

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Alice Springs Airport Hotel Motel (Queen of the Desert)
Date of Decision:	30 May 2000
Date of Hearing:	29 May 2000
Complaint:	Pursuant to Section 48(2)
Licensee:	Goldbar Pty Ltd (Mr JM Morgan Receiver & Manager)
Nominee:	Ms M Grayson
Heard Before:	Mr John Withnall (Presiding Member) Ms Mary Ridsdale (Member) Mrs Annette Milikins (Member)
Appearances:	Mr John Stirk for Alice Springs Police Mr John McBride for Goldbar Pty Ltd

The following decision was delivered ex tempore by the presiding member of the Commission on 30 May 2000. Some non-substantive editing has taken place, orders have been formalised and several subsequent queries addressed.

We are dealing at this time with two complaints against the licensed premises known as the Queen of the Desert, one of them arising out of a complaint by police of service to an intoxicated person on 20 August 1999, and the other brought on at this time by consent and arising out of a similar occurrence alleged by the police to have been observed on 3 May this year. Mr McBride on behalf of the Receiver and Manager of the licensee explained that a sale of the licensed operation was hoped to settle about mid June, such that the vendor sought to have all outstanding matters taken into account and the slate cleared, in effect, for the forthcoming transfer.

Both complaints have been formally upheld on the basis of Mr McBride not contesting an agreed statement of facts in respect of each incident. We reproduce those statements hereunder:

Agreed Facts ~ Incident 20 August 1999

The following are the agreed facts in relation to the complaint lodged pursuant to section 48 of the *Liquor Act* against the conduct of business of the proprietor and licence nominee of the Alice Springs Airport Hotel Motel (Queen of the Desert), as a result of an incident which occurred on 20 August 1999.

1. On Friday 20 August 1999 at approximately 6.00pm a male person named Richard Mick purchased a cask of fruity Moselle at the bottle shop of the Queen of the Desert Bottle Shop.
2. Mr Richard Mick was served by Mr Malcolm Strange, who was at that time the bottle shop manager.
3. Attending police officers were performing liquor patrols that evening. Those attending police officers observed Mr Mick prior to the purchase of alcohol as being affected by alcohol.
4. Subsequent to the purchase of alcohol Mr Mick was approached by police. Police observed that Mr Mick was unsteady on his feet, smelt of alcohol and had slurred speech.

5. Mr Mick was then placed into protective custody by the police, pursuant to section 128 of the *Police Administration Act*.
6. Mr Strange was busy at the time he served Mr Mick and did not observe Mr Mick approaching the counter.
7. Mr Mick was served without the customary sobriety observations. Mr Strange then proceeded to serve the next customer.
8. Mr Strange subsequently left the employment of the nominated licensee for unrelated reasons.
9. No criticism is being made by the proprietor or nominated licensee of the observations made by the police.

Agreed Facts - Incident 3 May 2000

The following are the agreed facts in relation to the complaint lodged pursuant to section 48 of the *Liquor Act* against the conduct of business of the proprietor and licence nominee of the Alice Springs Airport Hotel Motel (Queen of the Desert), as a result of an incident which occurred on 3 May 2000.

1. On Wednesday 3 May 2000 at approximately 1.30pm a male person purchased a cask of fruity Moselle at the bottle shop of the Queen of the Desert Bottle Shop.
2. The purchaser was served by Mr Keith Patrick Drew, who was at that time a counter attendant.
3. Attending police officers were performing liquor patrols that afternoon. Those attending police officers observed the purchaser prior to the purchase of alcohol as being affected by alcohol.
4. Subsequent to the purchase of alcohol the purchaser was approached by police. Police observed that the purchaser was unsteady on his feet, his eyes were blood shot and his breath smelt heavily of intoxicating liquor.
5. The purchaser was served without the customary sobriety observations.
6. Mr Drew was subsequently relieved of his duties of bottle shop counter attendant and all liquor sales.
7. No criticism is being made by the proprietor or nominated licensee of the observations made by the police.

The first of those occurrences, the one on 20th August, 1999 was within twelve months of the upholding by the Commission on 30 October 1998 of a previous and similar complaint in respect of which a penalty of suspension of licence for one day had itself been suspended for twelve months, to be activated upon any further complaint in that time being also upheld. A day's actual suspension is therefore to be served in respect of that previous breach of the *Liquor Act*. That is a given in the present situation.

Mr McBride urges us to impose no further actual suspension, partly on the basis of ineffectiveness, given that such a penalty would not be affecting the bottom line of the licensee, but only that of the main creditor, the Commonwealth Bank. However, as Mr McBride himself acknowledges, there is a message to go out to the community, there is an aspect of the need for general deterrence in the industry. Both matters before us at the moment involve sales of the larger size of wine cask to intoxicated Aboriginal persons.

Without any other considerations, and in the absence of any confusion of the situation by the appointment of the Receiver, if all three matters had been dealt with serially the licensee could reasonably have expected the following penalties as a minimum. There would be one day's

closure for the breach of what we shall refer to as the first complaint. The first of the matters we are now dealing with is therefore be regarded as a second transgression of the same nature, and should certainly attract a further suspension of two days. And then, the third time round there must surely be such a degree of exasperation on our part that would attract at least a four day suspension in order to focus the licensee's attention on its responsibilities. So in the absence of any other considerations we are convinced that the licensee should have a rolled-up penalty at this time for all three breaches of at least seven days actual closure. An alternative that may otherwise have received consideration by the Commission, that of a period of considerably more than seven days closure but further suspended on the basis of "good behaviour" for a further twelve or more months, is obviously not an option in the face of the impending transfer of the premises. In any event, the Commission is generally of the view that at the point of a third breach of Section 102 of the Act, actual suspension should be seen to be almost unavoidable.

However, on this occasion the penalty otherwise to have been expected by the licensee will be discounted to some extent, firstly in acknowledgment of the licensee's ultimately civilized approach to the resolution of the two current complaints (albeit perhaps motivated mainly by the licensee's need to clear the slate for the transfer), and secondly, in acknowledgement of the other matters that were put to us by Mr McBride in his usual no-nonsense and candid way, including the effective distance of the licensee from the actual management of the premises by the Receiver and Manager. However, we do note that the nominee has remained the same throughout the period of all three complaints.

The Commission has therefore determined as follows. The day's closure that was suspended in relation to the first breach will be notified to be served. In addition, there will be further penalties rolled-up in relation to complaints two and three which are now before us of another day's full suspension of licence followed by two days suspension in relation to take-away service only.

The two days full suspension will be on Thursday 8th June and Friday 9th June; the licence will be suspended in its entirety for those two days, with the exception of service to bona fide lodgers, meaning house guests and buses of people to or in respect of whom the licensee may have existing contractual obligations. We are talking about closure to the general public.

In addition to those two closures the bottle shop only will be suspended for Saturday June 10th and Sunday June 11th, during which time there is to be no takeaway sales from any bar in the hotel.

So to recap on what the hotel is now facing as a result of all three complaints together, the bottle shop will be closed for Thursday, Friday, Saturday and Sunday June the 8th to the 11th inclusive, but the premises must not trade in liquor at all on that Thursday and Friday, except to bona fide lodgers.

Postscript (1): It was later drawn to the Commission's attention that June 8th. and 9th. were the two days during which the Olympic torch would pass through Alice Springs. This circumstance was unknown to the Commission at the time of the above decision, and was not raised by Counsel at any time. In any event, (a) the nomination of the particular period of closure was largely driven by the Licensee's desire to have the licence unencumbered by mid-June, and (b) service to house guests remained permitted. The Commission does not propose to comment further on this aspect of the notification of the closure dates.

Postscript (2): By the time that the foregoing orders were formally notified to the Licensee in writing as required by Section 66 of the *Liquor Act*, the Commission felt that there may have been some confusion as to the effect of the above orders under the *Liquor Act* on the Licensee's obligations in relation to its gaming machines under the *Gaming Machine Act*.

Under the *Licensing Commission Act*, the Gaming Machine Commission has in effect been absorbed by the Licensing Commission, and it was for this Commission to indicate the Licensee's position under the *Gaming Machine Act* in relation to its suspension of liquor licence.

Under Sec 48(b) of the *Gaming Machine Act*, it is obvious that the suspension of the machine licence is to be concomitant with the liquor suspension. In our view the licensee was to be advised

that for those two days of closure of "the premises", its gaming machine licence was also suspended by operation of law.

The machine licence suspension was to be for those two days only, because the restriction on take-aways alone over the following two days would not prevent liquor being permitted to be sold in those parts of the premises containing the gaming machines, vide Sec. 88(a).

We do not see that further formal decision was needed on our part; the gaming machine situation is the automatic result of the liquor decision viz. closure of premises must include machines, take-away suspension of itself does not. The Commission determined that the Licensee be informed accordingly.

John Withnall
Presiding Member

10 June 200

(Decision 30 May 2000)