NEWS & INSIGHTS

FINLAYSONS LAWYERS

NOVEMBER 2020

NT LIQUOR LICENSING – COMPLIANCE WITH BDR REQUIREMENTS

The implementation of the Banned Drinking Register to assist in dealing with the alcohol issues in the Northern Territory is a practice that will remain in place for the foreseeable future. It has and will likely continue to attract the attention of regulators.

Licensees and their staff must ensure they take all steps to comply with the BDR requirements. A failure can lead to a prosecution and a substantial penalty.

Licensees can reduce the likelihood of a breach by implementing training (and re-training), internal audits, and appropriate policy.

BANNED DRINKERS REGISTER – BACKGROUND

The Banned Drinkers Register (**BDR**) is designed to prevent the sale of alcohol to persons the subject of an alcohol prohibition.

In short, the BDR works by requiring a customer's identification to be scanned and checked against the BDR to ensure that the customer is not the subject of an alcohol prohibition order.

Under sections 130 and 131 of the Act, a failure by a licensee or a licensee's employee to comply with the BDR scanning requirements is an offence.

RECENT DECISIONS BY THE NT LIQUOR COMMISSION

Three recent decisions by the NT Liquor Commission (the **Commission**) have highlighted the range of penalties available to the Commission for a breach of the BDR requirements.

These decisions relate to the Howard Springs Tavern, the Humpty Doo Tavern, and the Hidden Valley Tavern. A copy of the Commission's decision in each of these matters can be located here.

In the Hidden Valley case, the Commission found that the licensee had committed 192 breaches in a 6-day period. The licensee's counsel argued that a monetary penalty was more appropriate on the basis that the breaches stemmed from, amongst other things, inadvertent oversight, human error, and complacency in dealing with familiar customers.

The Commission determined that the failures giving rise to the breaches were not a "one off" but rather a systematic failure by the licensee. Accordingly, the Commission suspended the liquor licence for a period of 48 hours (which suspension was to take place over a weekend).

In the Humpty Doo case, the Commission found that the licensee had breached the BDR requirements on 54 separate occasions over a 3-day period. Similar submissions to those raised in respect of Hidden Valley were made by the licensee's counsel. The Commission found that the non-compliant transactions reflected 16% of the total transactions during the relevant 3-day period and accordingly they could not be described as a *"one-off"*, nor could they be put down to a "*momentary lapse of concentration*". Importantly, the Commission accepted that:

"*…human error is bound to result in some small degree of noncompliance even with the best training regime. However, a 16% failure rate is way in excess of what might be regarded as an unavoidable level of error."*

In light of the high non-compliant transaction rate of 16%, the Commission imposed a 24-hour suspension of the liquor licence (which was to take effect on a Tuesday).

In the Howard Springs case, a total of 8 breaches were committed by the licensee over a 3-day period, followed by a further single breach over the course of a single day which occurred several months later.

Unlike Hidden Valley and Humpty Doo, the Commission concluded that a minor fine of 3 penalty units would be appropriate.

Underpinning its decision in Howard Springs, the Commission observed that, the 8 non-compliant transactions during the 3-day period only amounted to 0.84% of total sales. During the later 1-day period, the number of non-compliant transactions reduced to 0.26% of the total transactions.

The Commission accepted that the reduced non-compliant transactions reflected a commitment from the licensee to further improve its level of compliance. The Commission also stated that a non-compliant transaction rate of 0.25% is "probably close to the limit of what is achievable for workers operating in a busy environment."

MINIMISING THE MARGIN OF ERROR

These decisions demonstrate that the Commission is willing to accept that there is an unavoidable element of "human error" which will contribute to breaches of the BDR requirements. In Howard Springs, the Commission went as far to say that a non-compliant transaction rate of 0.25% (or 1 in about every 400 transactions) is probably around about the "achievable limit" for employees operating in a "busy environment".

Despite this, it is clear that the Commission has a high expectation that licensees will comply with the BDR requirements under the Act. There are some steps that you can take to seek to minimise your error rate. In particular:

/ ensuring that all staff are familiar with the BDR requirements and the potential ramifications for the licensee in the event of a breach;
/ implementing regular internal training/retraining programs to ensure all staff are fully trained on the BDR scanner system;
/ conducting a regular review of internal policies and procedures in place around BDR compliance; and
/ implementing and conducting your own audit regime.

If you have any queries regarding this alert or BDR compliance more generally, please contact:

Martin Kelly

Partner

martin.kelly@finlaysons.com.au

+61 8 8235 7495

Ralph Bönig

Special Counsel

ralph.bonig@finlaysons.com.au

+61 8 8235 7684

Michael Rydon

Associate

michael.rydon@finlaysons.com.au

+61 8 8235 7514

Andrew Williams

Partner

andrew.williams@finlaysons.com.au

+61 8 8235 7775

Will Taylor

Partner

will.taylor@finlaysons.com.au

+61 8 8235 7421