

Northern Territory Licensing Commission

Reasons for Decision

Licensee:	Katherine Sports and Recreation Club Inc
Premises:	Katherine Sports and Recreation Club
Licence Number:	81401019
Proceeding:	Complaints pursuant to Section 48(2) Breaches of: Section 110 – Failure of Licensee to comply with a Conditions of Liquor Licence
Heard Before (on papers):	Mr Richard O’Sullivan (Chairman) Mrs Jane Large Mr Wally Grimshaw
Date of Hearing:	25 May 2011

Background

- 1) Following the laying of two complaints against the Katherine Sports and Recreation Club (“the Club”) at the May 2011 meeting of the Northern Territory Licensing Commission (“the Commission”) “*the Commission determined to conduct a Hearing on the papers on a date to be set*”.
- 2) The first complaint alleges breaches of Section 110 of the *Liquor Act* (“the Act”) in that the Licensee failed to adequately maintain the Club’s visitor book from May 2009 to December 2010. Specifically following an inspection of the premises on 7 December 2010, Inspectors noticed a number of entries had not been signed by the member introducing the visitors as recorded in the current visitor’s book. Following this on 8 December 2010, the Licensee was requested to provide previous visitor’s books which showed failure to comply with a licence condition for a period from May 2009 until April 2010.
- 3) In total the complaint alleges that from 1 May 2009 to 7 December 2010 the Licensee committed a breach of Section 110 of the Act by regularly contravening conditions of the Club’s liquor licence.

- 4) Section 110 of the Act states:

110 Licensee to comply with conditions

A licensee shall not contravene, or fail to comply with, a condition of his licence.

- 5) Condition 15 of the licence provides that:

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“The Licensee shall keep and maintain a Visitors’ book in a prominent and accessible place on the licensed premises at all times during which those premises are open for the sale of liquor.”

Condition 9 (f) of the Licence defines a visitor:

“visitor means a person who is a bona-fide guest of a member of the club whose:

- *name and address have been entered in the visitors' book next to the signature of the member whose guest he is; and*
 - *presence on the Club premises is permitted by the Club's rules."*
- 6) The second complaint is that the licensee committed a breach of his Liquor Licence Condition 10.

Condition 10 of the Licence provides that;

"The Management Committee of the Club shall:

- a) *exercise effective supervision and control over the Club's Manager to ensure that no breaches of the Act or the conditions of this licence occur;"*
- 7) In the complaint documentation provided by the Director, there is reference to the Club having a history of misuse of the visitor's book dating back to 2006. Given that history and the current alleged breach of licence condition relating to the visitors book, a governance and control complaint has been lodged relating to the Management Committee failing to exercise *"effective supervision and control"*.
- 8) In response to advice of the complaints, Dual Nominees Ms Alison Vincent and Mr Paul Mullins responded on 11 March 2011, in effect acknowledging past breaches of the Act and their licence condition through the Club's failure to properly control and monitor visitors entering the licensed premises.
- 9) The Nominees further advised that the Club is now under new management with a new committee and their recent appointment as Dual Nominees. Ms Vincent and Mr Mullins state they are fully aware of their obligations under the Club's licence conditions and that they have liaised with Inspectors regarding the use of the visitor's book. This correspondence also advised that the visitor's book is kept at the main bar area *"so that all persons entering the Club are in full view of staff and can be signed in appropriately under the guidance of staff"*.
- 10) The correspondence goes on to advise that the Dual Nominees cannot take responsibility for the inaction of past management and Licensees.
- 11) The complaint lodged by the Director also outlines the history commencing in early 2006 of apparent lapses in the proper maintenance of the visitor's book. The then Nominee was written to on two occasions in 2006 advising of responsibilities under the licence and warning that should similar occurrences occur, a formal complaint against the Licensee was likely.

Consideration of the Issues

- 12) The Commission considered the complaints which in essence has two parts; one relating to failure to properly adhere to licence conditions relating to maintenance of the visitor's book and the other over arching complaint that the management committee of the Club had not exercised effective control over the Club's management so as to ensure there were no breaches of the Act or licence conditions under which the Club operates.
- 13) The Commission notes the view contained in the complaint lodged that past breaches cannot be swept under the carpet with no responsibility accepted by the actions of past Licensees or Nominees. In the case of a liquor licence, the Licensee is the ongoing entity and therefore bears an ongoing responsibility for actions past, present and future.
- 14) Inspectors, on checking the visitor's book over 2009 and 2010, uncovered that only 9 of the 76 visitor entries had been signed by a member. In a number of these cases, only the name of the visitor was entered, with no date, no visitor address and no member details.

- 15) In considering the seriousness of the breaches which are not contested by the Club, the Commission notes that no apparent harm has resulted from the admission of people to the Club premises who had not been properly signed on in the visitor's book.
- 16) The Commission takes into account the advice of the current Nominees that a new management regime is in place which is fully aware of its responsibilities under the Act and its liquor licence and will ensure the Club conducts its business in accordance with these requirements.
- 17) The Licensee is warned that such lax attention to requirements of the Act and the licence conditions will not be tolerated. Due to the early admission to the breaches, a commitment to rectify any such behaviour in the future and the lack of harm which has evidently resulted from the dereliction of responsibility of the Club, the Commission is inclined to issue a reprimand to the Club and a warning that if a similar complaint is lodged against the Club in future and proven, a more serious penalty will likely be imposed.

Decision

- 18) The Commission finds the complaints alleging breach of licence condition through the misuse of the visitor's book and failure to exercise effective supervision and control are upheld.
- 19) The Commission notes that the Club has a prior history dating back to 2006 of laxity in its management of the visitor's book. Together, the more recent breaches over 2009/2010 and those of 2006 combine to give gravitas to the complaint. However, as it is evident that the Club has undergone a change in management and control, including appointment of new Nominees and Committee, the Commission is inclined not to penalise the Club under its current new structure for these past transgressions.
- 20) In these circumstances the Commission issues a reprimand and requests that the Director formalise this reprimand in correspondence to the Club and for this reprimand letter to be placed on the record. If a complaint of a similar or related nature is lodged before the Commission and upheld, in light of the current breaches, the Commission will be compelled to consider a more serious penalty, including that of suspension of licence.

Richard O'Sullivan
Chairman

18 July 2011