

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Casuarina All Sports Club
Licensee:	Casuarina All Sports Club Inc
Licence Number:	81415370
Nominee:	Mr Wolfgang Burk
Proceeding:	Complaints pursuant to section 48 of the <i>Liquor Act</i>
Complainant:	Licensing Inspector Graham Tribe
Heard Before:	Ms Jill Huck
Date of Hearing:	11 August 2005
Appearances:	Ms Sally Fielke for the Licensee Mr Greg Lye for the Director of Racing, Gaming and Licensing

1. This hearing arose from complaints lodged by Licensing Inspector Graham Tribe. Inspector Tribe stated that at approximately 20:00 on Wednesday 25 May 2005 and 21:30 on Saturday 28 May 2005 he was sold takeaway liquor in the form of 750 ml bottles of wine at the Casuarina All Sports Club bottle shop. Mr Tribe is not a member of the Casuarina All Sports Club and he stated that he was not asked whether he was a member of the Club nor was he asked for any kind of identification at the times of sale. Inspector Tribe complained that the sale of takeaway liquor to a non-member is a specific breach of the Casuarina All Sports Club's licence conditions.
2. Between the first and second incidents, two licensing inspectors had attended the Club's premises and had spoken to the duty manager and another staff member about the first incident.
3. The Club was formally notified in writing of the complaints on 31 May 2005. The Club, without conceding the accuracy of the matters the subject of the complaints, advised that it had disciplined the relevant staff members, that it had undertaken a review of its procedures and had commissioned new software (costing \$12,000) which would prompt staff members to confirm club membership before takeaway sales could be finalised. The Club also provided a copy of a document titled "Staff Policies" which includes a brief reference to the need to sight a current financial membership card before selling takeaway liquor to a person.
4. At the hearing Ms Fielke made it clear that the breaches were now fully admitted by the licensee. The Club provided, among other things, copies of written warnings to the staff members involved and copies of letters of apology and explanation from the relevant staff members. One of the staff members asserted that the breach occurred because it was very busy on the night in question. The licensing inspector gave evidence to contradict this claim and the Club conceded that it did not dispute the Licensing Inspector's version of events.
5. Ms Fielke further advised that at the time of the breaches both the general manager and the bottle shop manager were away. She argued that this may have impaired the effectiveness of the Club's response to the verbal notification about the first breach. She also advised that the Club had recently appointed a new general manager, Mr Andrew Hay, who was revising the Club's policies and introducing other processes to ensure that staff members are more aware of liquor laws and the licence conditions.

6. Ms Fielke submitted that although the hearing dealt with two separate complaints, they concerned incidents which occurred only three days apart and are the first complaints against the Club in its 10 years of operation. In view of this, and the initiatives which have been put in place since the breaches occurred, Ms Fielke asked that the Commission give the Club a written warning, or alternatively, that the Commission delay imposing any penalty for a period of 3 months to enable the new general manager to install the new software and stricter staff policies.
7. Mr Greg Lye for the Director submitted that a penalty was appropriate in this case because of the facts of this matter; in particular the fact that the second breach had occurred within three days of the first despite the Club being counselled by licensing inspectors after the first breach.

Discussion of the evidence and application of the law

8. The central facts in this matter are not in dispute; in particular it is not in dispute that takeaway liquor was sold to a non-member on 25 May and 28 May 2005. In respect of the issue of whether the premises were busy at the time of the sale I am inclined to accept, on the balance of probabilities, the licensing inspector's recollection of the circumstances of the sale.
9. There is also no dispute that, on the agreed facts, the sale of liquor in such circumstances was a clear breach of the Club's licence conditions. Club licences give clubs certain privileges, including Sunday takeaway trading, which are not available to some other types of licences. The sale of takeaway liquor to members of the general public, who are not members of the Club, is therefore of serious concern. In this case, the fact that the Club was caught breaching this aspect of its licence twice within a few days is disturbing, particularly as the matter was raised with the Club the day after the first breach.
10. Sections 49, 66 and 72 of the *Liquor Act* allow the Commission a wide discretion with regards to the outcome of a hearing into a complaint where a breach is found. Options include varying licence conditions, issuing directions to the licensee, suspending the licence, cancelling the licence or deferring consideration of the complaint on specified conditions.
11. In considering an appropriate outcome for this particular matter, I did not consider that a written warning would be sufficient. Such a penalty would only trivialise the nature of the breaches and provide little incentive to prevent such breaches occurring in the future. In this case the Club had effectively had a warning in the form of a visit from licensing inspectors on 26 May 2005 to discuss the first breach. This had not prevented the second breach.
12. From the evidence provided at the hearing it is now apparent that the Club is treating the matter more seriously and has taken some steps, including the ordering of new software, to try to prevent a reoccurrence. That said, I considered it important that the outcome of the hearing provided an actual penalty for the breaches and a very strong incentive to keep the Club on track to prevent further breaches.

Decision

13. After considering all the evidence I decided that the takeaway component of the Casuarina All Sports Club's licence should be suspended for three days: one day for the first breach; two days for the second. The first day of this three day suspension should be served on Saturday 17 September 2005. In line with a range of previous Licensing Commission decisions, the other two days of the three day suspension, will be suspended for a period of twelve (12) months from the date of this decision. If there are no further breaches of this particular licence condition in that period, this "suspended suspension" will wink out of existence. If another breach of the licence condition occurs within this period of twelve months, the second and third days of the suspension will apply at a date then determined

by the Commission in addition to any other penalty imposed by the Commission at that time.

Jill Huck
25 August 2005