

# Northern Territory Licensing Commission

## Decision

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<b>Premises:</b>	Melanka Lodge
<b>Licensee:</b>	Pinecot Pty Ltd
<b>Licence Number:</b>	80203189
<b>Nominee:</b>	Mr Jason Zammit to 25 April 2002 Mr Darren Lynch from 26 April 2002
<b>Proceeding:</b>	Complaint pursuant to Section 48(2) of the <i>Liquor Act</i> arising out of the conduct of the business at the licensed premises
<b>Complainant:</b>	Senior Constable Westphal
<b>Heard Before:</b>	Mr Peter Allen Mr John Withnall Mr Brian Rees
<b>Date of Hearing:</b>	21 May 2002
<b>Date of Decision:</b>	22 May 2002
<b>Appearances:</b>	Mr John Stirk for the Licensee Mr Rob Burgoyne for the Northern Territory Police

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The Commission has now reached a decision in this matter without having needed to rely on any of the three records of interview taken by Sen. Const. Westphal to which Mr Stirk has objected. That being the case, the Commission will reserve its ruling on the effect of the absence of any caution administered by Snr Const Westphal to those persons responding to his questioning. Potentially a formal ruling on the general issue of the admission by this Commission of evidentiary statements not perceivable as voluntary in the strict legal sense will be one of broad application, and will be addressed in depth by separate written determination as soon as time permits.

In the meantime we are concerned that the licensee should not be left wondering in relation to our determination of the substantive complaint.

Mr Zammit's initial written response to the complaint, referred to by Mr Stirk, was to concede that "Melanka does not deny that Jasmine Woodbury, a minor, was found on our licensed premises by Senior Constable Lindsay Westphal". Mr Stirk advised in his opening that there was no issue as to either Jasmine's age or the existence at the time of the relevant declaration under section 106(1)(a) of the Liquor Act, and in his closing he conceded the "transgression" of the licensee.

The argument was as to whether the transgression was such as could or should be held to have been a breach of section 106B.

The witnesses for the licensee (supported by the surveillance video) would have us accept the unlikelihood of Jasmine having entered the premises through the security-monitored front entrance, and on that evidence we find on the balance of strong probability that she gained access through one of the then fire exit doors with the assistance of some person or persons on the inside. Mr Rodrigues testified that he had advised the Melanka management that these doors were an operational headache. Because of the NT Fire and Rescue Services requirement that such doors always be able to be opened from the inside, he was aware that anybody on the inside could let anybody in and bypass being vetted by the front entrance security.

Mr Cox agreed that Mr Rodrigues “made it well known to us” that the exit door to the accommodation part of the establishment was a problem. That was months before the event we are now considering, and we accept that in the interim Senior Constable Westphal had noted numerous unsatisfactory occurrences, urged Mr Zammit and Mr Rodrigues to address what he saw as ongoing security issues, warned them against future breaches of the Act and generally had extended to them, in his words, all the consideration he could.

In those circumstances the Commission finds that the licensee was in breach of section 106B in permitting the entry of the minor Jasmine Woodbury by way of a known security problem area.

We do not accept the submission that the contravention was somehow excusable (or “authorised”, to use the words of section 124AA(2)(b)) as being in obedience to the order of a competent authority which the licensee was bound to obey. Certainly it was an NTFRS requirement that the exit doors be openable from the inside; it was *not* an NTFRS requirement that the doors be unguarded or that an appropriate security system not be devised to effectively encompass the resultant problem.

Management was aware of the need for surveillance of those exit points, as Mr Stirk acknowledged in his closing submissions, but we cannot agree with him that Jasmine’s entry should be seen to be an occasional slip in an otherwise adequate system. Mr Stirk does not take issue with a breach of section 106B being able to be constituted by an omission; he argues against their having been any such omission. However, the Commission’s view of Jasmine’s entry on the night is that it was a reasonably foreseeable consequence of the licensee’s inadequate attention to a known and ongoing issue.

Having found the licensee in breach of section 106B by permitting the entry of the minor, it becomes unnecessary to determine whether she was permitted to remain on the premises, an exercise of relevance to a situation where the actual entry of the minor may be seen to have been through no fault of the licensee or excusable for any other reason. As a quick *obiter dictum* though, we feel that when a person acknowledged by many of the licensee’s own witnesses to have appeared to have been under age on the night can dance through three or four musical numbers as one of only ten or so dancing patrons, conspicuously wearing a type of clothing deemed by the management to be inappropriate attire, the licensee would need to concede that the argument as to whether she has been allowed at that stage to remain on the premises has to be very much a live issue in those circumstances.

The parties now have the opportunity to address us on penalty, but in inviting submissions on penalty we want to put to the parties our opening position in this regard. It will, of course, be subject to what either side might now wish to put to us to persuade us otherwise, but following upon our view of the licensed premises our preliminary conclusion is that the problem which precipitated the breach of the Act is better addressed at this time not by the imposition of any penalty per se but by remediation.

Our preferred resolution of this matter at this stage is to insert a new condition into the licence mandating an effective alert system whenever any of the one-way exit doors is utilised during licensed hours.

We have in mind a condition such as the following:

**At any time after 2100 hours on any day that the premises are open for the sale of liquor, any door allowing egress from the licensed premises which is neither locked nor manned by at least one member of the licensee’s security personnel dedicated to the surveillance of that door at that time shall be fitted with an electronic alarm system which upon the opening of that door will sound an audible alert in such manner as to be easily discernable by at least one member of the security staff designated by the licensee to listen for and act upon any and all such alarms at that time.**

The drafting may well need refining upon input from the parties, but the concept is thought to be clear. We would also need to hear from the licensee as to a realistic lead time for the commencement of such a condition when finalised.

The issue of whether our finding of a breach of the Act in this matter should trigger the day's suspension hanging over the licensee as a result of the Commission's decision in an earlier matter on 4 April 2002 will be considered and dealt with by the Commission at the conclusion of the hearing of all complaints against Melanka Lodge currently before us.

Peter R Allen  
Chairman

22 May 2002