



Detective Superintendent Wayne Murray Cabramatta Local Area Command 243-249 Cabramatta Road CABRAMATTA NSW 2166 murr1way@police.nsw.gov.au	Mr Tan Phuong Nguyen Licensee Loc Ky Restaurant [private address not published]	Ms Michelle My Nguyen Solicitor My.T.Nguyen Solicitors PO Box 472 CABRAMATTA NSW 2166
NHU LOC PTY LTD Business Owner [private address not published]	A & E IPPOLITI PTY LTD Premises Owner 68-75 Greenway Place HORSLEY PARK NSW 2175 [by express post]	

7 May 2018

Dear Mr Nguyen

Reference No. DF17/005547
Matter Disciplinary Complaint
Trading hours Consumption on premises
Monday to Saturday 5:00 am to 2:00 am
Sunday 10:00 am to 2:00 am
Licence name Loc Ky Restaurant
Complainant A delegate of the NSW Commissioner of Police - Detective Superintendent Wayne Murray, Cabramatta Local Area Command
Premises 4/231 Canley Vale Road, Canley Heights NSW 2166
Issue Fitness and propriety of former licensee Mr Tan Phuong Nguyen
Legislation Section 3 and Part 9 of the *Liquor Act 2007*

**Final Decision on Complaint to Independent Liquor and Gaming Authority
in relation to Mr Tan Phuong Nguyen the former licensee of Loc Ky Restaurant,
Canley Heights**

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 6 September 2017.

The Complaint concerns Mr Tan Phuong Nguyen, the former licensee of an on-premises licensed restaurant with licence number LIQO624004673 known as the Loc Ky Restaurant, formerly the Santos Café and Pizza Bar, located at 4/231 Canley Vale Road, Canley Heights NSW 2166 (Premises).

The Complaint is made by Detective Superintendent Wayne Murray (Complainant) in his capacity as a delegate of the New South Wales Commissioner of Police.

The Complaint specifies one ground that is available under section 139(3)(i) of the Act– that Mr Nguyen is not a fit and proper person to be licensee.

The Authority has considered the Complaint and submissions and is satisfied that Mr Nguyen, who is now a former licensee of the Premises, is **not** a fit and proper person to be the holder of a liquor licence in New South Wales.

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

- i. Pursuant to section 141(2)(f) of the Act, the former licensee Mr Tan Phuong Nguyen is disqualified from holding a liquor licence and from being the approved manager in respect of any licensed premises in New South Wales, for a period of 3 years from the date of this letter.
- ii. Pursuant to section 141(2)(f) of the Act, the former licensee Mr Tan Phuong Nguyen is disqualified from being a close associate of the licensee in respect of licence number LIQO624004673, for a period of 3 years from the date of this letter, with such disqualification commencing 3 months after the date of this letter.
- iii. Pursuant to section 141(2)(f) of the Act, the former licensee Mr Tan Phuong Nguyen is disqualified from being a close associate of any other licensee in New South Wales for a period of 3 years, commencing from the date of this letter.
- iv. Pursuant to section 141(2)(e) of the Act, the Authority imposes the following new condition upon licence LIQO624004673 trading as Loc Ky Restaurant, with effect from the day after the date of this letter:


Mr Tan Phuong Nguyen may not be present on the licensed premises during licensed trading hours. Mr Nguyen may only perform paid or unpaid work in relation to the licensed business in a capacity that would not involve him being on the premises at any time when the premises is open to the public or when patrons are on the premises.

The disqualification of Mr Nguyen as a close associate of a licensee means that he may no longer be a director or secretary of the company that owns the business conducted pursuant to any liquor licence in New South Wales. Mr Nguyen may not own, or part own, any licensed business, and may not derive a business income, nor hold any position of management or executive control of any licensed business. The Authority has allowed Mr Nguyen 3 months to divest any relevant interest, position or power in respect of the Loc Ky business only. In all other respects the Authority's orders shall commence effect in one day.

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 ilqa.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 from Detective Superintendent Wayne Murray of the Drug and Alcohol Command of New South Wales Police (Complainant) dated 5 September 2017 and date stamped as received by Liquor and Gaming NSW (LGNSW) on 6 September 2017 (Cover Letter), a seven-page submission signed by Superintendent Wayne Murray of Cabramatta Local Area Command (LAC) of NSW Police dated 23 August 2017 (Complaint Letter), the official complaint application form signed by Superintendent Wayne Murray of NSW Police dated 23 August 2017 (Complaint Form) and 208 pages of supporting material labelled Annexures "A" to "H" that are referred to in the Complaint Letter and are discussed below (collectively referred to as the Complaint Material).
2. The Complaint is made in relation to Mr Tan Phuong Nguyen, who is identified in the Complaint Letter as the licensee of the licensed restaurant known as Loc Ky, located at 4/231 Canley Vale Road, Canley Heights (Premises), which previously traded as the Santos Café and Pizza Bar. The licence attaching to the Premises is number LIQO624004673. As noted below, Mr Nguyen no longer holds the licence at the time of the Independent Liquor and Gaming Authority (Authority) making findings on this matter, the licence having been transferred to Mr Nguyen's wife Thi Thu Hong Tran on 17 November 2017.
3. Licensing records provided by the Complainant from the NSW Police Alcohol Related Crime Information Exchange (ARCIE) database indicate that Mr Nguyen became the licensee of the Premises on 6 July 2015. The Complainant has also provided the licence transfer application dated 29 April 2015 made by Mr Nguyen pursuant to which Mr Nguyen acquired the licence. On this form Mr Nguyen advises that the business owner of the business conducted on the Premises is Nhu Loc Pty Ltd.

MATERIAL BEFORE THE AUTHORITY

4. The Complaint Material comprises:
 - Annexure A: Licence Transfer Application dated 29 April 2015 by Mr Tan Phuong Nguyen to Transfer licence of the Former Santos Café and Pizza Bar from Mr John Mellino.
 - Annexure B: Police submission dated 25 May 2015 objecting to the April 2015 Licence Transfer Application from Mr Mellino to Mr Nguyen.
 - Annexure C: A criminal history of the licensee through NSW Police Force documents including Criminal History Bail Report, Criminal Infringement Notice History and Computerised Operational Policing System (COPS) Breach Bail Alternative Report for Mr Tan Phuong Nguyen, all obtained by Police on 24 August 2017.
 - Annexure D: A statutory declaration of Mr Tan Phuong Nguyen signed and dated 6 July 2015 relating to the transfer of the liquor licence of the former Santos Café and Pizza Bar from Mr John Mellino to Mr Nguyen in which Mr Nguyen makes declarations about his fitness and propriety and previous convictions.
 - Annexure E: Key liquor licence record for Loc Ky Restaurant LIQO624004673 as at 17 April 2017 sourced from ARCIE.
 - Annexure F: Evidence Matrix prepared by Police summarising five incidents that have occurred between 23 April 2007 and 27 January 2017 in relation to Mr Nguyen.
 - Annexure G.1.1: COPS Event Report E64414539 for assault officer and intimidation on 27 January 2017 between 2:00 am to 3:00 am and malicious damage to property on 27 January 2017 between 8:20 am to 8:40 am. Mr Nguyen is identified in this report as the person of interest.
 - Annexure G.1.2: Court Attendance Notice (CAN) and NSW Police Facts Sheet in relation to H62068660, *R v Nguyen* listed before Liverpool Local Court on Friday 23 June 2017 at 9:30 am

for: intimidate police officer in execution of duty without causing actual bodily harm between 2:00 am and 3:00 am on 27 January 2017 (section 60(1) of the *Crimes Act 1900* (Crimes Act)); assault officer while in the execution of his or her duty between 2:00 am and 3:00 am on 27 January 2017 (section 58 of the Crimes Act); intentionally or recklessly destroy/damage property between 8:20 am and 8:40 am on 27 January 2017 (section 195(1)(a) of the Crimes Act).

- Annexure G.1.3: NSW Police Force COPS Custody Management Record for Mr Nguyen's detention at Cabramatta on 27 January 2017.
- Annexure G.1.4: Transcript of *R v Nguyen* 2017/00026695 heard at Liverpool Local Court on 23 June 2017.
- Annexure G.1.5: Certificate of Conviction dated 27 June 2017 in the matter of *R v Nguyen* 2017/00026695-003 (actual offence-destroy or damage property <=\$2000), 2017/00026695-001 (actual offence – intimidate police officer in execution of duty without actual bodily harm) and 2017/00026695-002 (actual offence – assault officer in execution of duty) recording that Mr Nguyen was sentenced to a term of 12 months imprisonment, suspended from 23 June 2017. The Court directed that Mr Nguyen be released from custody on condition that he enters into a good behaviour bond under section 12 of the *Crimes (Sentencing Procedures) Act 1999* for a term of 12 months subject to a number of conditions. Mr Nguyen was ordered to pay a fine of \$700 and compensation of \$308 to Police.
- Annexure G.1.6: Two photographs of damage Mr Nguyen allegedly caused to the Police cell.
- Annexure G.2.1: COPS Event Report E63391587- 22 June 2016 1.10 pm, 22 June 2016 3:00 pm and 30 June 2016 10:26 am - for licensee not display prescribed particulars at front entrance in breach of section 95(1) of the *Liquor Act 2007* (Act) and licensee alter name of premises without approval of the Authority in breach of section 95(2) of the Act.
- Annexure G.2.2: NSW Police record of interview between Sergeant Paul Leaney and Mr Nguyen at Cabramatta Police Station on 30 June 2016.
- Annexure G.2.3: NSW Police Force Penalty Notice 4033239459 issued to Mr Nguyen on 22 June 2016 for licensee not display sign with prescribed particulars.
- Annexure G.2.4: Email from the (then) NSW Office of State Revenue (now Revenue NSW) to NSW Police dated 19 April 2017 advising that penalty notice number 4032998476 was paid in full on 20 July 2011, penalty notice number 4033239468 was paid in full on 7 October 2016 and penalty notice number 4033239459 was paid in full on 7 October 2016.
- Annexure G.2.5: NSW Police Force Penalty Notice 4033239468 issued to Mr Nguyen on 22 June 2016 for licensee alter name of Premise without approval.
- Annexure G.2.6: Email from the (then) NSW Office of State Revenue (now Revenue NSW) to NSW Police dated 19 April 2017 advising that penalty notice number 4032998476 was paid in full on 20 July 2011, penalty notice number 4033239468 was paid in full on 7 October 2016 and penalty notice number 4033239459 was paid in full on 7 October 2016.
- Annexure G.3.1: COPS Event Report E59504537 – 12:00 am 31 December 2015 for intimidation, common assault, assault occasioning actual bodily harm and malicious damage. Mr Nguyen is identified in this report as the person of interest.
- Annexure G.3.2: CAN and NSW Police Facts sheet in relation to H60345573, *R v Nguyen* listed before Fairfield Local Court on Thursday 16 June 2016 at 9:30 am for: assault occasioning actual bodily harm between 12:01 am and 12:16 am on 31 December 2015 (section 59(1) of the Crimes Act); common assault between 12:01am and 12:16 am on 31 December 2015 (section 61 of the Crimes Act); 2 counts of intentionally or recklessly destroy/damage property between 1:55 am and 2:15 am on 31 December 2015 (section 195(1)(a) of the Crimes Act); stalk or intimidate intending to cause fear of physical or mental harm (domestic violence offence) between 12:01 am and 12:16 am on 31 December 2015 (section 13(1) of the *Crimes (Domestic and Personal Violence) Act 2007*).
- Annexure G.3.3: Four Certificates of Conviction dated 22 June 2016 in the matter of *R v Nguyen* 2015-382285-001 (assault occasioning actual bodily harm), 2015-382285-003 (intentionally or recklessly destroy/damage property), 2015-382285-004 (intentionally or

recklessly destroy/damage property) and 2015-382285-005 (stalk or intimidate intending to cause fear of physical or mental harm (domestic violence offence)) each recording that Mr Nguyen was sentenced to a 12 month good behaviour bond under section 9 of the *Crimes (Sentencing Procedures) Act 1999* for a term of 12 months.

- Annexure G.3.4: NSW Police statement of Constable Matthew Egan dated 23 January 2016 in the matter of *Police v Nguyen*.
- Annexure G.3.5: Four photographs comprising three taken from the inside of the premises where the events of 31 December 2015 occurred and one photograph of the victims' injuries.
- Annexure G.3.6: NSW Police statement of Senior Constable Matthew Garner dated 18 May 2016 in the matter of *Police v Nguyen*.
- Annexure G.3.7: NSW Police statement of Sergeant Andrew Wood dated 18 February 2016 in the matter of *Police v Nguyen*.
- Annexure G.3.8: NSW Police Force COPS Custody Management Record for Mr Nguyen's detention at Cabramatta on 31 December 2015.
- Annexure G.4.1: COPS Event Report E166537895 – 13 May 2011 at 11:32 pm – for offensive behaviour. Mr Nguyen is identified as the person of interest in this report.
- Annexure G.4.2: NSW Police Force Penalty Notice 4032998476 issued to Mr Nguyen on 13 May 2011 for offensive behaviour.
- Annexure G.4.3: Email from the (then) NSW Office of State Revenue (now Revenue NSW) to NSW Police dated 19 April 2017 advising that penalty notice number 4032998476 was paid in full on 20 July 2011, penalty notice number 4033239468 was paid in full on 7 October 2016 and penalty notice number 4033239459 was paid in full on 7 October 2016.
- Annexure G.5.1: COPS Event Report E29830670 – 23 April 2007 at 12.30 pm – for "slapping" a female [Note this report does *not* specify the offence type].
- Annexure G.5.2: CAN and NSW Police Facts sheet in relation to H30198818, *R v Nguyen* listed before Liverpool Local Court on Monday 21 May 2007 at 9:30 am for: common assault between 12:30 pm and 12:35 pm on 23 April 2007 (section 61 of the Crimes Act).
- Annexure G.5.3: Certificates of Conviction dated 28 June 2016 in the matter of *R v Nguyen* 2007/00099832-001 (common assault) recording that Mr Nguyen is to pay a fine of \$700 and court costs of \$67 in addition to entering into a good behaviour bond for 2 years pursuant to section 9(1) of the *Crimes (Sentencing Procedures) Act 1999* to commence on 21 May 2007.
- Annexure H: NSW Police Force Record of Interview between Police and Mr Nguyen at Cabramatta Police Station on 30 June 2016.

CONSULTATION ON COMPLAINT

5. On 25 September 2017 the Authority issued a Show Cause Notice to Mr Nguyen in his capacity as licensee. Also on that date the Authority sent invitations to make submissions to Nhu Loc Pty Ltd (the corporate business owner of which Mr Nguyen was the sole director and shareholder) and A & E Ippoliti Pty Ltd, the corporate property owner of the Premises. All three of these parties received a complete copy of the Complaint Material.
6. On 13 October 2017 Mr Nguyen's solicitor, Ms Michelle Nguyen, sent an email to Police seeking further particulars or further information in relation to the Complaint. This mainly concerned a request for Police records regarding Mr Nguyen's criminal history and the Police submission that was made to the Authority in objection to Mr Nguyen's Licence Transfer Application. Police responded to this request for particulars in emails dated 3 November 2017, 27 November 2017 and 1 December 2017.
7. In a brief email through Ms Nguyen dated 4 December 2017, Mr Nguyen advised that the licence had now been provisionally transferred to another party. In a further two paragraph email submission made through Ms Nguyen on 5 December 2017, Mr Nguyen noted that the licence had now been provisionally transferred to Mrs Thi Thu Hong Tran (who the Authority

notes is Mr Nguyen's wife) and Mr Nguyen questioned the basis for taking any disciplinary action against him in light of the fact that the Complaint was framed by reference to Mr Nguyen's fitness to hold the licence.

8. In an email from the Authority Secretariat to Ms Michelle Nguyen dated 5 December 2017, the Secretariat drew Ms Nguyen's attention to the fact that the transfer of licence to Mr Nguyen's wife does not resolve the complaint made against Mr Nguyen and unless the complaint is withdrawn by Police it will need to be considered by the Authority.
9. The Authority gave preliminary consideration to the matter at its meeting of 13 December 2017. Concerned that Mr Nguyen's cursory response did not indicate appreciation of the scope of disciplinary powers available to the Authority should the Complaint be established, the Authority Secretariat sent an email to Mr Nguyen on 19 December 2017 giving him one final opportunity to address the merits of the Complaint.
10. In a two-page submission through his solicitor dated 16 January 2018 Mr Nguyen reiterated that he is no longer the licensee of the Premises. He submits that it would be "unfair" to take action against the licence itself because:
 - the sole ground of Complaint is only specified in relation to Mr Nguyen's fitness and he no longer holds the licence, which is now held by Mr Nguyen's wife Mrs Tran (a copy of a licence transfer application filed on 2 November 2017 by Ms Michelle Nguyen is provided).
 - the Loc Ky Restaurant business is the only source of income for Mr Nguyen and Mrs Tran, and both of them are employed by the business.
 - Mr Nguyen and his wife have two dependent children.
 - Cancelling the liquor licence would be "unduly harsh" and "punitive" by severely impacting their ability to earn an income and support their children.
 - The revenue of the business would be reduced by 40% if the licensed business was not able to sell liquor.
 - Mr Nguyen "recognises that he has a problem with anger management" and he instructs his solicitor that he is seeing a medical practitioner, Dr Minh Nguyen, on a regular basis.
 - Mr Nguyen requests that Mrs Tran remain able to hold the licence.
 - Mr Nguyen instructs his solicitors that he is also "looking into transferring the entire business to Mrs Tran".
11. Mr Nguyen has also provided through his solicitor a one paragraph Medical Certificate from Minh Nguyen, a psychologist from MTN Psychological Services which states:

"This is to certify that Mr Nguyen has attended MTN Psychological service for psychological treatment fortnightly between 2/8/17 and 14/12/17. I believed that Mr Nguyen mental condition has improved and he is [sic] no longer required further treatment."
12. In a submission in reply from the Complainant dated 6 February 2018 the Complainant, through his case manager Sergeant Paul Leaney of the Cabramatta LAC submits that:
 - On 17 November 2017 Mr Nguyen's wife became the provisional licensee of the Premises.
 - Australian Securities and Investments Commission Records show that Mr Nguyen remains the sole director of the licensed business owner Nhu Loc Pty Ltd.
 - Police do not object to Mrs Tran holding the licence.
 - Police have not requested that the licence be cancelled only that Mr Nguyen be disqualified from being the licensee, manager or close associate of the licence.
 - The information about Mr Nguyen's children is misleading. Their two children are aged 20 and 21 years old, are adults and can earn their own income.
 - Mr Nguyen provides no documentation to support the claim of a 40% reduction in revenue should the licence be cancelled.

- With regard to the submissions as to Mr Nguyen’s anger management, Police contend that he was advised on 31 December 2015 that Police would be making a disciplinary complaint. Mr Nguyen acknowledged his anger management issues in an interview with Police dated 30 June 2016, but on 27 January 2017 Mr Nguyen was charged with assault Police, intimidate Police and malicious damage, for which he received a suspended sentence on 23 June 2017. One of the conditions of that suspended sentence was to attend counselling. While the medical certificate records attendance at counselling between 2 August 2017 and 14 December 2017, Police submit that Mr Nguyen had ample opportunity between 30 June 2016 and 2 August 2017 to seek counselling.
13. A disciplinary complaint under Part 9 of the Act is an administrative matter, and findings are made to the civil standard of proof. However, in accordance with the principle enunciated by the High Court of Australia in *Briginshaw v Briginshaw* (1938) 60 CLR 336, the seriousness of the allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are matters that are relevant to deciding whether an allegation has been proved on the balance of probabilities.

Fitness and Propriety at General Law

14. 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.
15. 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.
16. 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.*
17. Furthermore, sections 45(5), to which section 139(3)(i) refers, and section 45(5A) of the Act, prescribe 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.
18. The Authority notes that in the interpretations provided by section 137 of the Act, a reference to “licensee” in Part 9 of the Act includes a “former licensee”.

FINDINGS

Ground of Complaint – That the licensee, Mr Nguyen, is not a fit and proper person to be the holder of a licence – Section 139(3)(i) of the Act

19. The Authority is satisfied, as alleged in Particulars 1.2 to 1.2.6 of the Complaint Letter, that between 2:00 am and 3:00 am on 27 January 2017 Mr Nguyen committed the offences of intimidate police officer in execution of duty without actual bodily harm, assault officer in execution of duty and destroy or damage property contrary to sections 60(1), 58 and 195(1)(a) of the Crimes Act respectively. These offences occurred while Mr Nguyen was in the vicinity of his residential premises and “seriously affected” by alcohol.
20. The Authority makes these findings on the basis of the information provided in COPS Event Report number E64414539 (Annexure G.1.1), which is discussed below and the Custody Record for Mr Nguyen recording further drunken misconduct (Annexure G.1.3) including Mr Nguyen challenging Police to fight him.
21. COPS Event Report number E64414539 (Annexure G.1.1) records that the Police attended Mr Nguyen’s residential address in relation to a loud sound of a vehicle horn coming from the address. The report indicates that when Police arrived they noticed Mr Nguyen standing at the front of the premises yelling. This report records that when Police attempted to turn the horn off, Mr Nguyen made comments such as “Mate, I am drunk, I don’t know where everything is, you can look for it, I don’t fucking care”, “You can’t search my car and its my house” and “Move away, you are not searching my car” before pushing one of the Police officers away from the van. Mr Nguyen is then recorded as reaching inside the van and yelling at the other Police officer to move away from his van whilst at the same time was reaching for the officer’s hand. Before Police pulled Mr Nguyen away from the van, the report records that he became “aggressive” grabbing one of the officers by the shirt and attempting to push him away. Police record that the Harness technique was used on Mr Nguyen to pull him away and as a result Mr Nguyen lost his balance and fell to the concrete causing a minor laceration to the forehead. Whilst handcuffed and waiting for an ambulance the report states that Mr Nguyen pointed both his hands at one of the Police officers and stated: “You just wait, when I get released, I will kill you”. Mr Nguyen is recorded as continuing to state “I know karate, I will remember your face, I will kill you, I don’t care”. This report also records that between 8:20 am on 27 January 2017 whilst in custody, Mr Nguyen used the blood from an open wound on his forehead to write on the walls of the cells in the custody area of the Police station.
22. The Authority is further satisfied that on 23 June 2017 Mr Nguyen was found guilty of these offences and received a 12-month suspended sentence bond for the intimidate and assault police events, with a \$700 fine and \$308 compensation order in respect of the destroy or damage property offence. The Court orders are recorded in a Certificate of Conviction from Liverpool Local Court dated 27 June 2017 that is Annexure G.1.5.
23. The Authority accepts the Complainant’s contentions at Particular 1.7 of the Complaint Letter, made on the basis of a Transcript of the Liverpool Local Court proceedings on 23 June 2017 that is Annexure G.1.4, that the intoxication level of Mr Nguyen was not in dispute, that Mr Nguyen admitted being drunk and that on a scale of 1 to 10 the Police officer attending the event ranked Mr Nguyen as 10, being heavily intoxicated. The Magistrate described Mr Nguyen’s behaviour as “deplorable” and “alcohol fuelled”.
24. On this basis, the Authority is satisfied that Particulars 1.2.1 through to 1.2.6 of the Complaint Letter have been established.
25. The Authority is further satisfied, as alleged in Particular 1.3.1 of the Complaint Letter that at around 1:10 pm on 22 June 2016 Police detected a contravention of section 95(2) of the Act in that the licensed business conducted on the Premises was trading under the name “Loc Ky” without the approval of the Authority and there were no prescribed particulars of the licensee displayed at the entry to the Premises, contrary to section 95(1) of the Act. Police

issued Penalty Notices numbered 4033239468 (Annexure G.2.5) and 4033239459 (Annexure G.2.3) respectively for each contravention of the liquor legislation. Information provided in an email from the former State Debt Recovery Office (now Revenue NSW) to Police dated 19 April 2017 records that these Notices were paid (Annexures G.2.4 and G.2.6).

26. Pursuant to section 150 of the Act, upon payment of a Penalty Notice the offence is deemed to be committed by the person to whom a Notice was issued, for the purposes of disciplinary proceedings under Part 9 of the Act.
27. On this basis, the Authority is satisfied that Particular 1.3.1 of the Complaint Letter has been established.
28. The Authority is further satisfied (on the basis of COPS Event Report E59504537 at Annexure G.3.1, CAN and Facts Sheet for H60345573 at Annexure G.3.2 and the statements made by Constable Matthew Egan and Senior Constable Matthew Garner at Annexures G.3.4 and G.3.6 respectively) that on 31 December 2015 Mr Nguyen was arrested at his home and prosecuted for one count of assault occasioning actual bodily harm (contrary to section 59(1) of the Crimes Act), one count of common assault (contrary to section 61 of the Crimes Act), two counts of intentionally or recklessly destroy/damage property (contrary to section 195(1)(a) of the Crimes Act) and one count of stalk or intimidate intending to cause fear of physical or mental harm (domestic violence offence) (contrary to section 13(1) of the *Crimes (Domestic and Personal Violence) Act 2007*).
29. The COPS Event Report E59504537 at Annexure G.3.1 records that Mr Nguyen (who is identified as being “seriously affected” by alcohol) returned home intoxicated and after becoming “agitated” with his son, Mr Nguyen began to violently punch and bang on the room door that his son and partner were behind continuing to yell the words to the effect of “You have 5 minutes to get out of my house” and “You better be gone in 5 minutes or else”. This COPS report indicates that Mr Nguyen’s son opened the bedroom door and was confronted by Mr Nguyen who attempted to gain entry to the bedroom while yelling and swearing at his son. The record indicates that a struggle occurred which resulted in Mr Nguyen pushing his son and continuing to use one hand to grab his son’s right arm. The COPS report states that Mr Nguyen’s son felt pain later to this area and had visible scratch marks. The COPS Report indicates that Mr Nguyen went into the lounge room/kitchen dining area of the house and proceeded to remove and throw numerous kitchen drawers, cupboards and appliances on the floor before entering his son’s room and throwing all of his books on the floor. Mr Nguyen’s son had contacted Police who arrived at about 12:20 am. When Police arrived Mr Nguyen is recorded as stating “What the fuck? What the fuck did you call the Police for?”. Police subsequently arrested Mr Nguyen. The COPS Report indicates that Mr Nguyen “appeared to be extremely well effected by alcohol and was verbally abusive to all of those present” and that all witnesses stated that they held fears after Mr Nguyen’s behaviour that night. Whilst being held in the Police charge room area, this COPS Report indicates that Mr Nguyen urinated in the holding cells.
30. In the statement made by Sergeant Andrew Mark Wood, the Custody Manager at the Police Station (Annexure G.3.7), it is recorded that Mr Nguyen was “unsteady on his feet and argumentative”. After Sergeant Wood noticed Mr Nguyen had urinated in the dock, Sergeant Wood asked Mr Nguyen why he urinated on the floor, in which Mr Nguyen responded, “I disrespect you”. This statement indicates that Mr Nguyen continued to argue and be verbally abusive before urinating a second time in the same dock of the charge room. It is recorded that at no stage did Mr Nguyen ask to go to the toilet.
31. The Custody Management Record (Annexure G.3.8) indicates that Mr Nguyen was “Aggressive and threatening towards Police”. This record also indicates that Police expressed concerns to Mr Nguyen that the behaviour he was showing raised doubt as to whether Mr Nguyen was a fit and proper person to hold a liquor licence. It is recorded that Mr Nguyen stated that he “did not care” and told Police to “Do what you have to do”. Mr Nguyen

was advised that a disciplinary complaint would be submitted and Mr Nguyen “shrugged his shoulders” in response.

- 32.** The Authority further accepts the Police contention at Particular 1.6 of the Complaint Letter, made on the basis of an interview transcript at Annexure H between Mr Nguyen and Police on 30 June 2016, that the liquor consumed by Mr Nguyen prior to the incident on 31 December 2015 was consumed by him on his own licensed premises. Questions 14 through to Q16 of this interview indicate the following questions and Mr Nguyen’s responses:

Q 14. How much alcohol did you consume in the night leading up to the incident on the 31 December 2015?

A14. 5 bottles of beer

Q 15. Where did you consume the drinks?

A 15. Two at the pub and a few at my shop.

Q16. Your shop being the restaurant at 231 Canley Vale Road Canley Heights?

A16. Yes, that’s right.

- 33.** According to the Complainant at Particular 1.4.5 of the Complaint Letter, on 16 June 2016 at Fairfield Local Court Mr Nguyen entered a guilty plea to the offences of intimidation, assault occasioning actual bodily harm and malicious damage. The Authority is satisfied on the basis of the Certificates of Conviction dated 22 June 2016 contained at Annexure G.3.3 that Mr Nguyen received a 12 months good behaviour bond under section 9 of the *Crimes Sentencing Procedure Act 1992* for each of these offences: one count of assault occasioning actual bodily harm (contrary to section 59(1) of the Crimes Act), two counts of intentionally or recklessly destroy/damage property (contrary to section 195(1)(a) of the Crimes Act) and one count of stalk or intimidate intending to cause fear of physical or mental harm (domestic violence offence) (contrary to section 13(1) of the *Crimes (Domestic and Personal Violence) Act 2007*).
- 34.** On this basis, the Authority is satisfied that Particulars 1.4.1 through to 1.4.6 of the Complaint Letter have been established.
- 35.** The Authority is further satisfied, on the basis of COPS Event Report E166537895 (Annexure G.4.1) that around 11.32 pm on 13 May 2011 Mr Nguyen, who is recorded as having consumed “a large amount of alcohol before arriving in Liverpool” and appearing “slightly effected”, was detected by Police urinating on a shop front on a public street in the Liverpool CBD. Police issued Penalty Notice number 4032998476 (Annexure G.4.2) for offensive behaviour contrary to what would appear to be section 4 of the *Summary Offences Act 1988*. Although at Particular 1.5.1 of the Complaint Letter, the Complainant specifies that the Penalty Notice was paid on 1 August 2011, information in an email from the then Office of State Revenue now Revenue NSW to Police dated 19 April 2017 (Annexure G.4.3) indicates that this penalty notice was paid in full on 20 July 2011.
- 36.** On this basis, the Authority is satisfied that Particular 1.5.1 is established.
- 37.** The Authority accepts the Complainant’s contentions (referred to at Particulars 1.6, 1.8, 1.9 and 1.10 of the Complaint Letter) that Mr Nguyen’s history of conduct involving alcohol fuelled aggression and offensive conduct indicate that Mr Nguyen does not display the competence to carry on a licensed business.
- 38.** The Authority is further satisfied that the pattern and nature of criminal convictions and Penalty Notices, and the circumstances of his offending that are established by this Complaint are significant adverse factors when assessing Mr Nguyen’s character and competence and there is no positive evidence of good character or competence provided by Mr Nguyen.

39. The Authority accepts the Police contention at Particular 1.11 that Mr Nguyen has acknowledged in his interview with Police (Annexure H) that he may have an issue with anger management and conflict resolution.
40. Mr Nguyen's psychologist records that Mr Nguyen was getting psychological treatment last year and contends that his "mental condition has improved". While the Authority accepts on the basis of his medical certificate that Mr Nguyen attended a short course of treatment last year, there is insufficient evidence or analysis, by way of a detailed medical legal report or otherwise, to give the Authority confidence that Mr Nguyen is no longer prone to abusing liquor or engaging in acts of aggression when he does.
41. The Authority notes that while Mr Nguyen's conduct from 2011 is more remote in time, it demonstrates that Mr Nguyen's difficulties with alcohol abuse and public misconduct are longstanding.
42. There is also recent evidence from 2016 of non-compliance with basic licensing requirements - such as trading under the correct licensed business name and recording his licensee details at the entrance of the Premises. These matters disclose a lack of diligence or ability with respect to compliance with the liquor legislation.
43. The Authority gives weight to the fact that after gaining the benefit of the doubt from an Authority delegate and acquiring the transfer of this licence on 6 July 2015 (over Police objection) Mr Nguyen went on to be arrested for intimidating a Police officer in the course of his/her duty, assault Police and malicious damage on 27 January 2017. These are serious matters that resulted in a 12-months suspended prison sentence. Mr Nguyen should have been aware, when seeking the transfer of this liquor licence, that his role in relation to the licence was under close scrutiny by law enforcement, yet he has continued to offend.
44. The Authority is satisfied, on a cumulative assessment of Mr Nguyen's significant criminal record combined with some evidence of non-compliance with licensing legislation, that Mr Nguyen does not possess the knowledge or ability that is expected of a liquor licensee in New South Wales.
45. Moreover, the evidence and material establishing Mr Nguyen's lack of fitness indicates an ongoing and longstanding personal problem with alcohol abuse, anger management and a lack of self-control that suggest that he should not be placed in a position of responsibility, control or influence over the day to day operations of a liquor licensed business.
46. Mr Nguyen's submissions indicate to the Authority that he currently owns and controls the corporate business owner, and that the recent transfer of the liquor licence to his wife was a strategic response to the commencement of this disciplinary complaint. His submissions to the Authority indicate a desire to maintain involvement with the business as an employee. On the information before it, the proposed transfer of the business to Mr Nguyen's wife has not yet occurred but even if it does occur that would not prevent Mr Nguyen being involved with the operation of the business in some significant capacity, posing a risk to his patrons, staff and others.
47. The Authority is satisfied that the former licensee Mr Tan Phuong Nguyen is not a fit and proper person to hold a liquor licence in New South Wales.

No Further Submissions on Disciplinary Action

48. On 13 March 2018 the Authority sent a detailed letter to interested parties notifying its findings on the Complaint and inviting final submissions confined to the issue of what, if any disciplinary action should be taken (Findings Letter). The Authority placed the licensee on notice of its disciplinary powers, including that it was contemplating the imposition of a new licence condition in the terms specified below.
49. On 27 March 2018 Sergeant Paul Leaney sent an email to the Authority advising that the Complainant would not be making any further submissions.

50. On 28 March 2018, Mr Nguyen's solicitor, Ms Michelle Nguyen, requested an extension of time to make final submissions. The Authority granted an extension until 3 April 2018. However, no further submissions were received from any party.
51. The Authority notes that in the initial Complaint correspondence, the Complainant recommended that Mr Nguyen be disqualified from holding a licence, acting as an approved manager or acting as a close associate of a liquor licence under section 141(2)(f) of the Act.

DECISION AND REASONS

52. 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.

53. 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.
54. 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.

55. 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.

56. 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).
57. The Authority notes that Mr Nguyen has not made any 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. There are no positive submissions or evidence before the Authority indicating Mr Nguyen'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.
58. With regard to the common law indicia of fitness and propriety, Mr Nguyen 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.
59. While the licence for the Premises is now under the control of a third party (Mr Nguyen's wife) the Authority considers that the potential for Mr Nguyen to hold another liquor licence, or be in a position to control or influence this licensed business or another licensed business, poses an ongoing threat to public interest. Mr Nguyen's conduct that has been established by the Complainant includes serious alcohol related anti-social conduct, including some

alcohol related violence. His conduct has occurred on and off the Premises, has included the consumption of liquor on the Premises, domestic violence and unacceptable behaviour towards Police.

60. It is apparent that Mr Nguyen has a personal problem with his consumption of liquor, and a tendency to engage in quite aggressive and/or offensive conduct when intoxicated, both in public and in the home. These matters go directly to his ability to be responsible for a liquor licence and whether it is appropriate for him to be in a significant position of control or influence over a licensed business. This poses a likely threat to himself and others, including the staff and patrons of the family run restaurant the licence for which is now in the hands of his wife.
61. The letter from Mr Nguyen's psychologist dated 15 January 2018 is a very short note and does little more than establish that Mr Nguyen attended some counselling between August and December 2017. While the letter indicates that Mr Nguyen's circumstances had improved by the time of writing, the psychologist does not purport to provide any detailed medico legal analysis. This greatly reduces the weight that may be given to it. The letter provides little insight as to Mr Nguyen's past or present conditions, the circumstances explaining his repeated alcohol related misconduct, whether he has the ability to manage the availability of liquor as a licensee or owner of a licensed business and the degree of risk that Mr Nguyen may engage in similar alcohol related violence or anti-social conduct in the short to medium term.
62. The Authority agrees with the Complainant's uncontested submission that Mr Nguyen should be disqualified from holding a regulated position in the New South Wales liquor industry. In relative terms, Mr Nguyen's misconduct falls into an intermediate degree of seriousness. On a cumulative assessment, the Authority is satisfied that a significant period of disqualification, for a period of three years, is appropriate for the protection of the industry, the general public and Mr Nguyen.
63. The Authority is satisfied that Mr Nguyen should be disqualified from acting as a licensee or approved manager in respect of the Loc Ky Restaurant or any licence in New South Wales. Furthermore, given the demonstrated risk of Mr Nguyen consuming liquor on the Premises, the Authority finds it appropriate to impose a condition upon the licence that will reduce the risk of him engaging in anti-social conduct while patrons are on the Premises.
64. Mr Nguyen will not be permitted to hold a relevant "interest, position or power" that would amount to him acting as a "close associate" as defined by section 5 of the *Gaming and Liquor Administration Act 2007*. This means that Mr Nguyen may not be a director of the company that owns any licensed business in this State. He may not own or part-own a licensed business and may not benefit from any business income derived by a licensed business, nor may be in any position of management of a licensed business. In respect of the "Loc Ky" business only, the Authority has allowed Mr Nguyen 3 months to divest himself of any interest or role in that enterprise.
65. While this disqualification will not prevent Mr Nguyen from making some contribution to the Loc Ky business as an ordinary worker, the new condition imposed on the licence, which commences in one day, means that he cannot work on the Premises while the licensed premises is open.
66. An Australian Securities and Investments Commission ("ASIC") Search performed by the Authority Secretariat on 23 February 2018 indicates that Mr Nguyen is a company director, secretary and sole shareholder of Nhu Loc Pty Ltd, the corporate owner of the business conducted pursuant to the licence on the Premises.
67. In the absence of any submissions from Mr Nguyen on the prospect of disciplinary action, the Authority considers it reasonable to give Mr Nguyen a period of three months from the date of this decision to divest himself of any interest in the Loc Ky business or any interest, power or role that would place him in the position of being a close associate of the licence.

ORDERS

68. The Authority is satisfied that it is in the public interest to take the following disciplinary action:
- i. Pursuant to section 141(2)(f) of the Act, the former licensee Mr Tan Phuong Nguyen is disqualified from holding a liquor licence and from being the approved manager in respect of any licensed premises in New South Wales, for a period of 3 years commencing on the day after the date of this letter.
 - ii. Pursuant to section 141(2)(f) of the Act, the former licensee Mr Tan Phuong Nguyen is disqualified from being a close associate of the licensee in respect of licence number LIQO624004673, for a period of 3 years from the date of this letter, commencing 3 months after the date of this letter.
 - iii. Pursuant to section 141(2)(f) of the Act, the former licensee Mr Tan Phuong Nguyen is disqualified from being a close associate of any other liquor licensee in New South Wales, for a period of 3 years commencing on the day after the date of this letter.
 - iv. Pursuant to section 141(2)(e) of the Act, the Authority imposes the following new condition upon licence LIQO624004673 trading as Loc Ky Restaurant, with effect from the day after the date of this letter:

Mr Tan Phuong Nguyen may not be present on the licensed premises during licensed trading hours. Mr Nguyen may only perform paid or unpaid work in relation to the licensed business in a capacity that would not involve him being on the premises at any time when the premises is open to the public or when patrons are on the premises.



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/>.