

## Delegate of the Director of Liquor Licensing

### Decision Notice

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<b>MATTER:</b>	Complaint pursuant to section 160 of the <i>Liquor Act 2019</i>
<b>LICENSEE:</b>	Westbrick Pty Ltd
<b>PREMISES:</b>	Mataranka Hotel
<b>LICENCE:</b>	80117506
<b>LEGISLATION:</b>	Part 7, Division 3 of the <i>Liquor Act 2019</i>
<b>DECISION OF:</b>	Delegate of the Director of Liquor Licensing
<b>DATE OF DECISION:</b>	20 December 2024

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#### DECISION

1. For the reasons set out below, as a delegate of the Director of Liquor Licensing (the Director), I uphold a complaint against Westbrick Pty Ltd (the licensee) that on 3 February 2024 it had breached the *Liquor Act 2019* (the Act) by:
  - a. On two (2) occasions contravened section 130(2) by selling liquor to a patron prior to scanning the patron's approved form of identification on the identification system.
  - b. On one (1) occasion contravened section 130(2) by selling liquor to a patron without scanning the patron's approved form of identification on the identification system.
  - c. On one (1) occasion contravened section 138(b), by not refusing service to a patron when the patron's first form of identification identified that they were registered on the Banned Drinker Register.
2. Upon completion of the investigation into the complaint, I am satisfied that the following action should be taken:
  - a. Pursuant to section 163(1)(d) of the Act, issue the licensee with one (1) Infringement Notice pursuant to section 131(1) of the Act for contravening section 130(2) of the Act.
  - b. Pursuant to section 163(1)(b) of the Act, give the licensee a formal warning for contravening section 138(b) of the Act by not refusing service with the intent to sell liquor after the identification system had identified that the patron was on registered on the Banned Drinker Register.
  - c. Pursuant to section 163(1)(b) of the Act give the licensee a formal warning that any future contravention of section 130 or section 138 of the Act may result in the matter being referred to the Northern Territory Liquor Commission for disciplinary action.

## REASONS

### Background

3. Westbrick Pty Ltd (the licensee) is the holder of liquor licence 80117506 for premises known as "Mataranka Hotel", situated at Stuart Highway, Mataranka, NT, 0852 (the premises).
4. The joint nominees for the licensee are Mr Steven Chisholm, Ms Debre Ann Moore and Ms Sonia Ellmers.
5. As of 13 March 2024, the licence includes a takeaway authority, a public bar authority, a late-night authority, and an Adult Entertainment R-Rated authority. The trading hours pursuant to the public bar and late-night authority are therefore from 10:00 am to 2:00 am seven days per week. The licence further provides that in relation to the takeaway authority, liquor shall be sold only for consumption away from the premises during the following hours:
  - a. Sunday to Friday inclusive between the hours of 14:00 and 20:00.
  - b. Saturday and Public Holidays between the hours of 14:00 and 20:00; and
  - c. No trading Good Friday or Christmas Day.

### The Complaint

6. On or about 1 March 2024, Mr Nicol Fawcett, Constable of the Northern Territory Police Force referred a complaint to Senior Compliance Officers (SCOs) based in Katherine alleging that on 3 February 2024, the licensee had contravened the *Liquor Act 2019*. In support, Constable Fawcett provided CCTV footage and a CCTV synopsis describing the events within the footage.
7. On 7 March 2024, an inspector lodged a complaint with the Director pursuant to section 160 of the Act, the grounds for the complaint being pursuant to subsection 160(1)(b) in that:
  - a. The licensee or the licensee's employee contravened another provision of this Act of the regulations, whether or not it constitutes an offence.
  - b. The complaint was in the approved form specifying the grounds for the complaint, was signed, and lodged with the Director in compliance with the requirements of section 160(2) of the Act.
8. On 13 March 2024, a delegate of the Director accepted the complaint pursuant to section 160(1)(b) of the Act. The licensee was informed of the complaint the same day, via email and given 14 days to respond.
9. The substance of the complaint was in relation to events of 3 February 2024 and stated as follows:
  - a. On Saturday 3 February 2024 at about 12:04 pm, a Banned Drinker Register (BDR) scan was completed after the patron had paid for the takeaway liquor, contrary to section 130 of the Act.
  - b. On Saturday 3 February 2024 at about 12:32 pm, a patron purchased takeaway liquor without a BDR scan being completed, contrary to section 130 of the Act.

- c. On Saturday 3 February 2024, at about 1:06 pm, a BDR scan was completed after the patron had paid for the takeaway liquor, contrary to section 130 of the Act.
- d. On Saturday 3 February 2024, at about 3:49 pm, a patron provides a form of identification (ID) to the employee who then scans the ID on the BDR. Internal APMS data indicated a “No Sale” at that time. Approximately one (1) minute later, the patron provides another form of ID to the employee who also scans this ID on the BDR. Internal APMS data indicates a “No Sale”. Although no liquor is sold/supplied to the patron at that time, the employee should have refused further service after the first scan at 3:49 pm indicated a ‘No Sale’ in accordance with section 138 of the Act.

### The investigation

10. On 1 March 2024, Senior Compliance officer McIntyre, an appointed inspector pursuant to section 16 of the Act commenced an investigation that involved reviewing:
  - a. The licensee’s CCTV footage of all cameras for 3 February 2024.
  - b. The data of scans obtained from the identification system used by the licensee.
11. On 27 March 2024, the licensee provided their response to the complaint advising:
  - a. “We have reviewed the said footage of complaint. Employee Ilija (RAM) Kliska whom we refer to as Ram has made some errors in respect of Takeaway Alcohol Sales (BDR Processing of Identification & the correct process of takeaway alcohol sales)”
  - b. “Steve & I are like broken records so to speak in respect of all sales both over the bar & takeaway sales & provide frequent training & support.”
  - c. “Upon reviewing the footage Ram has been distracted with incorrect processes of takeaway alcohol sales in the event as such that he has thought that he had already scanned the patrons ID. A further incident was that Ram scanned a patrons ID that went red & then proceeded to scan another ID from the same patron which also went red. It is noted that Ram did not proceed with the sale of takeaway alcohol. The delays in processing of some transactions from BDR to EFTPOS to POS is due to Mataranka’s lack of Phone coverage services. Mataranka is currently in the process of a Telstra Tower Upgrade with completion scheduled for April 24, Nic (Telstra NT Manager).”
  - d. “We have brought the incidents to Ram’s attention, providing further training, clarification, support & prompted the importance of seriousness of not following the correct processes of takeaway sales. We have also reviewed several other days of footage & all takeaway sales were processed perfectly, without fault.”
  - e. “We take this matter seriously. Ram has been given a final warning in that there is no room for error. We will be & in the event that in house review of footage of takeaway alcohol sales errors his employment with Westbrick Pty Ltd t/a Mataranka Hotel will be instantly terminated without notice.”

12. Sections 129 and 130 of the Act in conjunction with Regulation 106(1)(b) of the Liquor Regulations 2019 (the Regulations) require licensees operating a takeaway authority to use and maintain an identification system. The system (the BDR scanning system) requires licensees to scan an approved form of identification for each customer who wishes to purchase takeaway liquor, using a government supplied scanner that checks whether the customer is on the Banned Drinker Register. Licensees are prohibited from selling liquor to persons unless, having first scanned the identification document and the system indicates that the patron is not prohibited from purchasing liquor.
13. CCTV footage clearly shows the two (2) separate interactions at 12:04 pm and 1:06 pm involving Mr Kliska, the licensee's employee, and two (2) patrons purchasing takeaway liquor. On both occasions, Mr Kliska is seen completing the sale of liquor prior to scanning the patron's identification on the identification system and the identification system indicating that the patrons were not on the Banned Drinker Register.
14. CCTV footage clearly shows a further transaction involving Mr Kliska and another patron at 12.32 pm where Mr Kliska sells liquor without operating the identification system at all.
15. CCTV footage clearly shows a further interaction involving Mr Kliska and another patron at 3:49 pm where Mr Kliska accepts a patron's identification that when scanned through the identification system identified that they were registered on the Banned Drinker Register. Mr Kliska then accepted another form of identification from the same patron and when scanned through the identification system it also indicated that the patron was on the Banned Drinker Register. While no sale of liquor occurred in this instance. Mr Kliska should have refused service to the patron in accordance with section 138 of the Act.

### Compliance History

16. On 18 November 2019, the licensee was issued with a letter of warning for contravening section 109(1)(a) and (b) of the Act, for failing to produce a record and any other document relating to the sale, supply or service of liquor in the course of the licensee's business and required to be kept by the licensee, namely failing to provide CCTV footage. on two (2) separate occasions.
17. On 18 November 2019, the licensee was issued a formal warning for contravening section 76(1) of the Act, for failing to ensure that the licensee had an acting nominee in place.
18. On 22 July 2020, the licensee was issued with an Infringement Notice for contravening section 293(1) of the Act for failing to ensure the CCTV installed at the premises was operable in accordance with the licence condition relating to CCTV requirements.
19. On 1 June 2022, the licensee was issued with an Infringement Notice for contravening section 131(1) of the Act for selling takeaway liquor to a patron without using the identification system.
20. On 21 February 2023, the licensee was issued with a formal warning for contravening section 130(2) of the Act for selling takeaway liquor to a patron who did not present an approved form of identification.

21. On 20 February 2024, the Northern Territory Liquor Commission (Commission) found that the licensee contravened the *Liquor Act 2019* on nine (9) occasions, namely section 102 on two (2) occasions, section 109 on one (1) occasion, section 130 on five (5) occasions and section 138 on three (3) occasions. The Commission was satisfied that grounds for disciplinary action existed and took the following disciplinary action against the licensee:
  - a. Varied the conditions of the licence in relation to the takeaway authority trading hours.
  - b. Suspended the licence for a period of four (4) hours from 14:00 hours to 18:00 hours on Wednesday 20 March 2024, with such suspension being confined to the sale or supply of liquor pursuant to the takeaway authority of the licence.
  - c. Imposed a monetary penalty 5 penalty units for failing to produce a record, namely till tapes.

#### **ACTION AFTER INVESTIGATION**

22. Section 163(1) of the Act provides that on completion of an investigation, as a delegate of the Director I may do any of the following:
  - a. Take no further action if satisfied that there are no grounds or evidence to justify taking further action, or the matter does not warrant taking further action;
  - b. Give the licensee a formal warning in relation to the complaint;
  - c. Mediate the complaint;
  - d. Issue an infringement notice in relation to the complaint;
  - e. Enter into an enforceable undertaking with the licensee; or
  - f. Refer the matter to the Commission for disciplinary action.
23. As delegate of the Director, I have taken into consideration that the events subject to this decision occurred some 17 days prior to the Commission's disciplinary hearing referred at paragraph 13 above.
24. I have also taken into consideration the licensee's response wherein they have provided Mr Kliska with additional training and their undertaking to terminate his employment should any further errors occur with takeaway liquor sales.
25. Based on the evidence referred to above, pursuant to section 163(1)(d) have determined to issue the licensee with one (1) infringement notice.
26. I also take this opportunity to warn the licensee that any future indiscretion of contravening section 130 or section 138 of the Act may result in referral to the Northern Territory Liquor Commission for disciplinary action.
27. Within 14 days of making this decision the Act requires the complainant, licensee and the Commission to be given a copy of the notice.

## REVIEW OF DECISION

28. As a decision of a delegate of the Director, this notice must state the decision and reasons for it, as well as advise an affected person of their right to seek a review of the decision and the manner in which it may be done.
29. Section 27 of the Act provides for a licensee or the complainant to seek a review of the decision within 28 days after the written notice is given to the person, and the application must be in the approved form and state the grounds for the review, and the facts relied upon to establish the grounds.
30. Accordingly, the affected persons in relation to this decision are Westbrick Pty Ltd, NT Police and the inspector.



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

20 December 2024