

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER:	DISCIPLINARY ACTION PURSUANT TO THE LIQUOR ACT
REFERENCE:	LC2020/055
LICENCE NUMBER:	80304474
LICENSEE:	KTLP Enterprises Pty Ltd
PREMISES:	Plaza Karama Tavern Karama Shopping Centre Kalymnos Drive KARAMA NT 0812
LEGISLATION:	Sections 130 and Part 6 of the <i>Liquor Act 2019</i>
HEARD BEFORE:	Ms Jodi Truman (Deputy Chairperson) Mr Bernard Dwyer (Health Member) Ms Christine Hart (Community Member)
DATE OF HEARING:	10 February 2021
DATE OF DECISION:	12 February 2021

Decision

1. For the reasons set out below, the Commission heard and upheld a complaint against KTLP Enterprises Pty Ltd (“the licensee”) and is satisfied that between:
 - a. 31 August and 6 September 2020 (inclusive); and
 - b. 28 and 29 September 2020 (inclusive);the licensee sold liquor to individuals on forty six (46) occasions without completing a scan of an approved identification using the Banned Drinker Register (“BDR”) identification system contrary to section 130 of the Act.
2. The Commission is satisfied that 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 eight (8) hours from 14:00 hours on Friday 19 March 2021.

3. Pursuant to section 165(2)(e) of the Act the Commission also directs the licensee to place signage in an area visible to the public that would utilise the takeaway facilities during the period of the suspension informing the public that the takeaway conditions have been suspended for failure to comply with the Banned Drinker Register (“BDR”) identification system.

Reasons

Background

4. KTLP Enterprises Pty Ltd is the Licensee for Liquor Licence 80304474 (“the licence”), trading as the Plaza Karama Tavern (“the premises”), situated at the Karama Shopping Centre, Kalymnos Drive, Karama, NT 0812. As the Commission noted in its previous decision concerning these premises¹; the licence for the premises was first issued in the 1990’s with the current licensee having held this licence since 2016 and also having held the licence previously under another corporate identity. The Nominee is Mr Peter La Pira.
5. On 1 September 2017 the Northern Territory Government established the current Banned Drinkers Register (“BDR”), a scheme the purpose of which is to identify people who are banned from purchasing takeaway alcohol and stop their purchase. It also assists in reducing alcohol-related harm to individuals, families and the community. At the time of its establishment, the scheme was supported by s31A of the *Liquor Act* 1978 (“the 1978 Act”) (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. On 1 October 2019 the *Liquor Act* 2019 (“the Act”) commenced operation. The Act continues the BDR scheme and is supported by Division 1 of Part 6 of the Act.
7. The scanning device provided under the identification system is linked to the BDR. If a 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 publicly 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”².

¹ Northern Territory Liquor Commission *Disciplinary action pursuant to the Liquor Act: KTLP Enterprises Pty Ltd* (LC2018/053, 2 October 2018) at [5]

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

8. A dual benefit of the scanning of identification is that the system also identifies persons who are under 18 years of age and who are therefore prohibited from purchasing liquor.
9. On 16 October 2020 a complaint was lodged and formally accepted by a Delegate of the Director of Licensing NT (“the Delegate”) under section 161(2)(a) of the Act. On 19 October 2020, the Delegate notified the licensee in accordance with section 162(1) of the Act that a complaint had been received in relation to possible breaches of sections 130 of the Act. The substance of the complaint was particularised and the licensee was invited to comment, with such comments to be considered as part of the Director’s investigation.
10. On 1 November 2020, the licensee responded and in summary accepted the breaches had occurred as alleged.
11. Upon completion of the investigation the Director was empowered under section 163(1) of the Act to exercise certain powers, including referring the complaint to the Commission for disciplinary action³. On 17 November 2020, in accordance with section 163(1)(f) the Director referred the complaint to the Commission.
12. Pursuant to section 166 of the Act, upon receipt of such a referral, the Commission must conduct a hearing and decide whether to take disciplinary action against the licensee. Upon completion of the hearing the Commission must dismiss the complaint or take disciplinary action against the licensee. Pursuant to section 165, the Commission may take disciplinary action against the licensee only if the Commission is satisfied:
 - a. a ground for disciplinary action exists; and
 - b. the disciplinary action is appropriate in relation to that ground.

Public Hearing

13. On 26 November 2020 the Commission wrote to the licensee seeking information concerning a hearing date for the complaint. On 23 December 2020 the solicitors for the licensee wrote to the Commission providing dates of availability for a public hearing. In accordance with the convenience of the applicant’s counsel; the Commission listed the matter for hearing on 10 February 2021.
14. At the hearing, the Director appeared via his Delegate, Mr Bernard Kulda. The licensee was represented by counsel, namely Mr Josh Ingrames and Mr La Pira was present at the hearing. Mr Ingrames informed the Commission from the outset that the breaches were admitted and it was proposed by the parties that the matter proceed on an agreed set of facts.
15. As a result of the admissions, at the commencement of the hearing, a copy of the hearing brief was tendered into evidence as exhibit one (1) and a bundle of documents entitled “Agreed Statement of Facts” was tendered as exhibit two (2).

³ Section 163(1)(f) of the Act

16. The complaint proceeded before the Commission on the basis of the agreed facts with the licensee admitting the 46 occasions of failing to scan the approved identification of patrons purchasing takeaway liquor contrary to section 130 of the Act.
17. Member of the Commission also had some questions about what could be seen during various transactions in order to properly understand that actions were being undertaken by the licensee's staff at the relevant time. Counsel for the licensee strongly objected to such a course of action, however in accordance with section 23(3) of the Act the Commission determined it was entitled to inform itself in any manner it considered appropriate and proceeded to view a very limited number of transactions to have the process explained and the staff members identified. This assisted members in understanding what was being referred to as the conduct which was admitted as having been undertaken to commit the offences.
18. Given the breaches were admitted, there was no requirement for any oral evidence to be led and the following facts were admitted and taken as read concerning the forty six (46) breaches alleged:

Statement of Agreed Facts

1. Details of Licence

- 1.1 *KTLP Enterprises Pty Ltd is the licensee of Plaza Karama Tavern (Premises), a licensed premises situated at 37 Kalymnos Drive, Karama, NT, 0812. Peter La Pira is the nominee listed on current liquor licence number 80304474, initially granted on 4 September 1990.*

2. The Complaint

- 2.1 *On forty-six (46) occasions the licensee (or an employee of the licensee) contravened Section 130 of the Liquor Act 2019 (the **Act**), by selling liquor to an individual without completing a scan of an approved identification (**ID**) between 31 August 2020 to 6 September 2020 (inclusive) and 28 September 2020 to 29 September 2020 (inclusive).*

3. Background

- 3.1 *On 7 September 2020, Licensing NT requested till tapes and CCTV footage from the Premises for the period 31 August 2020 to 6 September 2020 (inclusive) for the hours they sell takeaway liquor each day. All the material was supplied to Licensing NT on 28 September 2020.*
- 3.2 *On 1 October 2020, Licensing NT made a further request for till tapes and CCTV footage from the Premises for the time period 28 September 2020 to 29 September 2020 (inclusive). All the material was supplied to Licensing NT on 16 October 2020.*
- 3.3 *Compliance Support Officer Melissa Russell reviewed the footage for the days provided and observed forty-six (46) occasions that liquor was sold to an individual without a scan of an ID being completed.*

- 3.4 *As a result on 16 October 2020, a complaint was formally accepted by the Delegate of the Director of Liquor Licensing in accordance with section 161(2)(a) of the Act and a notice of the complaint was provided to the licensee on 19 October 2020.*
- 3.5 *On 1 November 2020, Mr La Pira provided a response to the complaint which is summarised as follows:*
- (a) As Licensee, Mr La Pira was disappointed with the results of the audit and that breaches had occurred.*
 - (b) They have held their liquor licence for over 30 years and worked hard to abide by the conditions of their licence.*
 - (c) Three of the nine staff committed the breaches. Two staff members who committed the bulk of the breaches are no longer employed at the venue (the main offender having his employment terminated and the other returning to security work). The third staff member is still employed and has been given additional training and counselling.*
 - (d) All staff members and managers have undertaken recent training provided by Licencing NT.*
 - (e) They intend to implement the following action:*
 - (i) a clear policy for new and existing staff outlining responsibilities;*
 - (ii) Managers will allocate a portion of their weekly shifts to check security cameras to ensure that all staff are carrying out the use of the BDR correctly.*
 - (iii) the cash register terminals have had the home screen changed to state "have you scanned the id" or similar words. The operator will have to hit yes to confirm before they can carry out a transaction.*
 - (iv) there will be regular refresher training updates to ensure staff are using the BDR correctly.*
 - (f) They are part of the Northern Suburbs Liquor Accord and continue to follow their guidelines and policies.*
 - (g) They have a number of other policies in place in relation to the responsible sale of alcohol.*
- 3.6 *Mr La Pira and his staff have provided a high level of engagement and assistance with Licensing NT in the course of these audits and investigations.*

4. Summary of Breaches

4.1 *The evidence for the breaches of section 130 of the Act consist of the CCTV footage and till tapes obtained from the premises as well as the APMS data.*

4.2 *The 46 occasions can be broken down into the following categories:*

- (a) *22 instances where staff did not scan an ID ("Not Scanned");*
- (b) *14 instances where staff scanned the ID, however pressed the "Restart button instead of the "Check BDR" button, therefore not sending details through to the BDR database to check if the individual was listed on the BDR ("Scanned – (pressed the Restart Button");*
- (c) *9 instances where staff scanned the ID, however did not press the "Check BDR" button, therefore not sending the details through to the BDR database to check if the individual was listed on the BDR ("Scanned – BDR not checked"); and*
- (d) *1 instance where a red screen has shown, with staff taking no action to amend the screen, and selling the alcohol, despite the red screen ("Scanned – Underage Screen") [for the avoidance of doubt it is not alleged that there has been any underage sale of alcohol by the Licensee].*

4.3 *The 46 occasions can be further broken down amongst the various staff members involved as set out in the following table:*

Staff	Not Scanned	Scanned - BDR Not Checked	Scanned - Pressed Restart button	Scanned - Underage Screen	Total
<i>Cephas Lopez</i>	<i>17</i>	<i>3</i>	<i>12</i>	<i>0</i>	<i>32</i>
<i>Cyrus Balutoc</i>	<i>1</i>	<i>0</i>	<i>2</i>	<i>0</i>	<i>3</i>
<i>Wayne Reed</i>	<i>4</i>	<i>6</i>	<i>0</i>	<i>1</i>	<i>11</i>
Total					46

4.4 *When viewed in light of all of the transactions at the Premises, the 46 breaches occurred out of a total of 3,090 transactions. This equates to an overall rate of 1.49% and an average daily noncompliance rate of 0.89% across the relevant days audited.*

4.5 *When broken down between the two audits:*

- (a) *Over the first period of 31 August 2020 – 6 September 2020: 2609 transactions took place with 45 transactions involving breaches. This equates to 1.72% of transactions being in breach of s.130 of the Act.*
- (b) *Over the second period of 28-29 September 2020 (after the first period): 481 transactions took place with 1 transaction involving a breach. This equates to 0.21% of transactions being in breach of s.130 of the Act.*

5. Changes since the Breaches

- 5.1 *Mr Lopez was the main culprit for the bulk of the breaches and almost all of the breaches where no ID was taken at all. When asked why he was not complying with BDR scans following the Licensing audit, he could not give the manager of the venue a clear answer and only said “I am sorry”. Mr Lopez knew his responsibilities under the BDR system, but it seems that corners were cut to save time and to serve customers more quickly. The consequences of not complying with the scanning process were not taken seriously by Mr Lopez.*
- 5.2 *As a result of Mr Lopez’s misconduct in this regard, his employment was terminated.*
- 5.3 *Mr Reed was initially employed as a security guard at the Premises and subsequently, due to his knowledge of customers and patrons, including who might generally be a trouble maker/trespasser, management considered it would be advantageous to employ him as a bottle shop attendant. Unfortunately, Mr Reed was not a good fit for this kind of work and got confused from time to time when using the BDR system.*
- 5.4 *As a result, Mr Reed, on his own accord, returned to security work, and did so from 7 September 2020 (before the Licencing audits were conducted).*
- 5.5 *Mr Balutoc was a new staff member at the time of the audit and has become an excellent bottle shop attendant as a result of the counselling and training following the Licensing audits.*
- 5.6 *While it was the previous practice for new staff to be trained and shown how to use the BDR system verbally and under a short period of supervision, on 27 September 2020 a BDR Standard Operating Procedure (**SOP**) and example staff scenarios documents (giving examples for staff of what to do in various circumstances) was implemented to complement the training of new staff at the Premises.*
- 5.7 *Staff are required to read and sign the SOP before commencing work at the Premises.*

- 5.8 *A BDR training session was conducted with Licencing NT with nine staff members, including the nominee Mr Peter La Pira on 23 October 2020. A further training session was held with the Premises' managers on 22 December 2020 to demonstrate how to effectively undertake BDR scans with the new NT drivers licences.*
- 5.9 *On 28 October 2020 the cash register home screen was changed at the Premises to state "take customer ID for BDR" as a reminder for the operator to ensure a compliant scan is carried out. The software would not allow for a requirement for a button to be pressed before the screen disappears, but it sits over the place on the screen where sales transactions are brought up as a reminder. There is also a sticker on the BDR screen reminding operators to "double check scan".*
- 5.10 *Since November 2020, the manager at the Premises has undertaken audits of the full CCTV footage at the tills to see that BDR scans have been taking place and ID's were being reviewed. The manager has noted 100% compliance from that view. These audits were held:*
- (a) from 27 November 2020 – 2 December 2020;*
 - (b) 14 December 2020; and*
 - (c) 14 January 2021.*
- 5.11 *Audits are planned to be conducted each month with the next audit planned for 15 February 2021.*
- 5.12 *In addition to these planned audits, random checks of:*
- (a) about 1/2 hour worth of live footage is checked by two different managers at different times each day;*
 - (b) one manager is reviewing 2 hours of footage on 2 random shifts a week; and*
 - (c) Mr La Pira sits and views live footage from his computer from time to time when working at the venue.*

6. Compliance History

- 6.1 *In 2020, one audit and four inspections were undertaken by Licensing Inspectors with no adverse findings (apart from the audit the subject of these facts).*
- 6.2 *In 2019, one audit and seven inspections were undertaken with no adverse findings.*
- 6.3 *In 2018, one audit and three inspection were undertaken with no adverse findings.*

6.4 *An inspection was undertaken on 24 February 2017 and a complaint was lodged alleging an employee of the licensee failed to remove a person from the premises who was "drunk". On 2 October 2018, the Liquor Commission upheld the complaint and as a result disciplinary action was taken against the licensee with a monetary penalty of 30 penalty units imposed.*

6.5 *There is otherwise no history of contraventions of the Act or Licence conditions by the Licensee.*

19. As earlier noted this is a complaint where the licensee has admitted that through the actions of its employees it has contravened section 130 of the Act on forty six (46) separate occasions over the course of a period of a total eight (8) days.

20. The Commission accepts that the licensee is genuinely remorseful, has taken swift and sustained action and is committed to ensuring staff receive necessary training and are constantly reminded of their obligations under the Act to ensure future compliance with the BDR requirements.

21. It is also highly relevant that the licensee has co-operated with the compliance officers and admitted the breaches at an early stage.

22. The Commission notes that heavy reliance was placed by counsel for the licensee that this was "1.72% of transactions being in breach of section 130 of the Act" for the first period and "0.21% of the transactions" in the second period. Whilst this is correct, it was clear from the footage that there was complete disregard on 46 occasions with the requirements of section 130 of the Act and as was stated by Mr La Pira to the Commission in relation to compliance with that section:

"It's not rocket science."

Disciplinary action to be taken

23. Having upheld the complaint, the Commission has determined it is appropriate that disciplinary action be taken. The Commission also notes that there were no submissions made that this should not be the case.

24. In terms of the action to be taken, Mr Kulda submitted to the Commission that the takeaway portion of the licence should be suspended for one (1) day. Counsel for the licensee submitted that a monetary penalty should be imposed and drew the Commission's attention to the Howard Springs Tavern decision⁴.

25. The Commission indicated to counsel during the course of submissions that it was not considered that a monetary penalty along the lines of that imposed in the Howard Springs Tavern matter was appropriate. Counsel stated this was accepted but did not make any suggestion as to the range that should be the penalty imposed.

⁴ Northern Territory Liquor Commission *Disciplinary action pursuant to the Liquor Act: NT Pubco Pty Ltd* (LC2020/045, 2 November 2020)

26. As stated during the submissions, the Commission has found it extremely difficult to determine the appropriate penalty in this matter. There is no doubt in the mind of the Commission members that the licensee has taken these breaches very seriously and taken extremely swift action to remedy the same. The statements made by Mr La Pira to the Commission clearly indicated a significant level of remorse.
27. The difficulty is however that compliance with the requirements of section 130 of the Act are not difficult. This was accepted by Mr La Pira. In addition the BDR provisions are extremely important provisions in terms of supply reduction and subsequent reduction of the risk to the community of problem drinking. It was acknowledged that this was a particularly important issue in and around the premises and particularly into the attached supermarket premises.
28. As was noted by the Commission in the Darwin River Tavern decision⁵
- “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”.
29. As was made patently clear in July 2018 in the decision of Halikos Hospitality Pty Ltd all licensees were warned that the period of leniency was over and that further breaches would no longer be tolerated⁶. This remains the case and for these reasons the Commission is not satisfied on this occasion that a monetary penalty is appropriate.
30. The Commission has however carefully considered the pro-active stance taken by the licensee and also the submissions made concerning the financial impact of any period of suspension. The Commission will not outline those matters here as they are commercially sensitive.

⁵ Northern Territory Liquor Commission, *Oceanview Developments Pty Ltd (Darwin River Tavern) Decision Notice Disciplinary action pursuant to the Liquor Act 1978*: (28 January 2020)

⁶ Northern Territory Liquor Commission *Disciplinary action pursuant to the Liquor Act: Halikos Hospitality Pty Ltd* (LC2018/054, 2 July 2018) at [46]

31. The Commission is however persuaded by the action taken by the licensee upon being made aware of these breaches that a period of one day is not required and the Commission has determined that the take away licence should be suspended for a period of eight (8) hours from 14:00 hours on Friday 19 March 2021. Such a period represents the most significant conduct that took place on Friday 4 September 2020 during the course of the first period of breaches.
32. The Commission also considers that it is appropriate that a direction be made that signage be placed in an area visible to the public that would utilise the takeaway facilities during the period of the suspension informing the public that the takeaway conditions have been suspended for failure to comply with the Banned Drinker Register (“BDR”) identification system. This will serve to send a message both to this licensee and generally of the importance of the scheme and system.

Notice of Rights:

33. Section 31(1) read with section 166(7) of the Act provides that the decision set out in this decision notice is reviewable by 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.
34. 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.



JODI TRUMAN
DEPUTY CHAIRPERSON, NORTHERN TERRITORY LIQUOR COMMISSION
12 February 2021

On behalf of Commissioners Truman, Dwyer and Hart