

# NORTHERN TERRITORY LICENSING COMMISSION

## REASONS FOR DECISION

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<b>Licensee:</b>	<b>Mr Terrance James Thomas Grieve</b>
<b>Licence Number:</b>	Crowd Controller Number 8552
<b>Proceedings:</b>	Complaint Pursuant to Section 53A of the <i>Private Security Act</i>
<b>Members:</b>	Mr Richard O'Sullivan (Chairman) Mr Philip Timney (Legal Member) Mr John Brears
<b>Date of Inquiry: (On Papers)</b>	17 April 2014

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## BACKGROUND

- 1) On 5 February 2014 a complaint was lodged by Licensing Inspector Jeff Paull against Dual Security Officer and Crowd Controller licensee Mr Terrance Grieve pursuant to Section 53A of the *Private Security Act* ("the Act"). The complaint alleges that on 13 January 2014 an incident occurred at Monsoons, a licensed tavern on Mitchell Street, Darwin, when Mr Grieve was on duty as a Crowd Controller and contravened Section 19(2)(a) and (c) of the Act through his actions in removing a patron from the licensed premises. The allegation is that in physically removing patron Mr Timur Faiz from Monsoons, Mr Grieve used undue force in contravention to clause 3.13 of the Code of Practice for Crowd Controllers ("the Code").
- 2) The Act under Section 48 provides for Codes of Practice to apply to a Crowd Controller's licence and such a Code has been approved by the Minister and Gazetted. Sections 19(2)(a) and (b) and 19(3) of the Act require licence holders to comply with the Code and provides penalties for contravention. Clause 3.13 of the Code states:

*"Crowd Controllers shall:*

*3.13 Not use undue force in the course of their duties"*
- 3) The complaint against Mr Grieve as initially laid down by Inspector Paull and accepted by the Director also included an allegation of a contravention of clause 3.16 of the Code:

*"Crowd Controllers shall:*

*3.16 In the course of their duties use mediation, negotiation, communication and conciliation as the primary methods of dealing with clients."*
- 4) From evidence and information provided during investigation of the allegations, including the viewing of CCTV footage, it was established that Mr Grieve did attempt mediation and use negotiation and communication skills in dealing with

Mr Faiz. The Director therefore determined not to pursue an alleged contravention of clause 3.16 of the Code.

## CONSIDERATION OF THE ISSUES

- 5) Commission members conducted a Hearing into the complaint against Mr Grieve on the papers presented and through a viewing of CCTV footage of the incident which occurred in the early hours of 13 January 2014 at Monsoons.
- 6) From the information provided and footage viewed it is evident that Mr Faiz was at the entrance to Monsoons when another Crowd Controller asked him to leave the premises. From the footage Mr Faiz is seen not comply with this request and at this point Crowd Controller Grieve becomes involved.
- 7) Mr Faiz becomes agitated and on the evidence provided becomes abusive towards Mr Grieve. Apparently Mr Faiz was keen to re-enter, rather than leave the premises. He is seen to remonstrate with Mr Grieve who follows up with what he has described in his written response to the complaint as the issuing of "*clear verbal dynamic commands with a neutral tone*".
- 8) On the CCTV Footage Mr Faiz is seen to move closer to Mr Grieve and uses arm movements and gestures. At this point Crowd Controller Grieve physically moves Mr Faiz to the street railing positioned in front of Monsoons. As the incident continued Mr Grieve claims that spittle was sprayed onto his face. While the Commission in viewing the footage could see Mr Grieve suddenly cease action and rub his arm against his face, it was not able to discern if this was as a result of having spittle over his face.
- 9) As Mr Faiz has made no formal complaint over the matter and has not been able to be contacted for his version of events the Commission can only rely on the version of events at this time, relating to the projection of spittle or mucus, as supplied by Mr Grieve in his response to the complaint of 28 February 2014:
  - *I returned immediately to the front entrance wiping the mucus and spittle of (sic) my face and applying antibacterial sanitiser (which I kept in my pocket) to my face. Concerned patrons also got up to my aid as well as the return of Controller Halifihi whom I informed what had happened. He instructed me to initiate First Aid and Bio-Hazard actions to my lips, eyes & face; and then to report the incident to the Duty Manager Jason Shore.*
  - *I completed my First Aid & Bio-Hazard clean up of my person; and reported the incident in detail to the Duty Manager Jason Short."*
- 10) Immediately following the apparent incident above and spray of mucus onto the face of Mr Grieve, he is seen to grab hold of Mr Faiz and push him onto the railing. Mr Faiz then is seen to grab a hold on the railing and Crowd Controller Grieve lifts him up over the railing resulting in him falling to the ground below, which is part of the Mitchell Street roadway.

- 11) While a degree of provocation towards Mr Grieve has occurred, his actions in forcibly lifting and pushing Mr Faiz over the railing onto the street did pose a serious element of danger to Mr Faiz.
- 12) From the footage viewed Mr Faiz appears uninjured from the push over the railing and stands up and continues to remonstrate with Crowd Controller Grieve and then jumps over the railing to further the argument. The Commission is advised that following this incident that Mr Faiz later returns to Monsoons and yells further abuse and threats to Mr Grieve.
- 13) The Commission is charged with determining the complaint pursuant to Section 53D of the Act

**53D Determination of complaint**

- (1) *On completing its consideration of and investigations into a complaint under section 53A, the licensing authority must make a determination:*
  - (a) *that, in the licensing authority's opinion, the complaint is of a frivolous, irrelevant or malicious nature, or that the complaint does not set out facts and circumstances that are sufficient grounds on which to base a complaint, and dismiss the complaint;*
  - (b) *that no further action is warranted;*
  - (c) *to reprimand the security provider;*
  - (d) *to fine the security provider an amount not exceeding the prescribed amount;*
  - (e) *to impose conditions on or vary the conditions of the security provider's licence;*
  - (f) *to suspend the security provider's licence; or*
  - (g) *to cancel the security provider's licence.*
- 14) From the evidence the Commission is able to conclude that there was a high degree of provocation from Mr Faiz to Crowd Controller Grieve through his resistance of lawful requests to leave the premises, abuse, aggressive behaviour and projection of spittle onto the Crowd Controller's face. Unfortunately the subsequent action of Mr Grieve in pushing Mr Faiz over a boundary railing onto the road did create danger and risk to the well being of Mr Faiz. Was the force used "undue" in the circumstances? If so, does the Commission find a contravention of Clause 3.13 of the Code which provides that a Crowd Controller shall "*not use undue force in the course of their duties.*"?
- 15) Technically the actions of pushing a patron over a railing does in all likelihood constitute a contravention of the Code. Mitigating circumstances for Crowd Controller Grieve exist because of the prior actions of Mr Faiz.
- 16) In evidence before the Commission is the good regard City Safe Police members have of Mr Grieve as a professional Crowd Controller who has often assisted Police with their inquiries in a proficient and courteous manner. Additionally, Licensing Inspectors who have dealt with Mr Grieve have found him courteous and professional in his duties. Inspector Jeffrey Paull who investigated the

complaint has also advised that Crowd Controller Grieve has been "*honest and forthright when discussing the matter...where he deployed a serious approach in respect of the allegation against him*".

17) The Director of Licensing has recommended that the Commission:

*"consider whether a penalty is warranted taking the following into consideration:*

- a) Crowd Controller Grieve's good record;*
- b) No formal complaint being received from Mr Faiz; and*
- c) No known injuries sustained by Mr Faiz."*

18) Technically the action of pushing Mr Faiz over the border railing is a contravention of Code clause 3.13. Taking into account the degree of provocation and the otherwise good record of Crowd Controller Grieve the Commission is persuaded that there is little to be gained from issuing a penalty pursuant to Section 53D of the Act. It does however warn Mr Grieve specifically and licence holders in general against physical action or reaction that may cause or result in physical harm to patrons through the actions of licensed Crowd Controllers.

## DECISION

19) The actions of Crowd Controller Grieve in pushing patron Faiz over the guard or boundary railing is a technical contravention of clause 3.13 of the Code. In recognition of:

- the high level of provocation towards Crowd Controller Grieve;
- the fact that Mr Faiz sustained no known injuries;
- the absence of lodgement of complaint by Faiz; and
- the high opinion of Crowd Controller Grieve by Police and Licensing Inspectors,

the Commission determines that pursuant to Section 53D(b) of the Act, no further action is warranted.

20) The Commission does warn against physical action by Crowd Controllers that may cause or result in physical harm to patrons or put their wellbeing at risk



Richard O'Sullivan  
CHAIRMAN

17 June 2014