

# NORTHERN TERRITORY LIQUOR COMMISSION

## DECISION NOTICE

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

**REFERENCE:** LC2018/163

**LICENCE NUMBER:** 80902640

**LICENSEE:** Pigglys Pty Ltd

**PREMISES:** **Pigglys**  
87 Gap Road  
ALICE SPRINGS NT 0870

**LEGISLATION:** Section 31A and Part VII of the *Liquor Act*

**HEARD BEFORE:** Mr Russell Goldflam (Acting Deputy Chairman)  
Ms Pauline Reynolds (Health Member)  
Mr Blair McFarland (Community Member)

**DATE OF HEARING:** 19 February 2019

**DATE OF DECISION:** 20 February 2019

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### **DECISION**

1. On 19 February 2019, the Northern Territory Liquor Commission ("the Commission") heard a complaint against Pigglys Pty Ltd ("the Licensee") in relation to its premises at the Pigglys supermarket ("the premises"). The Commission upholds the complaint and is satisfied that disciplinary action should be taken against the licensee by way of a monetary penalty of one penalty unit at the time of the offence (\$154), which is due and payable by the Licensee within 28 days of 19 February 2019, the date upon which notice of the penalty was given to the Licensee by the Commission.

### **REASONS**

#### **THE BREACH**

2. Richard and Adriana Bugg ("the Buggs"), the Licensee's principals, ran Pigglys, an Alice Springs suburban supermarket and bottleshop, for nine years. On 19 December 2017, the Licensee executed an agreement to sell the business, and in due course they relinquished their liquor licence, which was transferred to the current licensee. The Buggs now reside interstate, where they are taking a break, after working "8 am to 9 pm seven days a week... one of the hardest jobs I've ever had, dealing with liquor and the

town. It was very very very difficult.” The Buggs unequivocally state that they will never apply for a liquor licence again.

3. 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 is supported by s31A of the *Liquor Act* (“the Act”), which inserts 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. 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.<sup>1</sup>

4. On 15 February 2018, the Northern Territory Commissioner of Police announced Operation Haven, which, among other things targeted alcohol fuelled harm in Alice Springs using undercover police to detect *Liquor Act* breaches by licensees and others.
5. On 17 February 2018, two undercover police officers attended the premises and attempted to purchase liquor without producing identification for scanning. The salesperson, an employee of the Licensee, refused them service and pointed out the BDR information poster on display at the point of sale.
6. The officers, however, were persistent, and claimed that they were interstate visitors unfamiliar with the scheme and with no ID. They asked the salesperson if he could provide them with ID. The salesperson refused. However, he then suggested that they try and borrow ID from another customer, which they did, and purchased liquor using that person’s ID. In conducting this transaction, the salesperson breached s31A of the Act. He had no reasonable excuse for doing so, but the Licensee submits and the Commission accepts that the salesperson was motivated to breach the Act by a genuine desire to help importunate strangers who he believed were genuinely inconvenienced customers.

## **THE COMPLAINT**

7. Having detected this offence, police could have issued an infringement notice in the sum of one penalty unit (\$154), pursuant to Regulation 7, Regulation 7A and Schedule 2, Part 1 of the *Liquor Regulations*. However, this would have “blown their cover”, which in turn

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

may have jeopardised the surveillance component of Operation Haven. Instead, police referred the complaint to the Director-General.

8. On 24 May 2018, a Delegate of the Director-General of Licensing (“the Director-General”) informed the Licensee of the substance of the complaint, and Mr Bugg replied by letter dated 28 May 2018, apologetically admitting the breach and setting out the steps he had taken to remedy it, namely:
  - Counselling and warning the salesperson
  - Eliciting and accepting an apology from the salesperson
  - Provision of further BDR training to the salesperson
  - Provision of further BDR training to all staff members
  - Increasing supervision by management of BDR compliance by staff
9. On 25 June 2018, the licence was transferred to the new licensee. The Buggs ceased to run Pigglys.
10. At this point, pursuant to s68(5) of the Act, the Director-General could have dismissed the complaint if satisfied that no action was warranted. She did not do so, and the Commission agrees that breaches of s31A warrant action being taken, because the integrity and effectiveness of the BDR scheme depends on compliance with s31A. Licensees must be discouraged from breaching s31A and undermining the BDR scheme.
11. In these circumstances the Director-General was then required by 68(5)(b) of the Act to do one of four things: issue a formal warning; issue an infringement notice; require the licensee to enter into an undertaking; or refer the complaint to the Commission. There is little if any utility in either issuing a warning against entering into an enforceable undertaking with a former licensee who does not intend to obtain another licence. The infringement notice option was unavailable to the Director, who is empowered by s68(5)(b)(i) of the Act and Regulations 7(2) and 7A(2) of the *Liquor Regulations* to issue such a notice for a “Director-General infringement offence”, but not for a “police infringement offence”. An offence against s31A is a police infringement offence. Accordingly, on 19 December 2019, pursuant to s68(5)(b)(iii), the Director-General referred the complaint to the Commission. The Commission accepts that none of the other actions available to the Director-General under s68(5)(b) appears to have been suitable.

## **THE HEARING**

12. The matter proceeded as a public hearing at Alice Springs on 19 February 2019. Ms Morley appeared for the Director-General. The Buggs appeared, by leave, by telephone from Tasmania, where they now live. The Commission thanks them for their assistance and attendance.
13. The Buggs admitted the breach, a summary of the admitted facts of which was tendered as evidence, along with Mr Buggs’ letter dated 28 May 2018 referred to above.
14. On the admitted facts, the Commission upholds the complaint.

## **THE DISCIPLINARY ACTION**

15. The Commission may only take disciplinary action after upholding a complaint if satisfied that it is appropriate to do so. For the reasons set out at paragraphs 3 and 10 above, the Commission considers that disciplinary action is appropriate.
16. The maximum monetary penalty that can be imposed for breaching s31A is 100 penalty units (\$15,400). To date the Commission has dealt with only one other s31A complaint. On 2 July 2018 the Commission imposed a penalty of 20 penalty units on Halikos Hospitality Pty Ltd for breaching s31A of the Act. That complaint arose out of a course of repeated breaches committed by a salesperson in notably non-extenuating circumstances.
17. Having regard to the matters set out at paragraphs 7 and 11 above, the Commission does not infer that either the police or the Director-General necessarily considered that a stern penalty was warranted in this matter. No submission was made to the Commission that a stern penalty should be imposed. The Director-General recommended the imposition of a monetary penalty, and in the circumstances of this case, the Commission readily accepts that none of the other available types of disciplinary action provided for under s67(2) of the Act would be appropriate.
18. The Commission considers that in this matter the penalty imposed should be at the lowest end of the scale, having particular regard to the following significantly mitigating circumstances:
  - a. The Buggs no longer operate a licence and are unlikely to do so again.
  - b. The breach was only committed reluctantly and after persistent pressure by under-cover police.
  - c. The breach was motivated by a misguided but well-intentioned desire to serve customers.
  - d. The Commission accepts that the breach was an isolated event. On the same evening, the same salesperson was recorded refusing service to other customers who were unable to produce ID.
  - e. The Licensee immediately admitted the breach when confronted with it, took all reasonable steps available to it to address the issues raised, and remained appropriately remorseful and co-operative throughout the proceedings.
  - f. The Licensee has no previous history of non-compliance with the Act.
19. By imposing such a lenient penalty in the unusual circumstances of this case, the Commission does not intend to establish a precedent, or to imply or suggest that the penalty imposed in the matter referred to at paragraph 16 above was unwarranted. Licensees should expect that a failure to comply with s31A will attract substantial penalties.

## **NOTICE OF RIGHTS**

20. Section 120ZA of the Act provides that a reviewable decision is a Commission decision that is specified in the Schedule to the Act. Any application for review of a reviewable decision must be lodged within 28 days of the date of the decision.

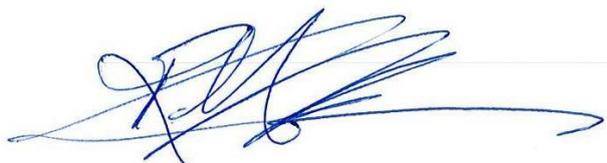
21. The Schedule specifies that a decision made pursuant to s69(3) (“Decision to take disciplinary action against licensee”) is a reviewable decision. Section 69, which is headed “Commission’s power to take disciplinary action” confers on the Commission the power to uphold a complaint and take disciplinary action (s69(4)(b)(ii)).

22. However, s69(3), the specific provision in the Schedule, does not in its terms refer to a decision to either uphold a complaint or take specified disciplinary action. It provides:

The Director-General must give the licensee details about the referral when referring the matter to the Commission.

23. 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.

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



RUSSELL GOLDFLAM  
ACTING DEPUTY CHAIRPERSON  
NORTHERN TERRITORY LIQUOR COMMISSION

20 February 2019

On behalf of Commissioners, Goldflam, Reynolds and McFarland