks menu) and Facebook page for the business for postings between January to April 2017 (Exhibit E06); the photograph of the “Grand Opening Special” flyer advertised on the Premises’ bar (Exhibit E16); the photograph of the “Free Shot” promotion advertised on the Premises’ bar (Exhibit E17); the information provided in paragraphs 19 to 30 of the Arguelles Statement (Exhibit E07) and paragraphs 14 to 18 of the Sim Statement (Exhibit E08); and the information provided at question and answer 186 to 213 and 351 to 385 of the Trinh Interview (Exhibit E13).
86. Clause 6(b)(iv) of the *Plan of Management* states:
- Management will encourage patrons to drink responsibly and let them know they will be asked to leave if they become intoxicated, violent or quarrelsome.*
87. Paragraph 25(g) of the Complaint Letter alleges that the information set out in this Ground and also in Grounds 2 and 3 demonstrate that this condition was not observed.
88. The Authority is satisfied that this allegation is established on the basis of the screenshots of the webpage for the “Replay Karaoke” business (including drinks menu) and Facebook page for the business for postings between January to April 2017 (Exhibit E06); the photograph of the “Grand Opening Special” flyer advertised on the Premises’ bar (Exhibit E16); the photograph of the “Free Shot” promotion advertised on the Premises’ bar (Exhibit E17); the information provided in paragraphs 19 to 30 of the Arguelles Statement (Exhibit E07), paragraphs 14 to 18 of the Sim Statement (Exhibit E08), paragraphs 46 to 47 of the Cooke Statement (Exhibit E11) and paragraph 14 of the Carr Statement (Exhibit E14); the information provided in pages 3 to 4 of the Lee Interview (Exhibit E09) and pages 2 to 3 of the Phan Interview (Exhibit E10); and the information provided at question and answer 163 to 174 of the Trinh Interview (Exhibit E13).
89. Clause 7(iii) of the *Plan of Management* states:
- In the event that full bottles of spirits are served to rooms, the licensee shall ensure that there is adequate supervision of the pouring of the contents of bottles, and patrons should be advised that liquor served from such bottles is to be provided by way of staff.*

90. Paragraph 25(h) of the Complaint Letter alleges that the information in Particular 2 of Ground 1 demonstrates that this condition was not observed and that during the Trinh Interview, Mr Trinh admits that this condition was not met.
91. While noting that Condition “3120” prevents *any* sale or supply of full bottles of liquor to patrons on the Premises, the Authority is nevertheless satisfied that these further allegations in respect of non-compliance with the Plan of Management are established on the basis of screenshots of the webpage for the “Replay Karaoke” business (including drinks menu) and Facebook page for the business for postings between January to April 2017 (Exhibit E06), the information provided in paragraphs 40 to 41 of the Arguelles Statement (Exhibit E07), page 3 of the Lee Interview (Exhibit E09), page 4 of the Phan Interview (Exhibit E10) and question and answer 376 to 385 of the Trinh Interview (Exhibit E13).
92. Clause 15(iv) of the *Plan of Management* states:
- All managers and key staff will be made aware of the requirements of the Plan of Management.*
93. Paragraph 25(i) of the Complaint Letter alleges that when Mr Alex Lee, who has worked in a supervisory role at the Premises since its opening, was asked by LGNSW Inspectors whether the Premises has a *Plan of Management*, Mr Lee responded: “What does a plan of management mean?” When asked if he had ever seen a document titled “*Plan of Management*”, Mr Lee responded: “For this venue, no”.
94. Paragraph 25(i) further alleges that in the Trinh Interview, Mr Trinh rejected the notion that Mr Lee did not know about the Plan of Management, claiming that he had read through it with Mr Lee.
95. The Authority has considered the evidence and material provided at page 4 of the Lee Interview (Exhibit E09) and question and answer 387 to 396 of the Trinh Interview (Exhibit E13). There is conflicting evidence before the Authority, in that Mr Lee stated that he did not know what a plan of management was, while Mr Trinh claims to have read through it with Mr Lee. Taking appropriate care with fact finding, in the context of a disciplinary complaint, the Authority finds that there is insufficient evidence to establish this contravention of the Plan of Management.
96. Ground 1 Particular 5 is established.
97. In conclusion, the Authority is satisfied that while serving as approved manager, Mr Trinh failed to comply with conditions “3010”, “3120”, “3080”, “3110” and clauses (ii)(b), (ii)(c), 3(ii), 4(iv), 6(i), 6(b)(ii), 6(b)(iv) and 7(iii) of the *Plan of Management*, which in turn constitutes a contravention of Condition “3060” of the licence. This conduct was in contravention of the requirement in section 11(2) of the Act that a licensee must comply with the conditions of a liquor licence.
98. Ground 1 is established.

## **Ground 2 – Mr Trinh failed to comply with other requirements of the Act or Regulation**

### *Particular 1: Section 9(2)(b) – Sale or supply of liquor outside authorised hours*

99. Paragraph 26 of the Complaint Letter notes that the Premises is approved to engage in licensed trading from 10:00am to 12:00 midnight on Monday through Saturday, and from 10:00am to 10:00pm on Sundays.
100. Paragraph 27 of the Complaint Letter alleges that analysis of evidence conducted by LGNSW Inspectors identified that the licensed business operating on the Premises was advertising its hours as from 6:00pm until 2:00am every day on its webpage and Facebook page.

- 101.** The Authority is satisfied that this allegation is established, on the basis of the screenshots of the webpage for the “Replay Karaoke” business (including drinks menu) and Facebook page for the business for postings between January to April 2017 (Exhibit E06).
- 102.** Paragraph 28 of the Complaint Letter alleges that during the LGNSW April Inspection, LGNSW Inspectors observed patrons being supplied liquor on the Premises after midnight and were able to themselves covertly purchase liquor outside of the trading hours authorised by the licence.
- 103.** The Authority is satisfied that this allegation is established on the basis of the information provided in paragraphs 46 to 47 of the Cooke Statement (Exhibit E11), paragraph 44 of the Arguelles Statement (Exhibit E07) and paragraph 14 of the Carr Statement (Exhibit E14).
- 104.** Paragraph 29 of the Complaint Letter alleges that information provided during the Lee and Phan Interviews demonstrated that the venue “regularly” traded beyond authorised hours, at the direction of Mr Trinh.

- 105.** The Authority particularly notes the following exchange at pages 2 to 3 of the Phan Interview:

*MR IRVING: Are you familiar with the liquor licence conditions attached to this liquor licence?*

*MS PHAN: Yes, like we're not supposed to sell drink, like liquor or alcohol after midnight, but we do.*

*MR IRVING: Which nights do you sell liquor after midnight?*

*MS PHAN: Friday and Saturday 'cause we're open to 2:00am those nights.*

*MR IRVING: Who is your manager?*

*MS PHAN: David Trinh.*

*MR IRVING: Does David Trinh work here most Friday and Saturday nights?*

*MS PHAN: Yes.*

*MR IRVING: What instructions or directions does David Trinh give you and other staff about serving liquor after midnight?*

*MS PHAN: When I say to him it's like midnight and we should stop selling liquor or alcohol he like says it's okay just keep doing it to about 1am.*

*MR IRVING: Is that the general understanding and actions of all staff involved in the sale or supply of alcohol?*

*MS PHAN: Yes.*

- 106.** The Authority is satisfied that this allegation is established on the basis of the information provided in pages 3 to 4 of the Lee Interview (Exhibit E09) and pages 2 to 3 of the Phan Interview (Exhibit E10).
- 107.** Paragraph 30 of the Complaint Letter alleges that during his coerced interview on 16 May 2017, Mr Trinh, who was present on the Premises during the LGNSW April Inspection, agreed that the sale of liquor to LGNSW Inspectors had occurred after midnight, but he asserted that staff should know that they are not to serve alcohol past midnight.
- 108.** The Authority is satisfied that this allegation is established on the basis of the information provided at question and answer 163 to 174 of the Trinh Interview (Exhibit E13).
- 109.** Particular 1 of Ground 2 is established.

*Particular 2: Section 73(1)(a) – Permitting Intoxication on licensed premises*

- 110.** Paragraph 31 of the Complaint Letter alleges that during the LGNSW April Inspection, LGNSW Inspectors observed a female patron in the lounge area of the Premises falling over,

unable to stand unassisted and vomiting into a bucket provided by staff. Inspectors formed the “firm belief” that she was highly intoxicated as a result of consuming liquor on the Premises. Inspectors also observed a security guard in close proximity to that incident, but did not see any staff ask her to leave.

111. The Authority accepts that these events occurred during the LGNSW April Inspection, on the basis of the uncontested information provided in paragraphs 19 to 30 of the Arguelles Statement (Exhibit E07) and paragraphs 14 to 18 of the Sim Statement (Exhibit E08).
112. Paragraph 32 of the Complaint Letter alleges that by reason of the matters outlined in Ground 4 of the Complaint (Particulars 2 and 3), LGNSW have not been able to obtain CCTV footage to further substantiate or refute this offence.
113. The Complainant observes that when the Authority issued the Short-Term Closure Order in May 2017 it was satisfied that the “licensee permitted, through the conduct of its staff responsible for the Premises at the relevant time, intoxication on the Premises on this date”.
114. The Authority accepts that it has previously found, in the context of issuing an expedited Short-Term Closure Order, that the licensee permitted intoxication on that date (as per paragraph 26 of the Authority’s Short-Term Closure Order decision dated 5 May 2017 that is Exhibit 01).
115. However, the Authority must now be satisfied, taking due care with respect to fact finding in the context of this disciplinary matter, that the licensee contravened section 73(1)(a) of the Act for the purposes of this Complaint and on the basis of the material now before it.
116. The Authority accepts that Mr Trinh has made certain statements in relation to this matter that are recorded in the question and answer 351 to 373 of the Trinh Interview (Exhibit E13).
117. At paragraph 34 of the Complaint Letter the Complainant alleges that despite Mr Trinh’s statements to the effect of taking “reasonable steps” to prevent intoxication, that the low level of supervision provided to patrons; the service of full bottles of spirits (as admitted to in question and answer 186 to 213, and 360 to 385 of the Trinh Interview (Exhibit E13)); the general lack of internal controls and an irresponsible service culture and the evidence set out in Ground 4 below that raises doubt as to Mr Trinh’s transparency and honesty. The Complainant contends that on the balance of probabilities, the licensee and approved manager permitted intoxication contrary to section 73(1)(a) of the Act and this was detected during the LGNSW April Inspection.
118. The Authority is satisfied that at around 11:28pm on Friday 28 April 2017 a female patron was in fact detected by LGNSW Inspectors as intoxicated on the Premises. This finding is made on the basis of the information provided in paragraphs 24 to 30 of the Arguelles Statement (Exhibit E07) and paragraphs 14 to 18 of the Sim Statement (Exhibit E08).
119. Section 73(4) of the Act provides that if a person is intoxicated on licensed premises, the licensee is deemed to have permitted the intoxication unless the licensee proves one of the three defences provided by section 74(4)(a), 74(4)(a1) or 74(4)(b) of the Act.
120. The Authority notes that neither the Former Licensee Koi Corp Pty Limited nor the Former Manager Mr Trinh has provided any evidence or submissions to the effect that any of those defences are relied upon in response to this Complaint.
121. Paragraph 33 of the Complaint Letter alleges that during the Trinh Interview Mr Trinh stated that the subject female patron was removed from a karaoke room due to her level of intoxication and was asked to leave the Premises. Mr Trinh asserts that her friends advised that they had arranged for someone to collect her and a decision was made between Mr Trinh and a security guard to allow her to rest in the lounge area of the Premises until her lift home had arrived.
122. The Authority notes that pages 34 to 36 of the Trinh Interview transcript record the following:

- Q354 *On the night our inspectors were at the premises - - -*
- A *Yes.*
- Q355 *- - - in the lounge area, there was a female patron who appeared to our inspectors to be extremely intoxicated.*
- A *Mm-hmm.*
- Q356 *She was vomiting all over the floor.*
- A *Mm-hmm.*
- Q357 *And a staff member came and gave her a bucket.*
- A *Mm-hmm. She was asked to leave.*
- Q358 *When?*
- A *She was asked to leave out of her room – that’s why she was in the lounge. And so she said that her – her friend said that they were having friends to come and collect her. She was waiting in the lounge area, and – and then that’s when she started vomiting, that – so that the staff would have given her the bucket. I’ve told the security that night, I’m aware that that was happening.*
- Q359 *O.K.*
- A *I told Ahmed – “Ahmed, well, there’s a female there, she’s actually pretty intoxicated, so I would like her out of the venue.” And – which he did, you know, he said, “Oh, look, she’s waiting for her friends to get her out.”*
- Q360 *How many drinks did she have before she - - -*
- A *I actually – I’m not too sure how many drinks she had. There were – they have a pretty big group in one of the rooms.*
- Q361 *Can you remember what the group ordered, or what – what drinks went to that room?*
- A *I – I can’t remember. No, I was too busy doing my other things as well. As I said, I wasn’t behind the bar that night.*
- Q362 *So it could have been possible with the large group - - -*
- A *Yeah.*
- Q363 *- - - five jugs were put in the room and she drank all of them?*
- A *Well, there is a possibility, if you put it that way, but that group that night, they had at least – at least 30 to 35, 40 people. So that’s quite a big group. That was room number 6, I remember.*
- Q364 *O.K. So has the licensee - - -*
- A *Yep.*
- Q365 *- - - being Koi Corp and you being the sole director and also the approved manager, what did you do on that night to prevent intoxication?*
- A *Prevent? Basically what – what I would do is to keep an eye on all the patrons. Make sure that they – they’re not being overly – over-served. That’s it. Like - - -*
- Q366 *No, but on that night, what did you do to prevent this girl becoming so intoxicated?*
- A *I offered water, you know to – to – to you know, offered water for her to drink. We told her, look, you know, “I’ll call a cab for you” or whatnot. We were trying to, like, just make sure she’s O.K., therefore that’s why she was in the lounge. No-one should ever be in the lounge, just let us – there, and she said she*



wanted to wait for a friend, and her friends were there, and said, "Oh, we're going to go soon," even though they still have time on their room. We said, "Look, I can't have you here, your friend's intoxicated, she has to go," and that's why she – she was at – in the lounge area.

Q367 *But why did she get to that point? For her to get - - -*

A *O.K.*

Q368 *- - - to that point - - -*

A *Yep.*

Q369 *- - - something - - -*

A *I'm not sure.*

Q370 *- - - must have gone wrong.*

A *Yeah, well, everyone takes alcohol differently.*

Q371 *Some process - - -*

A *I'm not sure how much she had, like, to be honest. Like, some people, they can't drink and drink and drink and they will be fine, but for her, maybe she's even had, like, one drink, one – two standard drinks or whatnot, and she could be like that. I'm not sure – you know. So - - -*

Q372 *But you don't know how much she had?*

A *I – yeah. Well, the – well, if she was to approach the bar and say, "Hey, I want to buy a drink," then we can assess her – look, you know, she looks a bit too much, then we'll – "No, sorry, we can't serve you," so - - -*

Q373 *So can you see the danger of leaving the jugs in with the group of people?*

A *Yes, I can see that. Yeah.*

- 123.** The Authority notes that Mr Trinh stated during the Trinh Interview that he offered water to the intoxicated female patron and suggested that he could call a taxi to take her home. The Authority accepts that this occurred, but there is no further evidence or information before the Authority that the Former Licensee, the Former Manager or staff took all of the steps specified by section 73(5) of the Act that would be capable of establishing a defence under section 73(4)(a) of the Act.
- 124.** Furthermore, there is no claim by the Former Licensee or Former Manager that the licensed business operated in accordance with the LGNSW *Prevention of Intoxication on Licensed Premises Guidelines* for the purposes of section 73(4)(a1) of the Act. It is apparent that the business was *not* acting in a manner compliant with clause 2(b) of those guidelines in that liquor consumption by all patrons was not actively monitored by the licensee or staff.
- 125.** There is no claim by the Former Licensee that the intoxicated person did not actually consume alcohol on the Premises for the purposes of the defence available in section 73(4)(b) of the Act. At pages 34 to 36 of the Trinh Interview (Exhibit E13), Mr Trinh admits that he was aware that the female patron was in fact intoxicated and that she had consumed an unknown amount of alcohol while on the Premises.
- 126.** As none of the defences potentially available to a licensee have been established, the Authority is satisfied, on the evidence and material before it, that the then licensee, Koi Corp Pty Limited, permitted intoxication on the Premises on 28 to 29 April 2017.
- 127.** Particular 2 of Ground 2 is established.
- 128.** In conclusion, the Authority is satisfied, on the basis of the above findings, that Mr Trinh failed to comply with other requirements of the licence. Ground 2 is established.

### **Ground 3 – Mr Trinh engaged in conduct likely to encourage misuse or abuse of liquor**

#### *Particular 1: Collective breaches and lack of controls on the supply and consumption of liquor*

129. Paragraph 35 of the Complaint Letter alleges that on 12 March 2017, only eight days after the Premises opened for business under the control of Koi Corp Pty Limited, Bankstown Licensing Police attended in response to a brawl involving patrons from the licensed business.
130. Upon arrival, police found a group of about 20 patrons in the vicinity of the Premises yelling and fighting. One male, who was observed by police to be well affected by alcohol, was arrested. He subsequently told police that he arrived at the Premises at about 11:00pm, had eight to ten alcoholic drinks and was asked to leave the bar at 2:15am.
131. The Authority is satisfied that this allegation is established on the basis of the information provided in the Supplementary Report prepared by Constable Nathan Dechaufepie of NSW Police, Bankstown Local Area Command dated 14 March 2017 (Exhibit E15).
132. Paragraph 36 of the Complaint Letter alleges that during the LGNSW April Inspection, LGNSW Inspectors witnessed high levels of inebriation, including one case of severe intoxication described in Particular 2 of Ground 2.
133. Paragraph 37 of the Complaint Letter alleges that Mr Trinh's disregard for compliance with authorised trading hours and other conditions on the licence demonstrates a clear lack of appreciation of the objects of the Act, as well as the likely consequences of any failure on his part to comply. This fostered a culture that permitted the misuse of liquor, including excessive consumption.
134. The Authority is satisfied, on the basis of its findings on Particular 2 of Ground 2, that the allegations in paragraphs 36 and 37 are established.
135. Particular 1 of Ground 3 is established.

#### *Particular 2: Active encouragement of excessive drinking*

136. Paragraph 38 of the Complaint Letter alleges that as well as creating an environment in which liquor is highly likely to be misused and abused, the following matters establish that Mr Trinh actively encouraged patrons to drink excessively:
  - (a) Analysis conducted by LGNSW Inspectors has identified a number of posts on the Premises' Facebook page and Mr Trinh's personal Facebook page using the promotional tag line: "Excessive drinking may cause karaoke".
  - (b) During an attendance on the Premises, LGNSW Inspectors identified a promotional flyer titled "Grand Opening Special" which offered patrons who booked a karaoke room (for a minimum eight guests) a complimentary bottle of champagne; or jug of Hennessy VSOP cognac mixed with soda/green tea; or a jug of vodka mixed with soda/juice.
  - (c) Another promotion identified by LGNSW Inspectors at the bar of the Premises offered a "free shot" to any patron who could balance a gold coin on a lime floating in a bowl of water.
137. The Authority is satisfied that the allegation in paragraph 38(a) of the Complaint Letter is established, on the basis of the screenshots of the webpage for the "Replay Karaoke" business (including drinks menu) and Facebook page for the business for postings between January to April 2017 (Exhibit E06).
138. The Authority is further satisfied that the allegation in paragraph 38(b) of the Complaint Letter is established on the basis of the photograph of the "Grand Opening Special" flyer advertised on the Premises' bar (Exhibit E16).

139. The Authority is further satisfied that the allegation in paragraph 38(c) of the Complaint Letter is established on the basis of the photograph of the “Free Shot” promotion advertised on the Premises’ bar (Exhibit E17).
140. Particular 2 of Ground 3 is established, most directly on the basis of the tag line used by the licensed business to associate excessive drinking with the karaoke services provided on the Premises in its online promotion of the venue.
141. The “grand opening special” provides less direct evidence of the promotion of excessive drinking, as it is not clear how much cognac or vodka is mixed with the jug of free drinks that will serve a minimum of 8 persons.
142. The free shot promotion is frivolous and may potentially promote the irresponsible consumption of liquor in a format that promotes rapid intoxication, but without knowing more about the degree of difficulty posed by this challenge the Authority does not give significant weight to this promotion.
143. Paragraph 39 of the Complaint Letter submits that in an environment that is negligent towards the responsible service of alcohol, fuelling negative behaviour with the above promotions is a “recipe for high risk attitudes” including excessive alcohol consumption.
144. The Authority is satisfied, on the basis of its findings on Ground 3 above, that the Former Manager Mr Trinh, through a lack of controls with regard to the responsible service of alcohol and collective breaches with regard to intoxicated persons on the Premises, engaged in conduct or activities that was likely to encourage misuse or abuse of liquor (such as binge drinking or excessive consumption).
145. Ground 3 is established.

#### **Ground 4 – Mr Trinh is not a fit and proper person to manage licensed premises**

##### *Particular 1: Police information and subsequent behaviour*

146. Paragraph 42 of the Complaint Letter alleges that given the need for urgent Police intervention at the Premises resulting from an act of violence involving a number of patrons from the Premises, and the subsequent arrest of an intoxicated and violent male patron, Constable Dechaufepie from Bankstown Local Area Command (Licensing Unit) arranged a meeting with Mr Trinh on 30 March 2017. The Complainant states that during that meeting, Constable Dechaufepie read and explained to Mr Trinh each of the prescribed liquor licence conditions, along with the authorised trading hours.
147. The Authority accepts that Mr Trinh met with Constable Dechaufepie on 30 March 2017, where Constable Dechaufepie read and explained to Mr Trinh each of the conditions on the licence, along with the authorised trading hours for the Premises. This finding is made on the evidence provided in the statement by Constable Nathan Dechaufepie of Bankstown Licensing Police dated 2 May 2017 (Exhibit E18).
148. Paragraph 43 of the Complaint Letter further alleges that LGNSW officers inspected the Premises one month later and, as described in Grounds 1 to 3 above, identified multiple serious breaches of the Act. The Complainant submits that these matters demonstrate that due to either a lack of interest or understanding of regulatory obligations, Mr Trinh does not have the requisite ability and/or knowledge to hold a position of authority within an organisation that holds a liquor licence, nor the role of approved manager.
149. The Authority is satisfied that this submission is established on the basis of its findings on Grounds 1 to 3 above.
150. Particular 1 of Ground 4 is established.

##### *Particular 2: Refusal to provide CCTV footage and sales records*

151. Paragraph 44 of the Complaint Letter alleges that at approximately 12:37am on 29 April 2017 during the LGNSW April Inspection, LGNSW Inspectors produced their official identification and introduced themselves to staff and Mr Trinh. The inspectors then exercised their coercive powers and directed Mr Trinh to provide them with particular CCTV footage and liquor sales records. Mr Trinh failed to comply with this direction.
152. Paragraph 45 of the Complaint Letter alleges that LGNSW Inspectors then explained their powers to inspect and seize items under section 26 of the GALA Act, and provided Mr Trinh with a copy of the relevant section. Despite this information and further guidance, Mr Trinh continued to refuse to comply.
153. The Authority is satisfied that the allegations in paragraphs 44 and 45 of the Complaint Letter are established on the basis of the information provided in paragraphs 39 to 48 of the Carr Statement (Exhibit E14).
154. Paragraph 46 of the Complaint Letter notes that the Authority has observed in its decision on the Short-Term Closure Order that the above behaviour showed that Mr Trinh was “less than transparent” in relation to the venue’s compliance with its licensing requirements. The Complainant alleges that this lack of transparency raises doubts as to Mr Trinh’s honesty. The Authority accepts that it previously made observations to this effect at paragraph 33 of the Short-Term Closure Order issued by the Authority in May 2017 (Exhibit E01).
155. Paragraph 47 of the Complaint Letter alleges that on 29 April 2017 during the LGNSW April Inspection, LGNSW Inspectors handed a Notice to Produce under section 21 of the GALA Act to Mr Trinh and explained its contents. That Notice required Mr Trinh to produce CCTV footage and point of sale records for 14 April 2017 and for the period from 19 April 2017 to 28 April 2017, which was to be furnished to LGNSW Inspectors by 5:00pm on **5 May 2017**.
156. The Authority is satisfied that Mr Trinh was in fact provided with this Notice on the basis of the uncontested information provided in paragraphs 24 to 26 of the Carr Statement (Exhibit E14).
157. Paragraph 48 of the Complaint Letter alleges that on 5 May 2017, Mr Trinh informed LGNSW that his lease had been terminated and that he did not have access to the Premises and would therefore not be able to comply with the section 21 Notice to Produce.
158. The Authority accepts that Mr Trinh was in fact evicted from the Premises on **5 May 2017** on the basis of the uncontested information provided by the Complainant and noting the information recorded in paragraphs 12 to 14 of the Short-Term Closure Order issued by the Authority in May 2017 (Exhibit E01).
159. Nevertheless, the Authority is satisfied that Mr Trinh had a reasonable opportunity to recover and provide the CCTV footage and sales data in response to the Notice to Produce that had been handed to him on **29 April 2017**.
160. Recovery and production of the CCTV footage and sales records under notice could have occurred prior to the eviction of Mr Trinh by the Premises Owner and prior to the apparent deletion of CCTV records, which according to the expert advice of Beam Digital Pty Ltd occurred on the afternoon of 4 May 2017.
161. On the information before it, and noting that Mr Trinh has not responded to this Complaint, the Authority is satisfied that Mr Trinh has *at least* failed to take reasonable action to ensure production of the CCTV footage and sales records in a timely manner. This demonstrates a substantial lack of skill or diligence, as an approved manager of licensed premises, with respect to the provision of CCTV to law enforcement under a compulsory Notice. A reasonable licensee should be aware of any constraints in terms of time limits or storage capacity posed by the CCTV system operated on licensed premises and should, in any event, take prompt steps to ensure preservation and production of CCTV footage when a Notice is issued.

162. Particular 2 of Ground 4 is established.

*Particular 3: Deletion of CCTV footage and sales records*

163. At paragraph 49 of the Complaint Letter the Complainant contends that on **9 May 2017**, LGNSW Inspectors attended the Premises with a representative of PT Property Group Services Pty Ltd (the Premises Owner and owner of *Little Saigon Plaza*, the shopping centre in which the Premises is located) to attempt to obtain the CCTV footage and point of sale records required under the section 21 Notice to Produce described above. On examination of the CCTV system, the system appeared to have been formatted with files deleted at 4:31pm on Thursday, **4 May 2017**. On examination of the point of sale system, all sales records also appeared to have been deleted.
164. The Authority is satisfied that at the time of this inspection the relevant records had been deleted. This finding is made on the basis of the letter from Beam Digital Pty Ltd to the Premises Owner dated 25 May 2017, which forms part of the Premises Owner's response to a separate section 21 Notice to Produce that was issued to the Premises Owner on 18 May 2017 (Exhibit E19).
165. Paragraph 50 of the Complaint Letter alleges that in response to this section 21 Notice to Produce issued to the Premises Owner, PT Property Group arranged for a director of KPOS (the manufacturer of the venue's point of sale system) to inspect the point of sale system to assess whether the relevant records that had been deleted were recoverable. It was confirmed in writing by a director of KPOS that the relevant records were not available. PT Property Group further arranged for a representative of Beam Digital Pty Ltd (the IT company who installed the CCTV system for the Premises) to inspect the Premises' CCTV system, who confirmed in writing that the relevant records were not available.
166. The Authority accepts these allegations on the basis of the Notice of Produce issued to the Premises Owner on 18 May 2017 and the Premises Owner's response to that Notice, which comprises a statutory declaration from an employee of the corporate Premises Owner dated 26 May 2017; two photographs of the Premises' DVR hard drive; a letter from KPOS Pty Ltd (the supplier of the Premises' point of sale system) to the Premises Owner dated 25 May 2017; and a letter from Beam Digital Pty Ltd (the IT company who installed the CCTV system for the Premises) to the Premises Owner dated 25 May 2017 (collectively Exhibit E19).
167. Paragraph 51 of the Complaint Letter alleges that during the Trinh Interview, Mr Trinh stated that he was the only person who had log-in and password access to the CCTV and point of sale systems. However, he denied that he deleted these records, stating that at the time in question, he did not have access to the Premises.
168. The Authority is satisfied that Mr Trinh has stated that he was the only person who had access to the login and password, but takes this as a reference to him being the only person *in the licensed business* with access – as there is information that Centre Management also had passwords. The allegations in paragraph 51 are established on the basis of the information provided in question and answer 938, 954, 967, 969 and 1007 to 1086 of the Trinh Interview (Exhibit E13).
169. In paragraph 52 of the Complaint Letter, the Complainant contends that, on the balance of probabilities, Mr Trinh wilfully obstructed LGNSW's investigation by deleting these records. The Complainant contends that in his dealings with LGNSW, Mr Trinh has been dishonest, obstructive and lacked the requisite knowledge, ability and/or character to hold a position of authority and responsibility within the liquor industry.
170. As noted above, the Authority is satisfied that Mr Trinh had a reasonable opportunity to recover and provide the CCTV footage that was the subject of the Notice to Produce that had been handed to him on **29 April 2017**.
171. Recovery and production of the CCTV footage under notice could have occurred prior to eviction of Mr Trinh by the Premises Owner and prior to the apparent deletion of CCTV

records, which according to the expert advice of Beam Digital Pty Ltd occurred on the afternoon of 4 May 2017.

172. The evidence provided by the Premises Owner and its contractor on 18 May 2017 indicates that deletion of the CCTV footage could have been *either* the product of a deliberate act or a consequence of the system automatically overwriting its data.
173. On the information before it, and noting that Mr Trinh has not responded to this Complaint, the Authority is satisfied that the CCTV and sales records required under notice were in fact deleted on 4 May 2017. The Authority is satisfied that Mr Trinh has *at least* failed to take reasonable action to ensure production of the CCTV footage and sales records in a timely manner. This demonstrates a substantial lack of skill or diligence, as an approved manager of licensed premises, with respect to the provision of CCTV to law enforcement under a compulsory Notice. A reasonable licensee should be aware of any constraints in terms of time limits or storage capacity posed by the CCTV system operated on licensed premises and should, in any event, take prompt steps to ensure preservation and production of CCTV footage when a Notice is issued.
174. The Authority finds that Mr Trinh's statements to Police regarding the sale of liquor after midnight were contradicted by his own staff, who made clear that sales of liquor after midnight were permitted by him. The Authority accepts the information provided by staff of Replay Karaoke and finds that Mr Trinh has been dishonest in his dealings with law enforcement in this regard. The Authority finds that deliberately and repeatedly failing to comply with licensed trading hours indicates a degree of dishonest dealing, in that Mr Trinh has intentionally contravened the authorisation conferred by the licence.
175. When making a finding on an individual's fitness and propriety, the Authority must have regard to whether that person is of good repute, having regard to character, honesty and integrity. The Authority notes that Mr Trinh has not provided any response to the Complaint, let alone any specific submissions on his character.
176. The Authority must also have regard to an individual's competence to carry on the type of business or activity carried on under the licence in question. In this case, the licensed business is a licensed Karaoke premises, which the Authority considers to be a higher risk form of licensed premises, involving patron participation in live entertainment in semi-private rooms, requiring particular diligence given some association between the consumption of liquor and patrons finding the courage to perform in front of others.
177. The Authority finds that the extent of non-compliance with licence conditions and lack of cooperation or diligence with respect to his dealings with law enforcement indicate that Mr Trinh does not have the degree of competence that would be expected from a reasonably competent operator of a higher risk licensed venue of this kind.
178. In conclusion, having considered cumulatively the Authority's findings on the alleged acts of regulatory non-compliance in Grounds 1 to 3 that are incorporated by reference into Particular 1 of Ground 4, and noting the Authority's further adverse findings on Particulars 2 and 3 of Ground 4, the Authority finds that Mr Trinh is not a fit and proper person to be the holder of a licence, or to be the manager of the licensed Premises.
179. Ground 4 is established.

#### **Ground 5 – Mr Trinh is not fit and proper to hold a position of authority in a corporate licensee**

180. Paragraph 53 of the Complaint Letter notes that Koi Corp Pty Limited was the corporate licensee of the Premises between 12 November 2016 and 5 May 2017. Mr Trinh was the sole director/secretary of Koi Corp Pty Limited during that period and thereby held a position of authority.

181. At paragraph 54 the Complainant contends that by reason of the matters set out in Ground 4, Mr Trinh is not fit and proper to hold a position of authority within the corporation that is the holder of a licence.
182. The Authority accepts that Mr Trinh held a position of authority in the corporate Former Licensee Koi Corp Pty Limited on the basis of the current *OneGov* licence record for the Premises as at 11 July 2017 (Exhibit E03), the previous *OneGov* licence record for the Premises as at 27 April 2017 (Exhibit E04) and the ASIC Company Extract for Koi Corp Pty Limited as at 1 May 2017 (Exhibit E05).
183. As identified in the Complaint Letter and as evident from liquor licence records before the Authority, Koi Corp Pty Limited is no longer the corporate licensee for the Premises, and Mr Trinh no longer has any direct involvement in the “Replay Karaoke” licensed business operating on the Premises.
184. An issue of statutory construction arises as to whether the ground of complaint available under section 139(3)(q) may be relied upon in respect of a person who was, at the time of the conduct the subject of complaint, a person who occupied a position of authority in a licensee corporation, but no longer holds such position at the time of determining a complaint.
185. Noting that the definition of a licensee in section 137 of the Act includes a “former licensee”, the Authority is satisfied that the most harmonious and coherent construction of the Act is to read the expression “person who occupies a position of authority in a licensee corporation” in section 139(3)(q) of the Act as including a person who occupied that position *at the time the conduct that is the subject of a complaint occurred*.
186. That construction accords with the scheme and purpose of Part 9 and avoids absurd results, whereby (for example) a person of authority in a corporate licensee may avoid exposure to the regulatory scheme by strategically divesting or reacquiring a relevant position with that licensee at different times.
187. On the basis of the Authority’s findings with respect to Mr Trinh’s fitness on the allegations specified in Ground 4, the Authority finds that Ground 5 is established.

#### **FINAL SUBMISSIONS ON DISCIPLINARY ACTION**

188. On 31 October 2017 the Authority sent a detailed letter by email and mail to the interested parties notifying its findings on the Grounds of Complaint and inviting the Complainant to provide any final written submissions or evidence confined to the question of what if any disciplinary action should be taken within 7 days from that letter. Mr Trinh, the business owner and premises owner of the Premises were also invited to make submissions in reply, with the benefit of the Complainant’s final submissions, no later than 14 days after the date of that letter.
189. On 6 November 2017 the Authority received a final submission from the Complainant. In summary the Complainant argues that during his brief involvement with the industry, Mr Trinh has demonstrated “serious disregard” for the law and the conditions of the liquor licence for the Premises that are designed to minimise harm to the community. The Complainant submits that there is a strong need for a penalty that provides general deterrence, including more specific deterrence for those operating Karaoke businesses, from engaging in this type of conduct and to instil public confidence in the liquor industry.
190. The Complainant submits that the Authority should disqualify Mr Trinh from the liquor industry for a period not less than ten years, that a monetary penalty be issued against him in the sum of \$22,000 and that Mr Trinh be ordered to pay the Secretary’s costs on the investigation that preceded this Complaint, in the sum of \$14,544.20. The Complainant provided a document with a detailed breakdown of how those costs were incurred.

191. No response to the Findings Letter was made by Mr Trinh, the current business owner or the property owner of the Premises.

## DECISION AND REASONS

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

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

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

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

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

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

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

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

197. The Authority notes that Mr Trinh has not responded to the Show Cause Notice nor made any further submissions in response to the Authority's Findings Letter. Nearly all of the allegations as to adverse conduct have been established on the basis of the uncontested evidence or material provided by the Complainant.

198. There are no positive submissions or evidence before the Authority indicating Mr Trinh's good repute (having regard to character or reputation) or competence as a liquor licensee, for the purposes of section 45(5A) of the Act.

199. With regard to the common law indicia of fitness and propriety, Mr Trinh has not provided submissions or evidence positively demonstrating how he possesses the knowledge, honesty or ability that is reasonably expected of a licensee in New South Wales.

200. While the licence for the Premises is now under the control of a third party, the Authority considers that the potential for Mr Trinh to hold another liquor licence, or be in a position to control or influence a licensed business, poses a substantial threat to public interest.

201. The proven contraventions, including some flagrant contraventions, of the Act and licence conditions were committed within a short period of time during the operation of the Replay Karaoke business. They occurred in the context of a high-risk mode of licensed business (a Karaoke venue) and call for a substantial regulatory response.

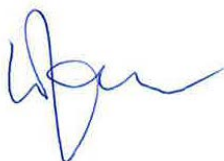


- 202.** In addition to those matters, Mr Trinh's personal failure to take reasonable steps to respond to notices for the production of CCTV indicates some lack of cooperation with law enforcement that underscores a lack of diligence and ability as a licensee. Some statements made to regulatory officers about liquor service practices were contradicted by his staff and indicate that Mr Trinh was not entirely frank when questioned about those matters.
- 203.** Mr Trinh has provided no evidence or submissions as to the effect that disqualifying him or his company from the industry or imposing a monetary penalty or ordering that he pay the Secretary's costs would have upon himself or others.
- 204.** The Authority agrees with the Complainant's uncontested submissions on the appropriate period of disqualification. On a cumulative assessment of its findings, the Authority considers that a substantial period of disqualification for Mr Trinh, for a period of ten years, is appropriate in the circumstances for the protection of the industry and the general public. The Authority considers that Mr Trinh should be disqualified from acting as a licensee, approved manager or a close associate of a licence and that this period of disqualification should commence without delay.
- 205.** Section 141(2)(c) of the Act prescribes that the maximum monetary penalty that may be ordered (other than in circumstances of aggravation) when disciplinary action is taken under Part 9 of the Act is 200 penalty units for an individual or 500 penalty units for a corporation. The Authority notes that no circumstances of aggravation are alleged in this Complaint and that section 17 of the *Crimes (Sentencing Procedure) Act 1999* prescribes that one penalty unit is \$110.
- 206.** The misconduct demonstrated by Mr Trinh personally was serious, calculated and substantial - albeit not in the worst category of regulatory non-compliance. Given the high-risk nature of the Karaoke business model that Mr Trinh elected to operate and some evidence of failure to cooperate with law enforcement with respect to the production of CCTV records when required, the Authority finds that a penalty in the sum of \$10,000 is an appropriate sanction that will operate as a signal to others in the industry as to the consequences of similar non-compliance.
- 207.** The Authority is further satisfied that the corporate licensee, Koi Corp Pty Ltd, whose sole director is Mr Trinh, should not be permitted to serve as a vehicle to hold another liquor licence nor operate another licensed business in this State. To that end the Authority finds it in the public interest to disqualify this company, on a permanent basis, from holding a licence or being a close associate of a licence in New South Wales.
- 208.** Having regard to the increased level of penalties contemplated by the Act for corporations, the Authority finds that a penalty in the sum of \$25,000 will provide a further signal to corporate licensees who may engage in similar non-compliance in a high-risk environment.
- 209.** Finally, the Authority notes the Complainant's uncontested submission that Mr Trinh should be ordered to pay the Secretary's costs on the investigation giving rise to the Complaint. Noting that nearly all allegations advanced by the Complainant have been established and having regard to the Complainant's detailed specification of its costs, the Authority is satisfied that Mr Trinh should be ordered to pay the Secretary's entire costs on the investigation, in the sum of \$14,544.20.

## ORDERS

- 210.** The Authority is satisfied that it is in the public interest to take the following disciplinary action:
- i. Pursuant to section 141(2)(h) of the Act, the former approved manager Mr David Trinh is disqualified from holding a liquor licence, being the approved manager, or being a close associate of a licensee in respect of any licensed premises in New South Wales, for a period of **10 years** from the date of this letter.

- ii. Pursuant to section 141(2)(c)(i) of the Act, the former approved manager Mr David Trinh is ordered to pay to the Secretary of the NSW Department of Industry a monetary penalty of **\$10,000** within 28 days from the date of this letter.
- iii. Pursuant to section 141(2)(l)(i) of the Act, Mr Trinh is ordered to pay the Secretary's costs on the investigation in relation to this Complaint in the sum of **\$14,544.20** within 28 days from the date of this letter.
- iv. Pursuant to section 141(2)(f) of the Act, the Authority **permanently** disqualifies the former licensee Koi Corp Pty Ltd from holding a liquor licence or being a close associate of a licensee in respect of any licensed premises in New South Wales with effect from the date of this letter, and
- v. Pursuant to section 141(2)(c)(i) of the Act, the Authority orders that the former licensee Koi Corp Pty Ltd pay to the Secretary of the NSW Department of Industry a monetary penalty of **\$25,000** within 28 days from the date of this letter.



Philip Crawford  
Chairperson

**Important Information:**

In accordance with section 13A of the *Gaming and Liquor Administration Act 2007* a relevant person (the Applicant or a person who was required to be notified of the prescribed Application and who made a submission to the Authority or the Secretary in respect of the prescribed Application) who is aggrieved by this decision may apply to NCAT for an administrative review under the *Administrative Decisions Review Act 1997*.

An application to NCAT must be made within 28 days of notice of this decision being published on the liquor and gaming website <http://www.liquorandgaming.nsw.gov.au/Pages/ilga/decisions-of-interest/decisions-of-interest.aspx> and be accompanied by the fee prescribed by the regulations.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney. The NCAT website is at <http://www.ncat.nsw.gov.au/>.