

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

CITATION: *COMPLAINT AGAINST IRIS GAP VIEW OPERATIONS PTY LTD [2023] NTLiqComm 1*

REFERENCE: LC2022/059

LICENCE NUMBER: 80102399

LICENSEE: Iris Gap View Operations Pty Ltd

PREMISES: Gap View Resort Hotel
123 Gap Road
Alice Springs NT 0870

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

HEARD BEFORE: Mr Russell Goldflam (Acting Deputy Chairman)
Mr Bernard Dwyer (Health Member)
Ms Christine Hart (Community Member)

DATE OF HEARING: 11 January 2023

DATE OF DECISION: 13 January 2023

DECISION

1. On 11 January 2023, the Northern Territory Liquor Commission (**the Commission**) heard and upheld a complaint against Iris Gap View Operations Pty Ltd (**the licensee**) that it had breached section 130 of the *Liquor Act 2019* (**the Act**). The Commission has decided to take the following disciplinary action against the licensee:
 - a. Suspending liquor licence number 80102399 (**the licence**) at the Gap View Resort Hotel (**the premises**) for a period of one day from 10:00 hours to 21:00 hours on Saturday 21 January 2023, 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.
 - b. Directing the licensee to take the following actions:
 - i. 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 takeaway liquor sales have been suspended for failure to comply with the Banned Drinker Register identification system.

- ii. Provide a written report (**the licensee's monthly report**) to the Director of Liquor Licensing (**the Director**) within the first three working days of February, March, April, May, June and July 2023 of the actions taken by the licensee over the previous month to implement:
 - the licensee's undertakings set out in its undated letter at pages 103 and 104 of Exhibit One received into evidence at the hearing of the complaint conducted on 11 January 2023; and
 - any further measures taken by the licensee to facilitate or promote compliance with section 130 of the Act.
- iii. To comply with any reasonable directions given to the licensee in writing by the Director arising from the licensee's monthly report.

STATEMENT OF REASONS

BACKGROUND

2. The Gap View Resort Hotel is a popular Alice Springs hotel with an attached drive-through bottle-shop. The licence includes a restaurant authority, a BYO authority, a takeaway authority, a public bar authority and a late night authority. On 4 July 2022, the licence over the premises was transferred to the licensee, a member of the Iris Capital company group (**the Iris Capital group**). Some of the staff employed by the previous licensee continued to work under the new owners, including two employees who were manning the bottle-shop on Sunday 11 September 2022. There are only two licensed premises in Alice Springs authorised to sell takeaway liquor on Sundays. The other one is the Todd Tavern, the licence of which has also recently been transferred to an Iris Capital group company. According to its website, the Iris Capital group owns some 56 hotels and pubs around Australia, including five in Alice Springs, as well as the Alice Springs casino, Lasseters.
3. 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.
4. Section 160(1)(b) of the Act provides that a person may make a complaint against a licensee on the ground that the licensee or the licensee's employee contravened a provision of the Act.
5. On 27 September 2022, a Delegate of the Director received a complaint from NT Police that on Sunday 11 September 2022 the licensee had breached section 130 of the Act.
6. The Director, with commendable efficiency, investigated and accepted the complaint and notified the licensee, who promptly responded, admitting the substance of the complaint

and outlining various steps it had taken or intended to take to mitigate the risk of further breaches of the BDR scanning system.

7. On 15 December 2022, the Director referred the complaint to the Commission, which listed the matter for hearing.

THE HEARING

8. The matter proceeded as a public hearing on 12 January 2023. Mr Kulda appeared on behalf of the Director. Mr Lumbard (the licence nominee), Mr Jervis (Chief Operating Officer of Lasseters Casino) and Mr Potter (Alice Springs compliance manager for Iris Capital) appeared on behalf of the licensee. As the licensee was unrepresented by counsel, the hearing was conducted with a minimum of formality.

THE FACTS

9. The licensee confirmed to the Commission that it did not intend to contest the complaint. Accordingly, the hearing proceeded by a recital of a summary of the facts relied on by the Director in support of the complaint. The Director also tendered without objection a brief of evidence (**the brief**), which included details of the Director's investigation of the complaint, a schedule of the takeaway transactions conducted by the licensee on 11 September 2022, and the licensee's written response to the Director after having been notified of the complaint.
10. The licensee admitted the truth and accuracy of the recited facts. On the basis of the admitted facts in conjunction with the evidence in the brief, the Commission upheld the complaint. Specifically, the Commission finds that on 11 September 2022, of the 507 occasions on which the licensee sold takeaway liquor from the bottle-shop on the premises, on 189 of those occasions, the licensee's conduct was non-compliant with the BDR scanning system.
11. Accordingly, the Commission found that the licensee contravened section 130 of the Act. The Commission was also satisfied that a ground for disciplinary action exists.

DISCIPLINARY ACTION

12. The Commission considers that in imposing disciplinary action, it should apply the principles of proportionality, parity and deterrence.
13. The BDR scanning system is a significant component of the Northern Territory Government's program of measures aimed at reducing alcohol-related harm. As the Commission has previously stated on several occasions:¹

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

¹ 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].

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.

14. It follows that the Commission considers that a breach of the BDR scanning system is inherently serious. Unfortunately, this case is among the most serious of its type that has come before the Commission: the licensee contravened the Act 189 times in a single nine hour period. Over 37% of all liquor sales conducted by the licensee on 11 September 2022 were in breach of the law. 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 11 September 2022 were not an isolated or exceptional occurrence. The licensee frankly conceded that the staffing arrangements at the bottle-shop on 11 September 2022 had been in place since before the licensee commenced to operate the licence some two months previously, and continued for some time after that. The licensee did not submit that the events of 11 September 2022 were isolated or exceptional. The Commission finds that this is a particularly serious instance of a contravention of section 130 of the Act. 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 period, and the licensee made no submissions that such a measure would be unreasonably harsh.
15. 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.
16. 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. This case is the first occasion on which a member of the Iris Capital Group, which has recently acquired several licensed venues in Alice Springs, has been the subject of a complaint that has been referred to the Commission. At the conclusion of the hearing, the Commission issued a warning to the three Iris Capital Group officers in attendance that any further contraventions of the Act, the Regulations or licence conditions by Iris Gap View Operations Pty Ltd or any Iris Capital Group licensee will be sternly dealt with. The Act confers on the Commission the power to take disciplinary action by cancelling a licence and/or disqualifying a person from holding a licence.

17. In considering what disciplinary action to impose, the Commission has had regard to the following circumstances that are adverse to the licensee:

- a. The contravention occurred less than three months after the licensee had acquired the licence.
- b. On the day of the contraventions, only two staff members were on duty at the bottle-shop, serving both drive-through and walk-in customers, with a sale being conducted on average once a minute from 12:00 hours to 2:100 hours. Those staffing arrangements are obviously inadequate and the licensee conceded that three staff members are required in these circumstances.
- c. The bottle-shop was similarly understaffed from 4 July 2022, when the licensee took over the licence, until, according to the licensee, about mid-December 2022.
- d. The licensee attributed significant responsibility for the contravention to the two poorly performing staff members who were on duty at the bottle-shop on the relevant day. In the view of the Commission, given the known volume of Sunday trading, it was unreasonable for the licensee to require two staff members to manage the workload in the bottle-shop with only minimal support and supervision. In the view of the Commission, primary responsibility for these contraventions lies with the licensee.

18. In considering what disciplinary action to impose, the Commission has had regard to the following circumstances that are favourable to the licensee:

- a. The licensee has no adverse liquor licence compliance history in the Northern Territory.
- b. The licensee acknowledged the contraventions at the first available opportunity.
- c. The licensee co-operated fully with the investigation and hearing of the complaint, and at the hearing expressed appropriate remorse for contravening the Act.
- d. At the time of the contravention and for the remainder of 2022, the licensee was subject to chronic staff shortages, which the Commission accepts was an endemic problem during this period in the Northern Territory hospitality industry.
- e. The licensee has now put in place arrangements whereby three staff are employed in the bottle-shop on Sundays from 12:00 hours to 19:00 hours, and two staff from 19:00 hours to 21:00 hours (when trading is usually less busy).
- f. When notified of the complaint the licensee promptly identified measures it had undertaken or intended to undertake to minimise the risk of further contravention, including:
 - Upgrade of the licensee's CCTV surveillance system to facilitate remote supervision and monitoring of sales in the bottle-shop from a manager's office.
 - Conduct of a regular monthly audit by the licence nominee of CCTV footage of the bottle-shop point of sale.
 - Establishment of a more systematic training program for staff, including the maintenance of a training register.

- More intensive monitoring by the nominee of the operation of the bottle-shop. The nominee states that since 11 September 2022 he has not encountered any occasions on which staff have failed to properly use the BDR scanning system.
- Use of a screensaver prompt at the bottle-shop point of sale stating “HAVE YOU SCANNED ID”.
- Regular attendance by the licence nominee at Alice Springs Liquor Accord meetings (which are chaired by Mr Jervis).

19. The busiest trading day of the week for the licensee’s bottle-shop is Sunday, because on that day the only premises from which takeaway liquor can be purchased in Alice Springs are the Gap View and the Todd Tavern. The Commission considers that there would be limited utility in suspending the licence on a Sunday, because customers would simply make their purchases that day at the Todd Tavern, another Iris Capital Group business. Instead, the Commission has determined to suspend trading on the second busiest day of the licensee’s trading week, a Saturday, which is also the day on which the bottle-shop commences trading at 10:00 hours, four hours earlier than on weekdays.

20. The Commission is satisfied in accordance with section 165(1) of the Act that the disciplinary action it has determined to take is appropriate in relation to the ground for disciplinary action that it has found exists.

NOTICE OF RIGHTS

21. 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.

22. 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

13 January 2023

On behalf of Commissioners Goldflam, Dwyer and Hart