

# NORTHERN TERRITORY LIQUOR COMMISSION

## Decision Notice

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<b>MATTER:</b>	<b>DISCIPLINARY ACTION PURSUANT TO THE <i>LIQUOR ACT</i></b>
<b>LICENSEE:</b>	<b>Vic River Pty Ltd</b>
<b>PREMISES:</b>	<b>Timber Creek Hotel</b> Lot 94 Victoria Highway TIMBER CREEK NT 0852
<b>LEGISLATION:</b>	Sections 106CA(1)(a) and 106CA(1)(b) of the <i>Liquor Act</i> .
<b>HEARD BEFORE:</b>	Ms Jodi Truman (Deputy Chairperson) Mr Kenton Winsley (Health Member) Ms Christine Hart (Community Member)
<b>DATE OF HEARING:</b>	10 May 2018
<b>DATE OF DECISION:</b>	10 May 2018

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### Decision

1. For the reasons set out below, the Commission is satisfied as follows:
  - a. That for various periods and on several occasions on the evening of 30 November 2016 the Licensee contravened a provision of the Act, namely:
    - i. The Licensee contravened section 106CA(1)(a) in that it sold or otherwise supplied liquor to a child namely, Master H and Miss S; and
    - ii. The Licensee contravened section 106CA(1)(b) in that it permitted someone else to sell or supply liquor to that child.
  - b. That in accordance with section 67(3) of the Act such contraventions constitute a ground for a complaint.
  - c. That as a result of those findings, the Commission upholds the complaint and is satisfied that there are grounds for taking disciplinary action against the Licensee.

- d. That given the contraventions occurred:
  - i. during the course of one period of conduct;
  - ii. were detected as a result of one incident;
  - iii. during the course of one trading period; and
  - iv. involved one group of patrons only

the Commission has determined that only a single action should be imposed for all contraventions.

- e. That given the serious nature of the contraventions, the Commission has accepted the recommendation of the Director-General as to the disciplinary action to be taken.
- f. That disciplinary action in accordance with section 67(2)(c) of suspending the licence for a period of two (2) days is appropriate.
- g. That taking into account the:
  - i. absence of any adverse compliance history;
  - ii. good standing of the Licensee;
  - iii. otherwise responsible and community focussed operation of the licence; and
  - iv. measures taken by the Licensee to mitigate the possibility of similar breaches occurring again

that the penalty imposed should be suspended for a period of 12 months.

- h. That given finalisation of this matter has been delayed by virtue of the terms of the transitional provisions of the Act and therefore the peculiar circumstances relating to the resolution of this matter, the Commission has determined that the disciplinary action shall be taken to have been imposed as and from 25 March 2018. Therefore the operational period of the suspension will commence for a period of 12 months as and from 25 March 2018.

## **Reasons**

### **Background**

2. Vic River Pty Ltd is the Licensee for Liquor Licence 80304074 (the licence), trading as Timber Creek Hotel, situated at Lot 94 Victoria Highway, Timber Creek NT, 0852 (287 kilometres south west of Katherine). The licence was issued to the Licensee on 4 December 2015. The Nominees are Mrs Fiona Maureen McDonald and Mr Callum Alexander McDonald.

3. On 4 December 2015 a Certificate of Declaration pursuant to section 106(1)(a) of the *Liquor Act* (the Act) was issued which prohibits a person who has not attained the age of 18 years from entering on or remaining in the Public Bar area of the premises.
4. On 1 December 2016, a 17 year old female (“Miss S”) attended at the Timber Creek Police Station and reported that she had been assaulted by her 17 year partner (“Master H”) the previous evening. Information provided by Miss indicated that prior to the assault she and Master H had been consuming alcohol at various locations, including at the Timber Creek Hotel.
5. On 9 December 2016 Police reported the matter to the Office of the Director-General of Licensing (“the Director-General”) through the SupportLink reporting system. That same day, Compliance Officers appointed as Inspectors in Katherine made requests to the Licensee to provide CCTV footage in addition to various other material to further inquiries.
6. Further inquiries were made and on 21 April 2017 a complaint was accepted by a delegate of the Director-General in accordance with section 68(3) and notice of the complaint was provided to the Licensee.
7. The complaint alleged three breaches of the Act:
  - a. That the Licensee permitted a child to enter into and remain in a prohibited area of the licenced premises contrary to section 106B(1) of the Act;
  - b. That the Licensee sold or supplied liquor to a child on the licensed premises contrary to section 106CA(1)(a) of the Act; and
  - c. That the Licensee permitted someone else to sell or otherwise supply liquor to a child on licensed premises contrary to section 106CA(1)(b) of the Act.
8. The Licensee responded to the complaint through its legal counsel on 11 May 2017. On 6 February 2018 the hearing proceeded at Timber Creek. The Commission is informed that the delay in progressing the matter between May 2017 and February 2018 was not due to any fault or conduct of the Licensee.
9. The Licensee acknowledged from the outset of the complaint investigation that Master H and Miss S were inside the Public Bar on 30 November 2016 and acknowledged that both were supplied with and consumed alcohol inside the premises. On 25 February 2018 the delegate determined that having considered all of the evidence she was satisfied that the Licensee had committed the three (3) breaches of the Act as alleged.

10. With respect to contravention of section 106B(1) of the Act, namely prohibiting a person from permitting a child to enter into and remain in a prohibited area of the licenced premises; the delegate indicated an intention to issue an Infringement Notice in accordance with section 68(5)(b)(i) of the Act and provided for in the *Liquor Regulations*.
11. With respect to the contraventions of section 106CA(1)(a) and (b), namely prohibiting a person from selling or otherwise supplying liquor to a child and also prohibiting permitting someone else to sell or otherwise supply liquor to a child or, engaging in conduct with results in a child being sold or supplied with liquor; the delegate indicated an intention to take disciplinary action by suspending the licence for a period of two (2) days as provided for in section 67(2)(c) of the Act on the grounds that the Licensee had breached a provision of the Act that regulates the sale, supply or consumption of liquor as set out in section 67(3)(b)(i) of the Act. For various reasons, the delegate further indicated an intention to suspend that penalty for a period of 12 months.
12. As at the date of that determined, the Act required that the delegate provide the licensee with written notice of the disciplinary action proposed to be taken against the licensee. The notification was to invite the licensee to make written submissions in response to the proposed action within the time specified in the notice, namely 28 days. Notification was provided to the licensee on 25 February 2018.
13. On 28 February 2018 however amendments to the Act came into effect, together with the *Liquor Commission Act*. The Act provided for transitional arrangements under section 171 in relation to pending disciplinary action as follows:

**171      Disciplinary action pending**

- (1) This section applies if, immediately before the commencement, the Director-General considered that disciplinary action should be taken against a licensee, but at the commencement no disciplinary action had been taken under section 69 as in force before the commencement.
  - (2) The Director-General must refer the matter to the Commission for the Commission to decide, under the Act as in force after the commencement, whether to take disciplinary action.
14. As a result, given that the delegate of the Director-General had considered that disciplinary action should be taken against the licensee, but had not yet taken such action, this matter was referred by the Director-General to the Commission for the Commission to decide whether to take disciplinary action.
  15. The Commission notes that given it was only the contraventions of section 106CA(1)(a) and (b) that were referred to the Commission as these were the only matters for which the Director-General had considered disciplinary action should be taken.

## **Public Hearing**

16. The matter was referred by the Director-General to the Commission on 13 April 2018 and this matter was listed for hearing on 10 May 2018. Notice of the hearing was given to the licensee on 27 April 2018 and the matter proceeded as a hearing on 10 May 2018.
17. On the day of the hearing, the Director-General appeared via her representative, namely Ms Sally Ozolins. Formal written submissions were provided to the Commission on behalf of the Licensees via their legal representative Mr Clifford Savala of Salerno Law dated 8 May 2018.
18. Those submissions made clear that the licensees were not submitting that the complaint should not be upheld or that there was not a ground in existence for taking disciplinary action against the licensee. In fact the solicitors for the licensee noted that:

“... there has already been an extremely thorough and exhaustive examination of the evidence at the Timber Creek hearing. This has, in our view, resulted in a fair decision being handed down by Ms Ozolins.”

The Commission finds such a concession was reasonable and proper by the licensee in all the circumstances.

## **Determination of the Complaint**

19. Although the Licensee's submissions did not take issue with such matters, the Commission considered very carefully the evidence put before it which included the hearing brief and a transcript of the evidence as it was given before the delegate during the course of the hearing on 25 February 2018.
20. As a result of that evidence, the Commission was satisfied that it should uphold the complaint and take disciplinary action against the licensee. The Commission was satisfied that a ground for taking disciplinary action existed by virtue of the contraventions of section 106CA(1)(a) and (b) of the Act.
21. As to the question of the appropriate disciplinary action to be taken; the written submissions made on behalf of the licensee were (ultimately) as follows:

“We would respectfully suggest that in all the circumstances that it would be equitable and fair that the complaint be dismissed. Alternatively, we would suggest that the complaint be dealt with by the LC as follows:

1. The complaint in relation to section 106B(1) be dismissed in the circumstances where an infringement notice had been issued and paid in full by VR; and

2. The complaint in relation to the 2 breaches of section 106CA(1) be dealt with in accordance with the decision handed down by Ms Ozolins. Furthermore that the penalty period be backdated to commence from the date of Ms Ozolins decision being 25 February 2018”.
22. Before proceeding further, as earlier noted the only contraventions before the Commission with respect to this matter were those of section 106CA(1)(a) and (b) of the Act. These were the only matters that were referred to the Commission by the Director-General as they were the only contraventions that the Director-General had considered disciplinary action should be taken for. The Commission therefore does not have before it any complaint in relation to section 106B(1) of the Act and the Commission has nothing further to say with respect to that matter as it has been dealt with by way of infringement notice.
23. Despite the submission made on behalf of the licensee that the complaint in relation to the breaches of section 106CA(1) of the Act should be dealt with in accordance with the decision handed down by Ms Ozolins; this Commission is required to still consider the appropriateness of that disciplinary action in accordance with the Act.
24. With respect to this issue, the Commission notes that the primary object of the Act is to regulate the sale, provision, promotion and consumption of liquor so as to minimise the harm associated with the consumption of liquor; and in a way that takes into account the public interest in the provision, promotion and consumption of liquor. In order to do that, the Act places various obligations on licensees and creates offences when those obligations are not properly discharged.
25. Section 106CA(1)(a) and (b) of the Act relate the sale or supply of alcohol to a child on licensed premises. Such sections are designed to protect children. The Commission considers such conduct to be extremely serious. As a result the obligation upon the licensee is also very serious and is significant. There are significant dangers associated with alcohol being provided to a child. The factual circumstances of this complain are an example of those dangers by virtue of the fact that the matter came to the attention of the Director-General as a result of Miss S complaining to police that she had been assaulted by Master H after they had been drinking at various locations including this licensed premises.
26. It is noted by the Commission that when making her determination the delegate of the Director-General referred to a 2011 decision made by the (then) Licensing Commission concerning a complaint involving a minor on licenced premises and in which it was alleged that the Katherine Hotel had permitted a minor to remain on prohibited premises. In considering a penalty for the established breaches, the Licensing Commission referred to a 2008 determination in which it was stated:

“... The Commission considers the sale of alcohol to minors to be at the higher end of offences and the Commission will treat such offences seriously. Whilst there is no evidence that alcohol was sold to the Minor it is clear that he was allowed to remain on licensed premises the subject of the Declaration and whilst he was on the premises he had access to and consumed alcohol, It is therefore the view of the Commission that this is a serious offence.”<sup>1</sup>

27. This Commission agrees with those comments by the then Commission and likewise finds that the sale (or supply) of alcohol to a child is at the higher end of offences and will be treated seriously by this Commission.
28. The Commission does however note that with respect to this licensee there is no evidence of any adverse compliance history, there is evidence of the good standing of the licensee contained within the material before the Commission with such history having been acknowledged and outlined by the NT Police. It is apparent that the licensee is also otherwise a responsible and community focussed operator and has, since the complaint was brought to their attention, put in place measures to mitigate the possibility of similar breaches occurring in the future.
29. It is for these reasons that this Commission is satisfied that the disciplinary action proposed by the Director-General of suspending the licence for a period of two (2) days as provided for in section 67(2)(c) is appropriate. Further, due to the matters raised in mitigation the Commission is also satisfied that it is appropriate to suspend such penalty for a period of 12 months.
30. The Commission notes the submissions made on behalf of the licensee that such suspension should be backdated to have commenced from the date of the delegate having given notice of her intended determination, being 25 February 2018. It is apparent that the basis for this submission is that the licensee had:

“... naturally assumed that the decision of Ms Ozolins was binding on it and have conducted themselves accordingly”.
31. Whilst the Commission has some sympathy for this submission, it is noted that the Decision Notice from the delegate made clear that the matter would not be finally determined until 28 days had passed from 25 February 2018. As a result this Commission finds that whilst it is appropriate to backdate the penalty due to the peculiar circumstances of this matter falling within the transitional provisions, this Commission finds that it is only appropriate to backdate the penalty to 25 March 2018 being the date upon which the matter would previously have been finally determined.
32. It is as a result of the matters outlined above that this Commission had made the determination as outlined at the start of this Decision Notice.

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<sup>1</sup> Reasons for Decision - Northern Territory Licensing Commission: Katherine Hotel 23 March 2011 [19]

## **Notice of Rights:**

33. Section 120ZA of the Act provides that a reviewable decision is a Commission decision that is specified in the Schedule to the Act. A decision to take disciplinary action against the licensee pursuant to section 69(3) of the Act is specified in the Schedule and is a reviewable decision.
34. Section 120ZC of the Act provides that a person affected by this decision may seek a review before the Northern Territory Civil and Administrative Tribunal. Any application for review of this decision must be lodged within 28 days of the date of this decision.
35. For the purpose of this decision, and in accordance with section 120ZB(1)(a) of the Act, the affected person is the licensee



JODI TRUMAN  
Presiding Member  
Deputy Chairperson

15 May 2018