

## Delegate of the Director of Liquor Licensing

### Decision Notice

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<b>MATTER:</b>	Contravention of the <i>Liquor Act 2019</i>
<b>LICENSEE:</b>	Epilogue Enterprises Pty Ltd
<b>VENUE:</b>	The Epilogue Lounge
<b>LEGISLATION:</b>	Sections 141 & 285 of the <i>Liquor Act 2019</i>
<b>DECISION OF:</b>	Delegate of the Director of Liquor Licensing
<b>DATE OF DECISION:</b>	10 August 2023

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#### BACKGROUND

1. Epilogue Enterprises Pty Ltd is the licensee for liquor licence number 80517222, trading as The Epilogue Lounge, situated at 58 Todd Mall, Alice Springs, NT 0870.
2. On 26 April 2023, a complaint pursuant to section 160 of the *Liquor Act 2019* (the Act), was accepted against The Epilogue Lounge by the delegate of the Director of Liquor Licensing, Holly Sowerby. The licensee was given 14 days to provide a response to the complaint.

#### Particulars of Complaint

Allegation 1, offence 1 – Section 141 of the Act – Duty and power to exclude and remove persons

3. It is alleged that the licensee and the licensee's employee contravened section 141 of the Act by failing to remove from the licensed premises a person who was disorderly or incapable of controlling the person's behaviour.
4. On Sunday 12 March 2023, at 12:05am (CCTV timestamp 1:05am), CCTV footage obtained from The Epilogue Lounge depicts a male entering the premises. The male is described as Caucasian in appearance; he was wearing a light coloured button up shirt, long pants and sneakers. The male departed the premises at 2:03 hours (CCTV timestamp 03:03 hours). There is a noticeable decline in the male's demeanour whilst he is in the premises. The male is observed in the footage unbalanced on his feet with his gait and co-ordination appearing significantly impaired. It is alleged the male was disorderly or incapable of controlling his behaviour and that the licensee and the licensee's employees failed to remove him.

Offence 2 – Section 285 of the Act – Prohibition of liquor to intoxicated person

5. It is alleged that an employee of The Epilogue Lounge contravened section 285 of the Act by intentionally selling or otherwise supplying liquor to another person, and the other person was on or in the licensed premises and was intoxicated, and the employee was reckless in relation to those circumstances.
6. On 12 March 2023, CCTV footage obtained from The Epilogue Lounge depicts a male of Caucasian appearance wearing a light coloured button up shirt, long pants and sneakers, purchasing liquor from the bar at 1:09am (CCTV timestamp 2:09am). In the CCTV footage the male appeared to be unbalanced on his feet and his coordination noticeably impaired. It is alleged the male was intoxicated when he was sold liquor.

## Licensee response to Complaint

7. On 8 May 2023, Mr Chris Wilkinson, licensee of The Epilogue Lounge, submitted a response to the complaint particulars.
  - a. The licensee acknowledged the allegations set out by Licensing NT.
  - b. The licensee claimed at 1:09am (CCTV timestamp 2:09am) the bar was busy, and bar staff were not able to watch the individual approaching the bar due to other patrons obscuring staff's vision.
  - c. The licensee has highlighted loud music, dimmed lights and the number of other patrons presenting to the bar make it challenging for bar staff to recognise signs of intoxication within the very little window of interaction with patrons upon service.
  - d. The licensee claims at the time of service the male (Person of Interest - POI) appeared stable on his feet and was able to place his order in a clear language.
  - e. The licensee has acknowledged a conversation whereby security advised bar staff it would be the POI's last drink. Bar staff explained the situation to the POI who was able to provide a friendly and clearly communicated response.
  - f. The licensee submits security monitored the POI's behaviour closely and due to closing time approaching a decision was made not to evict the individual beforehand.
  - g. The POI was not served any further drinks and did not show any signs of aggression.
8. After reassessing the CCTV footage, on 10 August 2023 the licensee provided a secondary response and accepted the complaint particulars as set out by Licensing NT.

## Investigation of complaint

9. On 12 March 2023, Senior Compliance Officer's (SCO) Erin Cassidy and Corrin Takotohiwi were conducting inspections of licensed premises in Alice Springs. At approximately 1:11am (CCTV timestamp 2:11am) SCO's attention was drawn to a POI who had just been served and appeared to be intoxicated and unsteady on his feet.
10. A duty crowd controller approached the SCO's and advised that he had directed bar staff that it was the POI's last drink. CCTV footage obtained from the premises corroborates the information provided by the crowd controller.
11. CCTV footage obtained from the premises for 12 March 2023 indicated the POI entered the venue at 12:05am (CCTV timestamp 1:05am). The POI purchased liquor at approximately 12:22am, 12:40am, 12:53am and 1:09am (CCTV timestamp 1:22, 1:40, 1:53 and 2:09am) and was also provided one and a half drinks from a companion. At approximately 2:03am (CCTV timestamp 3:03am) the male departed on his own accord with the venue in the midst of closing.
12. Between 12:05am and 2:03am (CCTV timestamp 1:05am and 3:03am) there is a noticeable decline in the POI's demeanour. As of 1:09am (CCTV timestamp 2:09am) the POI appears to have difficulty remaining firmly seated, his gait and co-ordination appeared significantly impaired with him unsteady on his feet and tripping backward at 1:21am (CCTV timestamp 2:21am).
13. The CCTV footage evidenced the POI was served double nips of spirits at 12:22am, 12:40am and 12:53am. Compliance officers requested till tapes from the licensee to verify sales transactions made by the POI. The licensee submitted four sales receipts, however only two of the four transactions aligned accurately with the POI's method of payment, therefore two receipts were deemed inadmissible. The remaining two receipts confirmed the POI purchased double nips of spirits on those occasions.

14. Principle Compliance Officer Holly Sowerby requested an extension of time to complete the investigation to allow for the licensee to reassess the CCTV footage, and the extension was approved by the Delegate of the Director of Liquor Licensing, Bernard Kulda, on 10 August 2023, pursuant to section 318(2) of the Act.

### **Compliance history of the licensee**

15. On 17 December 2021 a formal warning was issued to The Epilogue Lounge for contravention of sections 109, 160(1)(c)(i), 293(1), 303(2) of the Act and Regulation 59(4)(c) & (d). Contraventions occurred on 28 and 30 August 2021.

### **Analysis of the evidence**

#### Allegation 1

##### Offence 1

16. There is sufficient evidence to support the allegation that the licensee contravened section 141 of the *Liquor Act 2019* by failing to remove from the licensed premises a person who was disorderly or incapable of controlling the person's behaviour. In making this determination I have relied on the following facts:
17. Between 1:09am & 2:03am (CCTV timestamp 2:09am and 3:03am), the POI is observed on CCTV to have difficulty remaining firmly seated, his gait and co-ordination appear significantly impaired with him unsteady on his feet and at one point tripping backward.
18. Based on CCTV footage, it is evident that the POI is significantly impaired and incapable of controlling their behaviour.
19. Although the POI was restricted further bar service at 1:09am (CCTV Timestamp 2:09am) he was permitted to remain on premise.
20. In their initial response, the premises has disputed the allegation maintaining Security were observing his behaviour and a decision was made not to remove the POI as he was not showing any signs of aggression and the venue was due to close within the hour.
21. In their final response, the premises has accepted the allegation.

##### Offence 2

22. There is sufficient evidence to find the licensee contravened section 285 of the Act by intentionally selling or otherwise supplying liquor to another person, and the other person was on or in the licensed premises and was intoxicated, and the employee was reckless in relation to those circumstances. In making this determination I have relied on the following facts:
23. Based on CCTV footage the POI was served liquor at approximately 12:22am (double nips), 12:40am (double nips), 12:53am (double nips) and 1:09am (CCTV timestamp 1:22, 1:40, 1:53 and 2:09am), on each occasion his purchase included one drink for himself.
24. At 12:51am (CCTV timestamp 1:51am), POI enters the bar room and approaches the bar area, his gait appears to be affected.
25. At 12:53:30am (CCTV timestamp 1:53:30am am) the POI is at the bar counter awaiting service, engagement with bar staff begins at 12:54:15am (CCTV timestamp 1:54:15am), POI departs counter at 12:55:53am (CCTV timestamp 1:55:53am). Bar staff have a clear visual of the POI during this time, with minimal people awaiting service.

26. At 1:00am (CCTV timestamp 2:00am) the POI ascends the ramp leading to the dancefloor area, his gait appears to be affected.
27. At 1:03am (CCTV timestamp 2:03am) the POI enters the bar room and stands near the closest stair ledge before he approaches his companions on the other side of the stair rail, his gait and stance appear unsteady.
28. The POI approaches the bar counter, staff engage with the POI from 1:09:30am (CCTV timestamp 2:09:30am), the bar area clears during this time. At 1:10:20am (CCTV timestamp 2:10:20am) whilst payment is being made, security approach bar staff in relation to POI. Bar staff appear to advise the POI it is his last drink.
29. At 1:11:40am (CCTV timestamp 2:11:40am) the POI departs the counter toward the dancefloor in an unsteady manner.
30. Prior to the POI purchasing liquor at 1:09am (CCTV timestamp 2:09am), the POI's behaviour is noticeably impaired and it is reasonable in the circumstances to believe the impairment is a result of the POI's consumption or use of liquor.
31. Prior to the POI purchasing liquor at 1:09am (CCTV timestamp 2:09am), staff had adequate opportunity to observe the impaired behaviour exhibited by the POI and should have formed the opinion the POI was intoxicated and should have been refused to sell/supply him any further liquor.
32. In their initial response the premises dispute the allegation noting during interaction with the POI he appears to be stable on his feet and placed his order in clear language. At the time the POI was informed it would be his last drink, the licensee alleged he responded in a friendly coherent manner.
33. The licensee identified difficulty in observing physical signs of intoxication until interacting directly with the POI. Loud music and dimmed lighting create difficulty for staff to recognise signs of intoxication in the short period of interaction with customers. However, at 2:09am footage depicts there were only seven people, including the POI, standing at the bar, and by the time the POI extracted his wallet, there was no one standing beside him on either side. Contrary to the licensee's response, this particular situation provided sufficient opportunity for bar staff to assess the POI's level of intoxication.
34. In their final response the premises accepts the allegation.

## DECISION

35. In respect to allegation 1, offence 1, that being a breach of section 141(3) of the *Liquor Act 2019*, I have determined to issue an infringement notice of three (3) penalty units (3 x \$162 = \$486), pursuant to section 163 (1)(d) of the *Liquor Act 2019*.
36. In respect to allegation 1, offence 2, that being a breach of section 285(1) of the *Liquor Act 2019*, I have determined to issue an infringement notice of five (5) penalty units (5 x \$162 = \$810), pursuant to section 163 (1)(d) of the *Liquor Act 2019*.

## REVIEW OF DECISION

37. Section 27(1) of the *Liquor Act 2019* provides that an affected person for a delegate decision may apply to the Director for a review of the decision.
38. Section 27(2) of the *Liquor Act 2019* sets out the procedures for applying for a review of a delegate decision. Such application must be made within 28 days after written notice of the delegate decision is given to the affected person unless the Director extends the time allowed for making an application.

39. The affected person in this matter is the licensee of The Epilogue Lounge.

A handwritten signature in black ink, appearing to read "B. Kulda". The signature is written in a cursive, flowing style.

**Bernard Kulda**  
Delegate of the Director of Liquor Licensing