

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER:	DISCIPLINARY ACTION PURSUANT TO THE <i>LIQUOR ACT (2019)</i>
REFERENCE:	LC2021/016
LICENCE NUMBER:	81300518
LICENSEE:	Westten Services Pty Ltd
PREMISES:	Larrimah Wayside Inn 8 Mahony Street LARRIMAH NT 0852
LEGISLATION:	Part 7, Divisions 3 and 4 of the <i>Liquor Act 2019</i>
HEARD BEFORE:	Mr Richard Coates (Chairperson) Professor Phillip Carson (Health Member) Ms Amy Corcoran (Community Member)
DATE OF HEARING:	26 May 2021
DATE OF DECISION:	6 July 2021

Decision

1. For the reasons set out below, Northern Territory Liquor Commission (“the Commission”) upholds the complaint and is satisfied:
 - a) That between 2nd November 2020 and 14 December 2020 Westten Services Pty Ltd (“the Licensee”) or Licensee’s employee sold liquor to individuals on 144 occasions without correctly using the identification system contrary to section 130 of the *Liquor Act 2019* (“the Act”); and
 - b) That on 5 November 2020 an employee of the Licensee sold take away liquor to an individual prior to the hours within which take away liquor can be sold to the public.
2. The Commission is satisfied disciplinary action should be taken against the Licensee as follows:
 - a) Suspend the condition of the liquor licence relating to Takeaway Hours for a period of 5 days commencing from 2:00 pm on 16 August 2021 until close of business on 21 August 2021;

- b) Varying the licence conditions to include the following camera surveillance condition. The Licensee is to install, maintain and operate a camera surveillance system on the licensed premises in compliance with the requirements and guidelines prescribed from time to time by the Director of Liquor Licensing ("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 the register must be produced to the Director upon request. The system is to be installed within a month as outlined in paragraph 61 of this Decision Notice.
- c) Varying the licence conditions to insert the following Takeaway restrictions. Liquor sold for consumption away from the premises will be limited to one of the following products per person per day:
1. 30 cans or stubbies of mid-strength or light beer; or
 2. 24 cans or stubbies of full strength beer: or
 3. 12 cans or bottles of Ready-To-Drink (RTDs) mixes: or
 4. One two (2) litre cask of wine; or
 5. One bottle of fortified wine; or
 6. One bottle of Green Ginger Wine; or
 7. Two (2) x 750ml bottles of wine; or
 8. One 750ml bottle of spirits

The sale of port, wine in glass container larger than one (1) litre and of 750 ml or more remains prohibited.

Bush orders: That people placing bush orders (being bona fide orders from bush communities, cattle stations or work camps remote from Larrimah) be permitted to purchase up to seven "days worth" of liquor as set out above. To establish their bona fides for the purpose of purchasing liquor pursuant to this special condition, orders must be placed on accounts and received by telephone or email at least one day in advance. All documentation must be retained for each order and made available to an Inspector of Licensed Premises on request.

3. That the Commission, pursuant to section 318(1) of the Act, extends the time within which the Director was allowed to conduct the investigation, by section 158(2) of the Act, until Friday 16 April 2021.

Reasons

Background

4. Westten Services Pty Ltd is the Licensee for Liquor Licence 81300518, trading as Larrimah Wayside Inn (the premises) situated at 8 Mahony Street, Larrimah, NT, 0852. The Nominee listed on the Liquor Licence is Mr Stephen Baldwin, dated 11 May 2020.
5. On 15 December 2020, Licensing NT requested till tapes from the premises for the period 1 November 2020 to 15 December 2020 inclusive via email.
6. On 18 December 2020, SCO McIntyre forwarded an email to Baldwin advising that the till tapes had been received, however, the date and time columns appeared to be cut off and could not be read with certainty. A further letter of request was forwarded to Baldwin requesting till tapes including date and time columns in full for 5 November 2020, 8 December 2020 and 14 December 2020 specifically, by COB Monday 21 December 2020.
7. On 5 January 2021, SCO McIntyre requested the BDR transactions list (APMS data) from the Criminal Justice Research and Statistics Unit, Department of the Attorney-General and Justice, for the period 1 November 2020 to 15 December 2020 inclusive and this was provided the same day.

The till tapes and the APMS data were reviewed for the period 1 November 2020 to 15 December 2020 which revealed that the Licensee or employee of the Licensee failed to scan an approved identification (ID) on the Banned Drinkers Register identification system (BDR) on 168 occasions.

8. Upon further review of the till tapes, it was identified that the Licensee or an employee of the Licensee had sold/supplied two (2) separate sales of takeaway alcohol to a patron prior to the licensed takeaway hours. These two (2) takeaway sales occurred on:
 - 5 November 2020 – 13:54:52hrs – Receipt # L29754 and
 - 8 December 2020 – 13:30:30hrs – Receipt # L31265.
9. On 12 January 2021, a formal complaint was lodged and accepted by a Delegate of the Director of Liquor Licensing and the Licensee was formally advised and given the opportunity to provide a response.

The particulars of the complaint are:

1. Between 1 November 2020 and 15 December 2020, the Licensee (or an employee of the Licensee) sold/supplied takeaway alcohol to a patron without completing a BDR scan of an approved ID on 168 occasions.
2. On 5 November 2020, the Licensee (or an employee of the Licensee) sold/supplied takeaway alcohol to a patron prior to the approved licensed hours.

3. On 8 December 2020, the Licensee (or an employee of the Licensee) sold/supplied takeaway alcohol to a patron prior to the approved licensed hours.
10. On 7 February 2021 the Licensee provided a lengthy response to the complaint having earlier sought and been granted a 14 day extension of the time within which to file that response.
11. In its response the Licensee stated that it had a procedure in place whereby its staff didn't undertake a BDR scan for subsequent sales on the same day by the same customer who had been scanned on their first sale of the day. However staff were instructed to record the names of takeaway customers into the point of sale transaction – partly in response to the COVID-19 health pandemic. The Licensee claimed that from that record it could be seen that 127 of the non-compliant BDR sales were sales to customers that had already been scanned on the same day in respect of an earlier transaction.
12. After examining the Licensee's response, the Investigating Officer accepted that a number of the non-compliant sales were made to staff and hotel guests where no BDR scan was required. The complaint was therefore amended to allege 144 occasions where the Licensee contravened section 130 of the Act by failing to complete a BDR scan.
13. The investigating officer also accepted that one of the two complaints in relation to out of hours sales, namely the transaction on 8 December 2020 was to an in house staff member and was therefore not a "take away" sale.
14. The complaint that was ultimately referred to the Commission on 16 April for disciplinary action pursuant to section 165(2)(b) of the Act alleged a total of 144 occasions between 2 November 2020 and 14 December 2020 when the Licensee failed to complete a BDR scan and one take away sale on 5 November 2020 at 13:54 hours prior to the commencement of take away trading hours at 14:00 hours.
15. 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

16. On 20 April 2021 the Commission wrote to the Licensee advising that it had received the Director's referral of the complaint. The Licensee was asked whether it would be admitting the substance of the complaint, if it required any and which witnesses to attend the hearing and whether there were any potential hearing dates which were unsuitable from the Licensee's perspective. No response to that email was received

so on 12 May 2021 the Commission wrote to the Licensee advising that the matter had been listed for a public hearing on 26 May 2021.

THE HEARING

17. At the hearing, the Director appeared via his delegate, Mr Bernard Kulda and Mr Steve Baldwin appeared as representative of the incorporated Licensee.
18. At the commencement of the hearing the Chair advised Mr Baldwin that the Commissioners had all read the Director's referral brief and had concerns over a number of transactions where it appeared that a customer had made several separate, significant purchases of take away liquor within less than 5 minutes. Whereas the proposed "Statement of Agreed facts" only cited the failure to scan the individual's form of identification, an analysis of the data within the referral brief raises an inference these multiple purchases were indicative of the fact that the customer was obtaining the liquor on behalf of other persons who would be unable to satisfy the BDR requirements. Mr Baldwin was told that if that was in fact the case and the Licensee's employee was aware or should have been aware that the liquor being sold was destined for another then the circumstances surrounding the alleged breaches were much more serious than many of the other complaint matters the Commission has dealt with concerning breaches of the BDR system.
19. The Chair informed Mr Baldwin that the Commission would be prepared to adjourn the hearing so that he could consider the Licensee's position in relation to those matters and obtain legal representation if necessary. Mr Baldwin responded that he had already driven from Tennant Creek for this hearing and was not interested in making a return trip. He therefore rejected the offer of an adjournment.
20. The hearing commenced and the Director's referral brief was tendered and admitted into evidence as exhibit 1. Within that brief at folio 6 was a document entitled "Summary of Facts". The Licensee confirmed that he admitted those facts and conceded there had been 144 occasions on which takeaway liquor had been sold without his employees completing the required BDR scan and 1 occasion on which liquor had been sold prior to licensed take away hours.
21. The Commission again outlined the concerns it had over a number of the transactions identified within the brief and told Mr Baldwin it feared that there was a real risk the Larrimah Inn could have become a "honey pot" for problem drinkers because of its inconsistent adherence to the BDR scanning requirement and the apparent willingness of the Licensee's staff to turn a "blind eye" to sales for the purpose of secondary supply.
22. Included within the Director's referral brief (exhibit 1) from folios 380 to 686 is the Licensee's response to the complaint with extensive documentation in spread sheet form analysing the takeaway transactions for the period 1 November 2020 to 15 December 2020. The letter attaching the supporting documentation was dated 31 January 2021 and was signed by Janice Baldwin as "Director and Licensee". In that letter Ms Baldwin made the following introductory comments;

"Please find the following detailed response to the above complaint related to Takeaway sales and BDR scans for the period 1 November to 15 December 2020; our response is based on our operational procedures in place at the time."

It should be noted that we had for almost 2 years had a procedure where we did not undertake a BDR scan for subsequent sales on the same day by the same customer who had been scanned on their first sale (127 sales without BDR scans were to such customers).

Also over the last 18 months and particularly during the COVID-19 Bio Security changes to takeaway liquor rules we have started including names of takeaway customers into our Point of Sale transaction whilst we have the customers ID for the purposes of undertaking the BDR scan. This procedure allows Takeaway transactions to be easily seen in the transaction history list 380 of 686 and to assist with staff training and compliance; all 127 transactions noted above have the customers name entered into the transaction with the majority of transactions to the same customer happening within minutes of the first transaction”.¹

23. In detailing the circumstances surrounding the unscanned transactions the Licensee claimed in mitigation that the customer had been scanned once and the subsequent transactions all occurred within a very brief compass of time. The Commission accepts that it is highly unlikely that a customer will go on to the BDR within a few minutes of an earlier successful scan. However those subsequent transactions should have raised a suspicion on the part of the sales staff that the ultimate purchaser of the liquor was someone other than the person presenting the identification.
24. During the hearing the Commission raised what it regarded as some suspicious transactions with Mr Baldwin and in this decision we have referred to those particular sales as well as a number of others. In fairness to those customers who are not parties to these proceedings the Commission has referred to them in this Decision Notice by their initials only. One such customer was Mr RJ who underwent a BDR scan and was cleared to purchase liquor. At 18:32:43 Mr J underwent a BDR scan and was cleared to purchase liquor. His initial purchase was 2 bottles of Jim Beam Bourbon for which he paid a total of \$150 cash. At 18:34:21 he made a separate purchase of another 2 bottles of Jim Beam. His ID was not scanned and he once again paid \$150 cash for the two bottles of spirits. At 18:35:41 another purchase of liquor was made without any BDR scan, on this occasion the liquor purchased was a bottle of Bundaberg Rum for \$75. At 18:36:20 another Jim Beam bottle was purchased for \$75 cash. At 18:38:49 a separate transaction is listed concerning Mr J for a 30 can carton of Great Northern Beer for \$105 together with some soft drinks.²
25. Mr Baldwin was asked by the Commission if he could explain the rationale behind these multiple transactions. He said the Mr J was an indigenous person and it was not unusual for his indigenous customers to make multiple purchases when using a debit or credit card because they were often unsure as to how much remained in the account. When reminded that these were all cash transactions he still maintained that aboriginal people find it easier to purchase liquor in that way. He would not accept the Commission’s suggestion that the nature of these transactions should have raised a suspicion that Mr J was making the multiple purchases on behalf of different individuals who were either present with him or waiting nearby.

¹ Exhibit 1, page 380-381

² Exhibit 1, page 437

26. On 14 November 2020 at 15:27:54 Ms SK underwent a BDR scan and purchased 1 carton of XXXX beer, 2 bottles of Bundaberg Rum and a 24 can carton of Rum and Cola for \$348. At 15:33:20 she made another transaction which was not scanned and purchased 2 x 30 can cartons of Great Northern beer and 3 bottles of Bundaberg Rum for a total of \$435. At 15:37:11 she purchased a 24 can carton of Jim Beam and Cola for \$120. Her identification was also not scanned on that occasion.³
27. When questioned at length by the Commission over this transaction, Mr Baldwin refused to accept that there was anything suspicious about those transactions.
28. On 15 November 2020 at 14:17:08 Ms ES was subject to a BDR scan and purchased one bottle of Jim Beam and one bottle of Rum for \$150. Forty seconds later at 14:17:48 she purchased a bottle of Johnny Walker whiskey for \$75. She was not subject to a BDR scan on that occasion.
29. On the 20, 21, 23 and 26 November 2020 there were also instances of multiple transactions over a short period of time where only the first sale was subject to the BDR scan.
30. On 27 November 2020 there were a large number of take away sales including 12 transactions which were recorded by the Licensee as additional sales by a customer who had been subject to a BDR scan earlier in the day. One of those customers was Mr JP who was scanned at 17:37:28 and purchased a 24 can carton of Jim Beam and Cola, a 24 can carton of Vodka and Orange as well as a 30 can carton of Great Northern Beer for a total of \$345 which was paid in cash. At 17:39:12 he purchased 4 bottles of Jim Beam for \$300 cash. That transaction was subject to a BDR scan. At 17:40:59 he purchased another bottle of Jim Beam for \$75 and was once again not subject to a BDR scan.
31. On 28 November 2020 there was once again a large volume of take away sales. In its response to the complaint the Licensee admitted that there had been "8 additional sales without second scans for the same person".⁴ Ms EM was subject to a BDR scan when she first purchased liquor at 18:06:27 on that day. She purchased 6 bottles of Jim Beam and 6 cartons of Carlton Dry Beer for \$480 which was paid in cash (there may be a double counting of the liquor in this entry). At 18:08:36 she made another purchase which was not scanned of 1 bottle of Bundaberg Rum for which she paid \$75 cash. At 18:16:48 she made another unscanned purchase of one carton of VB Beer and one bottle of Bundaberg Rum for a total of \$180 which was paid by mastercard.
32. Also on 28 November 2020, at 19:18:32 Ms LL was subjected to a BDR scan and purchased what is recorded as 4 bottles of Jim Beam and 6 bottles of Bundaberg Rum for \$375 cash. It is likely that there is an error with the spreadsheet in the form of double entries and that in fact only 5 bottles of spirits were in fact sold to Ms LL.⁵ At 19:19:23 Ms LL is recorded as having purchased 1 carton of VB Beer and a 24 can carton of Jim Beam and Cola for \$225 cash.

³ Exhibit 1, page 467

⁴ Exhibit 1, page 388

⁵ Exhibit 1, page 548

33. On 29 November 2020 there were two additional sales without second scans as was also the case on 1 December 2020.
34. On 2 December 2020 the Licensee admitted that there were 12 additional sales to a person who had previously been scanned.⁶ On 3 December 2020 there were 8 additional sales without scans.⁷ On 4 December 2020 7 additional sales⁸, on 5 December 2020 2 additional sales⁹, 6 December 2020 2 additional sales¹⁰, 8 December 2020 1 additional sale, 9 December 2020 3 additional sales, 10 December 2020 4 additional sales¹¹.

Although some of these might be explicable on the basis that a credit card and cash were being used for what in effect was one transaction or a decision had been made later in the day that more alcohol was required, the majority of the transactions were for cash and made within minutes of the first purchase.

35. There were a large number of take away sales on 11 December 2020 and the Licensee admits that there were 14 additional sales without second scans on this day. Some of those multiple transactions included Mr AD who purchased a carton of Great Northern Beer and bottle of Bundaberg Rum at 14:31 for \$180 cash, a further 2 cartons of Great Northern plus a six pack at 14:38 and a 30 can carton of VB at 14:45 for \$105 by EFTPOS. On that same day, Mr RA also made 4 separate purchases. At 14:41 he purchased 2 cartons and a six pack of Great Northern Beer for \$240 which was paid by EFTPOS. At 15:00 he purchased a 30 can carton of XXXX and 2 bottles of Bundaberg Rum for \$248 cash. At 15:22 he purchased a further 2 bottles of Bundaberg Rum plus a six pack of Great Northern Beer together with cigarettes for a total of \$223 which was paid by EFTPOS. At 17:48 he is recorded as purchasing a further carton of Great Northern Beer and a bottle of Bundaberg Rum for \$180 cash¹².
36. On 13 December 2020 the Licensee recorded an additional 3 sales without additional scans and for 14 December 2020 there was one such transaction¹³.
37. Having examined the record of takeaway transaction and having heard Mr Baldwin's unsatisfactory explanation for the multiple transactions within the space of minutes, the Commission has concluded that the real gravamen of the admitted breaches is not the failure to scan the purported purchaser another time but the failure to refuse the sale because the real purchaser was not able or willing to present identification for scanning.
38. Although there was no reference to this in the Director's referral brief, during his evidence Mr Baldwin complained about the Police having made unsubstantiated claims that the operation of his premises constituted an ongoing threat to public safety.

⁶ Exhibit 1, page 389

⁷ Exhibit 1, page 390

⁸ Exhibit 1, page 391

⁹ Exhibit 1, page 392

¹⁰ Exhibit 1, page 392

¹¹ Exhibit 1, page 393

¹² Exhibit 1, pages 619-625

¹³ Exhibit 1, pages 395+396

Mr Kulda then revealed to the Commission that Licensing Compliance Officers had commenced their investigation into these matters following the attendance of Police in the vicinity of these premises on 11 December 2020. Police alleged that they had on that date detected a significant number of alcohol related criminal offences and harms associated with people who either consumed alcohol on the Larrimah Wayside Inn premises or purchased take away alcohol. The Delegated Officer asserted that:

“The behaviours observed constitute an ongoing threat to public safety and Police are now investigating offences against the Liquor Act 2019. I am further satisfied that these offences are likely to continue”.

39. On that basis the delegated Police Officer used the power of the Police Commissioner pursuant to section 258 of the Act to suspend this licence for 48 hours, commencing 2:00pm on 16 December 2020.
40. That information concerning the section 258 Notice should have been included in the Director’s referral brief as it provides an important context for the Commission’s consideration of this matter. Prior to the commencement of the hearing, the Commission had raised with Mr Baldwin its concern that the Licensee’s sloppy practices in relation to the BDR could see it become a “honey pot” for problem drinkers. Having now examined the take away transactions in some detail, a picture has emerged of high volumes of take away sales to individuals who the Licensee’s staff knew or should have known were purchasing that liquor on behalf of other persons. It is therefore not surprising that there was an increase in alcohol related offending near the premises and that police had concerns for public safety.
41. Mr Baldwin told the Commission that he kept the premises closed for another week following the Police imposed 48 hour licence suspension. He said that he was demanding further information from Police to justify the suspension but this had not been forthcoming. The Commission has no evidence before it on which to assess whether the Police suspension was warranted. However, as we have already observed, given the manner in which the take away licence was being operated, we are not surprised if there was excessive liquor consumption in the vicinity of these premises.
42. In relation to the complaint of a sale prior to the commencement of take away trading hours on 5 November 2020 at 13:53, the Licensee has admitted that breach. In its written response to the complaint the Licensee said that the staff member who made the sale had only been with them for four days and was still in training. The Licensee has warnings on its point of sale “Quick Sale Screen” which should have alerted the staff member to the fact that the sale could not be made until 14:00. The Commission acknowledges that there will always be a risk of error during the training of new staff and in the circumstances does not consider this to be a serious breach of the conditions of licence. Although a ground for disciplinary action exists in relation to this particular breach it would normally warrant a modest monetary penalty. Having regard to the disciplinary action that the Commission is proposing in relation to the more serious BDR breaches it has determined not to impose any additional penalty for this sale in breach of take away trading hours.

EXTENSION OF TIME

43. Following the hearing and prior to having made a decision on the final disposition of the matter, the Commission realised that the complaint may not have been referred to the Commission within the 90 day time limit prescribed by section 158(2) of the Act. On 14 June 2021 the Chairperson wrote (emailed) to the Director advising that as this complaint was lodged and accepted on 12 January 2021 but was not referred to the Commission until 16 April 2021 it may be out of time because of section 158(2) of the Act. That email further stated:

“As the Commission has not yet made any decision as to the penalty to be imposed, subject to the views of my other two panel members it may be open to you to still lodge an application for an extension of time. Such an application would need to be served on the Licensee so that he could be heard on the issue and if the Commission decided to entertain a late application it would ultimately be determined on its merits.

If you do not agree with my assessment that the referral is out of time or if you do intend to seek an extension of time can you please advise as soon as possible so that the Commission can determine how to proceed with the matter.

Subject to any submissions you may make, it would seem appropriate that I provide a copy of this letter and any response from you to both Mr Kulda and the Licensee”.

44. On 16 June 2021, Mr Mikaelian, on behalf of the Director, wrote to the Commission seeking an extension of time. In support of that application he submitted:

“The following information has contributed to the 90 day investigation period being exhausted –

- The Licensee Mr Baldwin requested an extension to reply to the official Section 160 complaint, via email, on the 28 January 2021.*
- The Delegate of the Director, Mr Bernard Kulda accepted the request for the extension on 28 January 2021 which was granted to 11th February 2021 (effectively a 2 week extension of time to respond to the complaint).*
- Once a response was submitted by Mr Baldwin, it took the investigating officer a substantial amount of time to go through the submission which was more than 270 pages of Till Tapes and complete the Investigation to support the alleged breaches.*

If the correct time periods were followed, the 90 day investigation should have been completed by 12 April 2021. The now known date of referral is 16 April 2021, indicating approximately 4 days over the 90 day investigation period.

If the Commission were to consider the extension provided to the Licensee by the Delegate of the Director of 14 days, and placed that on top of the original 90 day investigation period, the investigation period date would be 26 April, 2021”.

45. That letter together with the Chairperson's letter of 14 June 2021 were forwarded to Mr Baldwin and he was invited to make submissions on the Director's application to extend time. There was no response from the Licensee.
46. The Commission finds merit in the Director's submission that the completion of the investigation was delayed because the Licensee had been granted an additional 14 days within which to respond to the complaint. The Commission also accepts that due to the comprehensive nature of the response together with the significant amount of supporting documentation submitted by the Licensee that the additional time taken by the investigation officers was not unreasonable. The Commission has therefore determined, pursuant to section 318(1) of the Act, to extend the time within which the Director was required by section 158 to complete the investigation until 16 April 2021.

THE DISCIPLINARY ACTION

47. Having upheld the complaints, the Commission has determined it is appropriate that disciplinary action be taken. Mr Kulda for the Director submitted that the Commission should consider suspending the takeaway provisions of the licence for 2 days, impose a camera surveillance condition similar to that which the Commission has mandated in Alice Springs and Tennant Creek and to vary the conditions of licence to include a liquor volume restriction on take away sales.
48. Mr Baldwin argued that he had already suffered financial loss because of the 48 hour suspension of licence that had been imposed by Police and the further week he had remained closed of his own volition. He said that he had already implemented his own restriction on takeaway sales of \$300 per person per day.
49. 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. At the time of its establishment, the scheme was supported by section 31A of the *Liquor Act 1978* ("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.
50. 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 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"¹⁴.

¹⁴ Northern Territory Liquor Commission *Disciplinary action pursuant to the Liquor Act: Halikos Hospitality Pty Ltd* (LC2018/054, 2 July 2018) at [37]

51. 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 and in particular section 128.
52. Part 6 of the Act relates to Harm Minimisation caused by the consumption of liquor. In addition to providing for the patron identification scheme under Division 1, it also provides for responsible drinking under Division 3. Within Division 3 provision is made to prohibit any action by a Licensee that would induce the irresponsible or excessive consumption of liquor on or in licensed premises. Included within this Division is the requirement that every employee who has responsibilities that involve serving patrons or supervising the serving of patrons holds a responsible service of alcohol (“RSA”) certificate. This is a requirement that **all** Licensees must comply with.
53. In a decision of the Commission involving the Sabine Trading Co Pty Ltd¹⁵ the Licensee was facing disciplinary proceedings over a complaint that it had failed on a number of occasions to correctly use the BDR scanner contrary to section 130 of the Act. During the course of that hearing and after viewing the relevant CCTV footage, the Commission came to the view that the evidence revealed that sales had also been made to intoxicated persons and that having regard to the circumstances surrounding a number of purchases the Licensee’s employees should have been aware that the sale of liquor was not being made “to or solely to, the individual who had presented the identification”¹⁶.
54. It is important to acknowledge that these are not criminal proceedings. The matter has been referred to the Commission due to an alleged breach of licence conditions.

165 Disciplinary action

- (1) The Commission may take disciplinary action against the Licensee only if the Commission is satisfied:
 - (a) A ground for the disciplinary action exists; and
 - (b) The disciplinary action is appropriate in relation to that ground.
55. The Act does not constrain the Commission from taking disciplinary action on a ground other than the grounds specified in the complaint. In the Sabine Trading Co Pty Ltd Decision the Commission made it clear that it would be taking into account a range of breaches other than those articulated in the original complaint, in determining what disciplinary action to impose.
56. The Licensee has admitted that it failed to conduct any BDR scan in relation to 17 transactions over the relevant period. In mitigation, it claims that 127 of the other non-compliant sales were to individuals who had already been subject to an earlier scan, that same day. As the Commission has observed earlier in this decision, the majority

¹⁵ Northern Territory Liquor Commission *Disciplinary action pursuant to the Liquor Act: Sabine Trading Co Pty Ltd* (LC2020/013 and LC2020/019, 20 August 2020)

¹⁶ Northern Territory Liquor Commission *Disciplinary action pursuant to the Liquor Act: Sabine Trading Co Pty Ltd* (LC2020/013 and LC2020/019, 20 August 2020), para 70

of those subsequent sales were suspicious and most likely occurred because the customer was using their identification to obtain liquor on behalf of another. However in the absence of CCTV footage the Commission is unable to be satisfied, to the appropriate standard that all of those transactions fall into that category.

57. The Commission is however satisfied that in relation to the transactions conducted by the 8 customers referred to in paragraphs 24, 26, 28, 30, 31, 32 and 35 there is an overwhelming inference that their identification was being used to secure liquor for other persons who were unable to present their own identification or may well have been on the Banned Drinker Register. Accordingly, those breaches strike at the heart of that harm prevention system.
58. The tangible and intangible social cost of alcohol in the Northern Territory has been estimated at \$7,578 per annum for each adult Territorian.¹⁷ The Community has an expectation that Government will do something to stem the destructive consequences of alcohol abuse. The Banned Drinker Register is not a “silver bullet” it is only one of a number of complementary measures aimed at addressing the Northern Territory’s unacceptable level of alcohol related harms. The Commission is determined that Licensees, particularly those operating in remote areas close to “dry” indigenous communities will take a proactive approach to their obligations under the Act and consider “Responsible Service of Alcohol” as their daily mantra.
59. The Commission has taken into account that this Licensee has not long taken over what had been a struggling business and there are no doubt additional pressures associated with the Directors of the corporation residing in Tennant Creek. To its credit the Licensee admitted the breaches and it is only through its own response to the complaint that the Commission was alerted to these suspicious transactions. If the investigating officer had been aware of that aspect of this matter then that should have been clearly detailed in the referral so that the licensee was properly on notice of the case it might be expected to meet.
60. Mr Baldwin may not have best furthered the Licensee’s interests during his appearance before the Commission. He was argumentative over issues that were not relevant to our deliberations and seemed irritated that he had to travel to Darwin for the hearing. If he had responded to the Commission’s letter of 20 April 2021 and told us he was located in Tennant Creek then arrangements might have been made for him to appear before the Commission by video conference.
61. There were no submissions made by the Licensee as to why the proposed CCTV condition should not be imposed. It is already standard for licences in Alice Springs and Tennant Creek and an increasing number of remote area licenses. The Licensee is allowed one month from the date of this decision to install that equipment or such later time as the Director permits in writing.
62. The Commission saw some merit in the Licensee’s proposal that a cash limit be imposed in respect of take away sales, it would allow customers some flexibility in their choice of products. However the BDR system can not currently accommodate such a condition. Inquiries made by Mr Kulda indicate that for the BDR to be programmed for a dollar value cap on takeaway sales would cost between \$100,000 and \$150,000 to

¹⁷ Menzies School of Health Research (2019). The social and economic costs and harms of alcohol consumption in the Northern Territory.

design and take 12 months to implement. Without changes to the BDR a cash limit could only operate by a manual list compiled by the Licensee which would not necessarily be failsafe with shift changes and new staff. Having regard to what was transpiring at the Larrimah Inn last November and December, the Commission considers that preventing a recurrence of those multiple sales can best be achieved by imposition of a volumetric daily limit similar to that which applies in Tennant Creek whereby the BDR will refuse the sale if the customer has already obtained their limit for that day.

63. The Commission does not accept that the 2 day suspension suggested by the Director is sufficient. That type of penalty has been imposed in past cases for a similar number of breaches which were occasioned by pressure of work, staff training shortfalls or inadvertence. In this matter we have found a number of incidences of what can only be regarded as “wilful blindness” in relation to this Licensee’s obligation under the Act. It is relevant that in the Sabine Trading Co Pty Ltd Decision, that the licence for the Douglas Store was suspended for one month. The Commission had considered suspending the take away licence for one week, however having regard to the fact that the Licensee has already been subject to the 2 day suspension imposed by Police it has determined to suspend the takeaway licence for 5 days only commencing from 2:00 pm Monday 16 August 2021. The Commission was not persuaded that the Licensee be afforded any credit for the self-imposed closure following the Police suspension. Mr Baldwin was not convincing as to the reasons behind his decision which may have been motivated by his desire to make a point with the Commissioner of Police or the Government that he was not happy with that decision.

Notice of Rights:

64. 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.
65. 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, the Licensee and the persons who made the complaint.



RICHARD COATES
CHAIRPERSON, NORTHERN TERRITORY LIQUOR COMMISSION
6 July 2021

On behalf of Commissioners Coates, Carson and Corcoran