

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER:	DISCIPLINARY ACTION PURSUANT TO THE LIQUOR ACT 2019
REFERENCE:	LC2021/001
LICENCE NUMBER:	80100335
LICENSEE:	Halikos Hospitality Pty Ltd
PREMISES:	Lizards Bar and Restaurant 105 Mitchell Street DARWIN NT 0800
LEGISLATION:	Sections 130 and Part 6 of the <i>Liquor Act 2019</i>
HEARD BEFORE:	Ms Jodi Truman (Deputy Chairperson) Mr Bernard Dwyer (Health Member) Ms Christine Hart (Community Member)
DATE OF HEARING:	16 March 2021
DATE OF DECISION:	18 March 2021

Decision

1. For the reasons set out below, the Commission upholds the complaint and is satisfied that between 31 August and 6 September 2020 (inclusive), Halikos Hospitality Pty Ltd (the licensee) or licensee's employee sold liquor to individuals on twenty-five (25) occasions without correctly using the identification system contrary to 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)(b) of the Act suspends the condition of the licence permitting takeaway trade for a period of eight (8) hours from 14:00 hours on Friday 23 April 2021.
3. 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.

4. Pursuant to section 165(2)(e) of the Act the Commission also imposes the following additional condition on the licence:

“The licensee is to install, maintain and operate a camera surveillance system on the licensed premises in compliance with the requirements and guidelines prescribed from time to time 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 the register must be produced to the Director upon request”.

Reasons

Background

5. The licensee is the holder of Liquor Licence 80100335 (the licence), trading as Lizards Bar and Restaurant (“the premises”), situated at 105 Mitchell Street, Darwin, NT 0800. The Nominee is Mr Adrian Walsh (“Mr Walsh”).
6. On 1 September 2017, the Northern Territory Government established the current Banned Drinkers Register (“BDR”), a scheme the purpose of which is to identify people who are banned from purchasing takeaway alcohol and stop their purchase. It also assists in reducing alcohol-related harm to individuals, families and the community. 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.
7. 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.
8. 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 in its decision concerning this very licensee and these very premises:

“The Commission notes the importance of the BDR provisions under the Act. As has been publicly 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.

9. A dual benefit of the scanning of identification is that the system also identifies persons who are under 18 years of age and who are therefore prohibited from purchasing liquor.
10. It is disappointing to see that here the Commission is again having to deal with breaches by the same licensee of the same nature of what the Commission has clearly identified is an important piece of legislation for the benefit of the community as a whole.
11. On 10 November 2020, a complaint was lodged and formally accepted by a Delegate of the Director (the Delegate) under section 161(2)(a) of the Act and a notice was sent to the licensee in accordance with section 162(1) of the Act that that very same day. The substance of the complaint was particularised, and the licensee was invited to comment, with such comments to be considered as part of the Director's investigation.
12. On 23 November 2020, the licensee responded and in summary accepted the breaches had occurred as alleged.
13. Upon completion of the investigation the Director was empowered under section 163(1) of the Act to exercise certain powers, including referring the complaint to the Commission for disciplinary action². On 8 January 2021, in accordance with section 163(1)(f) the Director referred the complaint to the Commission.
14. 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

15. On 12 January 2021, the Commission wrote to the licensee advising that the matter would be listed for a public hearing on 10 February 2021. Several other challenges arose personal to the licensee (and not relevant to this complaint) and as a result the matter was adjourned to enable the licensee to deal with those issues. Upon the licensee advising it was ready to proceed, the matter was listed for a public hearing at the next available date being 16 March 2021.

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

² Section 163(1)(f) of the Act

16. At the hearing, the Director appeared via his Delegate, Mr Bernard Kulda. The nominee, Mr Adrian Walsh, and Assistant Manager, Mr Straven Gloistein, were present at the hearing for the licensee. The Commission was informed at the outset that the breaches were admitted, and it was proposed by the parties that the matter proceed on an agreed set of facts.
17. As a result of the admissions, at the commencement of the hearing, a copy of the hearing brief was tendered into evidence as exhibit one (1) and within that exhibit there was a document entitled "Summary of Facts" which was admitted by the licensee.
18. The complaint proceeded before the Commission based on those agreed facts with the licensee admitting the twenty-five (25) occasions of failing to scan the approved identification of patrons purchasing takeaway liquor contrary to section 130 of the Act.
19. Members of the Commission also had some questions about what could be seen/understood from various transactions referred to in the CCTV footage and the till tapes. This enabled the Commission to properly understand what actions were being undertaken by the licensee's staff at the relevant time/s. Mr Walsh took no objection to this course and the Commission notes that in accordance with section 23(3) of the Act the Commission is entitled to inform itself in any manner it considers appropriate.
20. Given the breaches were admitted, there was no requirement for any oral evidence to be led and the following facts were taken as read concerning the 25 breaches (the Commission has edited the agreed facts so that it reads as what has been admitted):

Agreed Facts

Details of Licence:

Halikos Hospitality Pty Ltd is the licensee (licensee) of Lizards Bar & Restaurant, a licensed premises situated at 105 Mitchell Street, Darwin. Adrian Walsh (Walsh) is the nominee listed on current liquor licence number 80100335, initially granted 16 August 1990.

Matter for Hearing:

On 10 November 2020 and in accordance with section 162(1) of the Act, a Delegate of the Director of Liquor Licensing notified the licensee that a complaint had been received in relation to possible breaches of sections 130 of the Act.

The ... (breaches admitted are) ... particularised as follows:

... on twenty-five (25) occasions the licensee (or an employee of the licensee) contravened Section 130 of the Act, by selling liquor to an individual without completing a scan of an approved identification (ID). The dates this occurred were between 31 August 2020 and 6 September 2020 (inclusive).

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

The review indicated that on 25 occasions between 31 August 2020 and 6 September 2020 (inclusive), staff members employed by the licensee sold liquor to an individual without properly completing a scan or failing to scan an approved identification.

Of these 25 contraventions there were:

- 7 instances where an employee did not scan an identification ("Not scanned"),*
- 12 instances where an employee scanned the identification, however pressed the "Restart" button instead of the "Check BDR" button, therefore not sending details through to the BDR database to check if the individual was listed on the BDR ("Scanned - Pressed the Restart Button").*
- 4 instances where an employee scanned the identification, however, did not press the "Check BDR" button, therefore not sending details through to the BDR database to check if individual was listed on the BDR ("Scanned - BDR not checked").*
- 1 instance where a red screen has shown, with an employee taking no action to amend the screen, and selling the alcohol, despite the red screen (Scanned – Age below Minimum Limit Screen").*
- 1 instance where an employee manually entered information into the system without being presented or scanning any form of identification.*

21. As earlier noted, this is a complaint where the licensee has admitted that through the actions of its employees it has contravened section 130 of the Act on twenty- five (25) separate occasions over the course of a period of a total of seven (7) days.
22. The Commission accepts that the licensee is genuinely remorseful. The licensee pointed out that because of these contraventions coming to light it was identified that 18 out of the 25 breaches had been committed by one (1) employee. That employee was terminated as a result and it is clear the licensee has taken swift action in response to these breaches.
23. In addition, Mr Walsh noted that as nominee he had only started in August 2020 (see his email dated 23 November 2020) and this offending had occurred in the few short weeks after he commenced. He made clear that as a result of reviewing the CCTV footage he had addressed "each and every staff member" who had each been "shown their errors and received a severe warning". Importantly however Mr Walsh acknowledged that "we are guilty in lapsing in this area" and recognised the responsibility for compliance rests with the licensee.

24. Mr Walsh noted that several measures had been put in place post the incident to reduce the risk of contraventions; including increased signage for staff about compliance, training with respect to compliance, reminders of the importance of compliance and that breaches could result in termination, regular auditing and changes to be introduced to the CCTV system currently in place.
25. It is clear to the Commission that sustained action has been taken by the licensee and that there is a commitment to ensuring staff receive necessary training and are constantly reminded of their obligations under the Act to ensure future compliance with the BDR requirements. It is also highly relevant that the licensee has co-operated with the compliance officers, admitted the breaches at an early stage and has been “very eager” (according to Licensing officers) with respect to training.
26. All these actions bode well for future compliance by the licensee, however as the licensee acknowledged compliance with section 130 of the Act is not difficult and it was clear from the CCTV footage that these breaches occurred due to a total disregard for the legislation and conditions of the licence.

Disciplinary action to be taken

27. 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.
28. In terms of the action to be taken, Mr Kulda submitted to the Commission that the takeaway portion of the licence should be suspended for “a period to be determined by the Commission”. Mr Walsh for the licensee requested that the Commission consider the financial impact of any disciplinary action and the financial impact of the action already taken by the licensee.
29. As earlier noted, this is not the first time that this licensee has come before the Commission for breaching provisions relating to compliance with the BDR system. As a result, the licensee does not come before the Commission without any history of non-compliance. In addition, the breaches on this occasion occurred because of a total disregard of the need for compliance with the BDR system. The Commission therefore does not consider a monetary penalty, as was imposed on the last occasion, is appropriate on this occasion.
30. The Commission has found it difficult to determine the appropriate penalty in this matter. There is no doubt that the licensee has taken these breaches seriously and taken swift action to remedy the same. There is also remorse. However as said by the Commission previously; the challenge that arises in all these sorts of matters is that compliance with the requirements of section 130 of the Act are not difficult. The BDR provisions are extremely important provisions in terms of supply reduction and subsequent reduction of the risk to the community of problem drinking. This is particularly important when the location of these premises is considered noting the proximity to the Esplanade, to several itinerant camps and Mitchell Street, thus making this a particularly high-risk venue.

31. As was noted by the Commission in the Darwin River Tavern decision³

“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”.

32. As the Commission made patently clear to this very licensee back in July 2018; all licensees were warned that the period of leniency was over and that further breaches would no longer be tolerated⁴. This remains the case and for these reasons the Commission is not satisfied on this occasion that a monetary penalty is appropriate.
33. The Commission has however carefully considered the pro-active stance taken by the licensee and the financial impact of any period of suspension particularly on the days being considered. The Commission will not outline those matters here as they are commercially sensitive.
34. Due to the nature of the action already taken, the Commission is persuaded that a suspension period of one day is not required and the Commission has determined that the takeaway licence should be suspended for a period of eight (8) hours from 14:00 hours on Friday 23 April 2021. Such a period represents the most significant conduct that took place on Friday 4 and Saturday 5 September 2020.
35. The Commission also considers that it is appropriate that a direction be made that signage be placed 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. This will serve to send a message both to this licensee and generally of the importance of the scheme and system.

³ Northern Territory Liquor Commission, *Oceanview Developments Pty Ltd (Darwin River Tavern) Decision Notice Disciplinary action pursuant to the Liquor Act 1978*: (28 January 2020)

⁴ Northern Territory Liquor Commission *Disciplinary action pursuant to the Liquor Act: Halikos Hospitality Pty Ltd* (LC2018/054, 2 July 2018) at [46]

36. The Director has also requested that a condition be imposed concerning the CCTV system at the premises. This was raised with the licensee who noted it was already part of their plans to change the CCTV system and that they would be willing to have such a condition imposed. As a result, that additional condition will be imposed in the licence.
37. Before concluding, the Commission notes that during the hearing, the licensee made comment about the nature of the responses sometimes levelled by members of the community towards staff at bottle shops like that which exists at these premises and the abuse that is sometimes received. The Commission is very sympathetic towards the persons who must ensure compliance with this section of the Act. It is not reasonable for members of the public to abuse such staff; they are, after all, only doing what they are required **at law** to do.
38. Just as the community has rallied in support of workers in supermarkets during COVID19 and against the kind of abuse directed at those persons, the Commission hopes that the public also recognises that staff at take away venues do **not** have a choice about whether to check identification in compliance with the Act or not. It is not merely a provision of the Act, but it is a condition of the licence upon which the premises operate and therefore **must** be complied with. Further, as has been made clear in this case (and another more recently⁵), non-compliance by such staff members can result in them losing their employment. That is a significant consequence for the individual involved. As a result, whilst members of the public may find the waiting time for the BDR system or the request for their identification a frustration or annoyance; the time has come for such abuse directed against staff to end. People's livelihoods may be at stake.

Notice of Rights:

39. Section 31(1) read with section 166(7) of the Act provides that the decision set out in this decision notice is reviewable by 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.
40. 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.



JODI TRUMAN
DEPUTY CHAIRPERSON, NORTHERN TERRITORY LIQUOR COMMISSION
18 March 2021
On behalf of Commissioners Truman, Dwyer and Hart

⁵ Northern Territory Liquor Commission, *KTLP Enterprises Pty Ltd (Plaza Karama Tavern) Decision Notice Disciplinary action pursuant to the Liquor Act 2019*: (12 February 2021)