

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: *DISCIPLINARY ACTION AGAINST TODD TAVERN LICENSEE*
[2025] NTLiqComm 22

REFERENCE: LC2025/017

LICENCE NUMBER: 80102200

LICENSEE: Iris Todd Operations Pty Ltd

PREMISES: Todd Tavern
1 Todd Street
ALICE SPRINGS NT 0870

LEGISLATION: Part 7 of the *Liquor Act 2019*

HEARD BEFORE: Mr Russell Goldflam (Chairperson)
Ms Ebony Abbott-Cormack (Health Member)
Mr Denys Stedman (Community Member)

DATE OF HEARING: 28 May 2025

DATE OF DECISION: 20 June 2025

DECISION

1. The Northern Territory Liquor Commission (**the Commission**) upholds a complaint against Iris Todd Operations Pty Ltd (**the licensee**) that on 30 January 2025 an employee of the licensee contravened s 285(1) of the *Liquor Act 2019* (NT) (**the Act**) at its licensed premises at the Todd Tavern, 1 Todd St, Alice Springs (**the premises**).
2. The Commission takes disciplinary action by imposing a monetary penalty of ten penalty units (\$1,850) on the licensee.

STATEMENT OF REASONS

BACKGROUND

3. In 2022 the licensee acquired liquor licence 80102200 over its recently purchased property the Todd Tavern, the oldest hotel pub in Alice Springs.
4. On Thursday 30 January 2025 at 14:16 a regular Todd Tavern customer (**the patron**) entered the premises and showed the Responsible Service of Alcohol (**RSA**) marshal on

duty his ID. The patron was limping and had difficulty extracting his ID card from its receptacle. Shortly after entering the premises, the patron purchased a schooner of beer, which he drank.

5. At 15:04 the patron was handed a second schooner of beer by another patron (**the friend**).
6. At 15:09 compliance officers from Licencing NT conducted their daily inspection of the premises, during which they walked past the patron, who was seated on a barstool at a table with the friend.
7. At 15:42 an employee of the licensee (**the barman**) sold the patron a third schooner of beer.
8. At 15:59 the patron was asked to leave the premises by staff because of his intoxication, and he walked out.
9. At 16:52 one of the compliance officers who had conducted the inspection noticed a male sitting on the ground in a public carpark across the road from the premises, and recognised him as the patron, who appeared to be heavily intoxicated.
10. On 4 March 2025, following inspection and analysis of CCTV footage recorded on 30 January 2025 and obtained from the licensee, the compliance officer made a complaint against the licensee on the ground that it had contravened the Act by, firstly, failing to remove the patron from the premises; and secondly, supplying the patron with liquor when he was intoxicated.
11. On 5 March 2025 a delegate of the Director of Liquor Licensing (**the Director**) accepted the complaint and notified the licensee, who provided a detailed written response to the Director on 18 March 2025.
12. On 6 May 2025 a delegate of the Director referred the complaint to the Commission with a brief of evidence in support of the complaint, including CCTV footage.¹

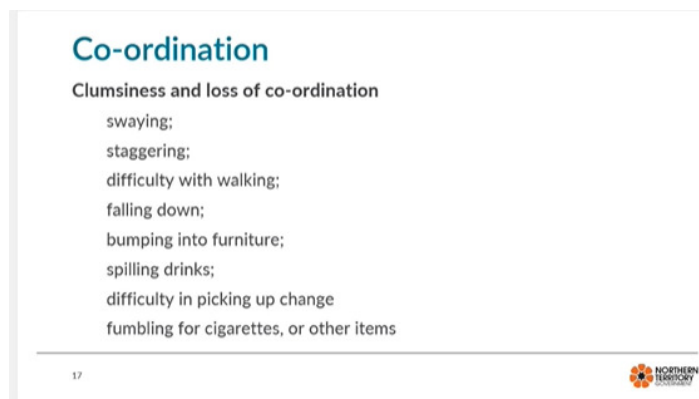
THE HEARING

13. On 28 June 2022 the Commission, sitting in Alice Springs, conducted a public hearing of the complaint. Mr Wood appeared on behalf of the Director. Mr Penman of counsel appeared on behalf of the licensee. Also in attendance at the hearing were Alice Springs Iris Capital Group chief operating officer Mr Craig Jervis, Todd Tavern licence nominee Mr Kevin Do Nascimento and officers of Licencing NT.
14. At the conclusion of the hearing the Commission invited the parties to provide written submissions in relation to the application of Part IIAA Division 5 (“Corporate criminal responsibility”) of the Criminal Code to this case. The Commission is grateful for the submissions of both the Director and the licensee, which were provided, in accordance with the Commission’s directions, on 11 June 2025.

¹ Unfortunately, the Commission has not been provided with the software required to access this footage, and has only been able to view the parts of it that were played during the hearing of the complaint.

THE EVIDENCE

15. Ms Georgia Auricht, the senior compliance officer who laid the complaint, appeared as a witness on behalf of the Director and played for the Commission parts of the CCTV footage, including the events described at paragraph 57 below. Ms Auricht gave evidence that she knows the patron and is familiar with his mobility impairment, but that the signs of impairment to his balance and co-ordination that she observed in the latter part of the CCTV footage were quite different from the mobility impairments he exhibits when not intoxicated.
16. Ms Holly Sowerby, the principal compliance officer who accepted the complaint, gave evidence of the RSA training Licensing NT gives to bar staff in Alice Springs. This includes instructions to staff to take sufficient time when dealing with patrons to ensure that they are not displaying signs of intoxication, including impaired speech, and dropping or fumbling with money or cards when making a purchase.
17. Ms Sowerby displayed for the Commission parts of a training presentation delivered by Licensing NT to bar staff in Central Australia, including a slide titled “Four indicators of intoxication” (loss of co-ordination, decreased alertness, change in behaviour and lack of judgement) and the following slide:



18. Licensing NT has not (yet) delivered this presentation to staff of the current Todd Tavern licensee.
19. The licensee called Mr Michael Kahui, the barman. The licensee also tendered a written declaration signed by Mr Kahui dated 19 May 2025, which stated:²
 - a. Mr Kahui has 15 years experience in the hospitality industry, “including 7 years here in Alice Springs at Todd Tavern”.
 - b. On 30 January 2025 he had served the patron, who appeared “composed and calm, and he engaged with me clearly and respectfully. There were no signs on his face or through his speech that indicated intoxication... he was polite and coherent.”

² Exhibit 4

20. Mr Kahui stated that the only RSA training he had undertaken was the online course he had done to obtain his RSA certificate seven years ago, followed by refresher online courses, most recently in December 2024. When assessing whether a patron is intoxicated, he looks for signs of intoxication such as red eyes, slurred and repetitive speech, staggering and humbugging, but does not look for fumbling. He stated that the clientele of the Todd Tavern were very different from the clientele of other Alice Springs licensed premises he has worked at, that 90% of Todd Tavern customers are Indigenous, and that the biggest hurdle is communication: "It's really hard for me and my colleagues to communicate with them most of the time." Mr Kahui agreed that as a consequence, at the Todd Tavern there is a substantial risk requiring him to take additional precautions and observations to make sure that the sale to the person is justifiable. He was adamant that since coming to work at the Todd Tavern, he had received no training.

21. Mr Kahui's oral evidence was at variance in a number of respects with both his written statement and the CCTV footage the Commission viewed.

- a. Mr Kahui said that although he has lived in Alice Springs for seven years and had worked at another licensed venue owned by a member of the Iris Capital group, he has only worked as an employee of the licensee at the Todd Tavern since September or October 2024, as a supervisor and also behind the bar.
- b. Despite the detailed account in his statement of 19 May 2025 of a single transaction conducted over two and a half months previously, in his sworn oral evidence given nine days later, Mr Kahui initially said that he did not now recall this event, and subsequently said that he did not now "clearly" recall it.
- c. Mr Kahui's evidence on the significant issue of whether or not he had prepared his statement before or after watching the CCTV footage was contradictory. Initially, he agreed in a straightforward fashion with the suggestion in cross-examination that he had prepared his written statement from viewing the footage. Later, however, in response to questions from the chairperson, he claimed, in what the Commission is constrained to observe was a strikingly unconvincing manner, that he had made his statement first, and only then asked to see the footage.
- d. Mr Kahui stated that most of his patrons don't speak English as a first language, and are hard to understand, which makes it difficult to assess their level of intoxication on the basis of their speech. On the other hand, his assessment that the patron was on this occasion not intoxicated appears to have been based primarily on Mr Kahui's impression of the patron's speech, which he said "sounded like normal".
- e. Mr Kahui deposed that he conversed with the patron at the bar during the transaction for two minutes. This evidence was inconsistent with the CCTV footage, which appeared to show no more than a few seconds of verbal interaction between the barman and the patron.³
- f. Mr Kahui said that the patron paid by coins. The CCTV footage shows that the patron paid with paper, and that his change was given in coins.

³ The Commission notes that the CCTV footage was visual only, and did not include an audio track.

22. As a result of these inconsistencies, the Commission approaches Mr Kahui's evidence with caution, and considers that both his oral evidence and his written statement were self-servingly reconstructed from his viewing of the CCTV footage.
23. Mr Kevin Do Nascimento, the licence nominee, also gave evidence. He said that he has been the licence nominee since September 2024, and had previously worked at the bottle shop on the premises. The Iris Capital group of companies, which owns several licensed premises in Alice Springs, provides a mandatory one to two hour RSA refresher course to all bar staff across all the Iris venues every six months. Mr Do Nascimento was sure that Mr Kahui did not attend the course in November 2024, because of illness, but believed he had attended the course in April 2025. He does not believe that the training focusses on the need to take particular care when assessing patrons of the Todd Tavern.
24. On 30 January 2025 Mr Do Nascimento's duties included walking through the premises and checking patrons. He showed the Commission CCTV footage recorded at 14:20 of him chatting to the patron, who he knows by name and is a regular, and who did not appear to be intoxicated at that time. He did not see the patron again that afternoon.
25. Mr Do Nascimento showed Mr Kahui the CCTV footage of the transaction the subject of Mr Kahui's evidence on the same day that Mr Kahui made his written statement, but Mr Do Nascimento said he could not recall the order of those two events on that day.
26. Mr Do Nascimento agreed that there is always a risk that a patron of the Todd Tavern is intoxicated, and that because of this, additional precautions are required in order to justify making a sale.
27. He also stated that Todd Tavern staff are directed that they should only assess a customer as being intoxicated if they have identified two distinct indications of impairment. Mr Do Nascimento was also the signatory to a letter dated 18 March 2025 to Ms Sowerby in response to the complaint, in which he stated:⁴

In-house training lists behavioural signs of intoxication that support noticeable impairment and requires three signs to be present before the person is categorically considered intoxicated:

...

If three signs are present, customer is to be refused service (keep medical conditions in mind)

THE LAW

28. Section 160(1) of the Act provides that a person may make a complaint against a licensee on various grounds, including:
- (b) the licensee or the licensee's employee contravened another provision of this Act

⁴ Exhibit 1, p. 25

or the regulations... .

29. This was the sole ground of the complaint dated 4 March 2025 laid by a Licensing NT Senior Compliance Officer against the licensee and accepted by a delegate of the Director on 5 March 2025. The particulars of the complaint notified by the Director's delegate to the licensee on 5 March 2025 were that the licensee and the licensee's employee had contravened s 141 and s 285 of the Act.⁵

30. Section 141(1) of the Act relevantly provides:

A licensee and the licensee's employees must exclude and remove from the licensed premises any person who is violent, quarrelsome, disorderly or incapable of controlling the person's behaviour.

31. As, for the reasons given below, the Commission is not satisfied that there was a contravention of s 141(1), it is unnecessary to now further analyse the elements of this provision.

32. Section 285(1) of the Act relevantly provides:

A person commits an offence if:

- (a) The person is a licensee or a licensee's employee; and
- (b) The person intentionally sells liquor to another person; and
- (c) The other person is on or in the licensed premises and is intoxicated, and the person is reckless in relation to those circumstances.

33. Section 7 of the Act provides:

Meaning of *intoxicated*

A person is taken to be ***intoxicated*** if:

- (a) the person's speech, balance, coordination or behaviour appears to be noticeably impaired; and
- (b) it is reasonable in the circumstances to believe the impairment results from the person's consumption or use of liquor or a drug.

34. Although the notice of the complaint to the licensee alleged that both the licensee and its employee had contravened these provisions, in accordance with the terms of s 285 ("a licensee or a licensee's employee") the Commission proceeds on the basis that it is entitled to uphold the complaint if satisfied that there was a contravention of that provision by either the licensee or an employee of the licensee, or both.

35. It follows that for the Commission to find that there has been a contravention of s 285(1) of the Act, it must be satisfied of all of the following matters:

⁵ Exhibit 1, pp 20 – 21

- a. the licensee or the barman intentionally sold liquor to the patron;
- b. the patron was on or in the licensed premises;
- c. the patron was intoxicated when they were sold liquor; and
- d. the licensee or the barman was reckless in relation to the circumstance that the patron was intoxicated.

36. Although these are not criminal proceedings, in order to determine this complaint the Commission is required to make a finding as to whether or not there has been a contravention of s 285, which establishes a criminal offence. Whether a person is accused of committing an offence against s 285 or is the subject of a complaint under s 160 of the Act that they have contravened s 285, the decision-maker, be it a court or the Commission, must evaluate the impugned conduct by reference to the statutory elements of the offence provision. And to do so, the Commission considers that it must turn to the principles of criminal responsibility that are expressly adverted to in the Act and the associated provisions of the Northern Territory Criminal Code.

37. On the other hand, unlike a court seized with jurisdiction to determine the guilt of a person charged with an offence under s 285, the Commission's findings of fact are not at the criminal standard (beyond reasonable doubt) but at the civil standard (the balance of probabilities in accordance with the "Briginshaw test": "In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences").⁶

38. Section 8 of the Act provides that Part IIAA of the Criminal Code applies to an offence against the Act.

39. Section 43AK, which is contained within Part IIAA of the Criminal Code, defines recklessness as follows:

- (2) A person is reckless in relation to a circumstance if:
 - (a) the person is aware of a substantial risk that the circumstance exists or will exist; and
 - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

(3) The question whether taking a risk is unjustifiable is one of fact.

40. Applying s43AK of the Criminal Code to the element of the offence against s285 set out at paragraph 35.d) above, for the Commission to find that there has been a contravention of s285, it must be satisfied that:

- a. The licensee or the barman was aware of a substantial risk that the patron was intoxicated; and
- b. Having regard to the circumstances known to the licensee or the barman, it was

⁶ *Briginshaw v Briginshaw* (1930) 60 CLR 336 per Dixon J

unjustifiable to take the risk.

41. Section 306 of the Act provides for the criminal responsibility of an individual for their employees or agents. As the licensee is not an individual but a corporation, s 306 is not engaged in the circumstances of this complaint. However, the note to s 306 states:

Part IIAA, Division 5, of the Criminal Code provides for the criminal responsibility of a body corporate for its employees or agents.

42. Division 5 of Part IIAA of the Criminal Code includes:

a. s 43BL, which provides:

If a physical element of an offence is committed by an employee, agent or officer of a body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, the physical element must also be attributed to the body corporate; and

b. s 43BM(1), which provides:

If intention, knowledge or recklessness is a fault element in relation to a physical element of an offence, that fault element must be attributed to a body corporate that expressly, tacitly or impliedly authorised or permitted the commission of the offence.⁷

43. The Commission considers that for the purpose of these proceedings common law vicarious liability is effectively displaced and codified by the statutory framework for criminal responsibility established by the Act in conjunction with Division 5 of Part IIAA of the Criminal Code.

44. In this matter, the Commission has considered whether there was a contravention of s 285 by the barman, and in addition, by the licensee. The Commission considers that the conduct of the licensee (as distinct from the barman) is of particular importance. Firstly, complaints under s 160 can only be made against licensees. Secondly, the duty imposed by s 285 (among many other duties imposed by the Act) is a duty on licensees. As the Full Court of the Supreme Court of the Northern Territory (per Martin (BF) CJ, Bailey J and Morling AJ) said in *Northern Territory Liquor Commission and Others v Rhonwood Pty Ltd* (1997) 6 NTLR 209 (“Rhonwood”) in relation to the Act’s predecessor, the *Liquor Act 1978* (NT):

The proper conduct of licensed premises is of such public importance that licensees who are granted the privilege of selling liquor can reasonably be expected to assume responsibility for the acts of their employees when selling liquor on their behalf.

45. Applying these provisions to the elements of the offence against s 285 set out at paragraph 34 and 38 above, the Commission could find that there has been a contravention of s 285 by the licensee (as distinct from by an employee of the licensee)

⁷ Section 43AE(c) of the Act provides that a physical element of an offence may be “a circumstance in which conduct, or a result of conduct, happens”. In this matter the relevant circumstances are that the patron was intoxicated and on or in the licensed premises.

if it is satisfied that:

- a. the barman intentionally sold liquor to the patron;
- b. the barman was acting within the actual or apparent scope of his or her employment;
- c. the patron was on or in the licensed premises;
- d. the patron was intoxicated when they were sold liquor;
- e. the barman was aware of a substantial risk that the patron was intoxicated;
- f. having regard to the circumstances known to the barman, it was unjustifiable to take the risk; and
- g. the licensee expressly, tacitly or impliedly authorised or permitted the barman's conduct.

FINDINGS

No breach of duty to remove person from premises: s 141

46. In relation to the alleged contravention of s 141 of the Act, the Director did not submit that the patron was violent, quarrelsome or disorderly, and the Commission received no evidence capable of supporting such a finding. The evidence included CCTV footage of the patron stumbling on two occasions, fumbling with items in his hands and momentarily losing his balance when seating himself on a barstool. The Director only faintly submitted that this established that the patron was incapable of controlling his behaviour. The Commission is not satisfied that this evidence is sufficient to enable the Commission to find that the patron was incapable of controlling his behaviour.

47. The CCTV footage also showed that employees of the licensee asked or told the patron to leave, and escorted him towards an exit, whereupon he left. The licensee relied on a letter dated 11 March 2025, some five and a half weeks after the event, signed by Mr Neves, the RSA marshal on duty at the premises at the time.⁸ According to Mr Neves, the only sign of intoxication exhibited by the patron was that at about 15:49 hours he raised his voice, prompting Mr Neves to refuse the patron further service, and then to escort him from the venue. The CCTV footage (which did not include an audio track) shows the patron walking unaided out of the premises, standing for a minute or so on the footpath near an entrance to the premises, and then turning and slowly walking along the footpath towards Todd Mall. The Commission accepts the Director's submission that the licensee's conduct in removing the patron from the premises strongly supports a finding that the patron was intoxicated. It does not necessarily follow, however, that the patron was incapable of controlling his behaviour: s 141(2) confers on a licensee the power to exclude from licensed premises a person who is intoxicated, but does not impose on a licensee a duty to do so.

48. Having considered all of the evidence, the Commission is not satisfied to the requisite standard of proof that the patron was incapable of controlling his behaviour. Accordingly,

⁸ Exhibit 1, p. 27

following the close of the Director's case, the Commission dismissed the ground of complaint that there was a contravention of s 141(1) of the Act.

Breach of prohibition of sale of liquor to an intoxicated person: s 285

49. While on the premises, the patron was supplied with three schooners of beer, one of which was given to him by the friend, and two of which he purchased from the bar. The Director relies only on the last of these transactions, which occurred at about 15:42, in support of the complaint that there was a contravention of s 285(1) of the Act.

50. It is readily apparent from the CCTV footage that on this occasion the barman intentionally sold liquor to the patron. The patron can be seen to walk up to the bar, fumble with items from his trousers pocket, and hand a piece of paper, which the Commission infers is cash, to another patron, who in turn passes it to the barman. The barman hands the patron a coin or coins in change and pours a beer from a tap into a schooner, which he hands to the patron.

51. The Commission finds that an employee of the licensee, while acting within the scope of his employment, intentionally sold liquor to the patron. These findings are not disputed by the licensee.

52. By operation of s43BL of the Criminal Code, this conduct of the licensee's employee is also attributed to the licensee.

53. It is also undisputed that at the time the patron was on or in the licensed premises.

The patron was intoxicated

54. The licensee does not concede that the patron was intoxicated when he was sold the liquor at 15:42. The Commission has carefully considered whether the evidence it has received supports a finding that the patron's speech, balance, coordination or behaviour appeared to be noticeably impaired, and that it was reasonable in the circumstances to believe that the impairment resulted from his consumption of liquor.

55. On these issues, the evidence was mixed.

56. On the one hand, the Commission has had regard to the following evidence tending against a finding that the patron was intoxicated:

- a. During the period of about 103 minutes that the patron was on the premises, he appears to have been served with only three schooners of beer, the last of which he did not finish.
- b. Two licensing inspectors patrolled the premises at 15:09 and walked past the patron without noticing that he might be intoxicated.
- c. The matter only came to the attention of licensing inspectors when one of them saw the patron in an apparently intoxicated state in a public place a short distance from the premises 52 minutes after he had exited the premises.
- d. The barman who served the patron did not assess him as being intoxicated.

- e. At least three other employees of the licensee were on the floor of the premises while the patron was present, and apparently did not notice any signs of intoxication before 15:57, when one of them removed the patron from the premises.
- f. When told to leave the premises, the patron was escorted towards the exit, but was compliant and walked out unaided.
- g. The evidence given at the hearing by both staff of the licensee and a liquor inspector, which the Commission accepts, that the patron was known to suffer from a pre-existing medical condition that impaired movement on one side of his body.

57. On the other hand, the Commission has had regard to the following CCTV evidence tending to support a finding that the patron was or became intoxicated while on the premises:

- a. At 14:58 the patron walks to a counter, leans on it with his left elbow, flops his right hand in an exaggerated manner as if gesturing to someone behind him, while standing with a hunched posture. He leans over very slowly to pick up something he has dropped, and stumbles when standing back up, before walking unsteadily and haltingly back towards the bar.
- b. At 15:21, the patron stands and walks unsteadily towards some poker machines. As he is trying to get another patron's attention, the partially empty glass he is holding tips, nearly spilling its contents. He stumbles and sways.
- c. At 15:22 the patron slowly walks back over to the table where he had been sitting with the friend, and places his glass on the table. He stands, leaning on a chair for support. He then goes to sit on the chair, and in the process falls against the friend, whose body stops the chair, and the patron, from falling over.
- d. At 15:42 the patron purchases another schooner of beer, taking a long time to extract the cash payment, while looking down at his hands, fumbling with them for over a minute. He picks up the drink when it's poured, and walks to a table, spilling some of it, leaving a trail over a metre in length of spilt drink on the floor.
- e. At 15:53 the patron walks unsteadily over to bar, and then stumbles as he approaches the barman, who he asks, while gesturing floridly, to hold his half a glass of beer when he goes to the toilet.
- f. At 15:56 the patron is escorted out of premises by an employee of the licensee.
- g. At 15:58 the patron stands on the footpath outside the entrance to the premises for over a minute, during which he engages with door staff. He is stumbling and swaying.
- h. At 16:00 the patron walks slowly and unsteadily north along the footpath towards a public car park.

58. The Commission also places particular weight on the undisputed evidence that eight minutes after the impugned sale, at 15:56, the patron was asked to leave the premises by an employee of the licensee who assessed the patron to be intoxicated:⁹

I heard [the patron] raise his voice. It was only at this stage that I deemed him to be appearing to show signs of intoxication.

59. The Commission received no evidence regarding the movements or activities of the patron between 16:00 and 16:52. Accordingly, the Commission places very little weight on the evidence of the compliance officer that she observed the patron in an intoxicated state sitting on the ground on a car park at 16:52.

60. Having considered all the evidence outlined above, the Commission is satisfied that from at least 14:58 until at least when he purchased his third beer at 15:42, a period of 44 minutes, the patron's balance, coordination and behaviour appeared to be noticeably impaired, and that it was reasonable in the circumstances to believe that this impairment resulted from his consumption of liquor. The Commission finds that the patron was intoxicated at the time he was served his third drink.

The barman and the licensee were aware of a substantial risk that Todd Tavern patrons were intoxicated

61. Counsel for the licensee submitted that the evidence did not support a finding that the barman was aware of a substantial risk that the patron was intoxicated, because, firstly, the patron had drunk less than three beers over a period of about 100 minutes, and secondly, because, up until he was removed, none of the licensee's employees had noticed that the patron was intoxicated.

62. The licensee tendered an extract from its Security Register showing that on 30 January 2025 19 persons were either refused entry or removed from the premises. At least six of these persons were asked to leave or refused entry because of their state of intoxication.¹⁰

63. In 2018, in dealing with a complaint against the then licensee of the Todd Tavern for failing to remove an intoxicated patron,¹¹ the Commission received evidence that "between 10 and 30 patrons are evicted from the Todd Tavern each day... [and the patron's] pattern of drinking and behaviour on the premises is typical of the venue's patrons."¹² In that matter, an uncontradicted estimate was provided in evidence by an employee of the then licensee that up to 40% of Todd Tavern patrons had on occasion been removed from the premises. The Commission does not attribute the unsatisfactory trading practices of the former licensee to the current licensee. However, the

⁹ Exhibit 1, p 27

¹⁰ Exhibit 5

¹¹ That complaint was made under the 1978 *Liquor Act*, which, unlike the Act, imposed a duty on licensees to remove patrons for being drunk.

¹² *Disciplinary action pursuant to the Liquor Act* (LC2018/055, 4 December 2018) at [35]

Commission is satisfied that the premises continue to be frequented by a similar cohort of patrons as in 2018. This finding is based on:

- a. the extensive CCTV footage the Commission was shown;
- b. the oral evidence given by employees of the current licensee; and
- c. the personal observations of Commission members Goldflam and Abbott-McCormack, both long-term residents of Alice Springs, who frequently pass by the premises during trading hours and see patrons entering, leaving and standing near the entrance to the premises.

64. The Commission accepts Mr Kahui's evidence that the clientele of the Todd Tavern are different from the clientele of other Alice Springs licensed venues he has worked at, his observations that they are overwhelmingly Indigenous and that most of them "don't have great English", and his concession that additional precautions are required to mitigate the risk of selling liquor to intoxicated persons at the Todd Tavern.

65. Having considered all of the evidence, the Commission is satisfied that Mr Kahui was aware of a substantial risk that a regular Todd Tavern patron would be intoxicated by mid afternoon on a trading day. It is common ground that the patron was a regular.

66. The Commission is also satisfied that licensee management were aware of a substantial risk that a regular Todd Tavern patron would be intoxicated by mid afternoon on a trading day. The Todd Tavern has previously been a venue where, as the Commission has found, "liquor is routinely consumed on the premises at dangerous levels".¹³ That was under a different licensee, who engaged in different trading practices, but the Commission infers that given the history of the premises and the persisting profile of its clientele, licensee management must be well aware that the Todd tavern is a venue at which there is an unusually elevated risk that patrons are or will become intoxicated.

The barman was unjustified in taking the risk of selling liquor to an intoxicated patron

67. The next element to be considered is whether, having regard to the circumstances known to the barman, it was unjustifiable for him to take the risk that the patron was intoxicated.

68. In considering this issue, the Commission has had regard to the following:

- a. As explained above, the Commission was not impressed by Mr Kahui's evidence, and accordingly attaches little weight to his recent claims to have made a closely observed and considered assessment of the patron's level of sobriety.
- b. Mr Kahui said that the patron's speech sounded normal, but also conceded that because Todd Tavern patrons generally speak English as a second language, it is difficult to assess their level of intoxication on the basis of their speech.
- c. Mr Kahui exaggerated the duration of his conversation with the patron while the transaction was taking place.

¹³ *Disciplinary action pursuant to the Liquor Act* (LC2018/055, 4 December 2018) at [35]

- d. Mr Kahui's claimed assessment of the patron's sobriety was, by his own account, confined to his observations of the patron's voice and face.
- e. Mr Kahui did not notice a salient indicator of intoxication exhibited by the patron while the transaction was taking place, namely the patron's fumbling for a lengthy period with the money he was extracting from his trousers pocket, and Mr Kahui gave evidence that he did not consider that this indicator was one to look for.
- f. Ten minutes after the impugned transaction, when the patron asked Mr Kahui to hold his beer while he went to the toilet, Mr Kahui failed to note or apparently notice that while approaching the bar the patron conspicuously stumbled directly in front of Mr Kahui, and then gestured floridly towards the toilets in a manner that noticeably indicated his intoxication.
- g. Despite his lengthy experience in the industry, and his awareness of a substantial risk that the patron was intoxicated, Mr Kahui took no effective steps to assess the patron's sobriety.

69. According to Mr Kahui's written statement, which includes reference to the patron's request to hold his beer, "At no time did I observe behaviour that would lead me to believe he was intoxicated to a level that would require refusing service." If this statement is true and accurate, the Commission finds that at least in relation to this second interaction, Mr Kahui's observations were seriously flawed. That in turn supports a finding that when Mr Kahui had conducted the impugned transaction ten minutes previously, his observations were also inadequate.

70. Alternatively, if this statement was merely a self-serving reconstruction, it reflects poorly on the credit of Mr Kahui, and the Commission is left without an account by the barman of his conduct on which it can rely.

71. It does not avail the licensee to fall back on the excuse that because the barman did not know the patron was intoxicated, it was not unjustifiable for him to serve the patron. The relevant circumstances known to Mr Kahui included that he was serving a regular customer of premises frequented by a clientele of habitual drinkers with communication difficulties. There is no evidence or suggestion in this case that the patron endeavoured to hide his intoxication.

72. The Commission finds that Mr Kahui failed to competently apply RSA principles and practices when engaging with the patron on 30 January 2025.

73. The Commission finds that it was unjustifiable for Mr Kahui to take the risk of proceeding with the sale, having regard to the circumstances known to him.

The barman's recklessness is not attributable to the licensee

74. The barman's recklessness must be attributed to the body corporate licensee if the licensee expressly, tacitly or impliedly authorised or permitted the barman's contravening conduct.

75. In support of a finding that the licensee authorised or permitted the barman's conduct, the Commission has had regard to the following:

- a. the licensee employed Mr Kahui as a supervisor at the Todd Tavern, despite the fact that he had no prior experience of meeting the particular challenges associated with supplying liquor to the Todd Tavern's distinctive clientele;
- b. the licensee failed to provide Mr Kahui with any RSA training between September or October 2024, when he commenced working at the premises, and 30 January 2025. (Mr Kahui also claims to have received no RSA training since that date, but it is unnecessary to make a finding in relation to this contested issue);
- c. the lack of evidence of effective supervision of staff of the premises to ensure compliance with RSA principles and practices; and
- d. the licensee's policy that three signs of intoxication must be identified before an assessment is made that a person is intoxicated – an approach that may discourage staff from actively checking for signs of intoxication.

76. In support of a finding that the licensee did not authorise or permit the barman's contravening conduct, the Commission has had regard to the following:

- a. immediately prior to being engaged as a supervisor by the licensee, Mr Kahui had been employed in a supervisory capacity in another Alice Springs Iris Capital group licensed venue, and had 15 years of experience in the hospitality industry;
- b. the licensee conducts mandatory RSA training for its staff every six months;
- c. Mr Kahui failed to attend the November 2024 training due to illness;
- d. on 30 January 2025 the licence nominee was on the premises and actively engaged with customers, including the patron;
- e. on 30 January 2025 there were sufficient staff on duty at the premises to maintain surveillance of patrons;
- f. on 30 January 2025 an RSA marshal was present, whose duties included the screening of patrons on entry;
- g. on 30 January 2025 the licensee excluded or removed 19 people from the premises;
- h. the licensee maintained a security register that recorded instances of removal and exclusion of patrons;
- i. the general impression gained from viewing the CCTV footage was that on 30 January 2025 business at the Todd Tavern was brisk, with at least twenty patrons on the premises at any one time, the atmosphere was convivial, there were no apparent instances of violent, quarrelsome, disorderly or uncontrolled behaviour, and staff were actively and appropriately engaging with patrons;

77. Applying the Briginshaw test, the Commission is on balance not satisfied that the licensee expressly, tacitly or impliedly authorised or permitted the barman's contravening conduct.
78. The Commission upholds the complaint on the ground specified in the complaint that the licensee's employee contravened a provision of the Act.
79. The Commission is satisfied in accordance with s 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.

DISCIPLINARY ACTION

80. The Commission accepts the submission of the Director, and accepted by counsel for the licensee that in imposing disciplinary action, the Commission should impose a modest monetary penalty.
81. Despite upholding this complaint, the Commission acknowledges that the licensee's surveillance of patrons has markedly improved since the Commission last upheld a similar complaint against a former licensee of the Todd Tavern in 2018. The Commission commends the licensee for requiring its staff to undertake substantial RSA training every six months. Finally, although the Commission has found that the barman was unjustified in serving the patron, this was not a case of blatant or wilful disregard for the provisions of the Act, but a matter at the lower end of objective seriousness on the scale of reckless misconduct.
82. Accordingly, the Commission has determined to take the disciplinary action set out at the commencement of this decision notice.
83. In exercising its powers and performing its functions to determine this complaint, as is required of it by s 3(4) of the Act the Commission has had regard to the primary and secondary purposes of the Act, and has done so in a way consistent with those purposes.

NOTICE OF RIGHTS

84. Section 31(1) read with s 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. In accordance with s 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
CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
20 June 2025

On behalf of Commissioners Goldflam, Abbott-McCormack and Stedman