

## Delegate of the Director of Liquor Licensing

### Decision Notice

---

**MATTER:** Contravention of Section 130 the *Liquor Act 2019*

**LICENSEE:** Iris Gap View Operations Pty Ltd

**VENUE:** Gap View Hotel

**LEGISLATION:** Section 130 of the *Liquor Act 2019*

**DECISION OF:** Delegate of the Director of Liquor Licensing – Bernard Kulda

**DATE OF DECISION:** 10 May 2023

---

#### BACKGROUND

1. Iris Gap View Operations Pty Ltd is the Licensee of the Gap View Hotel (the Premises), a licensed premises situated at 123 Gap Road, The Gap NT 0870. Craig Jervis is the Nominee listed on current liquor licence 80102399 dated 8 March 2023.
2. On 2 March 2023, a complaint was formally accepted by Holly Sowerby, Delegate of the Director of Liquor Licensing, in accordance with section 161(2)(a) of the *Liquor Act 2019* (the Act).
3. Notice of the complaint was delivered to the Licensee and Nominee later that day, providing 14 days to respond to two allegations made.

#### Particulars of Complaint

4. It was alleged that on 24 January 2023, the Licensee contravened section 130(2) of the Act on three occasions, by selling liquor to an individual without first checking the individual's identification (ID) against the Banned Drinker Register (BDR) to check whether the person is prohibited from purchasing liquor.
5. It was also alleged that on 24 January 2023 the Licensee contravened section 130(2) of the Act by selling liquor to an individual without first using an approved form of ID to check the BDR.

#### Licensee response to Complaint

6. On 23 March 2023, Nominee Jervis submitted a response to the complaint stating:
  - a) The Licensee accepted both allegations as set out by Licensing NT.
  - b) The Licensee is remorseful for all breaches of the Act, which occurred at the Premises on 24 January 2023.
  - c) **Allegation 1** - In addressing the first allegation, Nominee Jervis states that while not diminishing the seriousness of the breaches, each offence was due to human error.

Specifically, that in all instances a third party was involved which ostensibly confused the employees.

- d) **Allegation 2** - Nominee Jervis stated that he finds the responsible employee's actions as unfathomable given all staff had received training on the use of approved forms of ID. He further stated that given the ID used was officially issued by the NT Government, and that the information manually entered approved the sale, the customer was not on the Banned Drinkers Register.

### Investigation of complaint

7. On 30 January 2023, Principal Compliance Officer (PCO) Holly Sowerby received a complaint from NT Police against the Licensee of the Gap View Hotel in the prescribed form. Police provided CCTV footage obtained from the Premises for 23 & 24 January 2023 and a statutory declaration from a Police Auxiliary Liquor Inspector (PALI) who was on duty at the Premises bottle shop on 24 January 2023. NT Police alleged that between 23 & 24 January 2023, 10 breaches of section 130 (2) of the Act had occurred at the Premises.
8. Of the 10 alleged breaches, six matters were determined as either having no grounds or insufficient evidence to proceed. These matters are summarised below:
- (i) That on 23 and 24 January 2023, five purchases of takeaway alcohol were completed from the Premises prior to an approved form of ID being scanned on the BDR. Although technically correct, CCTV footage evidenced that although on each occasion the employee completed the sale before scanning was completed the employee remained in possession of the liquor until the BDR authorised the sale. Further, the transactions and scans were completed within seconds of each other. The frivolous nature of the allegations do not warrant further enforcement action by Licensing NT. Alternatively, further training and education is considered appropriate.
- (ii) That on 24 January 2023, a sale was completed to a customer whose ID was scanned on the BDR which returned a 'green screen' authorising the sale. The customer attempted a second purchase, his ID was scanned and the BDR returned a 'red screen', prohibiting the sale. Police alleged the employee did not enter the identification details correctly, or ensure the scan had occurred correctly, prior to completing the first sale. Police contend that the customer was in fact on the BDR and prohibited from purchasing liquor. Upon investigation, Senior Compliance Officer Chris Wade identified the customer had in fact already purchased a restricted item that day and on attempting a second purchase of a restricted item the sale was prohibited. Therefore, no breach had occurred.
9. Senior Compliance Officer Chris Wade investigated the remaining four alleged breaches. The CCTV footage NT Police acquisitioned from the Premises shows the four allegations occurred as detailed in the NT Police's official complaint.
10. The two employees responsible for the breaches, Matej Mico and Jarrod Whitely, completed their BDR training on 5/12/22 and 13/12/22 respectively.

### Analysis of the evidence

11. There is sufficient evidence to uphold the two allegations that the Licensee Iris Gap View Operations Pty Ltd Ltd contravened Section 130 (2) of the Act.

**Allegation 1:** That on 24 January 2023, on three occasions, employees of the Licensee sold liquor to an individual without first checking the individual's ID against the BDR prior to selling liquor.

**Allegation 2:** That on 24 January 2023, an employee of the Licensee contravened Section 130 (2) of the Act by using an unapproved form of ID when checking the BDR prior to selling liquor.

12. In making these determinations I have relied on the following facts:

### **Allegation 1**

#### Offence 1

At 17:20 hours on 24 January 2023, CCTV obtained from the Premises illustrates an employee of the Licensee serving a male patron. A second male approaches a service area and produces his ID which the employee scans against the BDR before taking payment for the liquor from the first male patron. This is contrary to Section 130(2) of the Act.

#### Offence 2

At 17:39 hours on 24 January 2023, CCTV obtained from the Licensee shows two women being served by an employee at a service area. One of the females supplies a form of ID, which the employee scans against the BDR that authorises the sale. The second female pays for the alcohol without having her ID scanned. This is contrary to Section 130(2) of the Act.

#### Offence 3

At 17:55 hours on 24 January 2023, a male and female approach a service area with a 10 pack of pre-mix cans. During the transaction, the male appears to ask for a bottle of rum and hands over \$100 cash and his ID. When scanned against the BDR the sale is authorised. The female pays the remaining quantum without her ID being scanned contrary to Section 130(2) of the Act.

### **Allegation 2**

At 18:47 hours on 24 January 2023, an employee of the Licensee attends a vehicle in the drive through. He takes the customer's ID and eftpos card to the counter to process the liquor purchase. The employee places the ID on the BDR scanner that fails to automatically scan the ID. The employee manually inputs the customer's details into the system and the sale is authorised. The ID used appears to be an NT Licence to Perform High Risk Work due to the distinctive strip running down the right hand side of the card. This type of ID is not recognised as an approved form identification pursuant to Section 128(3) of the Act making the sale contrary to Section 130(2) of the Act.

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

13. On 11 September 2022, the Licensee of the Gap View Hotel contravened Section 130 of the Act for failing to scan an approved form of identification on 189 occasions on 11 September 2022. The Director of Liquor Licensing referred the matter to the Northern Territory Liquor Commission, which upheld the complaint on 13 January 2023 suspending the take-away authority for one trading day.
14. On 3 February 2023, NT Police Commander Mark Grieve, exercised his powers pursuant to Section 258 of the Act and issued a 48 hour licence suspension to the Gap View Hotel for the hours between 12:00pm on 3 February and 12pm 5 February 2023.

## **DECISION**

15. In respect to both allegations that the Licensee breached Section 130 of *the Liquor Act 2019*, I find that evidence provided the evidence provided above, the allegations are proven.

16. In respect to allegation one, I have determined to issue infringement notices of four penalty units (four x \$162 = \$648) for each of the three counts (3 x \$648 = \$1,944) pursuant to section 163(1)(d) of the *Liquor Act 2019*.
17. In respect to allegation two, I have determined to issue an infringement notice of four penalty units (four x \$162 = \$648) pursuant to section 163(1) (d) of the *Liquor Act 2019*.
18. In determining to issue infringement notices in lieu of referring the matters to the NT Liquor Commission for disciplinary action, consideration was given to the circumstances of the breaches. The two employees responsible for the breaches underwent BDR training 4-5 weeks prior, and out of 325 BDR scans that day, 4 errors surmounts to 1.23% of total sales. As detailed in the response from Mr Jervis, human error will ultimately occur to a degree no matter the preventative measures undertaken.

## REVIEW OF DECISION

19. 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.
20. 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.
21. The affected persons in this matter is the Licensee of the Gap View Hotel, Iris Gap View Operations Pty Ltd and NT Police.



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