

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE AND REASONS FOR DECISION

CITATION: *COMPLAINT AGAINST WESTBRICK PTY LTD* [2024]
NTLiqComm 7

FILE NUMBER: LC2023/042

LICENSEE: Westbrick Pty Ltd

PREMISES: Mataranka Hotel

LICENCE: 80117506

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

DECISION OF: Ms Jodi Truman (Deputy Chairperson)
Professor Phil Carson (Health Member)
Mr Denys Stedman (Community Member)

DATE OF HEARING: 7 February 2024

DATE OF DECISION: 20 February 2024

Decision

1. For the reasons set out below the Northern Territory Liquor Commission (**the Commission**) heard and in part upheld and in part dismissed a complaint against Westbrick Pty Ltd (the licensee) that on 24 May 2023 it had breached the *Liquor Act 2019* (the Act) by:
 - a. On two (2) occasions contravened section 102(1) of the Act by selling and supplying liquor outside the hours prescribed by regulation in respect of the licensee's authority.
 - b. On one (1) occasion contravened Section 109(1)(a) and (b) of the Act by failing to produce a record and any other document relating to the sale, supply or service of liquor in the course of the licensee's business and required to be kept by the licensee under this Act, namely till tapes for 24 May 2023.
 - c. On five (5) occasions contravened Section 130(2) of the Act by selling liquor to an individual without scanning the person's identification.

- d. On three (3) occasions contravened Section 138(a) and (b) by not refusing service to a person who was intoxicated; or is registered on the banned drinkers register.
2. The Commission is satisfied that grounds for disciplinary action exist that the following disciplinary action is appropriate to be taken against the licensee:
 - a. Pursuant to section 165(2)(a) of the Act, vary the conditions of the licence as follows:
 - i. that in relation to the takeaway authority, liquor shall be sold only for consumption away from the premises during the following hours:
 - Sunday to Friday inclusive between the hours of 14:00 and 18:00.
 - Saturday and Public Holidays between the hours of 14:00 and 18:00; and
 - No trading Good Friday or Christmas Day.
 - b. Pursuant to section 165(2)(b) of the Act, suspend the licence for a period of four (4) hours from 14:00 hours to 18:00 hours on Wednesday 20 March 2024, such suspension being confined to the sale or supply of liquor pursuant to the takeaway authority of the licence. The operation of the licence pursuant to other authorities is not suspended.
 - c. Pursuant to section 165(2)(d) of the Act, impose a monetary penalty on the licensee of 5 penalty units for failing to produce a record, namely till tapes, as requested by the Director and as required to be kept by the licensee under the Act. The penalty is to be paid within 28 days of the date of this decision notice.
 - d. Pursuant to section 165(2)(e) of the Act, direct the licensee to take the following actions:
 - i. During the period of the suspension, place signage in an area visible to the public that would utilise the takeaway facilities during the period that takeaway liquor sales have been suspended for failure to comply with the Banned Drinker Register (“BDR”) identification system and for not refusing service to person/s intoxicated or registered on the BDR.
 - ii. Pursuant to regulation 59 of the Liquor Regulations and section 20 of the Act, the licensee comply with the provisions of the *Code of Practice for CCTV System in Licensed Premises* issued by the Commission on 26 April 2023 and as may be varied from time to time.

3. The Commission is not satisfied that at or about 16:45 hours on 24 May 2023 (referred to as “Breach 1” during the hearing) the licensee sold liquor to an individual without scanning the person’s identification contrary to section 130(2) of the Act and the Commission therefore dismisses that part of the complaint.

Reasons

Background

4. Westbrick Pty Ltd (**the licensee**) is the holder of liquor licence number 80117506 for premises known as “Mataranka Hotel”, situated at Stuart Highway, Mataranka NT 0850 (**the premises**). The joint nominees are Mr Steven Chisholm (Mr Chisholm), Ms Deborah Ann Moore (Ms Moore) and Ms Sonia Ellmers (Ms Ellmers).
5. The licence includes a takeaway authority, a public bar authority, a late-night authority, and an Adult Entertainment R-Rated authority. The trading hours pursuant to the public bar and late-night authority are therefore from 10:00 am to 2:00 am seven days per week. The licence further provides that in relation to the takeaway authority, liquor shall be sold only for consumption away from the premises during the following hours:
 - a. Sunday to Friday inclusive between the hours of 14:00 and 20:00.
 - b. Saturday and Public Holidays between the hours of 14:00 and 20:00; and
 - c. No trading Good Friday or Christmas Day.
6. Section 102(1) of the Act provides that a licensee must not sell, supply or serve liquor outside the hours prescribed by regulation in respect of the licensee’s authority.
7. Section 108(1) of the Act provides that a licensee must keep a written record of information, as prescribed by regulation, regarding the following:
 - a. “The licensee’s purchases and sale of liquor under the licence or an authority.
 - b. ...
 - c. Any other matter related to the licensee’s operation under the licence or authority prescribed by regulation.”
8. Section 108(2) of the Act provides that the licensee must retain each record for at least 3 years, unless exempted by the Director. Failure to do so is an offence under the Act.
9. Section 109(1) of the Act provides that a licensee must, on the request of an inspector or a police officer, produce to the inspector or officer, a copy of such records as required to be kept or any other document relating to the sale,

supply or service of liquor in the course of the licensee's business. Again, failure to do so is an offence under the Act.

10. Sections 129 and 130 of the Act in conjunction with Regulation 106(1)(b) of the *Liquor Regulations 2019* (the Regulations) require licensees operating a takeaway authority to use and maintain an identification system. The system (the BDR scanning system) requires licensees to scan an identification document for each customer who wishes to purchase takeaway liquor, using a government supplied scanner that checks whether the customer is on the Banned Drinkers Register. Licensees are prohibited from selling liquor to persons unless, having scanned the identification document, the system indicates that the individual is not prohibited from purchasing liquor.
11. Section 138 of the Act provides that a licensee and their employees must refuse to serve liquor to a person if the licensee or employee believes on reasonable grounds that the person:
 - a. Is intoxicated; or
 - b. Is registered on the banned drinkers register.
12. On 7 June 2023, Licensing NT received a complaint from NT Police that on 24 May 2023 the licensee had failed to comply with its takeaway licence conditions and had breached section 130 of the Act relating to the Banned Drinkers Register (BDR).
13. Upon receipt of that complaint, Licensing NT requested the licensee produce documents and CCTV footage for a time period including 24 May 2023. The request set out that such documents were to be provided by 16 June 2023.
14. On 20 June 2023, no response had been received from the licensee and follow up was made by licensing officers. Following that contact, request was made by Ms Ellmers requesting further time. Additional time was granted to deliver the material to Licensing NT on either 29 June or 5 July 2023.
15. On 7 July 2023, there was still no response provided on behalf of the licensee and contact was again made by Licensing NT officers. On 10 July 2023 a conversation took place where Ms Ellmers undertook to deliver the requested CCTV and till tapes on 13 July 2023.
16. On 13 July 2023, the CCTV was delivered, however Ms Ellmers had "forgotten" the till tapes. Six (6) USBs said to contain CCTV footage were delivered to the building occupied by Licensing NT and placed on the desk of Senior Compliance Officer Mellyssa Tracey ("SCO Tracey"). Compliance officers began assessing the information received.
17. On 18 July 2023, SCO Tracey sent an email to Ms. Ellmers (Attachment 9 of Hearing Brief) advising that two of the six USBs received were blank and also requested an update on when the outstanding till tapes would be expected.
18. On 24 July 2023, Ms. Ellmers sent two emails:

- a. first at 11:11 am advising she would hand deliver the requested till tapes to Licensing NT on 25 July 2023.
 - b. second at 3:12 pm which contained attachments being photos of the RSA register and associated RSA certificates, a blank copy of "Record of Consultation/Staff/Toolbox meeting", and a staff roster.
19. On 25 July 2023, Ms. Ellmers delivered the outstanding till tapes to Licensing NT.
20. On 18 August 2023, SCO Tracey sent an email to Ms. Ellmers noting there were two days' worth of till tapes missing, 28 May 2023 (EFT slips only provided) and 31 May 2023. Request was made for an update in relation to ongoing issues including the CCTV system installed over the BDR POS not being visible whilst the BDR is in use. Inquiry was also made as to whether or not a record of in-house training was kept and if so for a copy to be provided.
21. Ms Ellmers provided an email on 21 August 2023 advising as follows:
 - a. She considered she had provided the requested information as per the letter of request as she had checked it all off.
 - b. Current POS tills were "rung off" at the end of each day resulting in a printout that provides a record of daily department sales, extended detailed report of item sold along with the date and time of the sale. Once this is complete, the till resets for the following day and does not replicate the printout. The only other information able to be provided is the department sale but this does not provide extended sales information such as time and dates.
 - c. staff training is reviewed monthly at a minimum.
 - d. training ranges from daily operations to POS, BDR and takeaway sales.
 - e. a record of training is kept; and
 - f. after reviewing the allegations of potential breaches which took place on 24 May 2023, Ms. Ellmers had scheduled a meeting with staff member liliska (Ram) Kliska for additional training on 19 August 2023. Ms. Ellmers informed that training was recorded, and a copy was able to be supplied. Ms. Ellmers advised that the training consisted of:
 - i. reviewing the information provided by Licensing NT;
 - ii. the seriousness of the BDR breaches;
 - iii. correct processes in relation to takeaway sales and BDR usage;
 - iv. correct and accepted forms of ID;
 - v. correct days and times for takeaway sales;

- vi. staff sales of takeaway;
 - vii. RED screen on BDR; and
 - viii. refusal of sales and seizure of ID.
- g. The staff member involved on 24 May 2023 was Mr. liliska (Ram) Kliska (Mr. Kliska). A meeting had occurred with Mr. Kliska and as a result further training was conducted and a written caution letter had been issued.
- h. That in order to assist staff at the takeaway POS, a notification had been displayed advising customers that only one customer was permitted at any one time at the takeaway counter.
22. As a result of their assessment Licensing NT identified several breaches of the Act occurring and the conditions of licence occurring between 4.45pm and 8.13pm on 24 May 2023.
23. On 22 August 2023, a further email was sent by SCO Tracey to Ms. Ellmers informing her that till tapes for 24, 28 and 31 May 2023 were still missing and requesting an update as to when Ms. Ellmers was able to provide them.
24. On 20 September 2023, SCO Tracey made a complaint against the licensee to the Director. On 26 September 2023, that complaint was formally accepted by a Delegate of the Director in accordance with section 161(2)(a) of the Act and a notice of complaint was provided to the licensee the same date.
25. The substance of the complaint was in relation to 24 May 2023 and stated as follows:
- a. On two (2) occasions contravened section 102(1) of the Act by selling and supplying liquor outside the hours prescribed by regulation in respect of the licensee's authority.
 - b. On one (1) occasion contravened Section 109(1)(a) and (b) of the Act by failing to produce a record and any other document relating to the sale, supply or service of liquor in the course of the licensee's business and required to be kept by the licensee under this Act.
 - c. On six (6) occasions contravened Section 130(2) of the Act by selling liquor to an individual without scanning the person's identification.
 - d. On three (3) occasions contravened Section 138(a) and (b) by not refusing service to a person who was intoxicated; or is registered on the banned drinkers register.
26. The notice provided to the licensee provided an opportunity to respond within 14 days.
27. On 11 October 2023, due to nil response received in relation to the complaint letter, SCO Tracey sent a follow up email to nominees Ms Ellmers and Mr

Chisholm enquiring as to whether they would be submitting a response to the complaint and again requesting a copy of the warning letter issued to Mr Kliska.

28. On 13 October 2023, SCO Tracey had a telephone conversation with Ms Ellmers where she advised she was of the opinion that she had already provided a response to the complaint in August 2023 and could not offer any further information.
29. A copy of the warning letter was not provided, nor were the till tapes as required to be produced by the Director. During the hearing it was confirmed on behalf of the Director that it was the failure to provide the till tapes that formed the basis for the allegation that the licensee has contravened section 109 of the Act by failing to produce a document.
30. There was also concern raised about time discrepancy between the BDR data and the CCTV time provided, being approximately 32 seconds behind the data. This was not however the subject of any specific complaint and therefore no action was determined to be taken for that issue. The licensee is however ***strongly encouraged*** to remedy this issue as soon as possible to avoid the matter being raised again at a later date. The next Commission panel may not be so sympathetic on that occasion given this issue having been noted in these proceedings.

The Hearing

31. The matter proceeded as a public hearing on 7 February 2024. Mr Abhi Jain (Mr Jain) appeared on behalf of the Director. Ms Ellmers and Mr Chisholm (nominees) appeared on behalf of the licensee. As the licensee was unrepresented by counsel, the hearing was conducted with a minimum of formality.

The Facts

32. Given the licensee was understood to be appearing without legal representation, the Commission requested that the Director's representative provide a Statement of Facts in advance of the hearing in the hope of having facts reduced to writing that could be easily and directly related to each alleged breach. Unfortunately, whilst a statement of facts was provided, they were in effect a regurgitation of what was set out in the brief and did not provide assistance to reduce the unnecessary complexity in the manner.
33. As a result, although the licensee indicated that they "admitted what was seen on the CCTV", the Commission was required to go through the facts to ensure that what was being "admitted" was actually set out in the CCTV footage to ensure the licensee was not unduly prejudiced.

Breach 1

34. This breach involved a complaint of breaching section 130 of the Act, namely selling liquor to a person without identification being scanned. The

Commission carefully considered the CCTV footage, and it was during that exercise that the Commission noted that in terms of what could be seen in the CCTV footage, it could also easily be found that what was occurring in that transaction were two (2) people purchasing liquor to drink together with only one providing their identification.

35. As the Commission pointed out during the course of the hearing, this is a not dissimilar scenario played out every day with “couples” or persons in a relationship of friendship coming to the counter, one (P1) putting the liquor on the counter for them to consume together, the other (P2) handing over their identification and cash. That identification then being checked and then P1 taking the liquor when the identification was approved, and payment completed and both persons walking out in company together.
36. There was nothing seen in the footage for ***this particular*** transaction to indicate that the person providing their identification and making payment was being utilised by the other person to obtain liquor in a manner intended to subvert the Act. The Commission has seen such footage in previous matters that depict such transactions¹, however that was not the case in this transaction.
37. The Commission raised this with the representative for the Director who stated that they understood the issue raised and did not take it further with the Commission. As a result, the Commission (despite the acceptance of the breach alleged) found itself unsatisfied with respect to the allegation for “Breach 1” and dismissed this part of the complaint.

Breach 2

38. This breach involved a complaint of breaching section 138 of the Act, namely selling liquor to an intoxicated person. The Commission carefully considered the CCTV footage and finds that the footage (as accepted on behalf of the licensee) shows the sale of liquor to a male person who appears on any reasonable assessment to be very intoxicated. In these circumstances, the Commission finds the breach proven.

¹ For example: LC2020/013 & 019 (Douglas Street Supermarket, 20 August 2020) at [69]

Breach 3

39. This breach involved a complaint of breaching sections 130 and 138 of the Act, namely selling liquor to a person on the BDR and to an intoxicated person. The Commission carefully considered the CCTV footage and finds that the footage (as accepted on behalf of the licensee) shows the sale of liquor in circumstances where, particularly according to the BDR data, no sale should have occurred and that it is more likely than not that the person to whom the liquor was sold was on the BDR. Further that the person who was sold the liquor appears on any reasonable assessment to be intoxicated. In these circumstances, the Commission finds the breach proven.

Breach 4

40. This breach also involved a complaint of breaching sections 130 and 138 of the Act, namely selling liquor to a person on the BDR and to an intoxicated person. The Commission carefully considered the CCTV footage and finds that the footage (as accepted on behalf of the licensee) shows the sale of liquor in circumstances where, particularly according to the BDR data, no sale should have occurred and that it is more likely than not that the person to whom the liquor was sold was on the BDR. Further that the person who was sold the liquor appears on any reasonable assessment to be intoxicated. In these circumstances, the Commission finds the breach proven.

Breach 5

41. This breach involved a complaint of breaching section 130 of the Act, namely selling liquor to a person without identification being scanned. The Commission carefully considered the CCTV footage and finds that the footage (as accepted on behalf of the licensee) shows the sale of liquor to a person in circumstances where no identification for that person was scanned to determine if they were on the BDR. In these circumstances, the Commission finds the breach proven.

Breach 6

42. This breach is a further complaint of breaching section 130 of the Act, namely selling liquor to a person without identification being scanned. The Commission carefully considered the CCTV footage and finds that the footage (as accepted on behalf of the licensee) shows the sale of liquor to another person in circumstances where no identification for that person was scanned to determine if they were on the BDR. In these circumstances, the Commission finds the breach proven.

Breach 7

43. This breach is again another complaint of breaching section 130 of the Act, namely selling liquor to a person without identification being scanned. The Commission carefully considered the CCTV footage and finds that the footage (as accepted on behalf of the licensee) shows the sale of liquor to yet another person in circumstances where no identification for that person was scanned

to determine if they were on the BDR. In these circumstances, the Commission finds the breach proven.

Breach 8

44. This breach involved a complaint of breaching section 102 of the Act, namely selling and supplying liquor outside the hours prescribed by regulation in respect of the licensee's authority. The Commission carefully considered the CCTV footage and finds that the footage (as accepted on behalf of the licensee) shows the sale of liquor to a person approximately 3 minutes after the time prescribed under the licence.
45. As noted to the Director's representative during the hearing however, that person had been in the premises attempting to undertake a purchase of liquor *prior* to the "cut off" period of 8.00pm. It is clear also on the footage that the premises were quite busy at that time. The Commission has some level of sympathy for the licensee in these circumstances however the Commission acknowledges there exists a "technical" breach and that efforts could have been made by the licensee to avoid that breach. In such circumstances the Commission finds the breach proven, albeit noting it's technical nature.

46. Breach 9

47. The same cannot be said of the second complaint of breaching section 102 of the Act, namely selling and supplying liquor outside the hours prescribed by regulation in respect of the licensee's authority. The Commission carefully considered the CCTV footage and finds that the footage (as accepted on behalf of the licensee) clearly shows the sale of liquor to a person, namely an employee of the licensee, after the time prescribed under the licence. There is simply no reasonable excuse whatsoever for that transaction to have taken place. In these circumstances, the Commission finds the breach proven.

Breach 10

48. This breach involved a complaint of breaching section 109 of the Act, namely failing to produce a document, namely the till tapes for 24 May 2023. The Commission notes this was also accepted on behalf of the licensee, and it is clear no such till tapes were produced, and in these circumstances, the Commission finds the breach proven.
49. Accordingly, the Commission found that the licensee contravened section 102 on 2 occasions, section 109 on one occasion, section 130 on 5 occasions and section 138 on 3 occasions. Based on these findings, the Commission was also satisfied that grounds for disciplinary action exists.

Disciplinary Action

50. The Commission considers that in imposing disciplinary action, it should apply the principles of proportionality, parity and deterrence.

51. As has been stated many times, the BDR scanning system is a significant component of the Northern Territory Government's program of measures aimed at reducing alcohol-related harm²:

"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.

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."

52. It follows that the Commission considers that a breach of the BDR scanning system is inherently serious. Fortunately, for the licensee this case is not the most serious of its type that has come before the Commission. However, there were numerous occasions where the licensee contravened the Act in a less than 3 and ½ hour period and this is of concern.
53. Although these are not criminal proceedings, the Commission notes that section 131 of the Act provides that a contravention of section 130 is a criminal offence. Moreover, an irresistible inference arising from the admitted facts is that the contraventions on 24 May 2023 were not an isolated or exceptional occurrence. This is particularly so given that part of the response made on behalf of the licensee included that the staff member involved had raised concern about "daily abuse" received from the refusal of takeaway sales. This explanation does not provide any comfort to the Commission, nor does it address the takeaway sales involved selling outside of hours to a staff member.
54. It is an **extremely** unfortunate reality that in the Northern Territory if you are involved in the sale or supply of liquor, it is likely that there will be some verbal abuse received. If this is not something that can be dealt with appropriately

² For example: LC2018/054 (Lizards Bar and Restaurant, 2 July 2018) at [37]; LC2019/1430 (Darwin River Tavern, 28 January 2020) at [47] – [48]; LC2022/009 (Pit Lane Liquor, 1 April 2022) at [28]

by a licensee for the protection of their staff, then that adds to the Commission's concern about the conduct.

55. The disciplinary action to be taken should be proportionate to the seriousness of the contravention. The Director recommended that the licensee's takeaway licence be suspended for a significant period, however the Commission considers the period suggested on behalf of the Director was out of proportion to the penalties previously imposed by the Commission and unreasonably harsh.
56. The Commission has had regard to its previous decisions in which disciplinary action has been taken in response to contraventions by licensees of the BDR scanning system. In some of the less serious cases, monetary penalties were imposed. In some of the most serious cases, a lengthy suspension was imposed, but in those matters the contravention was accompanied by contraventions of other provisions of the Act or other aggravating circumstances. In several serious cases, a licence suspension of one day was imposed. That is the period recommended by the Director in this case, and the licensee did not submit that this would be excessive.
57. The Commission is anxious to deter this licensee and other licensees from further contraventions of the BDR scanning scheme and other provisions of the Act and Regulations.
58. This case is complicated by the fact that this is not the first time that this licensee has failed to comply with the Act. The following compliance history was admitted on behalf of the licensee:
 - a. On 18 November 2019, Mr. Chisholm and Ms. Moore were issued with a letter advising that no further action was to be taken for failing to supply CCTV on two (2) separate occasions in 2017.
 - b. On 18 November 2019, nominees, Mr. Chisholm and Ms. Moore were issued with formal warning letter for failing to ensure that the premises had an acting nominee in place.
 - c. On 10 February 2020, Senior Compliance Officer Franchi conducted an audit into the usage of the BDR at the premises. Upon reviewing requested CCTV footage, between 27 January 2020 and 2 February 2020, it was noted that scanning of an ID was being completed; however, the employees were not always checking that the details of the licence had scanned correctly and matched the BDR POS screen. Staff were noted pressing the scan button on the BDR POS prior to ensuring these details matched. SCO Franchi forwarded an email to the Licensee in relation to this on 17 February 2020, which highlighted this discrepancy.
 - d. On 17 April 2020, the Licensee was issued with an Infringement Notice for contravening their licence conditions by way of failure to provide CCTV footage upon request to an authorised officer.

- e. On 3 June 2022, the Licensee was issued with an Infringement Notice as on the 26 November 2021, an employee of the Licensee sold/supplied takeaway liquor to an individual who was not the lawful owner or the individual on the identification.
 - f. On 21 February 2023, the Licensee of Mataranka Hotel was issued with a formal warning letter as on 13 August 2022, an employee of the Licensee sold/supplied takeaway liquor to more than one individual who did not present an approved form of ID, being a Larrakia Nations ID card and a Northern Territory proof of age card that was severely faded to the extent that no details were able to be identified, including the photograph.
59. Further, the licensee has also been provided with education from Licensing NT including specifically relating to the BDR:
- a. On 19 April 2022, SCOs Ms. Mellyssa Jay Tracey and Ms. Lori McIntyre attended Mataranka Hotel for a routine Compliance Audit and conducted BDR training with employees of the Licensee, Ms. Sue Sansom and Mr. Andrea Fouvie.
 - b. On 12 May 2023, SCOs Tracey and McIntyre attended the premises for an un-announced compliance audit. Upon attendance, nominee Ms. Ellmers was the venue person present for this audit. As part of the audit process, Ms. Ellmers was asked questions surrounding the BDR, specifically if the Licensee/Nominee was aware of their obligations, if the system was working correctly and being maintained. On the compliance audit report, these questions were ticked as “Yes” further confirming that the Licensee/Nominee were aware of the legal requirements of the BDR system at that time, and of which was signed by Ms. Ellmers.
60. The Commission is therefore comfortably satisfied that this licensee and its nominees have been given every opportunity to understand their obligations under the Act and are well aware of the importance of doing so.
61. The Commission notes that it was stated on behalf of the licensee that they had already taken action in relation to ensuring their CCTV cameras were in a better position for the recording of transactions and that it had changed its takeaway hours to end at 6.00pm, rather than 8.00pm. Further there are now two (2) persons who conduct the takeaway transactions to avoid breaches like those admitted.
62. All of these changes are positive action taken by the licensee. This is taken into account in favour of the licensee as evidence to support that the licensee has taken these breaches seriously and is working to ensure they do not happen again. Disciplinary action however must be taken, and the Commission has determined to do as follows:
- a. Given the changes made by the licensee to their takeaway hours in recognition of the challenges of transacting take away sales until 8.00pm and thus voluntarily reducing their hours, the Commission will vary the

licence accordingly. Therefore, pursuant to section 165(2)(a) of the Act, vary the conditions of the licence as follows:

- i. that in relation to the takeaway authority, liquor shall be sold only for consumption away from the premises during the following hours:
 - Sunday to Friday inclusive between the hours of 14:00 and 18:00.
 - Saturday and Public Holidays between the hours of 14:00 and 18:00; and
 - No trading Good Friday or Christmas Day.
 - b. In recognition of the seriousness of the numerous breaches of section 130 and 138 of the Act, pursuant to section 165(2)(b) of the Act, suspend the licence for a period of four (4) hours from 14:00 hours to 18:00 hours on Wednesday 20 March 2024, such suspension being confined to the sale or supply of liquor pursuant to the takeaway authority of the licence. The operation of the licence pursuant to other authorities is not suspended.
 - c. In relation to the failure to provide the till tapes in spite of numerous requests to do so, pursuant to section 165(2)(d) of the Act, impose a monetary penalty on the licensee of 5 penalty units for failing to produce a record, namely till tapes, as requested by the Director and as required to be kept by the licensee under the Act.
 - d. Pursuant to section 165(2)(e) of the Act, direct the licensee to take the following actions:
 - i. During the period of the suspension, place signage in an area visible to the public that would utilise the takeaway facilities during the period that takeaway liquor sales have been suspended for failure to comply with the Banned Drinker Register (“BDR”) identification system and for not refusing service to person/s intoxicated or registered on the BDR.
 - ii. Pursuant to regulation 59 of the Liquor Regulations and section 20 of the Act, the licensee comply with the provisions of the *Code of Practice for CCTV System in Licensed Premises* issued by the Commission on 26 April 2023 and as may be varied from time to time.
63. In relation to the CCTV, the Commission notes that the licensee stated this had already occurred, however no evidence was provided to the Commission to substantiate this and in the abundance of caution and to ensure that the system in place is appropriate, the Commission has determined to impose that additional action.

64. Request was also made on behalf of the Director that there be point of sale imposed as part of the disciplinary action taken against the licensee. Unfortunately, no information was provided as to what was proposed by the Director in this regard, nor the cost of the same. In the circumstances of this particular matter, the Commission has determined not to take that action on this occasion. It should not however be inferred that the Commission would not take such action in future matters should the circumstances of the complaint warrant the action.

NOTICE OF RIGHTS

65. 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.
66. 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
20 February 2024

On behalf of Commissioners Truman, Carson and Stedman