

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: DISCIPLINARY ACTION PURSUANT TO THE LIQUOR ACT

REFERENCE: LC2020/045

LICENCE NUMBER: 80303036

LICENSEE: NT Pubco Pty Ltd

PREMISES: Howard Springs Tavern
Lot 40 Whitewood Road
HOWARD SPRINGS NT 0833

LEGISLATION: Section 130 of the *Liquor Act 2019*

HEARD BEFORE: Mr Richard Coates (Chairman)
Mr Bernard Dwyer (Health Member)
Ms Christine Hart (Community Member)

DATE OF HEARING: 2 November 2020

DATE OF DECISION: 2 November 2020

DECISION

1. For the reasons set out below, the Northern Territory Liquor Commission ("the Commission") heard and upheld a complaint against NT Pubco Pty Ltd ("the licensee"), and is satisfied that between the 31 January 2020 to 2 February 2020 inclusive and 29 May to 30 May 2020 inclusive, the licensee sold liquor to individuals without completing a scan of an approved identification on the Banned Drinker Register ("BDR") identification system on 9 separate occasions contrary to the provisions of section 130 of the *Liquor Act 2019* ("the Act").
2. The Commission is satisfied that disciplinary action should be taken against the licensee and pursuant to section 165(2)(d) of the Act, imposes a monetary penalty of 3 penalty units.

BACKGROUND

3. NT Pubco Pty Ltd is the licensee of licensed premises, Howard Springs Tavern (the premises), a licensed premise situated at Lot 40 Whitewood Road, Howard Springs NT 0835. Mr Tony Dempsey is the nominee listed on the liquor licence (# 80303036) which was originally granted on 16 August 1990.

4. On 23 June 2020, and in accordance with section 162(1) of the *Liquor Act 2019* (the Act), a Delegate of the Director of Liquor Licensing notified the licensee that a complaint had been received in relation to a possible breach of section 130 of the Act.

The substance of the complaint was particularised as follows:

It is alleged that between the periods of 31 January 2020 to 2 February 2020 (inclusive), and 29 May to 30 May 2020 (inclusive), the Licensee, "NT Pubco Pty Ltd" of the premises known as "Howard Springs Tavern" contravened Section 130 of the *Liquor Act 2019* by selling liquor to an individual on nine (9) occasions without using the Banned Drinking Register (BDR) identification system to scan the individual's form of identification.

5. A review of CCTV footage and sales records supplied by the licensee at the request of compliance officers in January 2020 and May 2020 was compared to APMS data for the same period.

The review indicated that on 8 occasions between 31 January 2020 to 2 February 2020 (inclusive) and on one occasion between 29 May to 30 May 2020 (inclusive), staff members employed by the licensee sold liquor to an individual without properly completing a scan of an approved identification.

6. Of the 9 contraventions investigated, there were 9 liquor sale transactions without corresponding APMS data indicating that a sale had been made without properly transmitting information through the identification scanning system.
7. Examination of CCTV footage supplied by the licensee indicated that 9 of the transactions occurred where the scanning equipment was used but not used correctly, resulting in the failure to transmit information to the BDR system.
8. On 31 July 2020 the licensee's solicitor Finlayson's Lawyers forwarded a letter to the Manager Compliance Liquor, Tobacco and Community Gaming in responding to the complaint.
9. The licensee's legal representative outlined details of the internal measures that the licensee had taken to retrain staff, issue formal warnings to staff and upgrade the BDR equipment. It also relied on the fact that there had been a marked improvement in the level of compliance between the January incidents and the further audit in May when only one breach occurred.
10. On 15 September the Delegate of the Director of Liquor Licence referred this matter to the Commission pursuant to section 166(2) to conduct a hearing on whether to take disciplinary action against the licensee. To suit the convenience of the licensee's legal representative a November hearing date was arranged.

PUBLIC HEARING

11. The matter proceeded as a public hearing on 2 November 2020. The Director was represented by Mr Bernard Kulda, Manager Compliance – Liquor, Tobacco and Community Gaming and Mr Bonig of counsel instructed by Mr Rydon appeared for the Licensee. Matthew Dowling an office holder of the licensee was also present. The

Commission is grateful for the assistance provided by all those who were involved with this matter.

12. The referred brief was tendered as exhibit one (1) and a summary of the agreed facts was also tendered as exhibit two (2).
13. Prior to the hearing, Commissioners had viewed the CCTV footage from which it was clear that this was a very busy bottle shop where staff were on occasions experiencing a degree of frustration in their attempts to complete the BDR check in accordance with the requirements. On all occasions the customer's identification was taken and placed on the BDR scanner however on 8 occasions between 31 January and 2 February and once between 29 and 30 May the scan was not properly completed.
14. Having regard to the total number of transactions which occurred between 31 January and 2 February, the 8 non-compliant transactions amount to 0.84% of the total sales for that period. The one breach between 29 and 30 May represents 0.26% of the total transactions for that period.
15. It is clear that despite the challenges of operating a very busy bottle shop, that this licensee's level of non-compliance at 0.84% in January, February was much lower than was the situation in recent complaints the Commission has dealt with involving the Humpty Doo tavern¹ and the Hidden Valley Tavern². It is also highly relevant in our view that since being alerted to the breaches in February that the licensee has managed to further improve its level of compliance when audited in May to only one breach (being a failure to complete a scan) out of approximately 400 transactions. Whilst licensees should be striving to attain complete adherence to the BDR requirements the Commission is prepared to acknowledge that a 0.25% error rate is probably close to the limit of what is achievable for workers operating in this environment.
16. Counsel for the licensee relied on the fact that his client had co-operated with the compliance officers and had acknowledged its wrong doing at the earliest opportunity before the Commission. The Commission is aware of the Dowling family's proud pioneering history within the Northern Territory hospitality industry. It was submitted by counsel for the licensee, and accepted by the Director's representative, that despite the Dowling family having operated hotels in Darwin since the 1930's that this is the first time that any of its licences have been the subject of disciplinary proceeding. In our view that is a remarkable achievement and deserving of recognition in these proceedings.
17. Having had regard to all the matters that have been submitted by counsel for the licensee and from the Director's representative the Commission has determined that a modest financial penalty is an appropriate disposition.
18. The Commission determines in accordance with section 165(2)(d) of the Act to impose a monetary penalty of 3 penalty units.

¹ Northern Territory Liquor Commission, *Epsomm Pty Ltd (Humpty Doo Tavern) Decision Notice Disciplinary action pursuant to the Liquor Act 1978*: (20 October 2020)

² Northern Territory Liquor Commission, *JTR Investments Pty Ltd (Hidden Valley Tavern) Decision Notice Disciplinary action pursuant to the Liquor Act 1978*: (27 July 2020)

NOTICE OF RIGHTS

19. Section 31(1) 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* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.
20. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Director and the licensee.



RICHARD COATES
PRESIDING MEMBER
CHAIRPERSON

16 November 2020

On behalf of Commissioners Coates, Dwyer and Hart