

# NORTHERN TERRITORY LIQUOR COMMISSION

## DECISION NOTICE

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**MATTER:** DISCIPLINARY ACTION PURSUANT TO THE *LIQUOR ACT 2019*

**REFERENCE:** LC2022/056

**LICENCE NUMBER:** 80901824

**LICENSEE:** VNR Enterprises Pty Ltd

**PREMISES:** Wanguri Supermarket  
1/1 Wanguri Place  
WANGURI NT 0810

**LEGISLATION:** Part 7 of the *Liquor Act 2019*

**HEARD BEFORE:** Mr Russell Goldflam (Acting Deputy Chairperson)  
Professor Phillip Carson (Health Member)  
Ms Katrina Fong Lim (Community Member)

**DATE OF HEARING:** 20 December 2022

**DATE OF DECISION:** 20 December 2022

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### DECISION

1. On 20 December 2022, the Northern Territory Liquor Commission (**the Commission**) upheld a complaint against VNR Enterprises Pty Ltd (**the licensee**) for breaching Regulation 53(2) of the *Liquor Regulations* (**the Regulations**), and took the following disciplinary action against the licensee pursuant to section 165 of the *Liquor Act 2019* (**the Act**):
  - a. Impose a monetary penalty of 22 penalty units on the licensee.
  - b. Impose the following additional conditions on the licence:
    - i. The gross value of the sales of liquor by the licensee on the licensed premises must be no more than 25% of the gross value of the sales of all products by the licensee at the licensed premises and any adjacent area where the non-liquor products are sold in each of the following periods:
      - 1 January 2023 to 31 March 2023
      - 1 April 2023 to 30 June 2023

- 1 July 2023 to 30 September 2023
  - 1 October 2023 to 31 December 2023
- ii. The licensee must provide to the Director of Liquor Licensing (**the Director**) by no later than three business days after the end of each month in 2023 a declaration dated and signed by the nominee including:
- The gross value of the sale of all products by the licensee at the premises during the previous month;
  - The gross value of the sale of liquor by the licensee at the premises during the previous month; and
  - The gross value of the sale of liquor as a percentage of the gross value of the sales of all products by the licensee at the premises during the previous month.

## **STATEMENT OF REASONS**

### **BACKGROUND**

2. In its decision issued on 19 December 2022 (LC2022/055, a complaint against the Milner Road Foodtown licensee), the Commission considered Regulation 53(2) of the Regulations, which requires licensed grocery stores to cap their liquor sales so that they do not exceed 25% of total turnover in a financial year (**the 25% cap**).
3. In that decision, the Commission, after examining the history, context and provisions of the statutory scheme that incorporates the 25% cap, concluded that the scheme was intended to reduce alcohol related harm, while being “calculated to enable existing mixed businesses, many of which are small locally owned enterprises, to continue to trade.” In that case, the Commission took disciplinary action against a small supermarket in Alice Springs that, like the licensee in this case, had exceeded the 25% cap. The Commission has now decided to take similar disciplinary action in this similar case.

### **THE LICENSEE**

4. The licensee is a small locally owned suburban Darwin supermarket, the principal executive officer of which is Mr Naveen Vukanti, who is in effect the sole owner of the business. Mr Vukanti is the licence nominee. The licence operates with a grocery store authority. Mr Vukanti works part-time at the premises, and employs two other people as full-time workers there.
5. The licensee has never previously breached the Act or its licence conditions.

### **THE COMPLAINT**

6. On 28 November 2022 the Commission was referred a complaint by a delegate of the Director that the licensee had breached the 25% cap in the 2021/2022 financial year. The Commission fixed the matter for hearing for 7 December 2022.

## **THE HEARING**

7. On 7 December 2022, Mr Vukanti, who was overseas, was unable to appear. Accordingly, the Commission adjourned the hearing to the first available date after Mr Vukanti's return to Darwin, 20 December 2022. At the hearing on that date Mr Kulda appeared on behalf of the Director, and Mr Vukanti appeared for the licensee, along with the manager of the premises, Mr Shailendhar Rao. Having formed the opinion that it was not appropriate to conduct the hearing in public because of the need to protect commercial-in-confidence information, the Commission acceded to a request by the parties that it direct that the hearing be conducted in private. The Commission thanks those who attended for their assistance.

## **THE COMPLAINT IS UPHELD**

8. As the licensee indicated that it did not intend to contest the complaint, the hearing proceeded by a recital of the facts relied on by the Director, and an admission by the licensee of the truth and accuracy of the recited facts. Accordingly, the Commission finds that for the 12 month period ending 30 June 2022 the gross value of the sales of liquor by the licensee on the licensed premises was 28.75% of the gross value of the sales of all products by the licensee at the premises.
9. The Commission accordingly upheld the complaint on the ground for disciplinary action provided by section 160(1)(b), that the licensee had contravened a provision of the regulations, specifically regulation 53(2). The Commission then proceeded to consider what disciplinary action to take.

## **DISCIPLINARY ACTION**

10. The Director submitted that the Commission take disciplinary action similar to that imposed on the Milner Road Foodtown licensee. The licensee did not contend otherwise.
11. The Commission considers that in imposing disciplinary action in this matter, the principles of proportionality, parity, and deterrence are significant.
12. As the Commission stated in the Milner Road Foodtown decision:

Affected licensees were allowed a year's grace to adjust their trading practices to bring them into compliance with the scheme. Indeed, as compliance with the 25% cap is assessed by reference to the financial year, licensees were in effect allowed until 30 June 2021 to commence compliance with the scheme, a date 21 months after the Act came into force.
13. Despite this, the licensee has to date failed to take effective steps to trade within the cap. This is a serious breach deserving of serious disciplinary action.

14. In considering what disciplinary action to impose, the Commission has also had regard to the following circumstances:

- a. The licensee has considered various measures it could take to reduce its liquor sales percentage, including establishing a takeaway food service at the premises, reducing trading hours, limiting the range of liquor products on sale, and placing a limit on the quantity of liquor that may be purchased in a single transaction.
- b. The licensee co-operated both with the Director's investigation of this matter, and with the Commission's conduct of the hearing.
- c. The Commission accepts the licensee's evidence that if the licence were cancelled or suspended for a significant period the business would become unviable.
- d. The Commission estimates that during the period the subject of the complaint, Mr Vukanti unlawfully enriched itself by an amount in the order of \$3,000, this being approximately the net profit (including the wage the licensee paid to Mr Vukanti himself) on the licensee's sale of liquor in excess of the 25% cap.
- e. The licensee is a small sole proprietor business attempting to survive in very challenging market conditions. Australia's liquor and grocery sectors are dominated by major national chains with large stores in Darwin that have been easily able to adjust their trading practices to comply with the Northern Territory's grocery stores licensing scheme.
- f. Mr Vukanti has arranged to sell the business in the coming months. The buyer has not yet applied to have the liquor licence transferred.

15. The Commission repeats the following relevant observations it made when imposing disciplinary action on the Milner Road Foodtown licensee:

After considering the statutory scheme of which regulation 53(3) forms a part, in the view of the Commission, despite the harm caused by takeaway liquor trading, that scheme was not established with the intention of putting small businesses out of business. Similarly, despite the seriousness of this breach, the Commission has decided to impose disciplinary action calculated not to put this licensee out of business. Whether and how the licensee can establish a lawful mode of trade is up to the licensee. It may entail a reduction of trading hours, of trading days, and/or of the range of stock. It may involve making the substantial investment required to establish a takeaway food service. It may involve other measures.

However, although the Commission has not been prescriptive in specifying the particular measures the licensee should take, the Commission considers that it is appropriate to take firm steps to ensure that the licensee promptly brings itself into compliance with the law. In the event that the licensee fails to do so, the Commission expects that the Director will immediately bring the matter back to the Commission. If that occurs, the licensee should expect to have its licence either suspended for a lengthy

period or cancelled, measures that the Commission is well aware would likely result in the closure of the business.

16. In fixing the monetary penalty, the Commission takes as a starting point the approach that a penalty be imposed that is substantially higher than the amount by which the licensee has profited from its unlawful conduct. The Commission has reduced that penalty taking into account the licensee's unblemished record of compliance and its co-operation with the investigation and hearing of this complaint. In fixing the monetary penalty (which amounts to \$3,454), the Commission has also had regard to section 167(1)(a), which fixes a maximum penalty in this instance of 200 penalty units, and the monetary penalty it imposed on the Milner Road Foodtown licensee, who had exceeded the 25% cap by 15%. The Commission considers that the monetary penalty it has fixed is sufficient to send a message to licensees and the community of the importance of complying with the 25% cap.
17. The Commission notes that section 167(3) provides that a monetary penalty must be paid within 28 days, or such longer period allowed by the Commission. The licensee did not seek a longer period.
18. The Commission is satisfied in accordance with section 165(1) of the Act that a ground for the disciplinary action exists and the disciplinary action it has taken is appropriate in relation to that ground.

#### **NOTICE OF RIGHTS**

19. Section 31(1) read with section 166(7) of the Act provide 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.



RUSSELL GOLDFLAM  
ACTING DEPUTY CHAIRPERSON  
NORTHERN TERRITORY LIQUOR COMMISSION

20 December 2022

On behalf of Commissioners Goldflam, Carson and Fong Lim