

Delegate of the Director of Liquor Licensing

Decision Notice

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| MATTER: | Complaint pursuant to section 160 of the <i>Liquor Act 2019</i> |
| LICENSEE: | Westbrick Pty Ltd |
| PREMISES: | Mataranka Hotel |
| LICENCE: | 80117506 |
| LEGISLATION: | Part 7, Division 3 of the <i>Liquor Act 2019</i> |
| DECISION OF: | Delegate of the Director of Liquor Licensing |
| DATE OF DECISION: | 18 March 2025 |

DECISION

1. For the reasons set out below, as a delegate of the Director of Liquor Licensing (the Director), I reject a complaint against Westbrick Pty Ltd (the licensee) that on 31 August 2024 it had breached the *Liquor Act 2019* (the Act) by:
 - a. The licensee or a licensee's employee intentionally sold or otherwise supplied liquor to another person on or in the licensed premises and is intoxicated, and the person is reckless in relation to those circumstances.
2. Upon completion of the investigation into the complaint, I am satisfied that the matter does not warrant taking further 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 23 February 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 Complaint

6. On or about 5 September 2024, Mr Nicol Fawcett, Constable 1st Class of the Northern Territory Police Force referred a complaint to Senior Compliance Officers (SCOs) based in Katherine alleging that on 31 August 2024, the licensee had contravened the *Liquor Act 2019*.

In support, Constable Fawcett provided a statement and Police Body Worn Camera (BWC) footage describing the events within the footage.

7. On 24 December 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 a licensee's employee intentionally sold or otherwise supplied liquor to another person on or in the licensed premises and is intoxicated, and the person is reckless in relation to those circumstances.
 - 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 24 December 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 31 August 2024 and stated as follows:
 - a. On Saturday 31 August 2024 at about 3:10 pm, Constable Fawcett was positioned inside the Mataranka Hotel and observed a male employee, and a female employee positioned behind the bar.
 - b. Shortly after, Constable Fawcett observed a female (floral dress/black and white top) being served a can of VB beer and exchange money with the male employee.
 - c. As the female walked away, Constable Fawcett immediately observed the female to “*stagger and sway heavily*” as she walked. As she approached the doorway, she grabbed hold of the door frame to steady herself. During this time, Constable Fawcett states she was unsteady on her feet and had formed the belief she was intoxicated.
 - d. Constable Fawcett approached the female, asked her how many drinks she had consumed, she replied, one then stated three. Constable Fawcett states during this time, her words were “*slow and slurred, and she smelt strongly of alcohol*” and escorted her out of the premises due to her intoxication.
 - e. As the female began walking towards the exit, she staggered and went to grab his left arm to steady herself.
 - f. Once outside, the female consented to a breath test and returned a positive reading for the presence of alcohol being 0.195 BrAC.

The Investigation

10. On 1 December 2024, Senior Compliance Officer Paull, an appointed inspector pursuant to section 16 of the Act commenced an investigation that involved reviewing:
 - a. The licensee's CCTV footage of entrance/exit, main bar and beer garden cameras for 31 August 2024.

11. On 7 January 2025, 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 sold the female (patron) 1 x VB can in the correct manner and the female did not look intoxicated.
 - b. CCTV footage demonstrates a police officer standing in the doorway observing the sale; if he believed that the sale should not have proceeded, he should have intervened.
 - c. We are of the belief the complaint was lodged due to Mr Kliska responding in an inappropriate manner upon the police officer questioning him regarding the sale and is concerned there may be a trend of complaints that appears to be at the fate of Mr Kliska.
 - d. Mataranka Hotel is a small community-based hotel which do the right thing and are always providing ongoing support & training so that we are delivering a safe, fun venue for patrons.
12. Sections 285 and 5 of the Act states:
 - a. A person commits an offence if the person is a licensee or a licensee's employee, and the person intentionally sells or otherwise supplies liquor to another person and the other person is on or in the licensed premises and is intoxicated and the person is reckless in relation to those circumstances.
 - b. Meaning of intoxicated - A person is to be taken to be intoxicated if the person's speech, balance, coordination or behaviour appears to be noticeably impaired, and it is reasonable in the circumstances to believe the impairment results from the person's consumption or use of liquor or a drug.
13. CCTV footage shows a female described as approx. 65-70 years old of frail appearance, enter the premises, attend the bar (POS) and place money (coins) on the bar. Mr Kliska, positioned behind the bar, collects the coins, places them into to till, removes 1 x can of VB from the fridge, opens the can, and places it on the bar. The female collects the VB and departs the bar (towards the beer garden).
14. Constable Fawcett enters the bar (as employee is at the till), positioned himself at the corner of the bar and observes Mr Kliska hand the female a can of VB beer before following the female to the beer garden.
15. Constable Fawcett approaches the female who was in possession of a can of VB beer. While engaging with Constable Fawcett, the female places her left hand on the railing, releases it and holds it again.
16. Constable Fawcett asked her how much she had to drink, she replied one, then stated three. Constable Fawcett replied, "*you're way too drunk to be here, out you go*" and took possession of the can of beer.
17. Constable Fawcett escorted the female (unaided) to the beer garden to collect her handbag, then through the premises to the front entrance. During this time, Constable Fawcett repeatedly told the female "*they should not have served you, you are way too drunk*".

18. The female sat on the ground and participated in a handheld breath test returned a reading of 0.195. The female is assisted to her feet by Fawcett.

Analysis of investigation

19. Constable Fawcett states as the female walked away (from the bar), he observed her to “*stagger and sway heavily*” as she walked. Hotel footage shows the female to momentarily stagger as she reaches the doorway, however, does not demonstrate the female to “*stagger and sway heavily*” as she walked away (towards the beer garden).
20. Constable Fawcett states the female grabbed hold of the door frame to “*steady herself*”. BWC footage depicts the female to hold then release the railing while remaining steady on her feet before once again taking hold of the railing appearing to assist her to walk up the two (2) sets of stairs (towards the beer garden).
21. Constable Fawcett states as he was conversing with the female, her words were “*slow and slurred, and she smelt strongly of alcohol*”. BWC footage depicts Constable Fawcett asking the female a number of questions, whereby the female responded immediately. During the time the female was conversing with Constable Fawcett, she spoke in broken English and her vocabulary was regarded as slow and slightly slurred.
22. Constable Fawcett states as the female began walking towards the exit, she staggered and went to grab his left arm to steady herself. Hotel footage depicts the female to be marginally swaying as she was being escorted from the premises.
23. While the female participated in a handheld breath test returning a reading of 0.195, and the Act declares the result of a breath analysis is admissible as prima facie evidence; there is insufficient evidence to find the female was ‘intoxicated’ pursuant to the definition of intoxication as described in section 5 of the Act.

ACTION AFTER INVESTIGATION

24. 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.
25. As delegate of the Director, I have taken into consideration Constable Fawcett’s observations as described in his statement, police BWC, CCTV footage and the licensee’s response.
26. Based on the evidence referred to above, pursuant to section 163(1)(a)(ii) have determined to take no further action as the matter does not warrant taking further action.

REVIEW OF DECISION

27. 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.

28. 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.
29. 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

18 March 2025