

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER:	DISCIPLINARY ACTION PURSUANT TO THE LIQUOR ACT 1978
REFERENCE:	2019/132
LICENCE NUMBER:	81118876
LICENSEE:	D & C Gourmet Pty Ltd
PREMISES:	Kim's Fish n Chips Shop 10-14 Stokes Hill DARWIN NT 0800
LEGISLATION:	Sections 31A(5)(a) and Part VII of the <i>Liquor Act 1978</i> .
HEARD BEFORE:	Ms Jodi Truman (Deputy Chairperson) Ms Elizabeth Stephenson (Health Member) Ms Sandra Cannon (Community Member)
DATE OF HEARING:	22 January 2020
DATE OF DECISION:	28 January 2020

Decision

1. For the reasons set out below, the Commission upholds the complaint and is satisfied that on 5 January 2019 the licensee sold liquor to an individual without scanning an approved identification of the individual with the scanner contrary to section 31A(5)(a) of the *Liquor Act 1978* ("the 1978 Act").
2. For the reasons set out below and on the basis of the evidence provided to the Commission and the admission made by the licensee is further satisfied and finds that between 1 September 2017 and 4 January 2019, the licensee sold liquor to individuals on at least 10,550 occasions without scanning an approved identification of the individuals with the scanner contrary to section 31A(5)(a) of the 1978 Act.

3. As a result, the Commission is satisfied disciplinary action should be taken against the licensee as follows:

- a. Suspension of the liquor licence for a period of 28 days commencing at 10.00am on 29 February 2020 and up to and including 9.59am on 28 March 2020; and
- b. Imposing into the liquor licence the following additional conditions:

Point of Sale and CCTV Requirement

- The licensee is to install an electronic point of sale system satisfactory to the Director of Liquor Licensing (“the Director”) that enables a clear and accurate identification of date, time and items sold in each transaction. The system must be programmed so that food, non-alcoholic and alcoholic items may be readily identified in each transaction and a report must be able to be readily obtained in electronic format that identifies each transaction, the products, date and time. The point of sale system is to be checked daily for date and time accuracy and adjustments made accordingly, a register of these checks are to be maintained and provided to the Director upon request.
- The licensee is to install, maintain and operate a camera surveillance system on the licensed premises in compliance with the requirements and guidelines prescribed by 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 register must be produced to the Director upon request.

Reasons

Background

1. D & C Gourmet Pty Ltd (“the licensee”) holds the liquor licence for the premises known as “Kim's Fish n Chips” (“the premises”) located at Shop 10-14 Stokes Hill Wharf, Darwin NT 0800. The Nominee is Ms Kim Ly (“Ms Ly”).
2. On 1 September 2017, the Northern Territory government established the current Banned Drinkers Register (“BDR”), a scheme the purpose of which is to prevent persons identified as harmful drinkers from purchasing liquor. The scheme was supported by s31A of the 1978 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.
3. 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.

4. Whilst off duty on Saturday 5 January 2019, Senior Compliance Officer Marco Franchi (“SCO Franchi”) attended the premises. At 6:35 pm, SCO Franchi approached the main counter of the premises where a lady now known to the Commission as Ms May Anderson sold a 375ml bottle of Crown Lager Beer (4.9% Alcohol) to SCO Franchi without scanning an approved form of identification through the BDR system. It is admitted that Ms Anderson is an employee of the licensee.
5. As a result, SCO Franchi immediately approached the Nominee and told her of the breach of section 31A(5)(a) of the 1978 Act by selling liquor to him without first scanning an approved identification through the BDR system. At the same time SCO Franchi provided Ms Ly with a verbal direction to scan every sale of liquor through the BDR in accordance to section 31A of the 1978 Act.

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

6. On 7 January 2019, a complaint was made by SCO Franchi to the Director-General of Licensing (“the Director-General”) against the licensee. The ground for the complaint was a breach of section 67(3)(a) of the 1978 Act, namely contravening a provision of the Act by virtue of the sale on Saturday 5 January 2019, at 6:35 pm. The complaint was accepted by the Acting Deputy Director-General (Operations) on 11 January 2019.
7. On 11 January 2019, SCO Franchi delivered a letter to Ms Ly advising that a complaint had been lodged alleging breach of section 31A(5)(a) of the 1978 Act and giving the licensee an opportunity to respond in writing. Nil response was received in the time given.
8. As a result of the events that took place on 5 January 2019, SCO Franchi commenced an investigation and as part of that investigation requested various items to be produced by the licensee including CCTV footage and till tapes for all transactions between 29 December 2018 and 8 January 2019.
9. In addition, SCO Franchi subsequently requested the licensee produce documents related to the quantity of liquor purchased for all takeaway liquor transactions from 1 September 2017 to 20 January 2019.
10. During the course of his investigation SCO Franchi examined correspondence and emails between Licensing NT and the licensee regarding the re-implementation of the Banned Drinker Register in the Northern Territory by 1 September 2017. On 3 May 2017, the Licensee wrote to Licensing NT in relation to the requirements for the installation of the BDR scanning equipment. In follow up correspondence, the licensee was reminded of the legislated requirement for all alcohol sales to be scanned in accordance with section 31A of the 1978 Act. The BDR scanning equipment was subsequently installed within the licensed premises in readiness for the BDR 'Go-Live” date being 1 September 2017.
11. On 21 January 2019, SCO Franchi received a USB stick from Ms Ly said to contain the footage requested. An examination of the footage revealed it mainly covered the BDR unit with minimal footage of the liquor fridges and no footage of customers served. In addition the footage was post event footage commencing at 6.30pm on 6 Jan 2019 and completing at 9.58pm on 15 January 2019.
12. The footage provided did not cover the incident involving SCO Franchi on 5 January 2019 nor did it cover the majority of the time period, namely 12 December 2018 to 8 January 2019 inclusive, as had been requested. In addition, no till tapes were provided as requested.
13. Inquiry was made of the licensee and Mr Ron Choong, Director of the Licensee, (“Mr Choong”) later advised that the licensee did not keep any till tapes but instead “tally up all liquor and food sales at the end of the day” and then separate 10% which is paid as GST.

14. As a result of the lack of till tapes and CCTV footage, SCO Franchi searched the NT Government Alcohol Permit Management System (“APMS”) database and identified records which show as follows:
 - a. 390 entries (BDR scans) for the sale of liquor products were made during the 16 month period between 1 September 2017 and 6 January 2019 (a total of 422 days) (excluding Mondays when the premises are closed). This is the equivalent of approximately 1.01 scans per day.
 - b. After the instruction was given by SCO Franchi on 5 January 2019 for every sale to follow a BDR scan, the BDR figures dramatically changed. APMS data showed that 1101 BDR scans for the sale of liquor were made during the period 6 January 2019 and 26 February 2019 (a total of 43 days (again excluding Mondays). This is the equivalent of 25.6 scans per day.
15. Based on the calculation of BDR scans post 5 January 2019, being approximately 25 scans per day, Licensing NT staff estimated the amount of liquor that was not scanned prior to 5 January 2019 was equivalent to approximately 10,550 scans. This figure was calculated simply by multiplying 25 scans per day by 422 days.
16. Although the figure of 10,550 scans was an approximate calculation made by Licensing NT staff, it was admitted by the licensee as the number of times that the licensee had failed to scan contrary to section 31A(5)(a) of the 1978 Act.
17. Having accepted the complaint and the investigation commencing, upon completion of the investigation the Director-General was empowered under section 68(5) of the 1978 Act to either dismiss the complaint or “otherwise – any of the following in relation to a ground for the complaint”: issue a formal warning; issue an infringement notice; require the licensee to enter into an undertaking; or refer the complaint to the Commission.
18. Accordingly, on 29 November 2019, pursuant to s68(5)(b)(iii) of the 1978 Act, the complaint was referred to the Commission for disciplinary action to be taken against the licensee.
19. Pursuant to section 69(4) of the 1978 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

20. 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 under Part VII of the Act with respect to enforcement provisions for licences.

21. Section 69 of the Act provides the Commission must conduct a hearing for deciding the complaint. The matter was therefore listed for hearing on 22 January 2020. Notice of the hearing was given to the licensee and the matter proceeded as a hearing on the scheduled date and time.
22. At the hearing, the Director appeared via his representative, namely Mr Mark Wood. The licensee appeared via Mr John Bradley. Both Mr Choong and Ms Ly were present before the Commission. It was admitted by the licensee that it had committed the breaches as alleged “without dispute”². As a result a summary of the admitted facts was tendered into evidence, together with written submissions in mitigation filed on behalf of the licensee. Thereafter submissions were made.
23. It was admitted before the Commission on behalf of the licensee that it had failed to scan on 5 January 2019 and further that the evidence established it had failed to scan “on perhaps 10,000 **or more** times³” (*emphasis added*). Before the Commission the solicitor for the licensee admitted the facts that the licensee had in fact failed to scan on 10,551 occasions. It is based on this admission that the Commission finds it proved that there were 10,551 occasions of failing to comply with the provisions of s.31A(5)(a) of the 1978 Act.
24. As noted earlier, on the admitted facts, the Commission upholds the complaint and finds the breaches as set out at the commencement of these reasons.

The Disciplinary Action

25. The licensee has admitted all 10,551 separate transactions as being the occasions when the licensee failed to comply with section 31A(5)(a) of the Act. The hearing before the Commission was 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.
26. With these types of breaches, it is important to remember that the purpose of the BDR provisions within the 1978 Act are to identify those persons who may be prohibited from purchasing liquor. There is a risk posed to the community if licensees fail to comply with the BDR provisions, particularly in light of the public policy behind the provisions.
27. The referral to the Commission included within it (as required under section 69(2)(a) of the 1978 Act) details about the disciplinary action that it was “recommended” that the Commission take. The recommendation in this referral was that the disciplinary action take “the form of a suspension of liquor licences for a period determined by the Commission pursuant to section 69(4)(b)(ii)”. During the course of proceedings Mr Wood was asked whether there was any

² Paragraph 19 of written submissions on behalf of the licensee

³ Paragraph 1 of written submissions on behalf of the licensee

recommendation about the length of any suspension and stated “at least one week”.

28. It should be noted at this point, as it was during the course of the proceedings, that the Commission is not bound by any recommendation made to it concerning the disciplinary action to be taken. In fact all options of disciplinary action as that term is defined under section 67 of the 1978 Act remain available to the Commission, including cancellation and disqualification.
29. In relation to the licensee’s compliance history, the following prior breach (and relevant penalty imposed) was admitted:
 - a. 9 September 2018 – sale of liquor to minors – letter of warning.
30. It should be noted however that communication with the licensee about the BDR and its obligations also took place in February 2018 when it was discovered that the BDR machine and router were disconnected in the premises and in November 2018 when a BDR audit was conducted at which time the licensee failed to comply with a request to provide its CCTV and till tapes. On neither occasion however was any action taken by Licensing NT officers or the Director-General.
31. In relation to breaches of the BDR provisions, the Commission was informed that there had been four (4) previous complaints under the 1978 Act. These related to the following premises and were as follows:
 - a. Liquorland Alice Springs – breach of section 31A(5)(d) of the 1978 Act – dismissed.
 - b. Lizards Bar and Restaurant - breach of section 31A(5)(a) of the 1978 Act being 10 separate occasions – monetary penalty of 20 penalty units was imposed.
 - c. Pigglys Pty Ltd - breach of section 31A(5)(a) of the 1978 Act being one occasion – monetary penalty of 1 penalty unit imposed (although the Commission notes the unusual features of that referral).
 - d. Northside IGA - breach of section 31A(5)(a) of the 1978 Act being 3 separate occasions – formal warning letter sent.
32. The Commission was further informed however that there were other relevant decisions relating to breaches of section 31A(5) of the 1978 concerning failure to comply with then “approved identification” provisions. This included the decision of the Northern Territory Liquor Commission in *Complaint pursuant to section 48(2) of the Liquor Act – Failure to Scan an Approved Identification Prior to the Sale of Liquor: Deemat Pty Ltd* (2 November 2011) (“the Deemat 2011 decision”).
33. In the *Deemat 2011* decision at paragraph 11 it was noted as follows:

“... previous decisions of the Commission in relation to breaches of section 31A(5)(a) of the Act were tabled. These were noted as follows:

- “A Decision of 5 November 2008 (Todd Tavern) in relation to several ID breaches on separate occasions with the Licensee incurring a two day suspension at the bottle shop;
- A Decision of 1 December 2009 (Macs Liquor Alice Springs) following a finding that seven sales were made without obtaining or scanning authorised forms of ID, the penalty imposed by the Commission was a one day’s suspension.
- Commission Decision of 17 June 2010 (Stuart Hotel) in relation to a breach of the Act where a person presented false ID in order to purchase takeaway. Commission issued a reprimand to the Licensee.”

34. The Commission has considered these decisions carefully.

35. Mr Bradley also made submissions to the Commission on behalf of the licensee. Such submissions can be summarised as follows:

- a. “Mr Choong and Ms Ly have admitted the charges without dispute”.
- b. “As the statements show, the breaches ... were done by staff despite the fact that the business owners had instructed the staff in the use of the BDR and the importance of it being used for every alcohol transaction”.
- c. The breaches “were not because of a wanton disregard for the law but through employees who are not complying with instructions from their employer”.
- d. That “the wharf precinct where the sales of this alcohol have happened is not an area that is attracting antisocial, drunken behaviour”. Reliance was placed on the statement of Mr Choong that they “have very little drunken, disorderly problems”.
- e. That “the lesser amount of disorderly behaviour caused by excessive drinking is influenced by the fact that ... the price that is being charged for a bottle of alcohol ... is being sold at up to about twice the price of what a typical bottle shop would sell the alcohol for”.
- f. “The price is more akin to what you would you would pay in a restaurant therefore people do not purchase large quantities from the outlets on the wharf”.
- g. “... even though this licence is a takeaway licence by classification, is more akin to a restaurant licence because the patrons purchase the alcohol with their meal, sit down on the wharf and eat and then leave the wharf on most occasions”.

- h. "With the logistics of the sale of alcohol at the wharf I submit that these breaches, although serious, do not have the potential social repercussions that they would have as if they were the result of sales through a conventional bottle shop outlet where logic dictates that a lot more banned drinkers would attempt to buy alcohol".
- i. "... the analysis of the BDR data, the employee data related to potential breaches and the statements from Mr Choong and Ms Anderson along with the social utility of the liquor licence, a suspension would not be in the best interest of the public nor would it assist in rehabilitation of an employee control system that had failed.
- j. "... licensee has not disputed any of the estimates that has been put forward by the Director of licensing, they have simply accepted the information as analysed and interpreted by Mr Franchi".
- k. "Apart from direct supervision at all times while the shop is open or reviewing CCTV footage for each and every day of trading there is no real way to monitor the staff 100% of the time to make sure the BDR scans are always performed. It would be advantageous if the licensee had access to some basic data such as the number of scans done each day to assist in investigating any potential breaches in the future.
- l. "More detailed information showing the time of each scan, such as what has been provided in the commission's brief, would be very helpful in identifying any employees who are not scanning through the BDR as required.
- m. "Mr Choong has advised me that it would be handy if he was able to receive at least some information on a daily basis.
- n. "Mr Choong and Ms Ly have taken this very seriously and have advised me that if there is anything the commission can provide to assist in monitoring to ensure all of the BDR scans are done that would be welcomed.
- o. "... the proven breach of 5 January 2019 is but one more of the breaches referred to in the 2nd charge, with the only real difference being that this charge is actually proven where the breaches alleged in the 2nd charge are based on analysis and probability.
- p. "... a written official warning would be an appropriate disciplinary action to take in relation to this matter along with an undertaking from the licensee to take further steps and to apply more diligence to ensure a repeat of the BDR breaches does not occur.

36. In relation to the matters raised in mitigation, the Commission notes the following:

- a. Whilst the Commission was encouraged by the frankness of the licensee in admitting the breaches alleged. This has to be seen in the context of really what appears on the evidence to be an overwhelming case.

The BDR transactions that Mr Bradley himself requested the Commission consider show a blatant disregard for complying with the BDR. It is simply unbelievable and unacceptable that there would be only one transaction recorded during the month of July 2018; a period that the Commission knows well to be notoriously busy at the Stokes Hill Wharf.

What those records show is almost complete failure to comply with the BDR from its introduction except for the first 4 days in September 2017. This is not to the credit of the licensee whatsoever in fact it represents a damning indictment.

- b. It follows that the Commission does not accept that this was “not because of a wanton disregard for the law”. In fact, as stated in the proceedings, the Commission fully accepts the submission made on behalf of the Director that the evidence shows **systemic** breaches of these provisions and that such breaches were “not inadvertent or careless”. Nothing was presented to the Commission to persuade the Commission to the contrary.
- c. The Commission does not accept, and informed the licensee it did not accept, any submission to suggest it was only the employees who failed to comply with the BDR requirements. The records simply do not support any such submission. Upon being alerted to this fact, Mr Bradley on behalf of the licensee did not seek to lead any evidence to support any such submission. As a result it was, and is, completely disregarded.
- d. It is accepted that due to the location of these premises that they are at the “lower risk” scale of premises. Whilst still a takeaway licence the premises are unusual as they operate much more like a restaurant and, as submitted on behalf of the licensee, have prices on their liquor for sale that are much more like restaurant prices than those at your usual take away licence for a bottle shop.
- e. It is accepted that as a result of its lower risk, location and prices that the potential social repercussions of these breaches are less than they would have been “if they were the result of sales through a conventional bottle shop outlet”. The risk however still remains due to the nature of this being a take away licence.
- f. It is accepted that the location for the premises are not an area known for attracting antisocial, drunken behaviour.

37. The Commission also does not accept that prior to coming before the Commission, the licensee had “taken this very seriously”. There was no evidence before the Commission of any real action having been taken by the licensee to reduce the risk of any further breaches. Further although it was submitted that “if there is anything the commission can provide to assist in monitoring to ensure all of the BDR scans are done that would be welcomed⁴”; the Commission was informed that on no prior occasion between the breaches coming to light and the filing of those submissions in mitigation by the solicitor for the licensee, had the licensee sought any assistance from Licensing NT officers. As was stated during the proceedings, the Commission places no weight whatsoever on the genuineness of the licensee’s “welcome” desire in this regard. If it were true, the licensee would have done something long, long ago.
38. Further, it appears from the evidence that on too many occasions the licensee sought to attribute blame to its employees, rather than acknowledging and accepting its obligation to ensure its employees were complying with their duties and obligations. As was stated during the proceedings, the licensee clearly has the ability to ensure staff collects payment for all sales. The licensee should therefore have the same ability to ensure staff complies with the provisions of the BDR. This is particularly so in light of the fact that the BDR provisions are required to be complied with **before** payment is received and processed. It should not be forgotten that the licensee has formally admitted these breaches “without dispute” and therefore admits that it is the licensee who has contravened this provision and that the responsibility rests with the licensee.
39. The Commission is particularly concerned that this complaint identifies 10,551 separate transactions over an almost 17 month period where the BDR provisions were not complied with. There appears to be no doubt that this was the “typical” manner in which the licensee traded.
40. As earlier noted, 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.

⁴ Paragraph 34 of written submissions on behalf of the licensee

41. 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.
42. A further aspect for this Commission to consider is, these kinds of breaches are not easy to detect and therefore must be taken seriously when they are found to have occurred.
43. The Commission notes that with respect to the disciplinary action to be taken against the licensee; the Director-General has recommended that the disciplinary action that should be taken against the licensee is suspension of its liquor licence.
44. The Commission inquired of Mr Bradley what financial impact would occur to the licensee if the Commission were disposed to suspend the licensee's liquor licence. Submissions were made as to that financial impact. Due to commercial privacy, the Commission will not detail those in these reasons, but they were taken into account.
45. Whilst credit is given to the licensee for its admissions with respect to these breaches, the facts are that these breaches are admitted to have occurred over an extended period of at least 17 months and in fact they are admitted to have occurred shortly after the provisions of the BDR commenced, in fact within days. The Commission also notes that no real action appears to have been taken by the licensee since this breach came to light. To simply say in submissions that "if there is anything the commission can provide to assist in monitoring to ensure all of the BDR scans are done that would be welcomed" does not provide any confidence to the Commission that the licensee is proactive in its understanding of the requirements placed upon it under the licence.
46. Given the number of breaches involved, the importance of these provisions under the Act and within the broader framework of alcohol policy in the Northern Territory, the Commission has determined that this matter is very serious and as a result it is completely inappropriate to simply issue a "written official warning" as suggested by the licensee's solicitor. In fact upon finding it appropriate to take disciplinary action, the Commission does not have the power to simply issue a warning. Such a penalty does not fall within the definition of "disciplinary action" under section 67 of the 1978 Act. It is unfortunate that this was not realised by the licensee or its solicitor before attending the Commission.

47. It should also be kept in mind that the seriousness of the BDR provisions and the seriousness of breaching such provisions were made patently clear by the Commission back on 2 July 2018 when the Commission issued its decision in relation to the premises known as Lizards Bar and Restaurant⁵. Before finalising those reasons the Commission stated as follows:

“ ... 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”.

48. The Commission could not have been clearer in its statement about the significance of these provisions and the seriousness of any breaches. It likewise could not have been clearer in its warning to all licensees.

49. In the decision issued by the Commission in Pigglys Pty Ltd on 20 February 2019 the Commission repeated that:

“Licensees should expect that a failure to comply with s31A will attract substantial penalties”.

50. In this referral, the Commission has before it 10,551 breaches that have been admitted by the licensee. It appears that this is the most number of failures of that section in the history of the BDR and/or the history of requirements for licensees to scan approved identification. That is a shameful record for this licensee to hold.

51. As earlier mentioned the whole range of disciplinary action is available to the Commission. Serious consideration was in fact given to cancelling the licence or even disqualifying the licensee from holding a licence. As noted above, contemplation was also given to imposing a monetary penalty. However it is not only this licensee who the Commission must consider when determining the penalty to impose, i.e. to say the Commission must not just consider specific deterrence but it must also consider general deterrence. What may be a large sum of money to one licensee may not be the same to another licensee.

52. As a result, the Commission finds that suspending the licence on this occasion is the appropriate penalty to be imposed. This is also in line with action taken in the past with respect to previous breaches of section 31A. The Commission does not however consider that one week as recommended by the Director is

⁵ Northern Territory Liquor Commission *Disciplinary action pursuant to the Liquor Act: Halikos Hospitality Pty Ltd* (LC2018/054, 2 July 2018) at [46]

sufficient. This is particularly in light of the number of breaches involved and the earlier cases where suspensions of two (2) days were imposed for a failure to scan identification on a mere 10 occasions.

53. The Commission has therefore determined to suspend the licence held by the licensee for a period of 28 days to commence at 10.00am on 29 February 2020 up to and inclusive of 9.59am on 28 March 2020. Quite frankly, to do anything less would make a mockery of the provisions relating to the Banned Drinker Register and a mockery of the statements previously issued by the Commission to all licensees about the seriousness of any such breaches.

54. In addition due to the evidence before the Commission of the issues concerning the licensees CCTV and also its point of sale system, the Commission has determined to impose additional conditions within the licence in the terms as set out at the commencement of these reasons.

Notice of Rights:

55. Section 120ZA of the 1978 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 1978 Act is specified in the Schedule and is a reviewable decision. It is however section 69(4)(b)(ii) that provides the Commission power to uphold the complaint and take disciplinary action against the licensee.

56. In this matter, the Commission has decided to uphold the complaint and to take disciplinary action. It is unnecessary for the Commission, which has not had the assistance of argument on this issue, to determine whether or not this decision is a reviewable decision, and the Commission expresses no view on the issue

57. If this decision is a reviewable decision, in accordance with Section 120ZB(1)(a) and (c) of the 1978 Act, the affected persons would be the licensee and the person who made the complaint.



JODI TRUMAN
PRESIDING MEMBER
DEPUTY CHAIRPERSON