

## Decision and reasons for decision

In the matter of an inquiry into whether there are grounds to take disciplinary action against Sterling Nightclubs Pty Ltd, licensee of the premises trading as The Love Machine, operating late night (on-premises) licence no. 322221115 (**Licence**), and if those grounds exist, whether to make a determination for disqualification under Part 6 of the *Liquor Control Reform Act 1998 (LCR Act)*

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**Commission:** Mr John Larkins, Deputy Chair  
Mr James O'Halloran, Deputy Chair  
Mr Steven Brnovic, Commissioner

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**Date of Hearing:** 6 December 2023

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**Date of Decision:** 13 June 2024

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**Date of Reasons:** 13 June 2024

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**Appearances:** Ms Penny Marcou of Counsel (instructed by Nickolas Coumaradios, Koutsantoni & Associates), on behalf of the Licensee, Mr Dhir Kakar, Mr Sandeep Bassin, and Mr Andrew Varigos  
Mr Bryn Overend of Counsel (instructed by Candace Prince, Prince Legal), on behalf of Mr Max Porritt  
Ms Francesca Holmes of Counsel (instructed by Sergeant Walter Soto), on behalf of Victoria Police  
Mr Robert O'Neill of Counsel, Counsel Assisting the Commission (instructed by Ms Caitlin McAlister, Liquor Control Victoria)

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**Decision:** The Commission determines that there are grounds for disciplinary action against the Licensee in accordance with section 93(1) of the LCR Act and has determined to:

- Impose a fine of \$20,000 against the Licensee, to be paid within three months of the date of this decision;
- Issue a letter of censure to the Licensee including a direction to:
- For a period commencing three months from the date of notification of this decision and expiring on 30 June 2027, the Licensee must engage an independent risk management consultant to conduct half-yearly written reviews of the Licensee's operational system to assure compliance by the Licensee with its obligations under the LCR Act and the Licensee must implement any recommendations made as soon as possible and, in any event, within three months from the date of the consultant's written review, and notify the Commission in writing of its implementation of any such recommendations.
- For a period commencing three months from the date of notification of this decision and expiring on 30 June 2027, the Licensee must request from the relevant Liquor Inspector for the Premises at half-yearly intervals, a brief report outlining whether the Liquor Inspector considers that the Licence has been operated satisfactorily for the preceding 6-month period, and convey any response received to the Commission; and
- Vary the Licence by imposing a condition that:  
By no later than one month from the date of notification of this decision, the Licensee must implement the Gender Based Violence Management Plan, prepared for the Licensee by Dr Tony Zalewski prior to the Commission having made its decision, and upon request is to make available this plan to an authorised member of Victoria Police or a person authorised in writing by the Commission.

Signed:



John Larkins, Deputy Chair

## Background

1. Sterling Nightclubs Pty Ltd (**Licensee**) holds late night (on-premises) licence no. 32221115 (**Licence**) in relation to the premises trading as The Love Machine, situated at 228-232 Malvern Road, Prahran (**Premises**).
2. The Premises is a nightclub with an overall maximum patron capacity of 450. The building consists of three levels and the Licensee has permission to play live or recorded amplified music on the Premises.
3. The Premises are located within an area generally known as the Chapel Street Entertainment Precinct. The surrounding areas comprise a mix of commercial and residential premises with several licensed premises in the immediate area.<sup>1</sup>
4. The Licence permits the supply of liquor for consumption on the Premises between the trading hours of:

Good Friday	Between 6pm and 5am
ANZAC Day (Monday to Wednesday)	Between 6pm and 3am
ANZAC Day (Thursday and Friday)	Between 6pm and 5am
ANZAC Day (Saturday and Sunday)	Between 12 noon and 5am
Monday to Wednesday	Between 6pm and 3am
Thursday and Friday	Between 6pm and 5am
Saturday and Sunday	Between 10am and 5am
5. The Licensee has been the holder of the Licence since 11 September 2018. Mr Dhir Kakar has been a director of the Licensee since 26 January 2018. He was the sole director between 16 January 2019 and 4 May 2020. He has been the sole director of the Licensee since 16 October 2023.
6. Between 11 October 2018 and 16 January 2019, Mr Sandeep Bassin was a joint director of the Licensee. He was reappointed as a joint director from 4 May 2020 and then ceased his directorship on 16 October 2023.
7. Mr Kakar is also the sole director of another registered company, Sterling Hospitality Pty Ltd, which holds a late night (on-premises) licence in relation to premises trading as Lux Club in South Yarra.
8. On 4 April 2022, the then Victorian Gambling and Casino Control Commission (**VGCCC**) received a request from Victoria Police, pursuant to section 91(1)(b)(ii) of the *Liquor Control Reform Act 1998*<sup>2</sup> (**LCR Act**), that the VGCCC conduct a disciplinary action inquiry in relation to the Licensee (**Victoria Police Request**). The Victoria Police Request related to allegations as to the Licensee's operations at the Premises under the Licence.
9. In a brief outline, Victoria Police alleged numerous instances against the Licensee of alleged grounds for disciplinary action involving contraventions of the LCR Act, being found guilty of an offence against the LCR Act, and conducting its business under the Licence in a manner

<sup>1</sup> Global Public Safety, 'Expert Security Report,' 1 December 2023, page 6.

<sup>2</sup> All references to legislation are references to the LCR Act unless stated otherwise.

that was detracting from or detrimental to the amenity of the area in which the Premises are situated. The original allegations included some that were not eventually pursued by Victoria Police that were of a particularly serious nature.

10. Besides Mr Kakar and Mr Bassin, Victoria Police also alleged that Mr Andrew Varigos and Mr Max Porritt were directly or indirectly concerned in or took part in the management of the Premises at or about the time of the allegations as contained in the Victoria Police Request. Mr Varigos and Mr Porritt were both previous shareholders of the Licensee.
11. On this basis Victoria Police alleged that each of Mr Kakar, Mr Bassin, Mr Varigos and Mr Porritt were “related persons” of the Licensee during the period of the alleged conduct for the purposes of section 94, and therefore, should the allegations be proven, potentially be subject to disqualification under section 93D.<sup>3</sup>
12. While he did not challenge the proposition that he was a related person, Mr Varigos ultimately submitted that he did not play a direct or indirect role in the management of the Premises at the time of the Victoria Police allegations, although he has been involved subsequently as the Licensee’s marketing manager since 2023.<sup>4</sup>
13. Conversely, it is undisputed that Mr Porritt was previously part of the management team of the Premises but is no longer employed with the Licensee, having left the company in September 2022.
14. On 1 July 2022, the Victorian Liquor Commission (**Commission**) was established under the LCR Act as the liquor regulator in Victoria. Pursuant to the legislated transitional provisions contained in Schedule 8, the Commission assumed jurisdiction to decide whether to conduct an inquiry into whether grounds for disciplinary action against the Licensee exist.
15. On the basis of the allegations made by Victoria Police, the Commission considered that there may be four grounds for disciplinary action as discussed below at paragraph 20.
16. There are two steps involved in a disciplinary action inquiry by the Commission under Division 1 of Part 6. The Commission must first determine whether one or more grounds for disciplinary action against the Licensee exist. If so, the Commission must decide what, if any, disciplinary action to take against the Licensee and/or a related person.

### Pre-inquiry

17. On 4 August 2022, the Commission wrote to the Licensee to advise that the Commission was considering whether to conduct an inquiry pursuant to section 91(1)(b)(ii) to determine whether there are any grounds to take disciplinary action against the Licensee and enclosed a request from Victoria Police under section 91(1)(b).
18. On 29 August 2022, the Commission received a written response from Koutsantoni & Associates on behalf of the Licensee raising various issues with some of the allegations in the Victoria Police Request and raising potential practical problems with the inquiry. The Licensee otherwise indicated that it would defend itself in a hearing.
19. On 3 October 2022, the Commission served a notice upon the Licensee pursuant to section 92(1) (**Notice**). The Notice stated that the Commission proposed to inquire into whether there were grounds to take disciplinary action against the Licensee.
20. The Commission considered that there were four broad grounds for disciplinary action with respect to the conduct of the Licensee and the operation of the Premises, as follows:

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<sup>3</sup> “Related Person” is defined in section 93D of the LCR Act.

<sup>4</sup> Written submissions – Kakar, Varigos, and Bassim - Koutsantoni & Associates – 4 December 2023, page 10.

- (a) the Licensee had contravened a provision of the LCR Act, the regulations made under the LCR Act (**Regulations**), the Licence, or a condition of the Licence;
  - (b) the Licensee had been found guilty of an offence against the LCR Act or the Regulations;
  - (c) the Licensee had conducted its business under the Licence, or allowed it to be conducted, in a manner that detracted from or was detrimental to the amenity of the area in which the Premises are situated; and
  - (d) the Licensee is otherwise not a suitable person to hold a licence.
21. In relation to the possible ground as described in paragraph 20(c) above, the Victoria Police Request provided information that police had received from the local council of the municipal district in which the Premises is situated (**Stonnington City Council**) involving amenity complaints concerning the Premises.
  22. The Commission identified in the Notice four individuals who may be subject to a determination under section 93D. This section relates to the disqualification of related persons. Those individuals were Mr Kakar (director of the Licensee), Mr Bassin (joint director of the Licensee at the time of the Notice), Mr Andrew Varigos and Mr Max Porritt (persons who, directly or indirectly, allegedly were concerned in or took part in the management of the Premises). Copies of the Notice were sent to the Licensee as well as to the related persons.
  23. As required by section 92A(1)(b), the Commission also published notice of the disciplinary action inquiry, inviting any persons whose commercial or financial interests may be detrimentally affected by the inquiry to attend and/or make submissions regarding the inquiry. The Commission did not receive any submissions from any such persons in response.
  24. On 21 November 2022, the Commission sent the Licensee, the related persons, and Victoria Police a proposed statement of grounds and proposed particulars as well as a schedule of the proposed particulars.
  25. The documentation made it clear that the Commission proposed to inquire into the allegations as particularised in the proposed schedule of particulars, being a total of 113 particulars.
  26. On 26 April 2023, the Commission sent the Licensee, the related persons, and Victoria Police a revised proposed statement of grounds and a revised proposed schedule of particulars. This occurred after Victoria Police confirmed with the Commission on 31 March 2023 the revised evidence and particulars that they proposed to proceed with for the inquiry.
  27. The Commission notes that based on the revised grounds and particulars brought by Victoria Police, the total number of proposed particulars reduced from 113 to 32. However, there were no changes to the grounds for disciplinary action as set out in paragraph 20 above.
  28. On 6 June 2023, the Commission was informed via email communication by Koutsantoni & Associates that it would no longer be acting on behalf of Mr Porritt. There was no change indicated, however, as to the legal representation for the Licensee, Mr Kakar, Mr Bassin, and Mr Varigos.
  29. On 7 June 2023, the Commission received correspondence from Ms Candace Prince of Prince Legal advising that she now represented Mr Porritt.
  30. In relation to the revised proposed schedule of particulars, on 14 June 2023, the Licensee and Mr Kakar confirmed that they disputed the allegations and/or did not consider them sufficient to amount to grounds for disciplinary action and requested more information from Victoria Police.
  31. By way of procedural directions dated 12 December 2022, each of Mr Kakar, Mr Bassin, Mr Varigos, and Mr Porritt were asked to inform the Commission if they took the position that

they were not a related person of the Licensee within the meaning of section 93D. None of them did so.<sup>5</sup>

## Legislation and the Commission's task

32. In conducting an inquiry under Division 1 of Part 6, the Commission must have regard to the objects of the LCR Act as set out in section 4(1). The objects that are relevant to this inquiry are:
- (a) to contribute to minimising harm arising including by—
    - (i) providing adequate controls over the supply and consumption of liquor; and
    - (ii) ensuring as far as practicable that the supply of liquor contributes to, and does not detract from, the amenity of community life; and
    - ...
    - (iv) encouraging a culture of responsible consumption of alcohol and reducing risky drinking of alcohol and its impact on the community.
33. Section 4(2) requires that the Commission, in the conduct of an inquiry, exercise its powers “with due regard to harm minimisation”.

### What are the grounds for disciplinary action?

34. Section 90(1) defines “grounds for disciplinary action” to include, relevantly in this matter:
- (a) that the licensee or permittee has contravened a provision of this Act, the regulations, the licence or BYO permit or a condition of the licence or BYO permit (as the case may be);
  - ...
  - (e) that the licensee or permittee has been found guilty of an offence against this Act or the regulations;
  - ...
  - (o) that the licensee or permittee has conducted the business under the licence or BYO permit, or allowed it to be conducted, in a manner that detracts from or is detrimental to the amenity of the area in which the licensed premises are situated
  - ...
  - (q) that the licensee or permittee is otherwise not a suitable person to hold a licence or BYO permit.
  - ...
35. There are some circumstances under the LCR Act where a person is considered not suitable to hold a licence<sup>6</sup> but these circumstances are not exhaustive. Therefore, it is necessary to consider the concept of suitability in the context of the relevant legislation.<sup>7</sup> It was recognised in *Buzzo Holdings Pty Ltd and Anor v Loison* [2007] VSC 31 that the purpose of Division 1 of

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<sup>5</sup> Given Mr Porritt's change of legal representation, he was also asked, by way of procedural direction dated 15 June 2023, to inform the Commission if he took the position that he was not a related person under section 93D. He did not do so.

<sup>6</sup> See LCR Act, s 44(3): “... a person is not a suitable person to hold, or carry on business under, a licence or BYO permit if the person or, if the person is a body corporate, any director of the person has, within the preceding 3 years— ... been convicted (a) of an offence of supplying liquor without a licence or of supplying adulterated liquor or of an offence against any law relating to customs or excise; or (b) engaged in activities involving the trading in or marketing of liquor in a manner contrary to the provisions of this Act.”

<sup>7</sup> *West Heidelberg RSL Sub-Branch Inc v Director of Liquor Licensing* [2006] VCAT 347; *Egan v Director of Liquor Licensing* [2007] VCAT 806.

Part 6 of the LCR Act is “the protection of the public, the upholding of industry standards, and the maintenance of public confidence in the liquor industry”.<sup>8</sup> It is not “for the punishment of particular individuals or corporations”.<sup>9 10</sup>

36. Further, the Commission considers that protection of the public and the object of harm minimisation are paramount. Therefore, in assessing suitability, the Commission “*must look at what is in accordance with the public interest which embraces matters, amongst others, of standards of human conduct acknowledged to be necessary for the good order and well-being of the public...*” and “*take into account that the Act...was designed to protect the interest of the community...and the issue of protection of the public remains an important consideration*”.<sup>11</sup>

### What disciplinary action can the Commission take?

37. Section 90 defines “disciplinary action” against a licensee to mean any one, or a combination, of the following:
- (a) the cancellation, or suspension for a specified period, of the licensee's licence;
  - (b) the variation of the licensee's licence;
  - (c) the endorsement of the licensee's licence;
  - (d) the issuing of a letter of censure to the licensee; and/or
  - (e) the imposition of a fine not exceeding an amount that is 250 times the value of a penalty unit fixed by the Treasurer under section 5(3) of the *Monetary Units Act 2004* on the licensee.
38. ‘Variation’ of the licensee’s licence is defined to include ‘the imposition of a new condition on the licence or permit.’<sup>12</sup>
39. Pursuant to s 93C, where a letter of censure is issued, the letter must specify the grounds for disciplinary action the Commission has determined exist, and may censure the licensee in respect of any matter connected with the operation of the licensed premises, and include a direction to the licensee to rectify within a specified time, any matter giving rise to the censure.<sup>13</sup> A failure to comply with the direction in the time specified in the letter, may result in further disciplinary action, which may be taken by giving written notice to the licensee for failure to comply with that direction.<sup>14</sup>
40. If the Commission finds that a ground for taking disciplinary action under section 90 is made out, the Commission may also determine, pursuant to section 93D, that the licensee or a related person be disqualified –
- (a) from holding a licence or BYO permit;

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<sup>8</sup> *Buzzo Holdings Pty Ltd and Anor v Loison* [2007] VSC 31 at [16] (Kaye J).

<sup>9</sup> *Ibid.*

<sup>10</sup> It is of course a recognised principle of regulatory and disciplinary law that provisions which are designed to be protective and not punitive may nevertheless have a punitive effect, and that the fact that a particular measure taken in protection of the community may have a punitive effect on a person does not detract from its legitimacy or appropriateness as a protective measure: *New South Wales Bar Association v Evatt* (1968) 117 CLR 177 at 183.

<sup>11</sup> *Whiting v AMC Investments (Occupational and Business Regulation)* [2005] VCAT 1830, [21]; See also *Raz Pty Ltd & Anor v Director of Liquor Licensing (Occupational and Business Regulation)* [2008] VCAT 857, [11], [28].

<sup>12</sup> LCR Act, s 90(1), paragraph (d) of the definition of “variation”.

<sup>13</sup> LCR Act, s 93C(1).

<sup>14</sup> LCR Act, s 93C(2) and (3).



- (b) from being a director in any body corporate that holds a licence or BYO permit;
  - (c) from being a partner in any partnership that holds a licence or BYO permit;
  - (d) from having a beneficial interest (whether directly or indirectly) in the shares of any body corporate that holds a licence or BYO permit;
  - (e) from in any way (whether directly or indirectly) taking part in, or being concerned in, the management of any licensed premises or any body corporate that holds a licence or BYO permit or any licensed club; or
  - (f) from being employed by any licensed club or any person that holds a licence or BYO permit.
41. Sections 93D(2) and (3) state that the Commission may disqualify a person in all or any of the ways listed above even if it determines not to take disciplinary action under section 93, and that it must specify a period for which the disqualification is to apply.
42. Section 93D(5) further states that a 'related person' in relation to a licensee or permittee relevantly means –
- (a) any director or nominee of the licensee or permittee (if it is a body corporate); or
  - ...
  - (c) any person who, whether directly or indirectly, is concerned in or takes part in the management of licensed premises or club of the licensee or permittee.

## The Inquiry

### Directions Hearings

43. Between December 2022 and October 2023, the Commission conducted six directions hearings to determine what arrangements would need to be made for the conduct of the inquiry, the provision of documents, the lodging of written submissions and witness lists.<sup>15</sup>
44. Before the directions hearing on 31 August 2023, the Commission received correspondence from lawyers on behalf of the Stonnington City Council, dated 21 August 2023, advising that it did not wish to have any active role in the inquiry beyond providing copies of records where relevant.<sup>16</sup>
45. Before commencement of the directions hearing on 19 October 2023, the Commission received a proposed mutual statement of agreed facts (**Statement of Agreed Facts**) together with mutually proposed terms of settlement between Victoria Police, the Licensee, Mr Kakar, Mr Bassin and Mr Varigos (collectively, the **Joint Proposal**).

### Evidence before the Commission

#### *Pre-Hearing Evidence*

46. The Commission had before it:
- (a) all evidence lodged by the Stonnington City Council on 12 February 2023;
  - (b) confirmation from Victoria Police, dated 31 March 2023, as to the evidence and particulars that they proposed to proceed with for the inquiry;

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<sup>15</sup> 12 December 2022, 27 April 2023, 15 June 2023, 31 August 2023, 18 September 2023, and 19 October 2023.

<sup>16</sup> Letter from Maddocks Lawyers on behalf of the Stonnington City Council, dated 21 August 2023.

- (c) response on behalf of the Licensee and Mr Kakar, received by the Commission on 14 June 2023;
  - (d) submissions and materials lodged by Victoria Police on 6 July 2023 following the response on behalf of the Licensee and Mr Kakar lodged on 14 June 2023;
  - (e) witness list and witness statements on behalf of the Licensee, Mr Kakar, Mr Bassin, and Mr Varigos, received by the Commission on 18 August 2023;
  - (f) letter from Maddocks Lawyers on behalf of the Stonnington City Council, dated 21 August 2023;
  - (g) email communication from Koutsantoni & Associates on behalf of the Licensee, Mr Kakar, Mr Bassin, and Mr Varigos enclosing missing documentation, received 31 August 2023;
  - (h) submissions and materials lodged on behalf of the Licensee, dated 18 August 2023;
  - (i) submissions and materials lodged on behalf of Victoria Police on 15 September 2023, 18 September 2023, 29 September 2023, and 5 October 2023;
  - (j) the Joint Proposal, received 19 October 2023;
  - (k) written submissions on behalf of the Licensee, Mr Kakar, Mr Bassin, and Mr Varigos, dated 4 December 2023;
  - (l) written report of Dr Tony Zalewski of Global Public Safety dated 1 December 2023, received 4 December 2023;
  - (m) written statement of Mr Kakar, dated 4 December 2023; and
  - (n) written submissions on behalf of Mr Porritt, dated 5 December 2023.
47. All pre-hearing evidence was provided to Victoria Police, the Licensee, and each of the related persons prior to the hearing.
48. The evidence relevant to the factual allegations that the Commission was considering was essentially overtaken by the Statement of Agreed Facts contained within the Joint Proposal. As explained below, in making its decision, the Commission has not taken into account any allegations which did not form part of or were inconsistent with the Statement of Agreed Facts.
49. The Statement of Agreed Facts reads as follows:

**STATEMENT OF AGREED FACTS**

1. *The Licensee transferred into the Licence on 11 September 2018, and has operated the Licensed Premises as a late night entertainment venue with live or recorded amplified music.*
2. *Between November 2018 to December 2021 there were multiple notifications requiring Police attendance in the vicinity of the licensed premises.*
3. *On these occasions police located persons drunk in a public place outside the licensed premises. In addition, on 25 August 2018 police located an intoxicated patron on the*



*licensed premises. On 14 April 2023, the Licensee was found guilty of operating during Covid restrictions and failing to provide CCTV when requested to do so whilst the premises was operating on 10 June 2020.*

- 4. The incidents described above caused concern as to undue detriment to the amenity of the area on numerous instances, leading to the Request for Inquiry pursuant to s.91(1)(b) of the Liquor Control Reform Act 1998.*
- 5. Since that period there have been significant changes to the management of the venue including change of management plan, change of security staff, and change in employee staff.*
- 6. It is recognised by the Liquor Licensing Division of Victoria Police that as a result the Love machine management has improved considerably, and can now be described as 'very good'. All interactions with the divisional licensing unit staff have been positive, and "In terms of amenity, Love Machine manage their awaiting patrons line better than any other venue in the area".*
- 7. The parties propose that this matter resolve by an admission by the Licensee to particulars 4 and 12 in the context of the circumstances noted within paragraphs 2-4 above.*
- 8. It is noted that with respect to particular 12, the allegation relating to the charge that was not found proven before HH Judge Maidment at the County Court of Victoria on 14/4/2023 will not form part of the narrative of the particular.*
- 9. It is noted that with respect to particulars 4 & 12 that the Licensee has already been fined by the Magistrates and County Courts with respect to these incidents and any penalty imposed by the Commission ought reflect those sanctions.*
- 10. The parties jointly propose that there be a resultant fine imposed on the Licensee, and a letter of censure containing any terms and conditions deemed to be appropriate by the Commission.*

11. *It is jointly agreed by the parties that should the sanctions identified in paragraph 7 above be accepted as appropriate by the Commission, then the initial sanctions sought at the time of referral (disqualification of the Licensee and related persons) will not be pursued by the Applicant.*<sup>17</sup>

50. Particular 4 referred to in the Statement of Agreed Facts (above) was that on 15 December 2021, Sterling Nightclubs Pty Ltd was found guilty of licensee permit drunk person on licensed premises at the Melbourne Magistrates' Court. The Licensee was fined \$1,200 without conviction. In summary, at approximately 1:30am on Sunday 25 August 2019, police attended at the Premises and were directed to the staff room where they located an unconscious male who had vomited due to being drunk.
51. Particular 12 referred to in the Statement of Agreed Facts (above) was that at approximately 10:07pm on Saturday 13 June 2020, the Licensee conducted a live music event at the Premises in breach of the COVID restrictions at the time. During this event there were no crowd controllers present which was a breach of the Licence.

### The Commission's consideration of the Joint Proposal

52. It will be noted that the Statement of Agreed Facts reflects agreement between Victoria Police, the Licensee, and Messrs Kakar, Bassin and Varigos as to both an agreed factual basis for the Commission to make findings and exercise its powers, and as to a proposed outcome. The Commission's jurisdiction is a hybrid of inquisitorial and adversarial procedure. A proposed consent outcome is not binding on the Commission but should be treated as a "relevant and weighty consideration, such that it is an unusual case where the [Commission] rejects a proposed consent order." The Commission nevertheless is not a rubber stamp and must consider the matters raised by the Inquiry for itself: *Hauer v Lord* [2006] VCAT 739 at [15]-[19] and [30]-[31].
53. As to the jointly proposed outcome, the Commission has treated it in accordance with the approach in *Hauer v Lord*. It notes that the parties contemplate that the letter of censure will contain such terms and conditions as the Commission deems appropriate. In the light of those principles, and of the capacity for it to impose terms and conditions, the Commission, having considered the issues for itself, has determined to accept that outcome.
54. The parties should note that, had no joint proposal been received, the Commission might well have been minded to impose a significantly heavier fine, and give strong consideration to whether periods of disqualification should be imposed on the related persons. Ultimately, however, on reflection, and in the light of:
- (a) paragraphs 5 and 6 of the Statement of Agreed Facts (as discussed above), and the evidence of Inspector Stamper of Victoria Police and Dr Zalewski (as will be discussed below);<sup>18</sup>
  - (b) the Commission's power to impose conditions under a letter of censure, and the undertakings given by the Licensee; and
  - (c) the criminal penalties already sustained by the Licensee,

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<sup>17</sup> The Statement of Agreed Facts referred to the term, "Applicant." The Commission has assumed the use of that term to mean Victoria Police.

<sup>18</sup> See below at [64]-[72] and [77]-[82] regarding the evidence of Stamper and Zalewski. See also above Statement of Agreed Facts at [49].

the Commission did not consider that the proposed outcome was outside the range of available penalties to such an extent as to mean it was the “unusual case” referred to in *Hauer v Lord* where rejection of a consent position would be required.

55. In summary, by way of the Joint Proposal, Victoria Police did not propose to call evidence at large for the inquiry. Rather, under the Joint Proposal, Victoria Police proposed (with the Licensee and Mr Kakar) a resolution of the matter with an admission from the Licensee to two particulars numbered 4 and 12, which read (in summary):

New Particular Number	Date and Approximate Time	Summary of Allegation
4	25 August 2019 1.30am	At approximately 1:30am on Sunday 25 August 2019, police attended at the premises and were directed to the staff room where they located an unconscious male who had vomited due to being drunk. On 15 December 2021, Sterling Nightclubs Pty Ltd was found guilty of licensee permit drunk person on licensed premises at the Melbourne Magistrates’ Court. The Licensee was fined \$1,200 without conviction.
12	10 June 2020 10.07pm	At approximately 10:07pm on Saturday 13 June 2020, the Licensee conducted a live music event at the Premises in breach of the COVID restrictions at the time. During this event there were no crowd controllers present which was a breach of the licence.

56. By way of the Joint Proposal, Victoria Police indicated that should the Commission accept as appropriate, in resolution of this matter, disciplinary action against the Licensee in the form of a fine in the sum of \$20,000 and the issuance of a letter of censure to the Licensee, Victoria Police would no longer be requesting that the Commission consider disqualification of the Licensee and the related persons.<sup>19</sup>
57. The Commission has considered the Statement of Agreed Facts and the Joint Proposal. It has determined to accept the agreed facts set out in paragraphs 1-6 of the Statement of Agreed Facts (above) as the basis for its determination. It also accepts the matters set out in paragraphs 7-9 of the Statement of Agreed Facts (above).

### *Oral Evidence at the Hearing*

58. In addition, the Commission has had regard to the oral evidence given at the hearing on 6 December 2023, of:
- Inspector Andrew Stamper of Victoria Police;
  - Dr Zalewski, expert witness for the Licensee and his report of 1 December 2023; and
  - Mr Kakar.

### *The Hearing*

59. An in-person hearing took place on 6 December 2023 (**Hearing**), at which Mr Kakar was present. The Licensee and Mr Kakar were represented by Ms Penny Marcou of Counsel.
60. Also present were Mr Bassin and Mr Varigos, represented by Ms Marcou. Neither Mr Bassin nor Mr Varigos gave evidence.

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<sup>19</sup> Joint Proposal, paragraph 11 of the Statement of Agreed Facts. See paragraph 49 herein.

61. Mr Porritt was present at the Hearing, represented by Mr Bryn Overend of Counsel. Mr Porritt did not give evidence.
62. At the Hearing, in addition to the evidence that was heard, the Commission and the parties discussed the Decision-Making Guidelines issued by the Acting Minister for Casino, Gaming and Liquor Regulation on 28 June 2023 (the **Guidelines**),<sup>20</sup> which deal with considerations that the Commission must consider when dealing with applications for licences to trade after 1am in inner Melbourne municipalities.<sup>21</sup> Those Guidelines refer to:
- the ability of the applicant to manage noise and amenity loss;
  - whether there is a satisfactory history of compliance with liquor laws
  - whether additional licence conditions may be required relating to the applicant's ability to manage the venue to minimise risks of harm from late-night trading; and
  - whether the venue has a plan to prevent and respond to gender-based violence, including sexual harassment.
63. While the Guidelines are not directly applicable in an inquiry under Part 6 of the Act, the Commission considers that the considerations set out in them are relevant to its task in this inquiry. The Commission at the Hearing commended them to the Licensee and the related persons, in particular the consideration of developing a plan to prevent and respond to gender-based violence.<sup>22</sup>

### *Inspector Stamper's Evidence*

64. Inspector Stamper gave evidence at the request of the Commission rather than as a witness called by any party.<sup>23</sup> Inspector Stamper had been the Local Area Commander at Stonnington since 30 January 2023, and had also familiarised himself with the history of the Premises.<sup>24</sup>
65. The Commission notes that Inspector Stamper has been a member of Victoria Police for over 30 years and has been appointed as a liquor inspector for over 10 years.<sup>25</sup>
66. Inspector Stamper stated that the history of the Premises changed after a change of managers at an operational level and from a willingness from Mr Kakar and in particular the new managers to work with Victoria Police.<sup>26</sup>
67. Of particular relevance, Inspector Stamper stated:
- "The professional relationship with the current Love Machine management is very good and all interactions with DLU staff<sup>27</sup> have been positive."<sup>28</sup>*
68. The Commission notes that it was made clear by Inspector Stamper that the current relationship between the operators of the Premises and Victoria Police can be described as a good one.<sup>29</sup>

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<sup>20</sup> Victoria Government Gazette, *Decision-making guidelines applicable for late night licences in inner-Melbourne areas*, No. S 356 Friday 30 June 2023.

<sup>21</sup> Hearing transcript, page 51 line 40, page 95 line 5, page 104, line 25.

<sup>22</sup> Hearing transcript, page 95 lines 1-8, page 104 lines 16-24. After the Hearing, Koustantoni & Associates lodged via email, dated 5 June 2024, the Licensee's Gender-Based Violence Management Plan prepared by Dr Zalewski.

<sup>23</sup> Hearing transcript, page 10 line 43 to page 11 line 19.

<sup>24</sup> Stamper statement at [1] and Hearing transcript, page 13 lines 31-35.

<sup>25</sup> "Liquor inspector" is defined in section 3.

<sup>26</sup> Hearing transcript, page 13, line 40 to line 45.

<sup>27</sup> DLU – Drugs Liquor Unit of Victoria Police.

<sup>28</sup> Stamper statement at [2].

<sup>29</sup> Hearing transcript, page 14, line 25.

69. He stated that the current operators work collaboratively with Victoria Police, including when members of Victoria Police are around the Premises during trading hours and in connection with liquor forums.<sup>30</sup>
70. In his statement, dated 29 September 2023, Inspector Stamper stated that the venue manager of the Premises had accepted an offer by a Crime Prevention Officer for the Premises to participate in a Crime Prevention Audit in late 2022. He said that the Premises' manager had responded positively with the Crime Prevention Officer.<sup>31</sup>
71. He also noted in his statement that several proactive measures had been put in place at the Premises, including with respect to staff allocations, lighting, furniture arrangements, and line of sight of the toilet facilities.<sup>32</sup>
72. Inspector Stamper described the Licensee's management of its awaiting patron line at the Premises as being better than the other venues in the area.<sup>33</sup>
73. The Commission accepts the evidence of Inspector Stamper. It is apparent from his evidence that the Commission is dealing with a situation and licensee vastly different to that confronting the police when this application was made and accepted by the Commission. The Statement of Agreed Facts reflects this. In practical terms, the effluxion of time has worked in the Licensee's favour as has its commitment to best practice in the future.
74. This commitment to best practice has included a statement on behalf of the Licensee that it is willing to and would adopt a gender based violence plan as described in the Guidelines and referred to above at paragraph 62.
75. However, the Commission remains concerned regarding the future conduct of this licence and was not overly impressed by Mr Kakar's evidence in the Hearing (as will be discussed below). While confident that the Licensee has reformed and is now capable of appropriately managing the Premises, the Commission considers additional assurance, by way of the requirement for ongoing independent assessments and reviews of the operation of the Licence for which Mr Kakar is responsible as sole director, would ensure rectification (and verification) of the management practices that ultimately gave rise to the circumstances leading to the grounds for disciplinary action which have been found to have been established. To that end, the Commission expects that the Licensee will implement the recommendations from those assessments and keep the Commission informed of its implementation of any such recommendations.
76. Mr Kakar was also during the course of his evidence given a clear caution by the Commission<sup>34</sup> as to the potential consequences of any further disciplinary proceedings. The Commission – in no uncertain terms – said that the Licence was under scrutiny, and that with findings against the licensee company, it has a record. In effect, the Commission warned that if the licensee company were to 'come back' before the Commission, it could face a harsher outcome than was the case on this occasion. In response, Mr Kakar confirmed that he understood that. The Commission proceeds on the basis that Mr Kakar has heard that warning and expects that Mr Kakar will heed it lest he and the licensee company face potentially more serious disciplinary outcomes in the future. The Commission trusts that the conduct of both venues continues along their current path in the manner recommended by Dr Zalewski and endorsed by Inspector Stamper.<sup>35</sup>

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<sup>30</sup> Hearing transcript, page 14, line 20.

<sup>31</sup> Stamper statement at [2].

<sup>32</sup> Stamper statement at [2].

<sup>33</sup> Stamper statement at [2].

<sup>34</sup> Hearing transcript, page 88, line 20 to line 39.

<sup>35</sup> Both venues referred to in paragraph 75 above are The Love Machine and the Lux Club, which is the venue also mentioned in paragraph 7 herein. Mr Kakar is the director of the companies holding licences for those venues.

### *Dr Zalewski's Evidence*

77. Dr Zalewski advised the Commission that he is an independent risk management consultant. His curriculum vitae states that he possesses specialised knowledge in the field of security and safety systems, particularly with respect to licensed venues. Dr Zalewski is an experienced independent witness and has appeared previously before the Commission in other matters.
78. In relation to this matter, Dr Zalewski had prepared a report dated 1 December 2023, which he relied on in his evidence in the Hearing.
79. In his report, Dr Zalewski stated that the current operations at the Premises through the Licensee's Security and Patron Management Plan (**SPMP**) provided a reasonable basis for effective management and security.<sup>36</sup>
80. That said, he recommended that the Licensee improve its SPMP by way of a number of updates as detailed in his report, which the Licensee has since advised that it has adopted.<sup>37</sup>
81. In his oral evidence, Dr Zalewski explained the process he would go through when working with a licensee, involving a launch of the SPMP to emphasise its importance to all staff, and how he would work with senior management to ensure that the SPMP was fully implemented in a particular venue.
82. He also recommended that there be audits of the Licensee's operational system and explained what that process involved. The Licensee has agreed to this recommendation.<sup>38</sup>

### *Mr Kakar's Evidence*

83. Mr Kakar stated that when the Premises were transferred to the Licensee in 2018, he hired new staff and inherited some existing staff.
84. He stated that, because The Love Machine was different to the operations of the previous licensee, he created his own management plan.
85. He stated that in 2019 the Premises closed for several months due to circumstances outside of his control and then there were COVID-19 restrictions in 2020 and 2021. These closures adversely affected his business.
86. He stated that from September 2022 he had made major changes to his management team, including restructuring the whole management team. He also changed the security company that he had previously had in place.
87. He stated that he had retained Dr Zalewski and had met with him twice. He agrees with Dr Zalewski's recommendation regarding regular audits and the recommendation to invite members of Victoria Police to be an integral part of audit meetings and to be part of meetings for the launch of the improved SPMP.
88. In his statement, dated 4 December 2023, he admitted that he was not hands on in the day-to-day management of the Premises but states that he has been completely hands on since September 2022, including arranging weekly meetings with his management staff as to compliance matters.
89. He also made reference to having dedicated a member of his management staff for the purposes of attending liquor accord meetings as required.

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<sup>36</sup> Global Expert Security Report, 1 December 2023, page 3.

<sup>37</sup> Global Expert Security Report, 1 December 2023, page 3; Written submissions – Kakar, Varigos, and Bassim - Koutsantoni & Associates – 4 December 2023, page 9.

<sup>38</sup> Global Expert Security Report, 1 December 2023, page 3; Written submissions – Kakar, Varigos, and Bassim - Koutsantoni & Associates – 4 December 2023, page 9.



90. The Commission remains concerned regarding the future conduct of this licence and as previously stated in paragraph 75 above, was not particularly reassured by Mr Kakar's evidence in the Hearing. While reasonably confident that the Licensee has reformed and is now capable of appropriately managing the Premises, the Commission considers additional assurance is essential, by way of the requirement for ongoing independent assessments and reviews of the operation of the Licences for which Mr Kakar is responsible for as sole director. As previously stated in paragraph 76 above, Mr Kakar was also, during the course of his evidence, given a clear warning by the Commission as to the consequences should the operation of the relevant licences that he is responsible for fall below par in the future.<sup>39</sup>

### *Post-Hearing Submissions*

91. In addition, the Commission has had regard to the various submissions it has received in relation to this matter after the Hearing from the Licensee, Mr Kakar, Mr Bassin, Mr Varigos (collectively), from Mr Porritt, and from Victoria Police.
92. Those submissions were all considered in the Commission's determination of what disciplinary action to take in respect of the Licensee and what, if any, to take in respect of the related persons.
93. Of the post-hearing submissions, the Commission notes that Koutsantoni & Associates lodged submissions on behalf of the Licensee, Mr Kakar, Mr Bassin, and Mr Varigos on 18 December 2023, in which it was asserted that the alleged events used to prove Ground 1 of the grounds for disciplinary action<sup>40</sup> were the same as the alleged events used to prove Ground 2<sup>41</sup> and that, having regard to the principle of double jeopardy, the Commission ought to only make a finding with respect to Ground 1 and refuse to make a finding with respect to Ground 2.<sup>42</sup>
94. In response, Ms Holmes submitted on behalf of Victoria Police that the alleged events constituted breaches not only of the Licence but also of the LCR Act, and therefore Victoria Police does not agree with the double jeopardy submission summarised above.
95. The Commission accepts Victoria Police's submission. It is clear from the scheme of section 90(1) that the grounds for disciplinary action are independent of each other, but there is no reason to consider that the same conduct cannot amount to a contravention of more than one of them.
96. In the criminal law context, where offences involve the same set of underlying acts, to find that both offences have been committed does not necessarily involve any form of double punishment: as stated by Gleeson CJ in *EPA v Australian Iron & Steel Pty Ltd*, "it is one thing to say that a person may not be put in jeopardy twice for the same offence; it is another thing to say that a person may not be put in jeopardy twice for the same conduct". A fortiori, in the disciplinary context, there is no difficulty with finding that the same conduct is a contravention of two different grounds for disciplinary action. Indeed, the Victorian Court of Appeal has held that "the common law rule against double punishment recognised in criminal proceedings cannot apply with the same strictness (if it applies at all) to disciplinary proceedings."<sup>43</sup>
97. Of course, it is essential that in imposing a sanction, the Commission takes into account that the same conduct is relied on here under different grounds. The Commission has been careful in setting the sanction to avoid any doubly punitive effect, keeping in mind that in any event the purpose of any sanction imposed is not to punish but to protect.

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<sup>39</sup> Hearing transcript, page 88, line 20 to line 39.

<sup>40</sup> That the Licensee had contravened a provision of the LCR Act, the regulations made under the LCR Act, the Licence, or a condition of the Licence.

<sup>41</sup> That the Licensee had been found guilty of an offence against the LCR Act or the Regulations.

<sup>42</sup> See paragraph 20 above.

<sup>43</sup> *McSteen v Architects Registration Board of Victoria* [2018] VSCA 96 at [65].

98. The Licensee also submitted that in the light of, in particular, paragraphs 5 and 6 of the Statement of Agreed Facts above, the matters canvassed in evidence in relation to Mr Kakar's subsequent addressing of the relevant issues through the Licensee, including its engagement of Dr Zalewski, and of the minimal involvement of Mr Bassim and Mr Varigos in the events the subject of the Statement of Agreed Facts, disqualification of those persons was not justified.
99. Subject to ensuring that the Licensee complies with the conditions in the letter of censure discussed below, the Commission accepts those submissions in paragraph 98 above.
100. In making its findings and decision, the Commission has, amongst other factors, had regard to the mutually made submission in the Joint Proposal which reads:

*It is noted with respect to particulars 4 & 13 that the Licensee has already been fined by the Magistrates' and County Courts with respect to these incidents and any penalty imposed by the Commission ought to reflect those sanctions.<sup>44</sup>*

#### Mr Porritt's submissions

101. In separate submissions, Mr Porritt conceded that he was a related person for the purpose of section 93D in relation to the contraventions found against the Licensee, and that therefore the Commission was entitled to disqualify him. Nevertheless, he maintained that as he made no concession as to any involvement in any of the Licensee's contraventions, it would not be reasonably open for the Commission to disqualify him.
102. He also submitted that "a contested hearing with substantive hearing of evidence in relation to the allegations has not been provided." The Commission rejects this submission. The course of not conducting a contested hearing was done at Mr Porritt's counsel's request, on the basis that such a hearing was not required in the light of the concession Mr Porritt was making that he was a related person.
103. In the alternative, Mr Porritt's counsel submitted that a disqualification was not required, in the light of his evidence as to the salutary effect of the proceedings upon him, and his otherwise satisfactory history of operating in the hospitality industry.
104. The Commission accepts Mr Porritt's alternative submissions and does not propose to disqualify him.

## The Commission's findings

### Ground 1 – The Licensee had contravened a provision of the LCR Act, the regulations made under the LCR Act, the Licence, or a condition of the Licence

105. It was alleged that:

New Particular Number	Date and Approximate Time	Summary of Allegation
4	25 August 2019 1.30am	At approximately 1:30am on Sunday 25 August 2019, police attended at the premises and were directed to the staff room where they located an unconscious male who had vomited due to being drunk. On 15 December 2021, Sterling Nightclubs Pty Ltd was found guilty of licensee permit drunk person on licensed premises at the Melbourne Magistrates'

<sup>44</sup> Statement of Agreed Facts, paragraph 9.

		Court. The Licensee was fined \$1,200 without conviction.
12	10 June 2020 10.07pm	At approximately 10:07pm on Saturday 13 June 2020, the Licensee conducted a live music event at the Premises in breach of the COVID restrictions at the time. During this event there were no crowd controllers present which was a breach of the Licence.

106. In the circumstances, the Commission finds this ground to be established.

### Ground 2 - The Licensee had been found guilty of an offence against the LCR Act or the Regulations

107. The Commission finds this ground to be established.

### Ground 3 - The Licensee had conducted its business under the Licence, or allowed it to be conducted, in a manner that detracted from or was detrimental to the amenity of the area in which the Premises are situated

108. The Commission has considered the admission by the Licensee and Mr Kakar in the Statement of Agreed Facts that the conceded particulars (as set out in paragraph 49 above) had caused concern as to undue detriment to the amenity of the area.<sup>45</sup>

109. The Commission finds this ground to be established.

### Ground 4 - The Licensee is otherwise not a suitable person to hold a licence.

110. In considering the suitability of the Licensee to continue holding the Licence, the Commission has considered its findings with respect to the grounds detailed above, as well as the evidence of Mr Kakar, Dr Zalewski, and Inspector Stamper at the Hearing.

111. As such, the Commission has not found that the Licensee is unsuitable to continue holding the Licence.

### Grounds for Disciplinary Action

112. As the Commission is satisfied that there are grounds for disciplinary action, it must proceed to make a determination in accordance with section 93 of the LCR Act. As indicated above, the primary object of the LCR Act is the need to minimise harm and the protection of the public through encouraging a culture of responsible consumption of alcohol, rather than imposing a sanction as a form of punishment.

113. The Commission may take into account a variety of factors in determining the appropriate disciplinary action, including (but not limited to):

- the paramount need to minimise harm<sup>46</sup> and the need to protect the public;<sup>47</sup>

<sup>45</sup> Statement of Agreed Facts, paragraph 4.

<sup>46</sup> See LCR Act, s 4(2), specifically, “[i]t is the intention of Parliament that every power, authority, discretion, jurisdiction and duty conferred or imposed by this Act must be exercised and performed with due regard to harm minimisation”.

<sup>47</sup> With respect to public protection, see *Ross v Planet Platinum Ltd (Occupational and Business Regulation)* [2012] VCAT 1670 [130]; *Victorian Commission for Gambling and Liquor Regulation v Legend Enterprises Pty Ltd (Review and Regulation)* [2013] VCAT 1412 [112].

- the nature, extent, and seriousness of identified grounds, including the period over which they extended;<sup>48</sup>
- the past compliance history of the licensee and/or similar previous conduct<sup>49</sup> as well as whether evidence suggests that the licensee fosters and encourages a culture of compliance with the LCR Act;<sup>50</sup>
- the level of cooperation with the Commission or other authorities responsible for enforcement under the LCR Act;<sup>51</sup>
- the financial position of the licensee;<sup>52</sup>
- the need to generally deter and discourage similar behaviour from other licensees and specifically deter the licensee in question;<sup>53</sup>
- remorse, contrition and/or corrective actions taken by the licensee to improve management of the premises;<sup>54</sup> and
- any mitigating circumstances relevant to the matter.

## Decision

114. The Commission considers that the primary object of the LCR Act relevant to its determination of this matter is “to contribute to minimising harm....”<sup>55</sup>

### Consideration of Disciplinary Action against the Licensee

115. The conduct admitted to by the Licensee is of great concern to the Commission, particularly in light of the admissions contained in the Statement of Agreed Facts. While there may have been some mitigating circumstances, the Licensee had failed to comply with its obligations under its licence and its obligations to its clientele and community. The Commission denounces the conduct. Were it not for the evidence of significant improvement from Inspector Stamper and the engagement of Dr Zalewski, a significantly harsher outcome may have been contemplated.
116. However, ultimately the Commission has considered the mutually proposed disciplinary action contained in the Joint Proposal which, in effect, provide a resolution of the matter that Victoria Police, the Licensee, and Mr Kakar submit is appropriate, subject to the additional disciplinary action of varying the Licence by imposing a condition on it.
117. The Licensee’s obligations include to minimise the risk of harm to its clientele. Minimising the risk of gender-based violence is important to the proper management of a venue such as the licensed premises. The Commission accepts that the Licensee has developed a Gender Based Violence Management Plan (prepared for the Licensee by Dr Zalewski) prior to the Commission having made its decision. The Commission considers that implementing and ensuring its staff comply with this Plan, will assist to minimise the risk of gender-based harm to its clientele, and thereby facilitate proper management of the venue. Accordingly, the Commission considers that imposing a condition requiring the Plan to be implemented will promote the public safety and public confidence objectives underlying the disciplinary framework.
118. In light of all the circumstances, and with particular emphasis on the Statement of Agreed Facts and the improved performance and systems engaged in by the Licensee since the

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<sup>48</sup> *Buzzo Holdings Pty Ltd and Anor v Loison* [2007] VSC 31 [33]-[34]; *Hodgkin v Planet Platinum Ltd (Occupational and Business Regulation)* [2011] VCAT 725 [328].

<sup>49</sup> *Hodgkin v Planet Platinum Ltd (Occupational and Business Regulation)* [2011] VCAT 725 [328]; *Buzzo Holdings Pty Ltd and Anor v Loison* [2007] VSC 31 [29].

<sup>50</sup> *Parr v K Marketing Pty Ltd (Occupational and Business Regulation)* [2010] VCAT 1108 [24].

<sup>51</sup> *Starera PL v Melbourne CC* [2000] VCAT 213 at [114].

<sup>52</sup> *Parr v K Marketing Pty Ltd (Occupational and Business Regulation)* [2010] VCAT 1108 [30].

<sup>53</sup> *Ross v Planet Platinum Ltd (Occupational and Business Regulation)* [2012] VCAT 1670 [130]-[132].

<sup>54</sup> *Ross v Planet Platinum Ltd (Occupational and Business Regulation)* [2012] VCAT 1670 [134].

<sup>55</sup> LCR Act, s 4

period covered by the Victoria Police allegations, the Commission considers it appropriate to take disciplinary action on the Licensee as set out in the following paragraphs.

119. In relation to grounds 1, 2 & 3:

- (a) The Commission imposes a fine of \$20,000 to be paid within three months of the date of this decision;
- (b) The Commission issues a letter of censure to the Licensee including a direction to:
  - For a period commencing three months from the date of notification of this decision and expiring on 30 June 2027, the Licensee must engage an independent risk management consultant to conduct half-yearly written reviews of the Licensee's operational system to assure compliance by the Licensee with its obligations under the LCR Act and the Licensee must implement any recommendations made as soon as possible and, in any event, within three months from the date of the consultant's written review, and notify the Commission in writing of its implementation of any such recommendations.
  - For a period commencing three months from the date of notification of this decision and expiring on 30 June 2027, the Licensee must request from the relevant Liquor Inspector for the Premises at half-yearly intervals, a brief report outlining whether the Licensing Inspector considers that the Licence has been operated satisfactorily for the preceding 6-month period, and convey any response received to the Commission;<sup>56</sup> and
- (c) Vary the Licence by imposing a condition that:
  - By no later than one month from the date of notification of this decision, the Licensee must implement the Gender Based Violence Management Plan, prepared for the Licensee by Dr Tony Zalewski prior to the Commission having made its decision, and upon request is to make available this plan to an authorised member of Victoria Police or a person authorised in writing by the Commission.

### Consideration of disqualification of related persons under section 93D

120. In determining whether or not to disqualify Mr Kakar, Mr Bassin, Mr Varigos, and/or Mr Porritt in accordance with section 93D, the Commission has taken into account, amongst other factors:
- (a) Victoria Police's indication, by way of the Joint Proposal, that should the Commission accept as appropriate, in resolution of this matter, disciplinary action against the Licensee in the form of a fine and the issuance of a letter of censure to the Licensee, Victoria Police would no longer be requesting that the Commission consider disqualification of the Licensee and the related persons;<sup>57</sup> and
  - (b) the Licensee's apparently significantly improved systems and performance in the period since the admitted conduct.
121. In light of all the circumstances, the Commission is not satisfied that it is appropriate to disqualify Mr Kakar, Mr Bassin, Mr Varigos, and/or Mr Porritt in accordance with section 93D.

***The preceding paragraphs are a true copy of the Reasons for Decision of Mr John Larkins (Deputy Chair), Mr James O'Halloran (Deputy Chair), and Mr Steven Brnovic (Commissioner).***

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<sup>56</sup> All emails to the Commission must be sent to [secretariat@liquor.vic.gov.au](mailto:secretariat@liquor.vic.gov.au).

<sup>57</sup> Joint Proposal, paragraph 11 of the Statement of Agreed Facts. See paragraph 49 herein.