

Delegate of the Director of Liquor Licensing

Decision Notice

MATTER:	Contravention of the <i>Liquor Act 2019</i>
LICENSEE:	ROBJO NT Pty Ltd
VENUE:	The NT Rock Bar
LEGISLATION:	Sections 141 & 285 of the <i>Liquor Act 2019</i>
DECISION OF:	Delegate of the Director of Liquor Licensing
DATE OF DECISION:	31 October 2022

BACKGROUND

1. ROBJO NT Pty Ltd (previously The NT Rock Bar Pty Ltd) is the licensee for liquor licence number 80818127, trading as The NT Rock Bar, situated at 78 Todd Street, Alice Springs, NT 0870.
2. On 4 August 2022, a complaint pursuant to section 160 of the *Liquor Act 2019* (the Act), was accepted against The NT Rock Bar (the Rock Bar) by the delegate of the Director of Liquor Licensing, Bernard Kulda. 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. On 14 July 2022, CCTV footage obtained from the Rock Bar depicts an Indigenous male (POI) wearing a baseball cap, Hawthorn football t-shirt, striped jacket and jeans, appearing 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

4. It is alleged that an employee of the Rock Bar 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. On 14 July 2022, CCTV footage obtained from the Rock Bar depicts an Indigenous male (POI) wearing a baseball cap, Hawthorn football t-shirt, striped jacket and jeans, purchasing liquor from the bar at 1914 hours and 1939 hours. The male appears to be unbalanced on his feet and his co-ordination noticeably impaired. It is alleged the male was intoxicated when he was sold liquor.

Licensee response to Complaint

5. On 30 August 2022, Mr Jo George, licensee of the Rock Bar, submitted a response to the complaint particulars.
 - a. The licensee acknowledged the allegations and does not dispute the claims set out by Licensing NT.
 - b. Since the 15 July 2022, the licensee has voluntarily reduced trading hours and are only open on Friday and Saturday nights.
 - c. The licensee claimed that on the 14 July 2022 staff must have missed observations of inappropriate behaviour by patrons, usually if staff observe adverse behaviour by patrons they are requested to leave the premises.
 - d. The licensee requested Licensing NT take into consideration their “minimal breaches over a 15-year period”.
 - e. The licensee recently attended an RSA refresher course [Licensing NT delivered licensee training] to refresh their responsibilities.

Investigation of complaint

6. On the 14 July 2022, Senior Compliance Officer’s (SCO) Holly Sowerby and David Neall were conducting inspections of licensed premises in Alice Springs. At approximately 1952 hours SCO’s Sowerby and Neall observed a person of interest (POI) exiting the Rock Bar. The POI is described as Aboriginal in appearance, he was wearing a baseball cap, striped jacket, Hawthorn football t-shirt and jeans. It was obvious to the SCO’s that the POI appeared intoxicated. His gait was impaired and he was very unbalanced on his feet. The POI was stumbling back and forth on the pathway at the front of the premises.
7. CCTV footage obtained from the premises for the 14 July 2022 indicated that the POI entered the Rock Bar at approximately 1619 hours. The male purchased alcohol at approximately 1620, 1642, 1747, 1758, 1835, 1916, 1929 and 1938 hours. The purchases correspond with the register till tapes obtained from the premises.
8. Between 1909 hours and 1956 hour, the POI is observed on CCTV footage losing his balance whilst both standing and walking within the premises, and appears incapable of controlling his behaviour.
9. There is evidence to indicate Rock Bar employees had asked the POI to leave the premises at 1956 hours, however sales of liquor ceased at 1951 hours and all patrons had left the premises by 2011 hours, indicating the premises was closing and patrons were being requested to leave regardless.
10. Footage obtained from Police CBD CCTV cameras corroborated the SCO’s observations of the male exiting the premises and his movements down Todd Street towards the Todd Mall.

Compliance history of the licensee

- a. On 28 February 2019, the licensee of the Rock Bar allegedly contravened sections 102 and 121 of the *Liquor Act 1978*. The Director of Liquor Licensing upheld the breaches on 1 November 2019 and imposed a monetary penalty of \$1590.
- b. On 7 December 2019, the licensee of the Rock Bar allegedly contravened sections 141 and 285 of the *Liquor Act 2019*. The complaint was upheld on 7 July 2020 and the licensee was issued an infringement notice by the NT Liquor Commission to the amount of \$1600.

- c. On 28 August 2021 NT Police Commander Craig LAIDER, exercised his powers pursuant to section 258 of the *Liquor Act 2019*, and issued a 48 hour licence suspension to the Rock Bar between 11:30am 28 August 2021 to 11:30am 30 August 2021.
- d. On 15 July 2022 NT Police Commander Craig LAIDLER, exercised his powers pursuant to section 258 of the *Liquor Act 2019*, and issued a 48 hour licence suspension to the Rock Bar between 11:00am 15 July 2022 to 11am 17 July 2022.
- e. On 26 August 2022, the Delegate of the Director of Liquor Licensing accepted a complaint against the licensee of the Rock Bar. The complaint alleged one contravention of section 91 of the Act, and thereby section 293, one contravention of section 141 and one contravention of section 285 of the *Liquor Act 2019*. The Delegate of the Director of Liquor Licensing upheld the breaches on 31 October 2022 and imposed a monetary penalty of 13 penalty units.

Analysis of the evidence

Allegation 1

Offence 1

11. There is sufficient evidence to support the allegation that the 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:
12. Between 1909hrs & 1956hrs, the POI is observed on CCTV losing his balance whilst both standing and walking within the premises.
13. Based on CCTV footage, it is evident that the POI is significantly impaired and incapable of controlling their behaviour.
14. There is evidence to indicate Rock Bar employees had asked the male to leave the premises at 1956hrs, however sales ceased at 1951hrs and all patrons had left the premises by 2011hrs, indicating the premises was closing and patrons were being requested to leave regardless.
15. In their response the licensee has not disputed the allegation.

Offence 2

16. 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:
17. At 1909hrs, 1930hrs, 1937hrs & 1946hrs the POI is observed on CCTV losing his balance both while standing and walking within the licensed premises. Prior to purchasing liquor at 1929hrs, 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.
18. At approximately 1929hrs and 1938hrs an employee of the licensee is observed on CCTV footage supplying liquor to the POI at the bar service area.
19. Till tapes evidence that liquor sold & supplied to the POI at 1929hrs was a stubby of Jim Beam & Cola, and was either a jug of cider or XXXX gold at 1938hrs.

20. Prior to the POI purchasing liquor at 1929hrs, 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 refused to sell/supply him any further liquor.
21. Maama O'Beira was the employee who supplied liquor to the POI and was employed by the premises and on duty at the time the offence is said to have occurred.
22. At approximately 1956 hours, the POI is observed on CCTV being ushered from the venue by a female employee.
23. In their response the premises has not disputed the allegation.

DECISION

24. It is acknowledged that the licensee has voluntarily reduced trading hours to only Friday and Saturday. Further to this, the licensee ensured all staff attended a RSA education session conducted by Licensing NT personnel shortly after the incident.
25. It is also recognised that the licensee is taking this matter seriously with one of the Directors, Mr Jo George working during the busy periods to supervise all staff and patron behaviour.
26. Recent inspections conducted at the premises has shown a mark improvement with patron management and RSA practices and no compliance issues at time of inspection.
27. Based on the available information provided to me, I have determined the following:
 - a. In respect to allegation 1, offence 1, that being a breach of section 141 of the *Liquor Act 2019*, I have determined to issue an infringement notice of three (3) penalty units, pursuant to section 163 (1)(d) of the *Liquor Act 2019*.
 - b. In respect to allegation 1, offence 2, that being a breach of section 285 of the *Liquor Act 2019*, I have determined to issue an infringement notice of five (5) penalty units, pursuant to section 163 (1)(d) of the *Liquor Act 2019*.

REVIEW OF DECISION

28. 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.
29. 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.
30. The affected person in this matter is the licensee of The NT Rock Bar.



Bernard Kulda

Delegate of the Director of Liquor Licensing

Date: 4 November 2022