

# FRAMEWORK FOR BANNING PATRONS FROM KAKADU LICENSED PREMISES

## PREFACE

The following approach to banning patrons from licensed premises in Jabiru is agreed within the framework of other relevant legal, regulatory and policy obligations. The approach outlined is intended to discourage unacceptable and dangerous behaviours by patrons on licensed premises in a manner which is clearly documented and fairly observed.

It is recognised that the *Liquor Act* requires a licensee to exclude any person from service or entry for a range of reasons. Specifically, Section 121 states that a licensee shall exclude or remove any person who is “intoxicated, violent, quarrelsome, disorderly or incapable of controlling his behaviour”. Further, a person can be excluded or removed if he or she would or might “render the licensee liable to a penalty” or, in the opinion of the licensee, that person would or might “disrupt the business of the licensee or unreasonably interfere with the wellbeing of other persons lawfully on the premises”.

## GENERAL GUIDELINES

There will be zero tolerance of any behaviours which might jeopardise the ongoing business of a license or threatens the safety and wellbeing of staff.

The Table below provides an agreed schedule of behaviours to be subject to bans and maximum ban times that can be applied. It is noted that some of these behaviours may incur further action under other legislation.

The application of any ban will always be at the discretion of the venue management. Each incident will be judged with reference to the attitude and demeanour of the patron at the time, any relevant history and the immediate circumstances. Cooperation will be regarded positively.

Bans are to be applied generally as a last or emergency action. Warnings will always be issued when a situation allows (i.e. for more minor breaches). A warning will be followed by a threat of a ban being imposed. Failure to comply will result in a ban. If unacceptable behaviours persist then a further ban will be incurred. This may result in an automatic 12 month ban.

If a patron is asked to leave premises the person must comply immediately or risk the application of a ban.

Maximum bans of 12 months at a time can be applied, with a review at the end of that period when the ban may be extended, lifted or have conditions applied. There is no guarantee that a ban will automatically be lifted.

All bans initiated by management of a licensed premises will be documented and records made available for inspection. Details are to include who the ban applies to, the start and finish dates of the ban and the reasons for the ban.

Police can recommend to a licensee that a ban be imposed on a person if Police have legitimate concerns that a problem behaviour relates to the business of the premises. Police will maintain records of these recommendations and provide details upon request from the person subject to the ban.

Table: Guideline to Unacceptable Behaviours and Maximum Bans

<b>UNACCEPTABLE BEHAVIOUR</b>	<b>MAXIMUM BAN PERIOD</b>
Physical violence – fighting, wrestling, punching, pushing	12 months
Threats of physical violence/intimidation/aggression – person fears for safety or damage being done	12 months
Property damage	12 months
Possession of a weapon	12 month
Drugs on premises	12 months
Alcohol offences – taking off premises, takeaway for third party, supply to underage	12 months
Verbal abuse	6-12 months
Misuse of equipment or throwing objects	6-12 month
Abuse of staff or other patrons – action causing undue distress, annoyance or irritation	6-12 month
General disturbance – spitting, refusing to vacate, loitering outside, going to sleep	3-6 month
Quarrelsome behaviour – not doing as requested, talking back, being argumentative	3 month
Obstructing staff in executing duties	3 months
Excessive noise – loudness or nature of noise causes irritation or annoyance	1 month
Objectionable language – words that are profane, obscene, disrespectful, indecent	1 month
Humbugging (annoyance, intrusion on privacy or convenience of others)	4 weeks

It must be noted that this list is not exhaustive. Licensees may also impose bans on people for health-related reasons, such as pregnant or breast feeding women who expose their babies to harm. Such bans will be for periods that correlate to the condition requiring protection. The persons subject to the ban will be fully informed.

### **APPLICATION OF BANS**

The decision to impose a ban rests with the management of each licensed premises. However it is agreed that a banned patron will not gain access to another outlet on the day a ban is issued.

Police circulate a list of bans to licensees and this may provide a guide to the kind of behaviours that individuals have engaged in. Based on the Guidelines, bans in excess of three months relate to more violent and objectionable behaviours. As a licensee is legally able to exclude or remove a person **who would or might** disrupt business or interfere with the wellbeing of other patrons, this list can signal potential trouble-makers and be a pre-emptive basis for electing to ban a patron. This can result in an individual being banned at more than one venue. It is probable that all licensees will exclude a person who has a ban of six months or more, as this would indicate a level of risk that none are prepared to tolerate.

The application of bans is dependent on individuals being accurately identified. It is accepted that the enforcement of bans can only be effective to the extent that identification systems are in place and operating properly.

### **APPEALS AND REVIEWS**

Natural justice affords the opportunity for a ban to be reconsidered. Without instituting any formal appeals process, the management of any licensed premises may be approached to have a ban revised.

Appeals are not to be vexatious. They should only be pursued when:

- there is a defensible claim that a ban is inappropriate (i.e. has no grounds, is for too lengthy a period or is being applied to more than one premises); or,
- the person can demonstrate suitable contrition and has actively sought to remediate their problem behaviours (e.g. through attendance at alcohol education or anger management sessions).

Discussion is to occur between nominated management and the person subject to the ban. Either party may have another person present for support and to help facilitate process. The final decision will remain with management of the licensed premises.

Reviews will accompany all bans of 12 months. Management will make an assessment of whether the person is likely to present further problems. That assessment will be based on

information obtained from relevant sources (e.g. other patrons, community and family members, service agencies, Police) and evidence of reform by the person (including active efforts to change their behaviours). The review may result in the extension of a ban, the complete lifting of a ban or the partial lifting of a ban.

The partial lifting of a ban means the person will be allowed service and entry to a licensed premises provided certain conditions are met. For example, the person might only be allowed certain beverages or only be allowed to drink at certain hours. Any conditions must be appropriate and reasonable.

A ban can be extended up to another 12 months at a time. Upon completion of the nominated time another review will be undertaken. The same three outcomes are then possible, depending on the deliberations of the review.

An exception to this process is for bans arising from assaults on the management or staff of a licensed premises. These bans will not be reviewed until there has been a turnover in the employment of all individuals involved in the incident. This acknowledges the lingering trauma and distress that can remain with people involved in physical attacks and threats and it recognises the occupational health and safety demands to be met by a workplace.

A person may seek further redress and make challenges through independent bodies such as the Licensing Commission and the Racial Discrimination Commission. The evidentiary requirements in these situations will be more demanding.

**APPENDIX**

Section 105 of the *Liquor Act* deals with riotous conduct on or at licensed premises. Specifically:

*A licensee shall not permit indecent, violent, quarrelsome or riotous conduct to occur on or at his licensed premises.*

Section 121 deals with Power to exclude or remove persons. Specifically:

- (1) *A licensee or employee of the licensee shall, or an inspector may, exclude or remove a person, not being a bona fide resident of the licensee's licensed premises, from the licensed premises if the person is intoxicated, violent, quarrelsome, disorderly or incapable of controlling his behaviour.*
- (1A) *A licensee or employee of the licensee or an inspector may exclude or remove from the licensee's licensed premises:*
  - a) *a bona fide resident of the premises, if that resident is intoxicated, violent, quarrelsome, disorderly or incapable of controlling his behaviour;*
  - b) *subject to any other law in force in the Territory, any person (including a bona fide resident), if the presence or continued presence of the person on or at the premises would or might:*
    - (i) *render the licensee liable to a penalty under this Act or any other law in force in the Territory; or*
    - (ii) *in his opinion, disrupt the business of the licensee or unreasonably interfere with the wellbeing of other persons lawfully on the premises; or*
  - c) *for or during a period not exceeding 12 months from the time a person was found guilty of an offence relating to the possession or supply of a drug on licensed premises, that person.*
- (2) *A person to whom subsection (1) or (1A) is applicable shall immediately leave licensed premises on being requested to do so by the licensee, an employee of the licensee, an inspector or a member of the Police Force.*
- (3) *A member of the Police Force shall, on the demand of the licensee, an employee of the licensee or an inspector remove or assist in removing from licensed premises a person who has been requested by the licensee, an employee of the licensee or an inspector in accordance with subsection (2), to leave the premises.*
- (4) *A licensee, employee of the licensee inspector or a member of the Police Force exercising a power under this section may use such force as is reasonably necessary for this purpose.*