



Mr Damien Morton Licensee Liquorland Shop 20 Eastgate Shopping Centre Ebley Street BONDI JUNCTION NSW 2022 orion1388@gmail.com cc: j.martin@jdklegal.com.au	Senior Sergeant Jacqueline Barlow Central Metropolitan Region Licensing Co-ordinator Sydney City Police Area Command 192 Day Street SYDNEY NSW 2000 barl1jac@police.nsw.gov.au cc: zahr1jam@police.nsw.gov.au	Mr John Coady Manager Compliance Liquor and Gaming NSW Level 9, 323 Castlereagh Street SYDNEY NSW 2000 john.coady@liquorandgaming.nsw.gov.au
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21 December 2018

Dear Mr Morton,

**Notice of Suspension of Licence Pursuant to Minors Sanctions Scheme
Liquorland, Bondi Junction (LIQP700301694)**

Introduction

1. Section 130C of the *Liquor Act 2007* (NSW) (Act) states:

130C Suspension of licence for first offence

- (1) If a relevant prescribed offence event occurs in relation to a prescribed offence committed on licensed premises, the Authority may, by order in writing served on the licensee, suspend the licence for such period (not exceeding 28 days) as is specified in the order.
 - (2) The Authority must not suspend a licence under this section unless the licensee has been given a reasonable opportunity to make submissions in relation to the proposed suspension.
 - (3) In deciding whether to suspend a licence under this section, the Authority may, without limitation, take into consideration the compliance history of the licensee in relation to the requirements of this Part.
2. Section 130B(1) provides that a “prescribed offence” for the purposes of Part 7, Division 4 of the Act (the Minors Sanctions Scheme) means an offence under section 117(1) or 117(8) of the Act. Section 130B(2)(b) provides that a “prescribed offence event” occurs when an amount is paid under a Penalty Notice issued to a person in respect of a prescribed offence.
 3. On 18 October 2018, Mr John Coady, Manager of Compliance, Liquor and Gaming NSW (LGNSW) provided information and a submission dated 17 October 2018 (the LGNSW Submission) notifying the Independent Liquor and Gaming Authority (Authority) of a prescribed offence event that had arisen from the sale of liquor to a minor on 17 March 2018 on the licensed premises trading as Liquorland, Bondi Junction (licence number LIQP700301694) located at Shop 20, Eastgate Shopping Centre, Ebley Street, Bondi Junction NSW 2022 (Premises). The licensee of the Premises is Mr Damien Morton (Licensee). The Onegov licence record provided as part of the LGNSW Submission indicates that the Licensee commenced that role on 30 June 2017.
 4. At its board meeting on 12 December 2018 the Authority considered the LGNSW Submission, submission and material provided by Licensing – Leading Senior Constable Jamie Zahra of the Eastern Suburbs Police Area Command dated 14 November 2018 (Police Submission) and submissions and material provided by the owner of the licensed business operating on the Premises, Liquorland (Australia) Pty Ltd, through its solicitors, JDK Legal, dated 28 November 2018 instructing Mr Jonathan Horton QC (First Liquorland Submission).

5. The Authority is not required by the liquor and gaming legislation to provide a statement of reasons when deciding whether to take action under section 130C of the Act. What follows is a brief summary only of the Authority's rationale for suspending the licence, provided in the context of a high-volume liquor jurisdiction.
6. The Authority has received a separate but related notification from LGNSW of a potential first strike against the Licensee under the disciplinary scheme in Part 9A of the Act. The Authority will provide a separate statement of reasons in relation to its decision on that matter.

Decision

7. The Authority is satisfied, on the information provided in a Computerised Operational Policing System (COPS Report) for event 69821988 created at 9:36pm on Saturday 17 March 2018, that on that day (being St Patrick's Day):
 - (i) Licensing Police attached to the Eastern Suburbs Police Area Command were patrolling packaged liquor outlets in the Bondi Junction Central Business District (CBD), when at around 5:45 pm Police observed 8 to 10 males aged 13-16 years of age standing outside the rear entrance to Eastgate Shopping Centre on Ebley Street, Bondi Junction.
 - (ii) Police had previously identified young persons at this location, soliciting adults to buy liquor from the Premises.
 - (iii) Police observed a male aged around 30 years walk down the entrance stairs from the Premises with a case of Carlton Dry beer. He was approaching the young males and supplied the beer to them a short distance away, whereupon Police detained all of these persons.
 - (iv) While speaking to this group, Police detected another young male carrying a six pack of Great Northern beer that was still cold to the touch. The young male was not in possession of any identification, but upon further investigation was established to be 16 years and 6 months of age. He told Police that the beer had been purchased on the Premises and indicated the sales assistant who had sold it to him (Sales Assistant).
 - (v) The 19-year-old Sales Assistant admitted to Police that he had sold the beer to the young male and participated in a notebook interview, when he told Police that he did not ask the young male for any identification as he believed that the male was over 25 years of age. At the conclusion of this interview, another sales assistant refunded the purchase price to the young male after Police returned the beer to the sales assistant.
 - (vi) Police requested that the CCTV footage pertaining to the sales transacted with the 30-year-old male and the young male be retained.
 - (vii) Police then contacted the Licensee, who expressed concern about these events.
 - (viii) A previous offence of selling liquor to a minor was detected in relation to the Premises on 19 June 2015, resulting in the Premises being closed by NSW Liquor and Gaming for 14 days.
8. The COPS Report includes a brief notation alleging that both the Sales Assistant and the Licensee have committed offences against section 117(1) of the Act, which provides that a person must not sell liquor to a minor. The Authority notes that this is an offence punishable by a maximum penalty of 100 penalty units, 12 months' imprisonment, or both.
9. The Authority is further satisfied, on the basis of a business record provided by Revenue NSW dated 15 May 2018, that Penalty Notice 4936169930 was issued to the Licensee on 6 April 2018 for the offence of selling liquor to a minor on licensed premises which occurred on the Premises on 17 March 2018. The status of this Penalty Notice is "Closed Paid" as at 9 May 2018.
10. Moreover, the Authority is also satisfied, on the basis of a business record provided by Revenue NSW dated 1 May 2018, that Penalty Notice 4936169893 was issued to the Sales Assistant on 22 March

2018 for the offence of selling liquor to a minor on licensed premises which occurred on the Premises on 17 March 2018. The status of this Penalty Notice is "Closed Paid" as at 30 April 2018.

11. The Authority is satisfied that a prescribed offence event occurred upon payment of either Penalty Notices 4936169930 or 4936169893. On the information provided in the LGNSW Submission, there is no evidence of any other prescribed offence events occurring within the 12 months preceding the occurrence of this offence, That is, the matter is to be treated as a first offence for the purposes of the Minors Sanctions Scheme.
12. While information provided in the LGNSW Submission indicates that this licence was suspended for a period of 14 days in October 2015 for a previous prescribed offence event at Liquorland Bondi Junction in June 2015, the matter constitutes a first offence for the purposes of the Minors Sanctions Scheme, and exposes the Licence to a potential suspension, not exceeding 28 days.
13. The Authority has taken into account the First Liquorland Submission; audit reports from Barringtons (a compliance consultant engaged by Liquorland) dated May 2018 and November 2018; a decision with reasons of the Liquor Commission of Western Australia in the matter of *Liquorland Gateways* dated 27 March 2017; a decision with reasons of the Victorian Commission for Gambling and Liquor Regulation in the matter of *Spring Street Reservoir* dated 12 October 2018; over 200 pages of Liquorland Compliance and Training material pertaining to the responsible sale of alcohol by Liquorland stores (the Liquorland Compliance Evidence); three letters dated 9 November 2018 from Coles Liquor's Area Manager, New South Wales State Manager and Operations Manager; a written reference for the Licensee from Mr Miki Jahn (a former employee of Liquorland Edgecliff where Mr Morton was previously the store manager) dated 19 November 2018; a personal reference letter for the Licensee dated 18 November 2018 from the Licensee's brother, Mr Anthony Morton; and a copy of the Licensee's Curriculum Vitae.
14. Liquorland's case is while it does not contest that an offence was committed against section 117 of the Act, no suspension of the licence is warranted by reason of Liquorland's response to the incident, its extensive systems of compliance to prevent further sale or supply of liquor to minors and that no actual harm resulted from the incident.
15. On 17 December 2018 the Authority sent an email to the Licensee's representatives placing him on notice that the Authority was contemplating suspending the licence for a period of ten days commencing on 14 January 2019 and invited any final submissions from the Licensee on that proposal by 19 December 2018.
16. Liquorland provided a two page legal submission through Mr Horton dated 19 December 2018 (Final Liquorland Submission) in which Liquorland submits that the suspension is disproportionate and for an excessive duration. Mr Horton contends that the period of 10 days is "excessive, disproportionate and inconsistent" in light of recent decisions under the Minors Sanctions Scheme.
17. Mr Horton in the Final Liquorland Submission submits that the 10 days will exceed the Authority's actions in previous cases and "wrongly" treats this case as "more grave than it is". Mr Horton submits that the length of the suspension amounts to an unfair penalty, which is outside the range of all previous Authority decisions applying the current legislative regime. On this basis, Liquorland seeks that in the alternative the Authority impose a sanction that is no longer than 5 days.
18. The Authority accepts, on the basis of the Liquorland Compliance Evidence read together with the First Liquorland Submission, that Liquorland stores maintain an extensive program of harm minimisation policies, procedures and training directed to the responsible service of alcohol, including measures directed at ensuring that its stores do not sell or supply liquor to minors.
19. Those measures are required to be implemented on the Premises and include the matters summarised in paragraphs 18 (a) to (j) of the First Liquorland Submission which include *inter alia*: requiring team members to have responsible service of alcohol (RSA) qualifications before commencing employment; requiring team members to complete the Coles Liquor Induction; requiring team members to complete three online training modules which include content on sales to minors and the ID25 programme;

requiring store managers to complete a store manager responsibility online training module; requiring future store managers to complete face-to face retail leaders training; providing regular communications on the ID25 programme; the yearly national licensing and safe trading focus week; an ID25 point of sale software prompt; pro-active target hardening at the store; the imposition of guidelines, audit checklists, policy and management procedures.

20. The Authority further accepts that Liquorland has responded to this latest prescribed offence with specific measures in respect of the Bondi Junction liquor store that are summarised in paragraphs 22(a) to (o) of the First Liquorland Submission. They include meeting with Police; employing a security guard; face-to-face refresher training on the ID25 programme; a tailored presentation about ID25 and sale to minors; re-rostering of team members to ensure senior staff were placed on registers; implementing a new store-specific recruitment tool; completion of a new responsible liquor retailing online module; external and face-to-face RSA training; conducting an independent audit of the Premises; increased activity for independent third-party mystery shopper program; increased secondary supply training; the appointment of an additional senior assistant store manager; increased centre management engagement; a police presentation and information session and engaging with LGNSW to address post-incident actions.
21. The Authority notes the observations made in the Police Submission that this is the second instance of a prescribed offence in respect of the Premises that has been captured by the Minors Sanctions Scheme; that numerous additional processes were implemented on the Premises following the 19 June 2015 prescribed offence, which have served to minimise minor supply events until the current incident; that the Licensee, senior management and staff have been cooperative, proactive and receptive to Police and that this current contravention was the product of "human failings" on the part of the Sales Assistant.
22. The Authority further notes the Police proposal that "strong consideration" be given by this licensed business to ensure that "experienced attendants" are present on the Premises on "challenging trade days" and that "targeted deployment of security" be used. Police observe that this business has "reinvigorated strategies" that support its harm minimisation measures.
23. Police state that they "are not overtly advocating" suspension of the licence but seeking the imposition of a new licence condition mandating compliance with a new Plan of Management for the Premises.
24. The Authority has also considered the observation provided in the Barrington Audit Report of May 2018 that this prescribed offence event was the product of employee culpability. Barringtons note that the CCTV indicates that the young male patron in question did not appear over 25 years of age. The consultant notes the systems and training in place at this store to prevent the supply of liquor to minors and advises that the Sales Assistant had been provided with "ID25" training (requiring the production of identification for persons who appear to be under 25 years of age) only 18 days prior to the incident. Barringtons conclude that the systems in place on the Premises are "best practice" and a model for other licensed businesses.
25. Nevertheless, the Authority finds that the facts and circumstances of this prescribed offence were serious. It is apparent from the Barrington Audit Report dated May 2018 that despite all of the systems in place, the Licensee left this packaged liquor business in the hands of a quite junior member of staff on a St Patricks Day Saturday in a busy shopping centre located liquor store engaging in a high volume of sales. The COPS Report establishes that the young male carrying liquor away from the Premises was readily identified by Police on the street, while conducting a general surveillance of licensed businesses in the Bondi Junction CBD.
26. The Authority accepts the information in the COPS Report that this store is known to Police as vulnerable to targeting by minors seeking to access liquor by way of secondary supply. This business operates in a challenging environment with respect to minors seeking access to liquor, either directly or indirectly.

27. The Authority does not accept that the failure to rigorously implement the ID25 Policy in this context should be attributed to the Sales Assistant alone, in that it involved management failure on the part of the Licensee.
28. Accepting that the May 2018 Barringtons Audit Report establishes that this business conducts around 220,000 transactions per year, this only underscores the contention in the Police Submission that this business requires experienced supervision on “challenging” trading days.
29. Barringtons assess the systems in place on the Premises as “best practice”. The Authority accepts that this is generally the case, and has also taken into account the positive reference provided by several Coles Liquor managers in support of the First Liquorland Submission, but considers the Licensee’s failure to leave the Premises in the hands of suitably experienced staff on the facts and circumstances of this case amounted to a failure to properly resource those systems and a substantial failing on the part of the Licensee. Compliance policies and systems are only as effective as the resources provided to implement them, every day of the week. A licensee may leave a busy liquor store in the hands of a junior employee on a busy trading day, but does so assuming responsibility for the regulatory consequences should staff not prove up to the challenge.
30. As indicated in the Minors Sanctions Scheme Register dated 23 March 2018 that was provided with the LGNSW Submission, the compliance history of this licence is marked by the occurrence of a reasonably recent prescribed offence on 19 June 2015, resulting in the suspension of this licence from 5 October 2015 to 18 October 2015. The LGNSW Submission establishes that as of 17 October 2018 (the date of the letter from LGNSW) this liquor store was the only licensed premises in New South Wales to have been the subject of two prescribed offence events for consideration under the Minors Sanctions Scheme.
31. While no evidence has been provided as to weekly takings, the number of weekly and annual transactions noted in the Barringtons Audit Report dated May 2018 satisfies the Authority that this is a high volume liquor store and suspending the licence for a period of ten days will likely come at some substantial cost to the licensed business. The Authority has taken into account that this decision may come at some considerable economic cost to the licensed business, and lost working hours to employees. The Authority further accepts Liquorland’s advice, made through Mr Horton in the First Liquorland Submission, that the Coles group invested \$67,764,829 in the local community during 2018 by way of cash and in-kind donations and Coles Liquorland contributed \$1.8 million of this amount. It is not clear from that submission what level of commitment was specifically provided in respect of the Bondi Junction liquor store.
32. The Authority notes that the maximum suspension that is potentially available for a single prescribed offence event is 28 days. The Authority has the discretion to take no action if it thinks fit. The Authority finds that the substantial compliance systems implemented on the Premises both prior to and shortly after this event warrant some weight as mitigating factors and has reduced the period of suspension that may otherwise be appropriate.
33. The Authority accepts the point made in the First Liquorland Submission that the 2015 suspension is not an adverse matter in respect of the current Licensee’s compliance history. However, the Authority considers this reasonably recent licence suspension to be a relevant factual matter that it has taken into account when considering whether a suspension is appropriate in this instance, and the duration of suspension. It occurred with respect to the same licence, on the same Premises operated by the same business owner, Liquorland.
34. Accordingly, the Authority is satisfied that the preferable course is to suspend this licence for 10 days. This will reinforce to the Licensee the consequences of repeated non-compliance, but also send a signal to others in the industry as to the consequences of non-compliance. The Authority has deferred commencement of the suspension until 14 January 2019 to enable a brief period of notice to staff of the licensed business.

35. In making this decision the Authority has had regard to all of the statutory objects and considerations prescribed by section 3 of the Act, but has given weight to the consideration in section 3(2)(a) the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour), and 3(2)(c) the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

Order

36. The Authority orders, pursuant to section 130C(1) of the Act, that licence LIQP700301694 for Liquorland Bondi Junction be suspended from Monday 14 January 2019 to Wednesday 23 January 2019 inclusive.

Yours faithfully



Philip Crawford

Chairperson

For and on behalf of the Independent Liquor and Gaming Authority

Important Information:

In accordance with section 130F of the *Liquor Act 2007* (NSW) a licensee may apply to the New South Wales Civil and Administrative Tribunal (NCAT) for administrative review under the *Administrative Decisions Review Act 1997* (NSW).

An application to NCAT must be made within 28 days of notice of this decision and be accompanied by the fee prescribed by the regulations.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney. The NCAT website is at <http://www.ncat.nsw.gov.au/>.