

Delegate of the Director of Liquor Licensing

Decision Notice

MATTER:	Contravention of the <i>Liquor Act 2019</i>
LICENSEE:	Jalchom Pty Ltd
VENUE:	Mayberry Darwin
LEGISLATION:	Sections 141 and 293 of the <i>Liquor Act 2019</i>
DECISION OF:	Delegate of the Director of Liquor Licensing
DATE OF DECISION:	20 April 2023

BACKGROUND

1. Jalchom Pty Ltd is the Licensee for Liquor Licence 80300317, trading as Mayberry Darwin, situated at 3 Edmunds Street, Darwin, NT 0800.
2. The Nominee is Mr Andrew Binns.
3. On 29 December 2022, NT Police advised Licensing NT, on 25 December 2022 at about 04:25 hours, police attended Edmunds Street, Darwin (across the road from Mayberry Darwin) and arrested a male for disorderly behaviour. The male was recently removed from Mayberry Darwin and described as being highly intoxicated.
4. After reviewing CCTV footage of Mayberry Darwin on Sunday, 25 December 2022, between 02:35 and 04:30 hours, Senior Compliance Officer Paull identified a number of incidences on the licensed premises where it will be alleged the Licensee has contravened provisions of the *Liquor Act 2019* (the Act). These alleged offences have been enumerated below.
5. On 20 February 2023, a complaint was formally lodged and accepted whereby the Licensee was formally advised and given the opportunity to provide a response.

PARTICULARS OF COMPLAINT

Allegation 1 - Section 141 - Duty and power to exclude and remove persons

6. On 25 December 2022, it is alleged that the Licensee and the Licensee's employees contravened section 141 of the Act on four (4) occasions by failing to remove from the licensed premises a person who was disorderly or incapable of controlling the person's behaviour.
7. Details of Offence 1: On 25 December 2022, at approximately 03:08 hours, a male patron is depicted on CCTV footage entering the front club holding a schooner glass, bumping into a wall and swaying side to side. A short time later, the male knocks a table over onto the floor, leaving it for another patron to pick up. During this time, a licensed crowd controller was located in close proximity of the male. It is alleged that the male was disorderly or incapable of controlling the person's behaviour and that the Licensee and the Licensee's employees failed to approach and remove the male.

8. Details of Offence 2: On 25 December 2022, at approximately 03:52 hours, the same male is depicted on CCTV footage entering the front club, unsteady on his feet and disorientated. The male proceeds upstairs towards level 2, is approached by a licensed crowd controller and directed downstairs. During this time, the male was disorientated, unsteady on his feet and had trouble maintaining his balance. It is alleged that the male was disorderly or incapable of controlling the person's behaviour and that the Licensee and the Licensee's employees failed to remove him.
9. Details of Offence 3: On 25 December 2022, at approximately 04:09 hours, the same male is depicted on CCTV footage entering the beer garden, in possession of a 275 ml bottle of Vodka Cruiser, unsteady on his feet, trouble maintaining his balance, stumbles forward and walks into a chair sending it to the ground. A licensed crowd controller approaches the male and directs him to pick up the chair. It is alleged that the male was disorderly or incapable of controlling the person's behaviour and that the Licensee and the Licensee's employees failed to remove him.
10. Details of Offence 4: On 25 December 2022, at approximately 04:12 hours, the same male is depicted on CCTV footage in the beer garden, unsteady on his feet, stumbling, drowsy and disorientated. At 04:15 hours, the male approaches an employee and is unable to keep his footing, severely staggering back and forth. It is alleged that the male was disorderly or incapable of controlling the person's behaviour and that the Licensee and the Licensee's employees failed to remove him.

Allegation 2 - Section 293 - Contravening licence conditions

11. On 25 December 2022, it is alleged that the Licensee contravened a condition of the liquor licence pursuant to section 293 of the Act by intentionally selling, supplying or serving liquor outside the prescribed liquor licence trading hours being 11:00 to 04:00 hours, seven (7) days a week.
12. Details of Offence: On 25 December 2022, at 04:01:44 hours, CCTV footage depicts a male patron hand over a sum of money in the form of a bank note to the bar employee at bar 2. At 04:02:19 hours, the male hands over a further sum of money in the form of a coin. At 04:02:38 hours, the bar employee hands the male 1 x 275 ml bottle of Vodka Cruiser Lush Guava. At 04:02:48 hours, the bar employee entered the transaction on the till register. (Till tape recorded transaction at 04:03:26 hours. i.e. 38 second difference between CCTV and till register times).

Licensee's response to complaint

13. On 13 March 2023, Ryan & Co Solicitors on behalf of the Licensee submitted a response to the complaint. In summary, Ryan & Co Solicitors makes the following submissions:

Allegation 1

14. In respect to the alleged breaches of section 141 of the Act on four (4) occasions, the Licensee accepts that its practices and procedures failed, that the patron should have been removed from the Premises earlier and accepts that it failed to act to the standards required of it.

In support of Ryan & Co Solicitors submission, they advise:

15. Since becoming aware of the allegations, the Licensee has improved its practices and issued communications to staff, management and security to be more vigilant identifying and dealing with patrons who show signs of intoxication.
16. Reminding staff that such patrons must not be served, that these patrons must be brought to attention of management or security and to alert the bar supervisor of any concerning behaviour displayed by patrons.
17. The Licensee has stressed to staff and security that if there are patrons who are showing any signs of intoxication, to notify management so an assessment of the patron can be conducted and appropriate action taken.
18. Staff induction training has been updated and improved for new staff.

19. Experienced staff and security are now working on the door on busy nights and regular patrols of the premises will be carried.

Allegation 2

20. In respect to the alleged breaches of section 293 of the Act, Ryan & Co Solicitors state:

21. At 03:59:40 hours, CCTV footage evidences the patron approached the bar, the bar person took another person's order before taking the order off the patron in question, which may have resulted in the actual transaction occurring just after 04:00 hours.

22. At 4:03:26 hours, the till register recorded the transaction being 38 second difference from the time stamp on the CCTV (04:02:48).

23. At 4.02.57 hours, CCTV footage evidences the Venue Manager closed down the register/POS to prevent any further transactions and removes the cash tray from the till.

24. Noting the time differences between the CCTV time stamp and the till register, it must be questioned how accurate either of these times are. It is possible that both the CCTV and till register are out by a few minutes to 'real' time, which could result in the transaction actually occurring within the prescribed liquor licence trading hours.

25. Since becoming aware of this, the Licensee now regularly checks that the time stamps on the CCTV and POS system are accurate and aligned. The Licensee has reinforced the closing procedures with all staff.

Investigation of Complaint

26. Licensing NT Senior Compliance Officer Paull commenced an investigation into the complaint noting the obligations of the Licensee pursuant to the Act.

27. The evidence for the complaint was based on the following documentation:

Allegation 1

28. Email to Nominee - On 1 November 2022, the nominee was advised in writing that on Saturday, 29 October 2022 at about 01:30 hours, Licensing Inspectors observed a patrons displaying signs of being affected by alcohol (unsteady on feet and coordination impeded) and discourteous behaviours i.e. dropped a drink on the floor and walking away, bumping and pushing into people etc. Crowd controllers were not attending to the issues.

29. Email from NT Police - Police confirm the male was arrested for disorderly behaviour and described as being highly intoxicated after being removed from Mayberry Darwin.

30. Security Sign-On/Incident Register - The register confirms there were five (5) licensed crowd controllers employed up to closing time (04:00 hours).

31. CCTV footage (Mayberry Darwin) depicts the following:

32. 03:08 hours, the male attends the front bar, noticeably unsteady, bumping into a wall and swaying side to side before knocking a table over onto the floor, leaving it for another patron to pick up.

33. 03:52 hours, the male attends the front club, unsteady on his feet and disorientated, had trouble maintaining his balance and proceeds upstairs towards level 2. He is approached by a licensed crowd controller and directed downstairs.

34. 04:09 hours, the male attends the beer garden, (in possession of a 275 ml bottle of Vodka Cruiser), unsteady on his feet, trouble maintaining his balance, stumbles forward and walks into a chair sending it to the ground. A licensed crowd controller approaches the male and directs him to pick up the chair.

35. 04:12 hours, the male attends the beer garden, unsteady on his feet, stumbling, drowsy and disorientated. The male approaches an employee and is unable to keep his footing, severely staggering back and forth.
36. 04:22 hours, the male is escorted/assisted from beer garden to across the road (Edmund St) by two (2) licensed crowd controllers and left on the footpath. During this time, male is unable to stand up or walk out on his own steam whereby requiring the assistance of two (2) licensed crowd controllers.
37. 04:25 hours, NT Police attend and male is placed in the police van and removed from the area.
38. **NB:** There is a 38 second difference between the times recorded on the till tapes and the CCTV footage i.e. CCTV footage times are 38 seconds behind till tapes.

Allegation 2

- a. Till Tapes (03:45 to 04:15 hours) - Till tapes evidence the male purchased a Vodka Cruiser Lush Guava (275 ml) at 04:03:26 hours on 25 December 2022.
- b. CCTV footage (Mayberry Darwin) depicts the following:
 - (i) 04:01:44 hours, the male engages with barmaid and hands over money (bank note).
 - (ii) 04:02:19 hours, the male hands over money (coins) drops on counter, male points towards fridges.
 - (iii) 04:02:38 hours, the bar employee removes and hands the male 1 x 275 ml bottle of Vodka Cruiser Lush Guava. Male leaves the area.
 - (iv) 04:02:48 hours, the bar employee entered the transaction (1 x 275 ml bottle of Vodka Cruiser Lush Guava) on the till register. **NB:** Till Tape records the transaction at 04:03:26.
 - (v) 04:02:57 hours, Duty Manager closes till registers and removes cash tray (preventing further transactions).

Analysis of Evidence

Allegation 1

39. There is sufficient evidence to support that the Licensee contravened section 141 of the Act on four (4) occasions on 25 December 2022 between 03:08 and 04:22 hours by failing to remove from the licensed premises a person who was disorderly or incapable of controlling the person's behaviour.
40. In making this determination, the following facts have been relied on:
41. Jalchom Pty Ltd is the Licensee for Liquor Licence 80300317, trading as Mayberry Darwin.
42. CCTV footage of 25 December 2022 evidences that the alleged contravention of section 141 of the Act occurred on the licenced premises of Mayberry Darwin.
43. Between 03:08 and 04:22 hours, the male is observed on CCTV to be unsteady on his feet, disorientated, had trouble maintaining his balance and it is evident that he is incapable of controlling his behaviour.
44. During this time, crowd controllers and employees failed to ask the male to leave the premises prior to being escorted at 04:22 hours.
45. The Licensee does not dispute the allegation and accepts that it failed to act in accordance with the relevant legislation.
46. The male was not a person residing in or lodging at residential accommodation on or in the licensed premises.

Allegation 2

47. There is sufficient evidence to support that the Licensee contravened section 293 of the Act on 25 December 2022 at 04:22 by intentionally selling or supplying liquor outside the prescribed liquor licence trading hours being 11:00 to 04:00 hours, seven (7) days a week.
48. In making this determination, the following facts have been relied on:
49. The Licensee does not dispute that the sale and supply (transaction) of the liquor to the male occurred after 04:00 hours.
50. While the Licensee's defence relies on the accuracy of the CCTV and till register time stamps against the actual 'real time', this argument is mute and holds little weight as it is the responsibility of the Licensee to ensure the sale and supply of liquor is within the prescribed hours of the liquor licence.
51. The Licensee failed to have appropriate measures and procedures in place to ensure the sale and supply of liquor was completed inside the prescribed trading hours being 04:00.

Compliance history of the Licensee

52. On 10 May 2022, the Delegate of the Director of Liquor Licensing found the Licensee had contravened section 293 of the *Liquor Act 2019* by allowing more than the maximum number of patrons on to the licensed area as directed by the NT Fire and Rescue Service and issued a Penalty Infringement Notice of 5 penalty units.
53. In addition to the contravention referred at paragraph 32, on 1 November 2022, the nominee was advised in writing on Saturday, 29 October 2022 at about 01:30 hours, Licensing Inspectors observed a patrons displaying signs of being affected by alcohol (unsteady on feet and coordination impeded) and discourteous behaviours i.e. dropped a drink on the floor and walking away, bumping and pushing into people etc. Crowd controllers were not attending to the issues

DECISION

54. In respect to allegation 1, that being a breach of section 141 (3) of the *Liquor Act 2019*, I have determined, pursuant to section 163(1)(f) of the *Liquor Act 2019*, to issue the Licensee an infringement notice to the amount of 3 penalty units in relation to the complaint.
55. In respect to allegation 2, that being a breach of Section 293 of the *Liquor Act 2019*, I have determined, pursuant to section 163(1)(b) of the *Liquor Act 2019*, to issue the Licensee a formal warning (in writing) in relation to the complaint.

REVIEW OF DECISION

56. 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.
57. 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.
58. The affected person in this matter is the licensee of Mayberry Darwin.



Bernard Kulda
Delegate of the Director of Liquor Licensing

24 April 2023