

# Liquor Commission

## Decision Notice

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<b>MATTER:</b>	<b>DISCIPLINARY ACTION PURSUANT TO THE LIQUOR ACT</b>
<b>REFERENCE:</b>	<b>LC2018/054</b>
<b>LICENCE NUMBER:</b>	80100335
<b>LICENSEE:</b>	<b>Halikos Hospitality Pty Ltd</b>
<b>PREMISES:</b>	<b>Lizards Bar and Restaurant</b> 105 Mitchell Street DARWIN NT 0800
<b>LEGISLATION:</b>	Sections 31A(6) and Part VII, Div. 2 of the <i>Liquor Act</i> .
<b>HEARD BEFORE:</b>	Ms Jodi Truman (Deputy Chairperson) Mr Russell Goldflam (Legal Member) Mr Kenton Winsley (Health Member)
<b>DATE OF HEARING:</b>	28 June 2018
<b>DATE OF DECISION:</b>	2 July 2018

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### Decision

1. For the reasons set out below, the Commission is satisfied that on 4 November 2017 an employee of the licensee sold liquor to 10 individuals without scanning an approved identification of the individuals with the scanner contrary to section 31A(5)(a) of the *Liquor Act* ("the Act").
2. As a result the Commission upholds the complaint against the licensee.
3. The Commission is satisfied disciplinary action should be taken against the licensee and imposes a monetary penalty upon the licensee of 20 penalty units.
4. The monetary penalty is due and payable by the licensee within 28 days of 28 June 2018 (i.e. the date upon which notice of the penalty was given to the licensee by the Commission).

## **Reasons**

### **Background**

5. Halikos Hospitality Pty Ltd is the Licensee for Liquor Licence 80100335 (the licence), trading as Lizards Bar and Restaurant (“the premises”), situated at 105 Mitchell Street, Darwin, NT 0800. The Acting Nominee is Mr Geoffrey Weekes.
6. On 4 November 2017, the Northern Territory Police reported a potential breach of the conditions of the licence to the Director-General of Licensing (“the Director-General”) through the SupportLink reporting system (“the referral”). The referral was in relation to an allegation that is not the subject of any relevant matter presently before the Commission and not relevant to these findings.
7. As a result of that referral, Senior Compliance Officer Steven Holehouse (“SCO Holehouse”) reviewed CCTV footage taken at the premises, in particular the bottle shop section of the premises.
8. During the course of observing that footage, SCO Holehouse formed the opinion that on a number of occasions whilst the employee of the licensee was conducting particular sales, he did not conduct scanning procedures as per the Banned Drinker Register (“BDR”) requirements.
9. As a result of the opinion formed by SCO Holehouse, a complaint was subsequently accepted by the Director-General in accordance with section 68(3)(a) of the Act and a notice of the complaint was provided to the licensee and the nominee.
10. Pursuant to section 67(3)(a) of the Act, the ground alleged in the complaint dated 19 December 2017 was that the licensee had contravened a provision of the Act. The relevant provision of the Act alleged to have been contravened was section 31A(5)(a), namely that an authorised seller sold liquor to an individual without scanning an approved identification of the individual with the scanner. The particulars of the complaint alleged that this occurred with respect to 10 separate transactions with individuals.
11. The Licensee responded to the complaint on 28 December 2017 acknowledging that the employee sold liquor to individuals on six separate occasions without scanning an approved identification.
12. On 3 April 2018 the Director-General formed the view that the licensee had committed a breach of the Act as alleged, i.e. a breach of section 31A(5)(a) of the Act, and determined that disciplinary action should be taken against the licensee.
13. The Act requires that the Director-General refer a complaint to the Commission for disciplinary action to be taken against the licensee in relation to that ground should the Director-General consider that appropriate.

14. As a result on 21 May 2018 this complaint was referred to the Commission pursuant to section 68(5)(b)(iii) of the Act for disciplinary action to be taken against the licensee.
15. Pursuant to section 69(4) of the Act, upon receipt of such a referral, the Commission must conduct a hearing for deciding the complaint and upon completion of the hearing either dismiss the complaint or uphold the complaint and take specified disciplinary action against the licensee. This must be done by written notice to the Director-General and the licensee.

## **Public Hearing**

16. In understanding these reasons, it is important that it be kept in mind that this is not a prosecution of a breach of section 31A(5)(a) of the Act. These are proceedings brought by the Director-General under Part VII of the Act with respect to enforcement provisions for licences and special licences.
17. Section 69 of the Act provides the Commission must conduct a hearing for deciding the complaint. The matter was therefore listed for hearing on 28 June 2018. Notice of the hearing was given to the licensee on 31 May 2018 and the matter proceeded as a hearing on the scheduled date and time.
18. At the hearing, the Director-General appeared via her representative, namely Ms Anna McGill. The licensee appeared via Mr Geoffrey Weekes who is the Acting Nominee and Executive General Manager of the licensee. Due to admissions made at the commencement of the hearing, no oral evidence was formally given however a number of documents were tendered and submissions were made.

### Formal admissions

19. As noted, shortly after the commencement of the hearing the Commission was advised by Mr Weekes that the licensee did in fact admit to all ten (10) occasions of sales without scanning. It became clear to the Commission that when the earlier admissions were made to only six (6) transactions, this was on the basis of confusion as to the precise timings of those transactions. The Commission accepts that some of the timings on the BDR transaction list and the CCTV recording and then the sales records did not correspond easily to one another. The Commission therefore accepted the admission to all 10 occasions to have been made in a prompt and reasonable manner.
20. The following were the relevant transactions relied upon in support of the complaint and were the transactions admitted to by the licensee as having occurred in breach of section 31A(5)(a) of the Act:
  - a. Transaction 1 occurring at or about 2100 hours where female purchases 2 x bottles of white wine. Sales Assistant, Khoa Quang LE (“the employee”) is seen to proceed with the sale and at no time conduct a scan of the person’s identification to determine whether the sale was permitted.

- b. Transaction 2 occurring at or about 2102 hours where patron purchase 6 pack of Melbourne Bitter and 4 pack of Pimms. The employee accepts the identification from the patron, places the identification on the scanning device, clears the previous 'Sale' screen and presses the Scan tab on the monitor. Whilst the monitor is in the process of conducting the scan, the employee processes the sale and removes the identification from the scanner before the scan is complete and hands the identification back to the male.
- c. Transaction 3 occurring at or about 2118 hours where male purchases 1 x bottle of wine using cash. The employee accepts the cash, proceeds with the sale and at no time conducts a scan of the person's identification to determine whether the sale was permitted.
- d. Transaction 4 occurring at or about 2124 hours when male purchases 6 pack of Mid Strength. The employee conducts the EFTPOS sale and at no time conducts a scan of the person's identification to determine whether the sale was permitted.
- e. Transaction 5 occurring at or about 2126 hours when patron purchases 1 x bottle of wine using EFTPOS transaction. The employee proceeds with the sale and at no time conducts a scan of the person's identification to determine whether the sale was permitted.
- f. Transaction 6 occurring at or about 2141 hours when patron purchases 1 x bottle of scotch. A crowd controller/security of the premises obtains female identification and places the identification on the BDR scanner, clears previous 'Sale' screen, and presses 'Scan' tab on monitor. The BDR commences scanning whilst the employee finalises the sale. The BDR monitor displays a screen requesting the identification details be manually entered. The crowd controller/security removes the identification from the scanner, inspects the identification and returns it to the female without manually correcting the details and scanning the identification to determine whether the sale is to proceed. The employee does not ensure the scan occurs prior to conducting the sale.
- g. Transaction 7 occurring at or about 2147 hours when a male purchases 6 pack of Peroni. The employee places the identification on the scanner and commences the scanning procedure. The BDR monitor displays the manual entry screen as the employee conducts the EFTPOS sale and at no time conducts a scan of the person's identification to determine whether the sale was permitted.
- h. Transaction 8 occurring at or about 2149 hours when a male purchases a carton of Corona using cash. The employee accepts the cash, proceeds with the sale and at no time conducts a scan of the person's identification to determine whether the sale was permitted.
- i. Transaction 9 occurring at or about 2151 hours when patron purchases single cans of Wild Turkey and Bundy. The female provides identification which the employee accepts and places on scanner and commences

scanning. The female pays with cash. The BDR monitor displays to manually enter the identification information. The employee removes the identification from the scanner and returns it to the female without manually correcting the details and scanning the identification to determine whether the sale is to proceed.

- j. Transaction 10 occurring at or about 2158 hours when male purchases cask of wine. The employee conducts an EFTPOS transaction to pay for the wine but at no time does the employee carry out a scan of the person's identification to determine whether the sale was permitted.

21. In summary it was admitted by the licensee that between 2100 hours and 2200 hours the employee of the licensee failed to comply with section 31A(5)(a) by:

- a. On six (6) separate occasions not scanning approved identification at all. These being transactions 1, 3, 4, 5, 8 and 10 as identified above.
- b. On one (1) occasion not completing the scanning of the approved identification before selling the liquor. This being transaction 2 as identified above.
- c. On three (3) separate occasions commencing the scanning of approved identification but failing to complete the scanning before selling the liquor. These being transactions 6, 7 and 9 as identified above.

## **Determination of the Complaint**

22. As earlier noted, early in the hearing the licensee admitted all 10 separate transactions which were particularised in the complaint as being the occasions when the licensee failed to comply with section 31A(5)(a) of the Act. The hearing before the Commission was therefore truncated by virtue of these admissions resulting in it no longer being a question whether the complaint should be upheld. The licensee's admissions meant the complaint **should** be upheld and the question for the Commission to determine thereafter was what disciplinary action should be taken in relation to the contravention of the Act.

23. In this regard the Commission was reminded by Ms McGill of the purpose of the BDR provisions within the Act being to identify those persons who may be prohibited from purchasing liquor. Ms McGill asked that the Commission consider the risk posed to the community if licensees fail to comply with the BDR provisions in light of the public policy behind the provisions.

24. Ms McGill reminded the Commission that with respect to this complaint there had been a number of occurrences within an hour which should be taken into account. However Ms McGill also noted that there was no adverse compliance history for the licensee and that in fact this was the first breach of the BDR provisions by a licensee since their introduction on 1 September 2017. The Commission was also later advised there had not been a previous complaint lodged in relation to the earlier BDR provisions introduced in 2012. There are therefore no comparative penalties for the Commission to consider with respect to this complaint.

25. Mr Weekes then made submissions to the Commission on behalf of the licensee. Mr Weekes advised that the licensee “respected” the BDR provisions and their role in keeping the community safe. The licensee also respected Licensing NT and their role and worked hard to keep a good working relationship with both Licensing NT and the NT Police.
26. Mr Weekes submitted that this was not a “deliberate attempt to reject the BDR” by the employee and submitted also; “I don’t think it was negligent. It just happened”. Mr Weekes advised that he had spoken to the employee involved who he described as “normally responsible”, “hard-working”, “not a difficult staff member”, “always wants to work”. He stated that the employee was “remorseful” and “very stressed” but “can’t explain” why he did what he did.
27. Mr Weekes stated that the action had been taken against the employee by way of a “written warning” and that training had been provided to all staff (including the employee) in relation to their obligations under the BDR provisions. The employee had been required to undertake his RSA again and the CCTV footage from 4 November 2017 was in fact used as a “training video” for staff as to “what **not** to do” with the events having “also taught us (i.e. management) lessons and showed us we need more staff”.
28. Mr Weekes asked the Commission to consider the good history of the licensee and the fact that this “also happened relatively new into the BDR period”. Mr Weekes stated:
- “These are good people, a good company with a good history and a clean slate. We do try to do the right thing and we are honest when we don’t do the right thing”.
29. Mr Weekes noted the licensee was a good corporate citizen and detailed extensive donations made by the licensee in the community. Mr Weekes identified it had been an intentional decision not to employ a lawyer to represent the licensee and that they wished to “put our hand up. We are ashamed – absolutely”.
30. Whilst the Commission was encouraged by the frankness of Mr Weekes as to the licensee’s acceptance of the inappropriateness of the conduct involved, the Commission was particularly concerned that this complaint identified ten (10) separate transactions in a single hour where the BDR provisions were not complied with. The significant question in the mind of the Commission therefore was whether this showed a pattern of the “typical” manner in which the licensee traded or whether this hour represented an anomaly?
31. As the evidence showed (and as admitted by the licensee) in the space of 49 minutes there were 13 transactions and of those 13 transactions, 8 were in contravention of the BDR provisions and therefore the Act. An obvious inference therefore that could be drawn by that evidence was that this was not “inadvertent” or “careless” but that this was in fact the manner in which this licensee usually trades.

32. In relation to this issue, Mr Weekes stated that he could not say to the Commission whether the practices of the licensee were “good or bad prior to these events as I was not there”, but that it was clear that “we could have complied and we did not”. Mr Weekes went on to state:

“However I can say that today we are trading and putting in practices that our staff **do** undertake the checks”.

33. Mr Weekes stated that he could only answer as to what the licensee can do “moving forward” and as for the transactions that occurred “we don’t have an answer”, but that it is “my responsibility to make sure it does not happen in future”.

34. In relation to the Commission’s concerns with respect to the licensee’s usual course of conduct with respect to the BDR provisions, information was received from SCO Holehouse that Licensing NT had “no reason to doubt that (the licensee) was using the BDR correctly”. Mr Holehouse stated that:

“Lizards come under regular inspections both covert and non-covert and also desktop and there was no reason to investigate them on their use of the BDR”.

Further:

“I’ve done covert monitoring of (the employee) and I was satisfied that (the employee) was compliant with the BDR”.

35. SCO Holehouse stated that his investigation of the licensee with respect to these contraventions had been made easier by virtue of the fact that the licensee had (despite not being required to do so) placed the BDR unit under the CCTV so that it could be seen and that he had:

“No reason to believe that the same number of errors occurred on another occasion since as a result of our inspections”.

36. Whilst the Commission remains concerned about the fact that in as little as 49 minutes there were 8 out of 13 transactions that were not in compliance with the BDR provisions of the Act, the case before the Commission on behalf of the Director-General is that there is “no reason to believe” that this is the usual course of conduct of the licensee. The Commission must therefore deal with the case as it has been presented.

37. In this regard, 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 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.

38. 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.
39. A further aspect for this Commission to consider is, as was inferred from the information given by SCO Holehouse, these breaches are not easy to detect and therefore must be taken seriously when they are found to have occurred.
40. The Commission notes that with respect to the disciplinary action to be taken against the licensee; the Director-General has recommended (as is required under section 69 of the Act) that the disciplinary action that should be taken against the licensee is the imposing of a monetary penalty under section 67(2) of the Act.
41. The Commission notes that Ms McGill advised the Commission that it was her instructions from the Director-General to submit that in fact the Commission should impose ten (10) separate monetary penalties upon the licensee for each separate transaction. The Commission notes that under section 70(2) of the Act the amount of monetary penalty;
  - a. "... must not exceed the lesser of the following:
    - i. The maximum amount of the fine specified for the offence;
    - ii. 100 penalty units".
42. In this case, the maximum amount of the fine specified for an offence against section 31A(5) is 100 penalty units. The Commission notes that a penalty unit is \$154. Ms McGill confirmed to the Commission that her submission was that the Commission could in fact impose 10 separate monetary penalties against the licensee, i.e. 10 separate maximums of \$15,400 or a maximum for all of \$154,000.
43. The Commission does not accept that submission. The case conducted before the Commission was one where a single complaint was laid against the licensee that alleged "a" single breach of section 31A(5)(a) of the Act. The particulars set out in the complaint did not specify 10 separate occasions although it is clear that the licensee was aware of the 10 transactions that were being referred to.
44. Given the circumstances of one complaint with one breach alleged, the Commission has determined that only one (1) monetary penalty can be imposed for this breach, i.e. a maximum penalty can be imposed of \$15,400. The Commission however notes that the maximum should be imposed for the most serious breaches and for the most serious offenders. That is not the set of circumstances that the Commission is dealing with here.

45. Taking into account the admissions made by the licensee, the fact that this breach occurred only a relatively short period of time after the provisions of the BDR had been commenced, the actions taken by the licensee since this breach came to light and the prior good history of the licensee in terms of its conduct under the conditions of its liquor licence the Commission has determined to impose a monetary penalty of 20 penalty units against the licensee, i.e. a sum of \$3,080.
46. Before finalising these reasons, and as was stated to the licensee at the conclusion of the hearing, this Commission wishes to make clear to this particular licensee and all licensees (and their employees) that the provisions of the Banned Drinkers Register ("BDR") ***must*** be taken seriously. This decision should serve as a warning to licensees that breaches will not be tolerated and now that the provisions have been in place since 1 September 2017, i.e. a period of almost 12 months, there will no longer be any leniency extended for failures to comply. The provisions are well known. Their compliance is simple. Their enforcement will be taken seriously due to their significance in keeping communities safer.

### **Notice of Rights:**

47. Section 120ZA of the Act provides that a reviewable decision is a Commission decision that is specified in the Schedule to the Act. A decision to take disciplinary action against the licensee pursuant to section 69(3) of the Act is specified in the Schedule and is a reviewable decision.
48. Section 120ZC of the Act provides that a person affected by this decision may seek a review before the Northern Territory Civil and Administrative Tribunal. Any application for review of this decision must be lodged within 28 days of the date of this decision.
49. For the purpose of this decision, and in accordance with section 120ZB(1)(a) of the Act, the affected person is the licensee



JODI TRUMAN  
Presiding Member  
Deputy Chairperson