

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

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

REFERENCE: LC2020/020

LICENCE NUMBER: 80100957

LICENSEE: JTR Investments Pty Limited

PREMISES: Hidden Valley Tavern
644 Stuart Highway
BERRIMAH NT 0828

LEGISLATION: Section 165 of the *Liquor Act 2019*

HEARD BEFORE: Mr Richard Coates (Chairperson)
Ms Elizabeth Stephenson (Health Member)
Ms Amy Corcoran (Community Member)

DATE OF HEARING: 14 July 2020

DATE OF DECISION: 27 July 2020

DECISION

1. For the reasons set out below, the Northern Territory Liquor Commission (the Commission) upholds the complaint against JTR Investments Pty Limited (the licensee) and is satisfied that between 9 December and 15 December 2019 inclusive, the licensee sold liquor to individuals without completing a scan of an approved identification on the Banned Drinker Register (BDR) identification system on 192 separate occasions contrary to the provisions of section 130 of the *Liquor Act 2019* (the Act).
2. The Commission is satisfied disciplinary action should be taken against the licensee and, pursuant to section 165(2)(b) of the Act, suspends the condition of the licence permitting Takeaway Trade for a period of 48 hours commencing 9:00am on Saturday 22 August 2020.
3. Pursuant to section 165(2)(a) of the Act, the Commission also imposes the following additional condition on the licence:

“The licensee is to install, maintain and operate a camera surveillance system on the licensed premises in compliance with the requirements and guidelines prescribed from time to time by the Director of Liquor Licensing (the Director) including CCTV camera surveillance at the point of sale designed and operated so as to record information regarding the items purchased, the use of the BDR scanner, interactions between the purchaser and the salesperson, the appearance of the purchaser and the appearance of the salesperson. The licensee must retain all data captured by the camera surveillance system for not less than 14 days. The licensee must maintain a register of the CCTV including a daily log of the date and time check, as well as any use of the system by the licensee, an employee of the licensee, inspector or police officer. The system is to be protected from unauthorised use and the register must be produced to the Director upon request”.

STATEMENT OF REASONS

BACKGROUND

4. The licensee holds the liquor licence for the premises known as Hidden Valley Tavern (the premises), situated at 644 Stuart Highway, Berrimah, NT, 0828. The licence was issued on 28 October 2016 and the current Nominee is Mr Ronald Townsend who is also a director of the licensee company.
5. On 1 September 2017 the Northern Territory government established the current Banned Drinker Register (BDR), a scheme the purpose of which is to prevent persons identified as harmful drinkers from purchasing liquor. The scheme was supported by section 31A of the *Liquor Act 1978* (now section 130 of the Act), which inserted into Northern Territory takeaway liquor licences a condition providing that licensees and their employees must not sell takeaway liquor without scanning a customer’s photographic identification.
6. The scanning device is linked to the BDR, and, if the customer is on the BDR, the seller is alerted and must refuse the sale. As the Commission has previously stated:

“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”¹.
7. On 16 December 2019, Senior Compliance Officer, Marco Franchi requested till tapes and CCTV footage from Hidden Valley Tavern for the time period 9 December 2019 to 15 December 2019 (inclusive). In January 2020, Licensing NT received the requested data.

¹ Northern Territory Liquor Commission *Disciplinary action pursuant to the Liquor Act 1978: Halikos Hospitality Pty Ltd* (LC2018/054, 2 July 2018) at [37]

8. In the footage for the period 9 December 2019 to 12 December 2019 (inclusive), it was observed that liquor was sold to individuals without using the BDR identification system to complete a scan of the individual's form of identification on ninety three (93) occasions.
9. As a result, Compliance Support Officer, Melissa Russell lodged a complaint with a Delegate of the Director on 21 February 2020 in accordance with section 160 of the Act. The complaint alleged that the licensee or employee of the licensee contravened section 130 of the Act.
10. On 21 February 2020, a Delegate of the Director accepted the complaint pursuant to section 161(2) of the Act and gave the licensee and nominee written notice of the substance of the complaint, his intention to investigate the complaint and the licensee's right to respond to the complaint pursuant to section 162 of the Act.
11. Following this, a review of the footage for the period 13 December 2019 to 15 December 2019 (inclusive), showed that on a further ninety nine (99) occasions, the licensee (or an employee of the licensee) failed to complete a scan of an approved identification on the BDR identification system. This information was provided to the licensee on 11 March 2020.
12. The licensee provided written response to the complaint on 19 March 2020.
13. The allegation against the licensee being:

"Between 9 December and 15 December 2019, the licensee or an employee of the licensee contravened section 130 of the Act on 192 separate occasions, by selling liquor to an individual without completing a scan of an approved identification".

PUBLIC HEARING

14. The matter proceeded as a public hearing on 14 July 2020. The Director was represented by Mr Bernard Kulda, Manager Compliance – Liquor, Tobacco and Community Gaming and Mr Ronald Townsend appeared for the licensee together with his legal representative Mr Anthony Downs.
15. The complaint proceeded before the Commission on the basis of the agreed facts and the licensee admitted the 192 offences of failing to properly scan the approved identification of patrons purchasing takeaway liquor contrary to section 130 of the Act.
16. The three employees of the licensee who had failed to scan their customers' identification details into the BDR system each gave evidence before the Commission. They were Ms Tamara Holten, Mr Toby Brown and Ms Jody Rayney. They each accepted responsibility for not complying with the BDR requirements but said it was not a deliberate decision to provide liquor to a known banned drinker but rather due to a complacent attitude toward regular customers and a desire to provide prompt service.

17. The Commission accepts that each of these employees were genuinely remorseful for their actions and for the serious consequences that have been visited upon their employer, Mr Townsend. They each offered to tender their resignations but the licensee has decided to keep them on. The Commission is prepared to accept their assurances that they now appreciate the seriousness of their past failures and that they will comply with the BDR requirements in the future.
18. Mr Townsend also gave evidence. He was interstate at the time these breaches occurred but, to his credit, he did not try to suggest that the offences only occurred because of that absence. He was also genuinely remorseful for this serious breach of his responsibilities under the Act and properly admitted that the “buck stops with me as licensee”. He has had a long and proud history within the Northern Territory hospitality industry and the Commission has afforded him credit for his relatively good compliance record.
19. The Commission also heard evidence from Mr Townsend of the financial hardships that have confronted his business, the most recent of which has been a downturn in sales due to the COVID-19 Pandemic. The Commission accepts the submission made by his counsel that this tavern is operated as a family business with a close and supportive relationship between management and staff.
20. The licensee’s counsel made the following submission in relation to the extenuating circumstances surrounding the commission of these breaches of the BDR procedures:
- “In summary, the reasons for what has occurred are as follows:
- a) My client’s trust that his employees would follow the procedures;
 - b) My client’s lack of ability to monitor and supervise staff although he honestly believed that they were being compliant;
 - c) Staff being busy with multiple customers and orders and believing that they had completed the procedures required;
 - d) Inadvertent oversight, mistake and human error;
 - e) Complacency in dealing with long standing regular customers;
 - f) Sales to staff where staff believe that if other staff were on the BDR Register then they would not be able to be employed”.
21. However the licensee called three of the relevant staff members to give evidence, primarily in relation to their remorse for the trouble they had caused their employer, but when further questioned by the Commission it became clear that these breaches arose from systematic failures and were not a “one off” event over this particular week. It may be that the pressure on staff was greater at this particular time, in the lead up to the festive season, so it is impossible to ascertain the extent and for what prior period these breaches had been occurring. The Commission will deal with this disciplinary matter on the basis of the admitted breaches but will also have regard to the fact that these occurred due to a long standing systemic failure.

22. The Commission is concerned with the number of transactions admitted in respect of this complaint. There were 192 transactions within a 6 day period. There is no evidence to suggest that the licensee's staff were not following the appropriate BDR procedures knowing that a banned drinker would thereby obtain liquor. However, it is possible that this packaged liquor outlet's cavalier attitude to the requirements of the BDR could have encouraged problem drinkers to try their luck at the Hidden Valley Tavern so there is a real risk that banned drinkers would have been able to purchase liquor from this outlet contrary to the intended purpose of section 130 of the Act.

23. As was noted by the Commission in the Darwin River Tavern decision²:

"The BDR provisions represent an important part of the provisions under the 1978 Act. 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 a significant 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".

24. In that decision the Commission also helpfully detailed the circumstances of a number of earlier decisions of the Commission whereby some lenience was afforded to licensees in the period shortly after the re-introduction of the BDR however, it was made patently clear in July 2018 in the decision of Halikos Hospitality Pty Ltd that licensees were warned that the period of leniency was over and that further breaches would not be tolerated³.

25. The evidence against the licensee in this matter largely derives from CCTV footage which the licensee had installed for security purposes. During the course of the hearing, the Commission asked the licensee whether he would have any objection to the Commission imposing a condition requiring it to maintain CCTV coverage at the point of sale for takeaway liquor such that compliance with BDR requirements could be monitored in future. The licensee indicated its agreement to such a proposed condition. The Commission has accordingly determined to impose the additional condition of licence as outlined in paragraph 3 of the decision notice.

² Northern Territory Liquor Commission *Disciplinary action pursuant to the Liquor Act 2019*: Ocean View Developments Pty Ltd (LC2019/130, 28 January 2020) at [47] and [48]

³ Northern Territory Liquor Commission *Disciplinary action pursuant to the Liquor Act 1978*: Halikos Hospitality Pty Ltd (LC2018/054, 2 July 2018) at [46]

26. The Darwin River Tavern decision is the most recent case of a similar nature to this matter. In that case there were 138 breaches of the BDR over a period of 26 days and the Commission imposed a suspension of the licence in relation to takeaway sales for a period of 48 hours. In our view the objective seriousness of the offending behaviour is greater in the present case by virtue of the number of breaches over a shorter period of time. However, the Commission is prepared to accept that there was a greater deal of cooperation with licensing officers in this case and as previously indicated we were impressed by the genuinely remorseful attitude of the licensee and its staff to their failure to comply with the requirements of the BDR.
27. Whilst Mr Downs submitted that the matter could be dealt with by a monetary penalty, we do not accept that such a disposition would be within the appropriate range of disciplinary options available to the Commission. The legislature has determined that the BDR is an important cornerstone in the strategy to reduce the disruptive consequences of the Territory's harmful drinking culture. There is an expectation that licensees will play a part in mitigating the harmful effects of liquor sales within our community.
28. Having regard to the number of breaches involved over a relatively short period of time and the importance of these provisions within the framework of alcohol policy in the Northern Territory, the Commission has determined that suspension of licence is the only appropriate disciplinary disposition in this type of case. Having also considered all matters raised in mitigation on behalf of the licensee, the Commission has determined that the licence should be suspended for 48 hours.
29. The Commission therefore suspends the condition of the licence permitting takeaway sales for 48 hours to take effect as outlined in paragraph 2 of this Decision Notice.

NOTICE OF RIGHTS

30. Section 31(1) read with section 166(7) of the Act provides 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.
31. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Director and the licensee.



RICHARD COATES
PRESIDING MEMBER
CHAIRPERSON
27 July 2020

On behalf of Commissioners Coates, Stephenson and Corcoran