

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER:	DISCIPLINARY ACTION PURSUANT TO THE <i>LIQUOR ACT 2019</i>
REFERENCE:	LC2021/036
LICENCE NUMBER:	80101056
LICENSEE:	NT Hotels Pty Ltd
PREMISES:	Winnellie Hotel 34 Winnellie Road WINNELLIE NT 0820
LEGISLATION:	Section 130 and Part 7 Divisions 3 and 4 of the <i>Liquor Act 2019</i>
HEARD BEFORE:	Ms Jodi Truman (Deputy Chairperson) Mr Bernard Dwyer (Health Member) Ms Amy Corcoran (Community Member)
DATE OF HEARING:	25 November 2021
DATE OF DECISION:	25 November 2021

Decision

1. For the reasons set out below, the Northern Territory Liquor Commission (“the Commission”) upholds the complaint and is satisfied that:
 - a. Between 15 and 21 January 2021 NT Hotels Pty Ltd (“the licensee”) or the licensee’s employee sold liquor to individuals on six (6) occasions who did not present an approved form of identification and therefore did not correctly use the identification system contrary to section 130(2)(a) of the *Liquor Act 2019* (“the Act”).
 - b. Between 15 and 18 January 2021 the licensee or licensee’s employee sold liquor to individuals on six (6) occasions without scanning an approved identification of the individual with the identification system scanner contrary to section 130(2)(b) of the Act.
2. The Commission is satisfied disciplinary action should be taken against the licensee as follows:

- a. Suspend the condition of the liquor licence relating to Takeaway Hours from 1000 hours to 2200 hours on Friday, 10 December 2021.
- b. Impose into the liquor licence the following additional condition with the system to be installed by close of business on 1 February 2022, unless further time is granted by the Director of Liquor Licensing (“the Director”):

“CCTV Requirement

The licensee is to install, maintain and operate a camera surveillance system on the licensed premises in compliance with the requirements and guidelines prescribed by the Director of Liquor Licensing (“the Director”) including CCTV camera surveillance at the point of sale designed and operated so as to record information regarding the items purchased, the use of the BDR scanner, interactions between the purchaser and the salesperson, the appearance of the purchaser and the appearance of the salesperson. The licensee must retain all data captured by the camera surveillance system for not less than 14 days. The licensee must maintain a register of the CCTV including a daily log of the date and time check, as well as any use of the system by the licensee, an employee of the licensee, inspector or police officer. The system is to be protected from unauthorised use and register must be produced to the Director upon request.”

- c. Pursuant to section 165(2)(e) of the Act, the Commission also directs the licensee to place signage in an area visible to the public that would utilise the takeaway facilities during the period of the suspension informing the public that the takeaway conditions have been suspended for failure to comply with the Banned Drinker Register (“BDR”) identification system

Reasons

Background

3. The licensee is the holder of Liquor Licence 80101056, trading as Winnellie Hotel (“the premises”) situated at 34 Winnellie Road, Winnellie. The nominee is Mr Leigh Jennings.
4. On 1 September 2017, the Northern Territory government established the current Banned Drinkers Register (“BDR”), a scheme the purpose of which is to prevent persons identified as harmful drinkers from purchasing liquor. At the time of its establishment, the scheme was supported by s31A of the *Liquor Act 1978* (“the 1978 Act”), which inserted into Northern Territory takeaway liquor licences a condition providing that licensees and their employees must not sell takeaway liquor without scanning a customer’s photographic identification.

5. The scanning device provided under the identification system is linked to the BDR. If a customer is on the BDR, the seller is alerted and must refuse the sale. As the Commission has previously stated:

“The Commission notes the importance of the BDR provisions under the Act. As has been publically noted many times, there is a significant body of evidence that supports supply reduction measures such as the Banned Drinker Register. Studies have shown there are benefits in banning persons from being able to purchase alcohol including increased venue safety, general risk management, and deterrence of antisocial behaviour. There is also a considerable body of research that shows a strong correlation between alcohol availability and crime, anti-social behaviour and family violence. Reducing access to liquor has demonstrated corresponding reductions in these areas. These provisions form part of the Government’s policies towards making communities safer”¹.

6. On 1 October 2019, the *Liquor Act 2019* (“the Act”) commenced operation. The Act continues the BDR scheme and is supported by Division 1 of Part 6 of the Act and in particular section 128.

Allegations:

7. Facts admitted by the licensee before the Commission were that on 4 June 2021 a complaint was formally lodged with the delegate of the Director of Liquor Licensing, Mr Bernard Kulda (“the Delegate”) pursuant to section 160 of the Act in relation to alleged breaches of section 130 of the Act.
8. On 9 June 2021, the complaint was accepted by the Delegate with the licensee being informed of the complaint via email on the same day.
9. Following detailed review of CCTV footage and sales records supplied by the licensee at the request of compliance officers that was compared to APMS data for the same period, it was revealed that the licensee or licensee’s employee sold liquor to individuals on twelve (12) occasions between 15 and 21 January 2021 without completing a scan of an approved identification in accordance with the requirements of section 130 of the Act.
10. The licensee provided a response to the complaint by email on 1 July 2021, in summary advising as follows:
 - a. “Larrakia cards” had been used because they successfully scanned and therefore they “assumed” they were approved.
 - b. Two (2) sales had occurred despite the “red screens” as they were “unaware of the process in dealing with this situation”.
 - c. Remaining nine (9) breaches were errors or “forgotten”.

¹ Northern Territory Liquor Commission *Disciplinary action pursuant to the Liquor Act: Halikos Hospitality Pty Ltd* (LC2018/054, 2 July 2018) at [37]

11. Having accepted the complaint and the investigation commencing, upon completion of the investigation the Delegate was empowered under section 163(1) of the Act to do any of the following:
 - a. take no further action (if satisfied of certain matters);
 - b. give the licensee a formal warning;
 - c. mediate the complaint
 - d. issue an infringement notice;
 - e. enter into an enforceable undertaking; or
 - f. refer the complaint to the Commission.

12. On 7 September 2021, the Delegate referred the complaint to the Commission for disciplinary action to be taken against the licensee. Pursuant to section 166 of the Act, upon receipt of such a referral, the Commission must conduct a hearing and decide whether to take disciplinary action against the licensee. Upon completion of the hearing the Commission must dismiss the complaint or take disciplinary action against the licensee. Pursuant to section 165, the Commission may take disciplinary action against the licensee only if the Commission is satisfied:
 - a. a ground for disciplinary action exists; and
 - b. the disciplinary action is appropriate in relation to that ground.

Public Hearing

13. In understanding these reasons, it is important that it be kept in mind that this is not a **prosecution** of a breach of the Act. These are proceedings brought under Part 7 of the Act with respect to regulatory compliance for licences.

14. At the hearing, the Director appeared via his Delegate, Mr Bernard Kulda. The licensee appeared via its nominee, Mr Leigh Jennings (“Mr Jennings”).

15. In terms of the hearing, the complaint was initially scheduled to take place on 5 November 2021, however just prior to that date Darwin went into a “lock out” due to COVID-19 and at the request of Mr Jennings the hearing was re-scheduled to 25 November 2021 which was the next available date convenient to all persons.

16. At the commencement of the hearing the Chairperson advised the licensee that each of the Commissioners had read the Director’s referral brief which became exhibit 1 at the hearing. The Commission inquired if there was anything in that brief which was objected to by the licensee and no objections were made.

17. The Commission inquired of Mr Jennings whether such breaches were admitted, and Mr Jennings confirmed they were in accordance with the earlier admissions. Mr Jennings was asked if there was anything he wished to say on behalf of the licensee about the breaches, to which he advised the Commission as follows:
 - a. He wanted to confirm what he was supposed to do when he received a red screen on the scanner;
 - b. He was “disappointed and remorseful” as he was personally involved in two (2) of the breaches.
 - c. One of the other employees involved had already left as he was only part time and a student. The other employee was “slightly embarrassed”.
 - d. Steps had been put in place to avoid such breaches in the future and he was personally spending “much more time in the bottle shop”.

18. The Chair informed Mr Jennings that the Commission was concerned by the evidence showing:
 - a. On one of the occasions of sale, the licensee’s employee had used his own identification to complete the sale, showing a degree of dishonesty in attempting to “cover up” his failure to scan the customer’s identification;
 - b. The total lack of any inquiry to be made by the licensee as to whether “Larrakia cards” were authorised particularly given the material distributed by the Director, including a poster, that clearly identifies those items of identification that are authorised and does not show “Larrakia cards”. Further that it was a simple matter of making an inquiry of Licensing that would have provided an immediate answer to this issue and avoided such breaches.
 - c. The reliance by the nominee of employees being on “automatic pilot” and forget to scan yet appear capable of never forgetting to receive payment for the liquor.
 - d. The very real concern that it was apparent that despite receiving a red screen on the identification device the licensee and its employees continued to sell on each occasion without seeking any information whatsoever as to the appropriate course of action to be taken in such circumstances.

19. In relation to these matters Mr Jennings indicated there was little he could say other than to indicate it was not a practice for employees to use their own licence and that he took responsibility for not making the relevant inquiries and for making a “bad assumption” about the use of the identification cards.

20. In relation to these twelve (12) occasions identified as failing to comply with section 130, it was admitted before the Commission that the transactions can be broken down into the following categories:
 - a. One (1) incident where the staff member did not ask for Identification. After the liquor sale was completed, he used his own identification and scanned it through the BDR to have it recorded on the system. Resulting in a fail to scan, (“Not Scanned”)
 - b. Four (4) instances where staff did not ask for identification and did not scan, resulting in a fail to scan (“Not Scanned”).
 - c. One (1) instance where staff asked for identification, scanned the identification, let the BDR screen time out, and then took no action to rescan the identification to check if the person was on the BDR, resulting in a fail to scan.” (“Scanned – not sent through to the BDR”).
 - d. One (1) instance where staff asked for identification, placed the identification on the scanner, completes liquor sale, then presses the scan button but removes the identification before the scan is completed. Hands back ID and liquor to customer. The scan is still incomplete, no action to rescan the identification to check if the person was on the BDR, resulting in a fail to scan.” (“Scanned – not sent through to the BDR”).
 - e. One (1) instance where staff member (1) asked for identification, scanned the identification, did not check the BDR, walks to the vehicle and gives customer their liquor and completes the sale. The second staff member (2) places his customer identification on the scanner, prior to scanning the identification he completes the scan for staff member (1). Staff member (1) was unaware of the result of the scan and proceeded with the sale resulting in a fail to scan. (“Scanned – did not check the BDR result”).
 - f. One (1) instance where staff member (1) asked for identification, scanned the identification, Staff member (2) appears to press the scan BDR button and hands the licence back to Staff member (1) who without receiving a BDR result proceeded with the sale. After the vehicle left the premises with the liquor, Staff (1) returned to the counter and pressed the check BDR button obtaining a result.

- g. Two (2) instances where an Age Below Minimum Limit screen has shown, with staff taking no action to check the identification and amend the details and selling the alcohol despite the red screen (“Scanned – Age Below Minimum Limit”). (Also is it agreed that this was in fact a miss-scan requiring a rescan of the identification to occur, however this was not done therefore resulting in a failure to scan in breach of section 130(2)(b) of the Act rather than sale to an underage person).
 - h. One (1) instance where an unapproved form of identification, namely a Larrakia Nation Card was accepted and scanned to obtain Liquor.
21. As earlier noted this is a complaint where the licensee has admitted that through the actions of its employees (including its own nominee) it has contravened section 130 of the Act on twelve (12) separate occasions over the course of a period of a total seven (7) days. As a result, the Commission finds itself satisfied of the twelve (12) breaches of section 130(2)(a) and (b) of the Act.
22. Whilst the Commission notes the remorse expressed on behalf of the licensee and has received evidence of steps taken to avoid breaches in the future, the Commission also notes that the licensee was found to have contravened these provisions only in December 2020 which proceeded by way of a warning by the Delegate of the Director. Despite receiving that warning, as was suggested to the nominee and accepted, it appears the licensee has really not done anything to avoid such conduct.

The Disciplinary Action

23. Having upheld the complaint, the Commission has determined it is appropriate that disciplinary action be taken. The Commission also notes that there were no submissions made that this should not be the case.
24. Although the licensee admitted the breaches at an early stage, these were breaches that were readily avoidable. The Commission accepts that the “Larrakia cards” *could* be scanned. However, as was stated to Mr Jennings during the course of the hearing, as nominee **he** is responsible for ensuring the Act is complied with and there are very simple ways to ensure compliance in this case. An example is the poster that sets out all approved forms of identification. A further example is making contact with Licensing officers who can assist.
25. Given the nature of the complaints which have been admitted, and subsequently found as occurring, the Commission does not consider that it is appropriate that the matter should be dismissed and therefore now turns to the question of the nature of the disciplinary action to be taken in relation to the contraventions of the Act.

26. With these types of breaches, it is important to remember that the purpose of the BDR provisions is to identify those persons who may be prohibited from purchasing liquor. There is a risk posed to the community if licensees fail to comply with the BDR provisions, particularly in light of the public policy behind the provisions.
27. Compliance with the requirements of section 130 of the Act are not difficult. This was accepted by Mr Jennings. The BDR provisions are extremely important in terms of supply reduction and subsequent reduction of the risk to the community of problem drinking. The Commission finds this a significant matter for a premises such as the Winnellie Hotel which the Commission considers to be a high risk.
28. As was noted by the Commission in the Darwin River Tavern decision²:
- “The BDR provisions represent an important part of the provisions under the 1978 Act. There is a significant body of evidence that supports supply reduction measures such as the Banned Drinker Register. Studies have shown there are benefits in banning persons from being able to purchase alcohol including increased venue safety, general risk management, and deterrence of antisocial behaviour. There is also a considerable body of research that shows a strong correlation between alcohol availability and crime, anti-social behaviour and family violence. Reducing access to liquor has demonstrated corresponding reductions in these areas. These provisions form a significant part of the Government’s policies towards making communities safer.
- With this important public policy background, it is clear that the BDR provisions are in place to attempt to reduce the risk to the community of problem drinking. The Commission therefore anticipates that the community expects that as this is a public policy about making the community safer, that when there is a breach, the consequences to follow from such a breach should be strict”.
29. As was made patently clear in July 2018 in the decision of Halikos Hospitality Pty Ltd all licensees were warned that the period of leniency was over and that further breaches would no longer be tolerated³. This remains the case and for these reasons the Commission is not satisfied on this occasion that a monetary penalty is appropriate.
30. In addition, the Commission notes that these kinds of breaches are not easy to detect and therefore must be taken seriously when they are found to have occurred.

² Northern Territory Liquor Commission, *Oceanview Developments Pty Ltd (Darwin River Tavern) Decision Notice Disciplinary action pursuant to the Liquor Act 1978*: (28 January 2020)

³ Northern Territory Liquor Commission *Disciplinary action pursuant to the Liquor Act: Halikos Hospitality Pty Ltd* (LC2018/054, 2 July 2018) at [46]

31. A matter that causes the Commission further concern is the licensee's compliance history. The Commission notes that on 18 December 2020 the licensee was found by the Delegate of the Director to have failed to complete a scan of an approved identification on the BDR system on seven (7) occasions on 14 August 2020. With respect to the explanations given in relation to those transactions they were almost precisely the same explanations given for these transactions, namely:
 - a. "Significant increase in sales and transactions since May, (placing) pressure on staff in trying to complete transactions correctly and scan licences on all occasions, in particular Fridays".
 - b. "Error" on behalf of the person performing the scan;
 - c. Not rescanning the licence when there has been a scan earlier for the same purchaser, noting "this type of purchase is commonplace with indigenous consumers".
32. The Commission notes that the majority of these failures to scan occurred on a Friday. There were occasions where there was a failure to rescan a customer even though the licensee stated back in November 2020 it would be "ensuring staff rescan licences for multiple transactions" and had implemented a "heighten awareness of completed license scans regardless of how busy they could be".
33. It appears to the Commission that this awareness wore off very shortly after receiving the written warning from the Delegate under section 163(3)(b) of the Act. This causes the Commission some concern as to just how seriously the licensee took the matter of those breaches.
34. The Commission has considered carefully a number of the previous decisions concerning failure to comply with the identification system. Although the number of breaches was twelve (12), this should be considered in the context of occurring shortly after similar breaches in 2020 for which a warning was given and the significance of the fact that on two (2) occasions the nominee himself was involved in the breaches. The importance of these provisions under the Act, the broader framework of alcohol policy in the Northern Territory and the high-risk nature of these licences must all be considered.
35. Having considered the matter carefully, the Commission considers that these matters are serious and as a result it is appropriate that a suspension of the takeaway component of the licence be imposed for the periods set out at the commencement of this decision notice and that the additional actions should also be taken.
36. Finally, due to the significance of the CCTV footage with respect to the complaints against both premises, the Commission has determined it is appropriate that there be an actual condition imposed into the licence requiring the licensee to maintain CCTV coverage at the point of sale for takeaway

liquor so that compliance with BDR requirements can be monitored in future. This matter was raised with the nominee and no objection made to such a condition being imposed.

Notice of Rights:

37. Section 31 read with section 166(7) of the Act provides that the decision set out in this decision notice is reviewable by the Northern Territory Civil and Administrative Tribunal (“NTCAT”). Section 94(3) of the *NTCAT Act 2014* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.
38. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for review of this decision are the Director and the licensee.



JODI TRUMAN
PRESIDING MEMBER
DEPUTY CHAIRPERSON

On behalf of Commissioners Truman, Dwyer and Corcoran
29 November 2021