

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: 19 July 2023

BACKGROUND

1. Iris Gap View Operations Pty Ltd is the Licensee of the Gap View Resort 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 20 April 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 allegation made.

Particulars of Complaint

4. It was alleged that on 18 March 2023, the Licensee contravened section 130(2) of the Act, 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.

Licensee response to Complaint

5. On 4 May 2023, Nominee JERVIS submitted a response to the complaint stating:
 - a) The Licensee accepted the allegation as set out by Licensing NT.
 - b) The Licensee regrets the breach of the Act, which occurred at the Premises on 18 March 2023.
 - c) In addressing the allegation, Nominee JERVIS states:
 - (i) That while not diminishing the seriousness of the breach, the offence was the result of human error. Specifically, that a delay was created when a confused bottle shop attendant was unable to scan a product into the point of sale system.
 - (ii) That 433 BDR scans were conducted with 422 sales completed showing this non-compliant transaction as being 0.024% of the total sales made on this day.

Investigation of complaint

6. On 30 March 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 18 March 2023 and a statutory declaration from a Police Constable who was on duty at the Premises bottle shop on 18 March 2023. NT Police alleged that 2 breaches of section 130(2) of the Act had occurred at the Premises.
7. Of the 2 alleged breaches, 1 matter was determined as either having no grounds or insufficient evidence to proceed.
8. Senior Compliance Officer Brian Wingrove investigated the remaining alleged breach. The CCTV footage NT Police acquired from the Premises shows the allegation occurred as detailed in the NT Police's official complaint.
9. The employee responsible for the breach, Ben MULLEN, completed his BDR refresher training on 8 February 2023.

Analysis of the evidence

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

Allegation: That on 18 March 2023, an employee of the Licensee sold liquor to an individual without first checking the individual's ID against the BDR prior to selling liquor.

11. In making this determination I have relied on the following facts:

At 17:18 hours on 18 March 2023, CCTV obtained from the Premises illustrates an employee of the Licensee serving a male patron. The employee takes payment for the liquor without scanning his ID on the BDR. This is contrary to Section 130(2) of the Act.

Compliance history of the licensee

12. 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.
13. 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.
14. On 24 January 2023, the Licensee of the Gap View Hotel contravened Section 130 of the Act on 4 occasions by selling liquor to 3 individuals without scanning their ID's on the BDR; and selling liquor to 1 individual without first using an approved form of ID to check the BDR. On 10 May 2023, the Delegate of the Director of Liquor Licensing upheld the complaint and issued 4 notice of infringements for a combined total of \$2,592.

DECISION

15. In respect to allegation that the Licensee breached Section 130 of the *Liquor Act 2019*, I find that following the evidence provided above, the allegation is proven.
16. In respect to the allegation, I have determined to issue an infringement notice of three penalty units (4 x \$162 = \$648) pursuant to section 163(1)(d) of the *Liquor Act 2019*.

REVIEW OF DECISION

17. 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.
18. 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.
19. 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

Date: 2 August 2023