

NSW Independent Liquor & Gaming Authority

Mr Mark Bylsma Former Licensee Colyton Hotel	Mr Darren Duke A/Director of Compliance & Enforcement Unit NSW Department of Creative Industries, Tourism, Hospitality and Sport
Section 140(3) – Third parties Mr Shaun Patterson Licensee Colyton Hotel	Section 140(3) – Third parties AUSTRALIAN LEISURE AND HOSPITALITY GROUP PTY LIMITED Business owner
Section 140(3) – Third parties Charter Hall Premises Owner	

Our ref: DOC24/282543

3 December 2024

Dear Sir/Madam

Decision regarding a complaint about Mr Mark Bylsma under section 139 of the *Liquor Act 2007* and section 129 of the of the *Gaming Machines Act 2001*

Our decision

We are satisfied that the grounds of complaint are established and have determined to:

- **reprimand** Mr Mark Bylsma under section 141(2)(m) of the Act the *Liquor Act 2007* (Act).

Background

On 6 June 2022, Liquor and Gaming NSW (L&GNSW) received a complaint that a minor, aged 17 years old, had attended the Colyton Hotel on 26 May 2022. The complaint alleged the minor entered the hotel, withdrew money from an automatic teller machine (ATM), consumed liquor and engaged in the operation of an approved gaming machine in a restricted area.

A review of CCTV footage showed that on 22 May 2022:

- an adult male approached the rear entry of the premises where his identification was assessed by a security staff member prior to entry. The male then proceeded into the venue via the gaming entry
- the adult male proceeded to the main bar area and pressed a button to the right of the main entry door which allowed it to open. This allowed the minor entry into the hotel through the main bar
- both males then proceeded to the restricted gaming area of the hotel

- a staff member was observed with a tray of drinks and hands a drink to the adult male, then proceeds to hand a 330ml bottle of Jack Daniels branded pre-mix liquor bottle to the minor
- the minor then uses an ATM to make a withdrawal and proceeds to play an electronic gaming machine (EGM).

The minor was observed to be inside the licensed premises for approximately 65 minutes. During this time no ID checks were undertaken by staff members or security staff. The minor was observed to engage in EGM play approximately 237 times and consume one Jack Daniels pre-mix bourbon and cola whilst on the licensed premises.

A disciplinary complaint was submitted to the Authority on 24 August 2023.

Grounds of complaint

The grounds of complaint are that the former licensee:

- failed to comply with any other requirement under this Act or the regulations, relating to the licence or the licensed premises — section 139(3)(d) of the *Liquor Act 2007*
- contravened a provision of this Act or the regulations — section 129(3)(a)(i) of the *Gaming Machines Act 2001*.

Submissions and consultation

On 21 May 2024, a show cause notice was issued to the former licensee, L&GNSW, current licensee, business owner and premises owner. The submissions in response are detailed below:

Submission from the former licensee, received 18 June 2024:

- since the incident the following changes have occurred at the venue:
 - staff and security have been retrained to continually check patrons for ID who look under the age of 25
 - a flashing light was installed over the door which alerts staff and security if the door is opened after lockdown
 - a staff meeting was held to also remind all staff of the importance to not rely on security to check ID but to make sure they were as well
 - a managers meeting was also held where checking IDs and management presence on the floor after lockdown was discussed.
- Mr Bylsma has been a licensee for more than 20 years and states he has never received a licensing breach or compliance notice in any hotel over that time. He is no longer the licensee of the venue.

Submission from JDK Legal on behalf of the current licensee and business owner, received 18 June 2024:

- the grounds of complaint relate to a single incident over two years ago. In these circumstances, it is submitted that the most appropriate regulatory action should have been to issue a Warning, Penalty Infringement Notice or Court Attendance Notice.
- at the time of the incident, access to the venue was limited to a single entrance. The venue employed contracted security staff to be stationed at this entrance who assessed patrons' identification prior to entering.
- while it is the Licensee's responsibility to ensure that staff comply with their obligations under the Act, consideration must be given in circumstances whereby a minor, with the assistance of an adult, has purposefully deceived staff and gained unauthorised entry to the premises.

- it is emphasised that there is insufficient evidence to conclude beyond a reasonable doubt that the drink consumed by the minor is liquor and there is a lack of clarity regarding the staff member's interaction with the minor.
- the complaint alleges that the minor was supplied with liquor on only one occasion while at the venue for approximately 65 minutes.
- there is no evidence to suggest that the minor sought to purchase the liquor. Rather, the adult accompanying the minor purchased the drinks from a staff member who later provided the drinks to both the adult and minor.
- there is no evidence to suggest the minor was intoxicated or induced to play the EGMs. There are no findings that the operation of the EGMs resulted in any contributable harm (for example, financial hardship). The Authority can be satisfied that the amount of money spent by the minor (\$200) is relatively low.
- ALH Group has co-operated and liaised with L&GNSW since being made aware of the incident.
- ALH Group also oversaw several actions, in an effort to improve the venue's policies and procedures relating to minors. These actions included:
 - the former licensee completed a quarterly Licence Inspection & Compliance Checklist.
 - ALH Group upgraded three CCTV cameras to record in high definition.
 - ALH Group installed a blue strobe light above the exit door, which was accessed by the minor. The light flashes for 60 seconds if the door is operated via the button located inside the hotel. This alerts the hotel's staff, security and management to the manual operation of the door.
 - ALH Group contacted the local licensing unit at Penrith to issue a barring notice for the adult.
 - The venue holds regular team meetings to discuss operations and provide a forum for management and staff to communicate important information and provide feedback. The meetings include compliance as a recurring agenda item.
 - ALH Group has introduced site specific induction, which includes NSW Crowd Controller Venue Specific Induction and the Security Australia ALH Onsite Training Guide. These documents ensure that ALH Group's security providers are familiar with site specific compliance matters.

Further submissions

On 14 October 2024, the current licensee and business owner, L&GNSW and the former licensee were given a further opportunity to provide submissions on the Authority's proposed penalty. The responses are detailed below:

- On 14 October 2024, L&GNSW advised that they agreed with the proposed penalty and would not be making any further submissions.
- On 21 October 2024, JDK Legal advised that in light of the proposed penalty the current licensee and business owner would not be making any further submissions.
- On 11 November 2024, the former licensee advised that he accepts the proposed penalty.

Our findings

It appears that poor practices/procedures and lack of supervision contributed to the offence occurring, as the minor gained entry to the venue through an exit door with the assistance of an adult who had already gained entry via security.

We have taken into consideration the significant changes to business practices at the venue since the offence occurred and note that the former licensee was not present at the hotel at the time of the offence.

Although the former licensee was not present, he is responsible for the personal supervision and management of the licensed premises at all times. We consider the offence to be serious in nature and therefore warrants disciplinary action in the form of a reprimand.

Relevant legislation

Prescribed grounds of complaint

We are satisfied that the complaint was made validly and that the established grounds of complaint are prescribed grounds under section 139(3)(d) of the *Liquor Act 2007* and section 129(3)(a)(i) of the *Gaming Machines Act 2001*.

The material we considered

In determining the disciplinary complaint, the following material was considered:

- disciplinary complaint from L&GNSW, received 24 August 2023
- submission from the former licensee, received 18 June 2024.
- submission from JDK Legal on behalf of the licensee and business owner, received 18 June 2024
- email from L&GNSW, received 14 October 2024
- email from JDK Legal on behalf of the licensee and business owner, received 21 October 2024
- submission from the former licensee, received 11 November 2024

If you are dissatisfied with this decision

The respondent or complainant may apply to NCAT for a review of this decision under the *Administrative Decisions Review Act 1997*.

For more information, please contact the NCAT Registry at 1300 006 228 or visit the NCAT website.

This decision may be published on the website.

If you have any questions

Please contact the Office of ILGA at office@ilga.nsw.gov.au if you have any questions.

Yours sincerely



Jeff Loy

Board Member

for and on behalf of the **Independent Liquor & Gaming Authority**