

Northern Territory Licensing Commission

Reasons for Decision

| | |
|------------------------|-------------------------------------------------------------------|
| Premises: | Corroboree Park Tavern |
| Licensee: | Corroboree Park Nominees Pty Ltd |
| Licence Number: | 80304179 |
| Nominee: | Peter Jerald Shappert |
| Proceeding: | Penalty Hearing re Breach of Section 102 of the <i>Liquor Act</i> |
| Decision of: | Mr John Flynn (Presiding) Ms Brenda Monaghan Mrs Jane Large |

- 1) On 18 October 2006, the Commission published a decision upholding a complaint of the Director of Licensing that the Corroboree Park Tavern had breached Section 102 of the Liquor Act (the Act) by serving an intoxicated person. The impact of this is not a criminal finding of guilt but grounds for regulatory action under the terms of the Act in relation to the liquor licence.
- 2) The Commission has now had the opportunity to consider the written submissions on penalty received from Counsel for both parties and to reach a decision on the appropriate penalty to impose in this particular case. We have no doubt in our minds that the Licensee breached Section 102 of the Act by serving a patron when he was intoxicated. We also emphasise that serving an intoxicated person is one of the most serious breaches a Licensee can commit. The type of penalty to be imposed, however, must reflect the particular circumstances of each case.
- 3) We take into account all matters when considering penalty and that includes any consequences that flow from this breach. Quite what caused the accident that led to the tragic death of Mr Glagau is unknown but it is reasonable to assume that it may well have been a combination of factors. Mr Glagau's health was poor and he had recently had time off work and in hospital for some serious health problems. In the week prior to his death, he had been working long days at the quarry site in hot October conditions and would reasonably be tired by the evening. He was also prone to falling asleep on the job on frequent enough occasions to have earned him a nickname. Finally, he had drunk sufficient alcohol on the evening in question to give him an estimated BAC of .18% at 12.30pm.
- 4) Senior Constable David Gilmour, an officer with sixteen (16) years experience in the Accident Investigation Unit made the comment that "odds on he fell asleep at the wheel" and noted that there was no indication that speed had a part to play in the accident. We take into account all of the factors mentioned above when deciding penalty. It is reasonable to assume that the amount of alcohol consumed by Mr Glagau during the evening may well have been a contributing factor to the accident that led to his death but there were other factors such as tiredness and ill health generally that may also have played a part.
- 5) We also cannot ignore the following factors when considering penalty:
 - a) Mr Glagau was a big man who held his liquor well and exhibited fewer outward signs of intoxication than most;
 - b) Whilst on the evidence, any service on Mr Glagau after 11.21pm was in breach of Section 102, we accept that there were only one or perhaps two occasions of service

- on Mr Glagau after that time and they appear to have been service of mid strength beer;
- c) We accept that when Ms Crispe was serving Mr Glagau after 11.21pm, she did so believing that he had taken up her offer of a free bed and was staying the night at the hotel;
 - d) When Mr Glagau changed his mind and decided to drive home, Ms Crispe did everything in her power to try to get Mr Glagau to stay at the hotel;
 - e) This is the first proven breach of any nature for the Licensee and there is nothing in the evidence before us to suggest that this breach was evidence of a general pattern of irresponsible service of alcohol at the premises. It should be seen for the purposes of penalty as an isolated occurrence.
 - f) The Nominee has taken the breach seriously by taking steps to introduce new protocols and procedures to increase patron care.
- 6) Counsel for the Director of Licensing urges the Commission to impose a harsh penalty on this Licensee in the form of a long period of suspension of some months. Such a penalty would serve as a clear warning to other Licensees that serving intoxicated persons will not be tolerated but it would normally be the type of penalty imposed after consistent irresponsible behaviour by the Licensee rather than for an isolated event such as the one before us. Counsel for the Licensee, on the other hand, submits that a fully suspended suspension is more appropriate. Having considered both submissions in detail we find that we can not accept the conclusions reached on penalty in either submission. We do, however, take into account the numerous factors set out in paragraphs 3) to 5) above and consider on balance that the evidence supports the imposition of a penalty and that the penalty should be at the lower end of the scale.

Penalty

We impose a penalty of two (2) days suspension of the liquor licence with the first day to be served on Tuesday 23 January 2007. The second day of suspension is suspended for a period of twelve (12) months from the date of this decision. If there are no further breaches of a similar serious nature in that period, then the "suspended suspension" will lapse after twelve (12) months. If the same, similar or more serious breach of the licence condition or the *Act* occurs within this period of twelve months, the one (1) day suspended suspension will be imposed in addition to any other penalty imposed by the Commission at that time.

John Flynn
Presiding Member

5 January 2007