

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Katherine Hotel Katherine Terrace Katherine NT 0850
Licensee:	Deema Pty Ltd
Licence Number:	80101789
Proceedings:	To undertake a Hearing to consider a Complaint alleging that the Licensee committed the following offences: (1) Section 106B of the <i>Liquor Act</i> , namely, allowing a minor on the licensed premises; (2) Section 121 of the <i>Liquor Act</i> , namely failing to remove two intoxicated persons from the licensed premises
Members:	Mr P Timney (Presiding Member) Mr D Brooker Mrs J M Large
Attendees:	Inspector M Woods, for the Director of Licensing Mr Whelan for the Licensee, Deemat Pty Ltd
Date of Hearing:	23 March 2011

Background

- 1) On Friday, 20 August 2010 at 11.05 pm, according to the premises' security camera footage, a person entered the Katherine Hotel and remained on the premises until 01:55 on Saturday 21 August 2010.
- 2) Later on the same night at a location away from the Hotel the person was placed in protective custody by Police due to his level of intoxication. It was during the processing by Police that it was discovered that the person was a minor who had used an altered NT Driver's Licence to gain admission into the Katherine Hotel. The birth date on the front of the licence had been altered from 05/11/1992 to 05/ 1/92 whilst the back of the licence still showed the 05/11/1992 date. The minor was allowed to remain on the licensed premises for some three hours constituting an offence under Section 106B of the *Liquor Act* ("the Act").
- 3) Whilst investigating the above alleged offence Licensing Inspector Wood observed on the CCTV footage, an older person, who was unsteady on his feet, enter the Katherine Hotel at 12:00 am on 21 August 2010. He remained in the hotel until 01:52 am and his ability to move and steadiness deteriorated considerably. On leaving the hotel he fell and required help from a young man accompanying him. He stumbled down the stairs and fell against the wall as he exited the hotel. Outside the hotel he was assisted in walking by his companion and at the corner it would appear he is urinating against the wall. Inspector Wood submitted that allowing an intoxicated person to remain on the licensed premises was an offence of Section 121 of the Act.
- 4) A further alleged offence of Section 121 of the Act was withdrawn on the instructions of the Director of Licensing.

The Hearing

- 5) Inspector Wood read out the facts concerning the allegation of the minor on the premises and tendered a set of three NT Drivers Licences, all in the name of the same minor and all of which had been altered in some way. He stated that over a twelve month period the minor had attempted to use these licences to gain entry into licensed premises in Darwin and Katherine. Following the confiscation of the licence in Darwin, Licensing Inspectors came to Katherine to discuss the issue with the minor's family and also briefed local Licensees on the matter.
- 6) The CCTV footage viewed by the Commission during the Hearing clearly showed the minor entering the premises with security present at the entry point. The minor was also observed moving around the premises at various times and eventually leaving the premises. Mr Wood noted that the alteration of the driver's licence was a poor forgery and one that should have been readily identified by the crowd controllers on duty.
- 7) Inspector Wood advised that there had been no evidence of sale of alcohol to the minor but he was drinking in the hotel and harm arose from that drinking as, after leaving the hotel, he was apparently involved in an altercation at a service station, came to the attention of Police and had to be taken into protective custody. Mr Wood submitted it was obvious from the footage that the Security Officer at the entrance of the Hotel did not make any attempt to thoroughly check the licence tendered by the minor.
- 8) Inspector Wood noted that the Licensee was previously advised of the risk that this particular minor may attempt to enter licensed premises using an altered ID. He added that the family of the minor was well known to the Nominees.
- 9) Inspector Wood read out the facts concerning the elderly man and noted that he appeared to be intoxicated and unsteady on his feet when he stumbled against the Hotel wall when he was entering the premises. The man had a conversation with the crowd controller at the entrance and, in Mr Wood's submission, the crowd controller should have been alerted to the state of intoxication of the man at that stage. Mr Wood noted that the man's condition deteriorated whilst he was inside the Hotel and drinking and that at one stage he fell against the pool table. The elderly man need the assistance of a companion due to his unsteadiness and was seen on the CCTV footage to urinate against the wall of the Hotel after leaving the premises. Inspector Wood tendered a series of photographs taken from the CCTV footage relating to both incidences and showed the entire footage at the Hearing.
- 10) Mr Whelan, for the Licensee, agreed with the facts given for both alleged breaches and stated that that he could not deny that the CCTV footage showed the elderly man was unsteady on his feet and did urinate outside the hotel. He said that neither the minor nor the elderly man caused any disruption or harm inside the hotel and therefore didn't bring themselves to the attention of the staff.
- 11) Mr Whelan noted that the elderly man did not do anything untoward whilst on the premises so as to bring his condition to the attention of staff of the premises. He submitted that the man entered the Hotel where sat and quietly became intoxicated over a period of approximately 2 hours. Mr Whelan made similar observations in respect of the minor in that he did nothing whilst on the premises to bring himself to the attention of staff or the crowd controllers.
- 12) In his submission on penalty Inspector Wood stated that the Katherine Hotel had a previous offence, namely, serving an intoxicated person takeaway liquor at the bottle shop contrary to Section 102 of the Act. The Commission on 12 July 2010, in accordance with Section 124AAA of the Act, suspended the Hotel's take away licence for one day but suspended the penalty for a period of twelve months. At the time of issuing that penalty the Commission advised the Licensee as follows:

“that a further finding of guilt for an offence of Section 102 of the Act within the next twelve months carries with it a maximum penalty of eight days suspension of

licence. ..Whilst significant weight has been given to the unblemished record of the Licensee in this case the Licensee should not expect that degree of leniency for any future breach. The Licensee should also be aware that any penalty imposed for subsequent breaches may not be limited to the bottle shop area of the licensed premises and may apply to the liquor licence generally."

- 13) Inspector Wood tendered copies of the previous Katherine Hotel decision and a series of previous decisions by the Commission for similar offences namely Squires Tavern, Ducks Nuts, Discovery and Crossways Hotel.
- 14) Inspector Wood submitted that a licence suspension of two to five days should be considered by the Commission and, because of the circumstances which gave rise to noticing the offences, any suspension imposed should be concurrent rather than cumulative.
- 15) Mr Whelan, in his submission on penalty, stated that the Licensee had not replied or offered any response to the Director of Licensing's letters of 27 September 2010 and 8 October 2010, which outlined the complaints, because advice from the Australian Hotels Association ("AHA") was that any response might incriminate the Licensee. He offered in mitigation the facts that there had been a clever deception by the minor and although the elderly man clearly became intoxicated whilst on the licensed premises, he caused no problem or known harm to himself or any other person.
- 16) Mr Whelan stated that the problems arose due to difficulties in engaging competent security officers for the hotel. To ensure this does not happen in the future the Licensee has entered into an agreement with Visual Security whereby, at considerable cost, professional security is being provided from Darwin. He tendered Visual Security Invoices indicating that the Licensee had paid between \$1,500 and \$2,100 per week for Crowd Controllers from Darwin to travel to Katherine and provide security services at the Hotel.
- 17) Mr Whelan submitted that if a penalty of actual suspension of licence were to be applied that it not include the wholesale liquor component of the Licensee's business.

Consideration of the Penalty

- 18) The Commission considers both offences seriously and previous decisions for offences under Section 106 of the Act (minor on premises) have ranged from a two day suspension for a first offence to five days for a subsequent offence. An offence under Section 121 of the Act (intoxicated person on premises) in 2009 resulted in a two day suspension, of which one day was suspended.
- 19) In the Crossways' decision of 14 July 2008, where the circumstances were similar to the matter at this Hearing and there had been previous offences, the Commission stated:

"A former Chairman of the Licensing Commission previously advised the liquor industry that 'Licensees who served minors or drunks or who are found to be blatantly breaching their licence conditions must accept the consequences of their actions'. The Commission considers the sale of alcohol to minors to be at the higher end of offences and the Commission will treat such offences seriously. Whilst there is no evidence that alcohol was sold to the Minor it is clear that he was allowed to remain on licensed premises the subject of the Declaration and whilst he was on the premises he had access to and consumed alcohol. It is therefore the view of the Commission that this is a serious offence."

A suspension of five days with two days suspended was imposed.

- 20) As neither of the offences currently before the Commission relate to Section 102 of the Act, the suspend penalty imposed on the Katherine Hotel in July 2010 does not come into consideration by this Commission but it does remain in effect until July 2011 and the

Commission must take into consideration that there was an offence just eighteen months previously.

- 21) The Commission accepts that both the offences occurred on the same night and at the same time and were only detected later in the evening by Police when investigating a separate incident and from the camera surveillance footage. The Commission agrees with Inspector Wood's submission that any penalty imposed should be concurrent and will only impose one penalty for both offences.
- 22) The Commission accepts Mr Whelan's submission that the camera surveillance footage did not show any disruption or unruly behavior by either the minor or the elderly man whilst in the hotel. Against this is the fact that the minor had to be taken into protective custody by the Police shortly after he left the hotel, an indication that some harm did follow his being allowed to drink in the premises for almost three hours.
- 23) Although Mr Whelan submitted that there had been a clever deception by the minor, the alteration on the licence was very crude and should have been easily detected and, more importantly, Licensing Inspectors had in the previous month advised all Licensees in Katherine to be on the alert for this particular minor trying to gain access to the premises using an altered driver's licence.
- 24) In both matters it is clear that there has been a breakdown in the level of scrutiny undertaken by the security officers employed in the hotel. This has been recognised by the Licensee and action has been taken to address the problem by employing professional security officers from Darwin at a significant cost to the Licensee.
- 25) The Commission accepts Mr Whelan's advice as to why the Licensee did not respond to the letters from the Director advising of the complaints and is prepared to give the benefit for having admitted the breaches at the first opportunity. The Commission also notes the remedial steps taken by the Licensee in securing the services of Darwin based crowd controllers, at significant additional costs. The Commission takes these matters into account in determining the discount to the penalty it may otherwise have imposed.

Decision

26) The Commission has determined that:

- (a) Due to the circumstances surrounding the detection of the two offences that only one penalty will be imposed;
- (b) When imposing any penalty consideration has to be taken of the previous offence committed in March 2010 and previous decisions by the Commission for like offences;
- (c) Taking account of the mitigating factors set out above, and the warning issued to the Licensee in the decision of 12 July 2010, a five (5) day suspension of trading will be imposed for the entire premises and for all sales of liquor, including take away and wholesale sales;
- (d) As the Licensee has taken action to rectify the security problems in the hotel which gave rise to the offences two of the five days are immediately suspended.
- (e) The three days suspension of trading are to be served on the same day as the offences were committed, namely Friday 6, 13 and 20 May 2011. The Commission notes that the suspension over three consecutive Fridays, together with the time until the suspensions apply should be sufficient to allow the Licensee to make adequate arrangements in respect of its wholesale clients.

The suspended two day penalty will remain suspended for a further twelve month period from the date of this decision. Should no further breach of a similar or greater seriousness occur within the twelve month period then this suspended penalty will lapse at the end of

that period. However, if within the next twelve months there is a proven breach of either the Act or the licence conditions that is of a similar or greater seriousness to this matter then the two day suspension will come into effect, together with any other penalty that may be imposed for the subsequent breach.

Philip Timney
Presiding Member

8 April 2011