

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Alice Springs Memorial Club
Licensee:	Alice Springs Memorial Club Inc
Licence Number:	81402285
Nominee:	David Harvey Hunt
Proceeding:	Complaint Pursuant to Section 48(2) of the <i>Liquor Act</i>
Heard Before:	Ms Brenda Monaghan (Presiding) Mrs Jane Large Ms Helen Kilgariff
Date of Hearing:	24 August 2006
Date of Decision:	25 August 2006
Appearances:	Senior Inspector Wayne Sanderson Mr Sam Salmon, for the Licensee Mr David Hunt, Nominee Mr George James, President

1. On 5 July 2006 a complaint was lodged with the Licensing Commission alleging that on 13 April 2006, the Alice Springs Memorial Club (the Club) sold alcohol on premises to a patron who was not a member or bona fide guest of a member. The complaint further alleges that the Club sold takeaway alcohol to the same patron. Both incidents were in breach of the Club's licence conditions and Section 110 of the *Liquor Act*.
2. The Club's liquor licence contains the following conditions:

Sale for Consumption on and away from Club premises
 - (a) For consumption on or at the licensed premises by a member of the Club or by a visitor in the present of such a member.
 - (b) For removal and consumption away from the licensed premises **only** to financial members.
Consumption by Members and Guests:
 - 11 Unless authorised by a Special Licence, liquor shall not be consumed on the licensed premises except by a member of the Club or a Visitor in the presence of such a member.
 - (f) 'visitor' means a person who is a bona-fide guest of such a member of the Club whose:
 - name and address have been entered in the visitors book next to the signature of a member whose guest he is, and
 - presence on the Club premises is permitted by the Club's rules.
3. The facts were that on 13 April 2006 Mr Gregory Lye, a Senior Licensing Inspector, attended the Alice Springs Memorial Club. He entered via a side door and purchased a drink from the bar without being questioned as to his membership status. Mr Lye later

admitted he was not a member and was directed to sign in. His signature was not witnessed by another member in accordance with the Club rules and licence conditions applying to visitors. Mr Lye was later allowed to purchase alcohol for consumption away from the Club – a right that is only granted to financial members.

4. At the hearing on 24 August 2006 Mr Salmon appeared on behalf of the Club and Mr Sanderson on behalf of the Director of Licensing. The breaches were admitted by the Club.
5. In mitigation, Mr Salmon provided documentation to show that at the time of the breaches (ie 13 April 2006), the Club was in the process of amending its Constitution to enable visitors residing at a distance greater than 32 kilometres from Alice Springs to become Temporary Members allowing them to drink at the Club unaccompanied by a member but not to purchase takeaway.
6. Mr Salmon noted that Mr Lye entered the premises via a side door from the car park. Access via this door is only gained by swiping a membership card and therefore, in his submission, a barman might assume that a person entering from that direction was in fact a member. Mr Salmon asked the Commission to consider that the supply of alcohol to Mr Lye on premises fell into the category of a minor or technical breach.
7. Mr Salmon made a similar submission with respect to the incomplete signing in of Mr Lye as a visitor. Such entry requires a member to countersign Mr Lye's signature in the visitors book and to have some responsibility for his presence (NB the membership retained by the visitor states *guests must at all times remain in reasonable company of the member and not remain on the Club's presence any longer than the member*). Mr Salmon asked the Commission to take into account the fact that at the time of the breach, changes to the Constitution were underway to enable outsiders such as Mr Lye to be able to use some of the Club's services without a member's presence and consent.
8. As regards the sale of takeaway alcohol to a non-member, Mr Salmon submitted that the sale took place at 2.50pm on Easter Thursday. He provided documents which showed that the Club was busy on that day and that at least thirty-one (31) non-members (perhaps with partners) and sixty-one (61) members (perhaps with partners) had signed in between 10.00am and 3.00pm. Quite how many were present at the time of the breach is unknown. The evidence of the barman was that the bar was busy and he was "distracted by serving people at the TAB terminal and doing poker machine payouts". For this reason the barman failed to check whether Mr Lye was a member or not.
9. As regards penalty, Mr Salmon asked that the Commission take into account the following matters:
 - a) On 18 April 2006, signs were erected at access points advising patrons of the restrictions on the sale of takeaway to verified financial members only.
 - b) Further signs have been erected advising all staff that they must only sell takeaway to financial members upon proof of membership and advising that temporary members should be refused.
 - c) The Club has provided a written warning to the bar staff member who served Mr Lye to discourage repeat offending.
 - d) Club Management counselled all staff on the terms of their liquor licence with respect to membership requirements and restrictions on takeaway sales.
 - e) Once this decision is handed down, the Club intends to advise all members of its contents via newsletter and the notice board.
 - f) This is the first breach by the Club of this particular provision.
10. Mr Salmon reminded the Commission that the Memorial Club has been in operation for forty (40) years and has always been considered a good corporate citizen. It caters for

both family groups and individuals and employs thirty-nine (39) people. It makes a significant financial and non-financial contribution to community activities in Alice Springs. The Commission fully accepts this submission.

11. Mr Salmon acknowledged that this was the second time the Club has appeared before the Commission this year. The previous occasion related to a proven complaint of serving a minor, the penalty for which included a one (1) day suspended suspension for a twelve (12) month period. Mr Salmon made submissions with respect to the imposition of this suspended penalty asking that if the Commission decided to impose a sanction, then the one (1) day suspension only relate to the takeaway component of the licence not the full licence.
12. With respect to the current breaches for consideration by the Commission, Mr Salmon sought a fully suspended suspension rather than the immediate imposition of one.
13. In response, Mr Sanderson acknowledged that at the time of the breaches on 13 April 2006, the Club had advised Racing, Gaming & Licensing (RGL) of their intention to alter their Constitution to allow visitors from out of town limited membership rights. He made the valid point, however, that Mr Lye was at no time asked by the barman to clarify whether he was a full member, a temporary member or a visitor but was simply served a beer upon request. In short, there was no attempt to clarify his status before he was served alcohol.
14. Mr Sanderson's main submissions were with respect to penalty. He submitted that the one (1) day suspended suspension of licence for the previous breach of licence was intended to apply to the whole of the licensed premises and not just the takeaway component.
15. As regards the current complaint, he referred to the Casuarina All Sports Club Inc decision dated 25 August 2005 and submitted that the penalty imposed there of one (1) day immediate suspension and two (2) days suspended suspension was an appropriate penalty for this case also.

Decision

16. The Commission has considered all the submissions made on behalf of the Club and the Director. The first breach the Commission needs to consider is the service of alcohol on premises to Mr Lye. It seems quite clear on the agreed facts that the barman relied on the security arrangements for Club entry to screen and ensure that all those persons on premises were entitled to be there and to purchase alcohol. The Club is well organised. All three (3) external doors require swipe card entry by members and non-members are required to sign in at the front desk. There are clear notices on all external doors advising these requirements. At the front entry non-members are advised by a staff member to sign the visitors book.
17. Despite these commendable steps to ensure Club rules are respected, the reality is that staff members cannot simply rely on the security arrangements at each door to screen patrons. It is still easy for a number of non-members to enter whenever a member opens a door. Staff serving alcohol must take care to ensure that only those entitled to purchase alcohol are served. A simple question to Mr Lye would have prevented the first sale occurring. In summary, whilst we accept that the Club had in place responsible measures to prevent breaches of membership conditions, it must still ensure that its staff are aware of their ongoing need to be vigilant with those they serve – both that they are properly signed in and that they are not served alcohol if they cannot confirm their member or visitor status.
18. As regards the failure of the Club to ensure that Mr Lye, being a visitor was properly signed in, the Commission does not intend to penalise the Club for this breach. The documents provided at the hearing show that the practice in force at that time had the informal approval of the Director of Licensing. It was a technical breach which had arisen as a result of a misunderstanding by the Club of its Constitution and changes to the Constitution were being made to remedy the breach.

19. The more serious breach was the sale of takeaway to Mr Lye in circumstances where the bar staff member was fully aware that he was selling to a non-member in breach of the licence conditions. It is not sufficient to argue that the day was busy because the staff member clearly identified Mr Lye in his statement and had had a previous conversation with him about his visitor status. This breach seems to suggest a blatant or reckless disregard for licence conditions and cannot be ignored.
20. When considering penalty, we fully acknowledge all the submission made by both parties including the fact that the Club makes a significant contribution, both financial and non-financial to the Alice Springs community. However this is the second occasion that the Club has appeared before the Commission on a breach within a relatively short period of time, and we take account of this fact on penalty.
21. The Commission must also take into account the fact that on 3 May 2006 part of the penalty imposed on the Club for serving a minor was a suspended suspension of one (1) day. Serving a minor is a serious breach and it appears that the Commission on the last occasion gave the Club a partially suspended sentence in the form of a "good behaviour bond". As there has been another breach within the twelve (12) month time frame, the Commission intend to impose the suspended part of the penalty being one (1) day.
22. The Commission have heard submissions as to whether or not the Commission in the previous decision intended that the suspended portion would only suspend the takeaway component of the licence or the whole of trading. The Commission considers that the intention was that a further breach would mean the imposition of a suspension to the whole of trading rather than just the takeaway component and that it would be imposed on a Tuesday. To this end, the Commission direct that the sale of alcohol at the Club be suspended for one (1) day on a Tuesday with the date to be fixed by the Deputy Director of Licensing after consultation with the Club.
23. We now turn to these most recent breaches being two (2) occasions of the sale of alcohol to an authorised person (one on premises sale and one takeaway). We impose a combined penalty of three (3) days suspension of the takeaway component of the liquor licence. The first day of suspension is to be served on a Thursday at a date to be fixed by the Deputy Director of Licensing after consultation with the Club. The further two (2) days of the suspension are to be suspended for a twelve (12) month period. If no similar or more serious proven breaches occur within this twelve (12) month period from the date of this decision, then the suspended suspension will lapse. Should it need to be imposed then the suspension will be served on two (2) Thursdays.

Brenda Monaghan
Presiding Member