

**NORTHERN TERRITORY LIQUOR COMMISSION**  
**REASONS FOR DECISION**

---

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

**REFERENCE:** **LC2022/023**

**LICENSEE:** **Westten Services Pty Ltd**

**PREMISES:** Larrimah Wayside Inn  
8 Mahony Street  
Larrimah NT 0852

**LEGISLATION:** Part 7, Divisions 3 and 4 of the *Liquor Act 2019*

**HEARD BEFORE:** Richard Coates (Chairperson)  
  
Phil Carson (Health Member)  
  
Amy Corcoran (Community Member)

**DATE OF HEARING:** 7 June 2022

**DATE OF DECISION:** 21 July 2022

---

**DECISION**

1. The Northern Territory Liquor Commission (**the Commission**) upholds the complaint and is satisfied that:
  - (a) On 24 November 2021, the Licensee, Westten Services Pty Ltd, trading as Larrimah Wayside Inn, (**the Licensee**) contravened section 109 of the *Liquor Act 2019* (**the Act**), by not providing a document, as requested, to Licensing NT, being the daily register of the closed circuit television (**CCTV**) which is to record the date and time of the Licensee checking the CCTV is working;
  - (b) On 27 August 2021, the Licensee contravened section 203 of the Act, and the liquor licence conditions by selling takeaway liquor on four separate occasions to patrons in breach of the emergency powers declaration put in place by the Director of Liquor Licensing (**the Director**), that liquor not be sold to an individual that did not have a legitimate address at which to consume the liquor within the region where it was purchased.
2. The Commission is satisfied disciplinary action should be taken against the Licensee. The takeaway condition of the liquor licence will be suspended from 14:00 hours to 20:00 hours on Friday, 19 August 2022.

## **REASONS**

### **BACKGROUND**

3. Westten Services Pty Ltd holds liquor licence number 81300518 and trades as Larrimah Wayside Inn (**the Premises**) situated at 8 Mahony Street, Larrimah, Northern Territory. The nominee listed on that licence is Stephen Baldwin.
4. On 6 July 2021, the Commission handed down its decision in relation to earlier disciplinary measures taken against this Licensee for 144 breaches of the Banned Drinker Register (**BDR**) between 2 November 2020 and 15 December 2020. In that decision, the Commission suspended the takeaway licence for five days and also imposed conditions requiring the Licensee to install CCTV covering the BDR point of sale. It was a further condition that the Licensee must maintain a register of the CCTV including a daily log of time and date checks.
5. In purported compliance with the CCTV condition, the Licensee placed a household camera over the BDR whilst it pursued a Biz Secure grant through the Northern Territory Government to upgrade all its security cameras.
6. On 3 September 2021, Licensing NT requested till tapes and CCTV from the premises for the period Thursday, 26 August 2021 to Sunday, 29 August 2021 inclusive, for the entire hours of trade. In compliance with this request the Licensee provided a number of short videos purportedly taken during those trading hours.
7. On 17 November 2021, an email was forwarded to the nominee, Mr Baldwin, with a query as to whether daily checks had been conducted on the CCTV cameras as required by the Commission's decision of 6 July 2021. On 24 November 2021, Mr Baldwin provided a response to the effect that he had not been keeping a register of these checks, as he had been the only person accessing the cameras.
8. On 20 August 2021, the Director, Mr Philip Timney, had sent an email directive to all licensees with a takeaway alcohol licence in the Darwin, Palmerston, Litchfield, and Katherine areas, including Larrimah Wayside Inn. The Director advised that he had used his emergency powers to vary licence conditions under section 257 of the Act. He imposed the following additional condition in relation to takeaway licences:

*"Where a customer presents an identification that indicates that the person resides in a place in the Territory that is not in the region where the purchase is taking place, licensees are required to ask the customer to satisfy them that they have a lawful residence at which to consume the liquor within the region in which the liquor is purchased.*

*For the purpose of certainty, a public place is not a lawful residence for the purposes of this Notice, even if the consumption of liquor in that public place is otherwise lawful.*

*In the event the customer is unable to satisfy the licensee that the customer intends to consume the liquor in a lawful residence the transaction is to be refused“.*

9. Information provided by NT Police to Licensing NT compliance officers indicated that on four separate occasions on 27 August 2021, customers had attended Larrimah Wayside Inn and purchased takeaway alcohol when they were not residents of Larrimah. The information provided was supported by body worn video footage taken by police officers when they spoke to the indigenous customers who had purchased liquor. They all had identification which indicated their residence as being an Aboriginal community which was a restricted area and admitted that they were intending to consume the liquor in a public place where liquor could not be lawfully consumed.
10. Police also had a video recording of a conversation with Mr Baldwin on 27 August 2021, wherein he acknowledged that he was aware these emergency restrictions were in place.
11. Licensing officers subsequently compared the police body worn video footage of the Aboriginal patrons who claimed to have purchased liquor from the Licensee's premises with the actual CCTV taken by the security cameras at those premises on the same day and were able to identify the four transactions which had been made in breach of the emergency direction.
12. On 21 January 2022, pursuant to section 162 (1) of the Act, a delegate of the Director notified the Licensee that a complaint had been received in relation to a possible breach of sections 109 and 293 of the Act.
13. The substance of the complaint was particularised as follows;
  - (a) It is alleged that on 24 November 2021, the Licensee, Westten Services Pty Ltd, trading as Larrimah Wayside Inn (liquor licence number 81300518) contravened Section 109 of the *Liquor Act 2019* (the Act) by not providing a document, as requested, to Licensing NT, being the daily register of the CCTV which contains checks of the date and time.
  - (b) It is also alleged that on 27 August 2021, the Licensee contravened Section 293 of the Act, and the Liquor Licence conditions, by selling takeaway liquor on four (4) separate occasions to patrons in breach of the Emergency Powers put in place by the Director of Liquor Licensing, Mr Philip Timney.
14. On 4 February 2022, the Licensee responded to the Notice asking how it was determined that Mr Baldwin knew where the liquor was to be consumed. Licensing officers subsequently confirmed that this information came from the police body worn video footage.
15. On 27 April 2022, the Director referred the complaint to the Commission to conduct a hearing pursuant to section 166 (2) of the Act to determine whether it was appropriate to take disciplinary action against the Licensee.

16. On 10 May 2022, the Commission wrote to the Licensee advising that the matter would be listed for public hearing on 7 June 2022.

## **THE HEARING**

17. On 7 June 2022, the matter proceeded as a public hearing. Mr Stephen Baldwin appeared for the Licensee by telephone and Mr Bernard Kulda appeared for the Director. The Commission is grateful for the assistance provided by all those present at hearing.
18. At the commencement of the hearing Mr Baldwin was asked whether he was content for the matter to proceed or whether he required an adjournment to obtain legal assistance. He indicated a willingness for the matter to be dealt with on that date and after further questioning by the Commission he advised that he would not be contesting the allegations. The Director's referral brief was admitted into evidence as Exhibit 1.
19. Mr Kulda then read out the following Statement of Facts (which are replicated at page 4 of Exhibit 1):

*"On 21 January 2022, 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 a possible breach of sections 109 and 293 of the Act.*

*The substance of the complaint was particularised as follows:*

1. *It is alleged that on 24 November 2021, the Licensee, Westten Services Pty Ltd, trading as Larrimah Wayside Inn (liquor licence number 81300518) contravened Section 109 of the Liquor Act 2019 (the Act) by not providing a document, as requested, to Licensing NT, being the daily register of the CCTV which contains checks of the date and time.*
2. *It is also alleged that on 27 August 2021, the Licensee contravened Section 293 of the Act, and the Liquor Licence conditions, by selling takeaway liquor on four (4) separate occasions to patrons in breach of the Emergency Powers put in place by the Director of Liquor Licensing, Mr Philip Timney.*

*Compliance Officers requested a document from the Licensee, being the CCTV daily check, which includes the date and time checks and this was not provided, as requested.*

*A review of the CCTV supplied by the Licensee at the request of Compliance Officers in September 2021 was compared with body worn video supplied by Northern Territory Police at the request of Compliance Officers, also in September 2021.*

*The review indicated that on four (4) separate occasions, on the 27 August 2021, the Licensee (or an employee of the Licensee) sold liquor to an individual that did not reside in the same region as the liquor was purchased. Further, these individuals were going to consume the liquor in a public place, which was not a lawful place at the time.*

*On 4 February 2022, the Licensee responded to the complaint.”*

20. The Licensee formally admitted the facts upon which the complaint had been particularised.
21. In mitigation, Mr Baldwin asserted that there had been ongoing difficulties with the BDR scanner over several months. This was largely due to internet connection issues which regularly arose at Larrimah. He had raised these problems with licensing officers on numerous occasions but they had been unable to provide effective assistance. As he had been obliged to manually record the details of his takeaway sales he had decided that there was not a lot of point in keeping a record of his checks on the CCTV camera that was positioned over the BDR point of sale. Mr Baldwin further stated that there was no demand for takeaway liquor from any of the residents of Larrimah and that all his sales were made to travellers. On some days there would only be a few takeaway sales and because of all the restrictions surrounding the BDR he was giving serious consideration to surrendering his takeaway authority.
22. In relation to the four sales made in breach of the Director’s Emergency Declaration, Mr Baldwin claimed that this measure unfairly targeted Aboriginal patrons. He said that all purchasers of his packaged liquor were travellers and should be entitled to consume the alcohol where ever they decided to camp at the end of the day’s travel. As a long-time resident of the Northern Territory he didn’t believe that the current restrictive regime in relation to takeaway liquor was the answer to the level of alcohol related harm that exists within our community. When asked by the Commission why he had not indicated an intention to admit the substance of the complaint at an earlier stage, rather than waiting until the day of hearing, Mr Baldwin said that he had difficulty in understanding what was actually being alleged against the Licensee in the Director’s brief.
23. The Commission is not unsympathetic to Mr Baldwin’s confusion. The brief is difficult to readily comprehend. It contains repetitive accounts of the same facts, irrelevant material such as emails to witnesses, email trails some of which are in chronological order while others are in reverse order. The Commission has previously raised concerns with the Director over the quality of section 163 referral briefs and believes that a review of current processes could lead to greater efficiencies in complaint proceedings.
24. In making these observations, the Commission is not being critical of Licensing Officer Lori McIntyre who conducted this challenging investigation most diligently and competently.

25. The Commission then asked Mr Kulda, the Director's representative, whether it was alleged that the failure to keep the required record of CCTV checks could have enabled the Licensee to cover up any other failures to comply with the Act or a condition of licence. Mr Kulda confirmed that the Director was making no such suggestion. The Commission had made a condition of licence that required the Licensee to maintain a register of CCTV checks and it had failed to do this. Although he conceded that there had been ongoing problems with the BDR equipment this did not relieve the Licensee from its obligation to maintain the register in accordance with the condition that had only so recently been imposed by the Commission.
26. There has been no suggestion by the Licensee that the complaint has not been made out nor that it would be inappropriate for the Commission to take disciplinary action against it for breaches of licence conditions. Accordingly, the Commission upholds the complaints as outlined at the commencement of this Decision Notice and has determined that disciplinary action should be taken.
27. Mr Kulda, for the Director, submitted that an appropriate penalty would be a suspension of the takeaway licence for one day. Mr Baldwin asked the Commission to take into account the difficulties associated with operating a licence in such a remote location but conceded that the penalty suggested by the Director was not unreasonable.

## **THE DISCIPLINARY ACTION**

28. On a number of occasions during the course of the hearing, the Commission expressed its serious concern that these breaches had occurred so soon after the Commission's earlier decision of 6 July 2021 imposing disciplinary action against this Licensee. Indeed the complaint in relation to the four sales which occurred on 27 August 2021, occurred within a week of the expiration of the earlier period of suspension.
29. However on the evidence before it, the Commission finds that the complaint in relation to failing to maintain the CCTV register is in the nature of a technical breach. The Director has not disputed the Licensee's claim that the ongoing problem with the BDR equipment meant that little in the way of meaningful footage was being recorded by the relevant camera. He has also not suggested that the failure to record CCTV checks has enabled the Licensee to cover up any other suspicious transactions or activity. If the Licensee had contacted licensing officers and informed them that it could see no point maintaining the register until such time as the BDR equipment was working again, then that aspect of this complaint may never have been referred to the Commission.
30. Although the Commission is prepared to accept that the Director's Emergency Declaration presented additional difficulties for licensees, these measures were imposed because of the grave risk posed by the COVID pandemic, particularly to the health of Indigenous Territorians. The community has an expectation that Licensees will play their part in abiding by emergency conditions that are aimed at reducing the risk of the virus spreading within an extremely vulnerable sector of our population. If this Licensee continues to maintain philosophical objections to some of the restrictions associated with the sale of takeaway liquor in the

Northern Territory then it would be well advised to give further consideration to surrendering its takeaway authority. As Mr Baldwin confirmed during this hearing, there is no need for such a service by the local residents and as the evidence from these two disciplinary hearings has shown, the purchases of takeaway liquor by Aboriginal people travelling from remote communities has proved problematic for the police and to this Licensee.

31. In all the circumstances, the Commission has determined that the one day suspension as suggested by the Director is a sufficient penalty in respect of both breaches. However, the Licensee must understand that any further breaches of its licence conditions are likely to attract a much greater penalty including the possible cancellation of its takeaway authority.

### **NOTICE OF RIGHTS**

32. Section 34(2)(c) of the *Northern Territory Civil and Administrative Tribunal Act 2014* (the **NTCAT Act**) requires the Commission to notify the Licensee and the Director that they have a right to request a statement of reasons for this decision. Whether or not the Commission receives such a request, the Commission proposes to issue and publish a statement of reasons for this decision.
33. 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.
34. 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

CHAIRPERSON  
NORTHERN TERRITORY LIQUOR COMMISSION  
28 July 2022

On behalf of Commissioners Coates, Corcoran, Carson