

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Warnkurr Sports and Social Club
Licensee:	Victoria Daly Shire Council
Licence Number:	81416090
Proceeding:	Complaint Pursuant to Section 48(2) Section 121-Failure to Remove or Exclude Intoxicated Person from the Licensed Premises
Heard Before:	Mr Richard O'Sullivan (Chairman) Ms Brenda Monaghan (Legal Member) Mr Walter Grimshaw
Date of Hearing:	1 July 2009
Appearances:	Ms Lia Finocchiaro for the Licensee Inspector Mark Woods for Director of Licensing

Background

- 1) A complaint was lodged on behalf of the Director of Licensing pursuant to Section 48(2) of the *Liquor Act* ("the Act") alleging a breach of Section 121 of the Act (failure to remove an intoxicated person from a licensed premises). Ms Finocchiaro as Counsel for the Licensee admitted a breach of Section 121 (below) based on agreed facts.

121 Power to exclude or remove persons

(1) A Licensee or employee of the Licensee shall, or an inspector may, exclude or remove a person, not being a bona fide resident of the Licensee's licensed premises, from the licensed premises if the person is intoxicated, violent, quarrelsome, disorderly or incapable of controlling his behaviour.

(1A) A Licensee, an employee of the Licensee or an inspector may exclude or remove from the Licensee's licensed premises:

(a) a bona fide resident of the premises, if that resident is intoxicated, violent, quarrelsome, disorderly or incapable of controlling his behaviour;

(b) subject to any other law in force in the Territory, any person (including a bona fide resident), if the presence or continued presence of the person on or at the premises would or might:

(i) render the Licensee liable to a penalty under this Act or any other law in force in the Territory; or

(ii) in his opinion, disrupt the business of the Licensee or unreasonably interfere with the wellbeing of other persons lawfully on the premises; or

(c) for or during a period not exceeding 12 months from the time a person was found guilty of an offence relating to the possession or supply of a drug on licensed premises, that person.

- (2) *A person to whom subsection (1) or (1A) is applicable shall immediately leave licensed premises on being requested to do so by the Licensee, an employee of the Licensee, an inspector or a member of the Police Force.*
- (3) *A member of the Police Force shall, on the demand of the Licensee, an employee of the Licensee or an inspector remove or assist in removing from licensed premises a person who has been requested by the Licensee, an employee of the Licensee or an inspector in accordance with subsection (2), to leave the premises.*
- (4) *A Licensee, employee of a Licensee, inspector or a member of the Police Force exercising a power under this section may use such force as is reasonably necessary for the purpose.*

Hearing

- 3) Inspector Mark Wood, appearing on behalf of the Director of Licensing, gave information to the Commission that on 23 October 2008, in conjunction with Constable Anthony Jones of Kalkaringi Police, he took part in an operation relating to the investigation of the unlawful transportation of liquor into the township of Kalkaringi. A routine inspection of the Warnkurr Sports and Social Club (the Club) was included as a corollary to that operation.
- 4) Upon Inspector Wood and Constable Jones arrival at the Club at 7.30pm on the said date, they observed that some patrons appeared to be intoxicated. At this point the Nominee, Mr Colin Searle (Nominee) was not present at the bar.
- 5) During the inspection of the premises Inspector Wood was approached by a male person known to him whom he had earlier seen walking back from "One Tree" (a drinking paddock on the outskirts of Kalkaringi). The patron, Mr Dodd was displaying signs of intoxication with slurred speech and unsteady gait. and said, *'I know you were my lawyer, do you remember me from court'*. Inspector Wood said *"I remember you but I was not your lawyer"*. Mr Dodd replied, *"Yes, you were, I know you, I just got out of Berrimah"*.
- 6) Inspector Wood told Mr Dodd that he had seen him drinking earlier and he was drunk and should not be in the club and if did not leave he could get into trouble and may finish back in Berrimah. Mr Dodd then appeared to leave the premises.
- 7) Two (2) other patrons were also displaying signs of intoxication. It was during this time that the Nominee, Mr Searle appeared from the food servery area where he had been assisting his wife with food preparation. Mr Searle immediately acknowledged the fact that intoxicated persons had entered and remained on premises and he took immediate steps to deal with the problem including closing the Club early. He explained that they had had a very busy night with a dance contest and that he was grossly understaffed due to 3 staff not turning up to work. One of the staff was hired to provide security.
- 8) At 9.30am on the following morning 24 October 2008, at the request of Mr Searle, a meeting was held at the Club with the OIC of Kalkaringi Police, Senior Constable Drury, which Inspector Wood attended. The discussion revolved around the issues arising from the previous evening and the need for proactive measures including ongoing staff training in liquor licensing requirements and Responsible Service of Alcohol (RSA).
- 9) Mr Searle was notified that a complaint would be lodged with the Director regarding intoxicated persons on the premises the previous night. There is no allegation before the Commission that those persons had in fact been served liquor at the Club.
- 10) A written Statement was supplied by Inspector Wood and by Constable Jones in relation to these matters. The protracted delay in presenting this complaint was due to the unavailability of Constable Jones in supplying his statement.

- 11) Ms Finocchiaro in representing the defendant addressed the Commission and reiterated the circumstances and stated that the facts as given by Inspector Wood had been agreed to.

Submissions on Penalty

- 12) On the issue of penalty Inspector Wood gave information to the Commission that an agreement had been reached by himself (representing the Director) and Ms Finocchiaro representing the defendant.
- 13) Inspector Wood explained to the Commission the circumstances under which the Victoria Daly Shire Council (VDSC) came to be the holders of the licence and their involvement and responsibilities under the Act.
- 14) The agreed recommendation of both parties was that a severe reprimand be given in writing and it to be placed on file to be taken into consideration if any further breaches occur.
- 15) In reaching this recommended penalty, Inspector Wood told the Commission he took into account the pressures Mr Searle was working under in relation to staff shortages and difficulty of recruitment (Kalkaringi is approximately 460 kilometres from Katherine and 170 kilometres from Top Springs). With the tyranny of distance and remoteness of the location, it is a pertinent factor regarding the recruitment of staff. Had the staff all turned up to work, it is reasonable to assume that the intoxicated persons in question would have been refused entry.
- 16) Inspector Wood submitted that both the Nominee, Mr Searle and the Shire Council were genuinely concerned by the breach and open to any proactive measures that might prevent such a breach in the future. The Licensee and Nominee were helpful with Inspector Wood and Kalkaringi Police and should be given credit for an early admission of guilt and the fact that they showed a genuine interest in compliance and displayed genuine contrition over the breach. Finally, the fact that both the Licensee and Nominee have no prior licence breaches is an important matter to be taken into account.
- 17) Ms Finocchiaro agreed with Inspector Wood and added in mitigation there had been no harm perpetrated, no damage done and absolutely no aggression showed at any stage during the incident of the breaches. The Nominee had also attempted to ensure his patrons got home safely by arranging for a bus service home that evening. Furthermore, the Nominee had been very happy to close the licensed premises, albeit only ten (10) minutes early on the night of the breach as a sign of good faith.
- 18) Ms Finocchiaro went on to explain a new, experienced Nominee had been appointed and the VDSC was totally committed to a closer involvement with the enterprise and was looking forward to regular dialogue with all stakeholders, ie Police, Council Directors and Licensing Inspectors, as to areas of ongoing improvement and conformity with regulations. The presence of a council executive member at the hearing was noted.
- 19) Inspector Wood suggested, along with the severe reprimand, a licence condition be imposed requiring RSA training for staff and also that an additional condition be imposed requiring further staff and management education be undertaken as deemed necessary by the Director .

Decision

- 20) In arriving at its decision, the Commission is mindful of all aspects outlined by Inspector Wood and Ms Finocchiaro in their submissions and furthermore takes into account the need for consistency in penalties where parallels exist (e.g. the recent case of the Mataranka Hotel). Particular note was taken of the fact that this is a first breach for the Licensee and Nominee and also that Inspector Wood appears confident that the Licensee

is taking the right proactive measures to ensure that there are no further breaches. The decision of the Commission is that a severe written reprimand be issued and this to be placed on file to be considered in the event of any further breaches being proven. Further, a licence condition is to be incorporated requiring RSA training and any further education training as deemed appropriate by the Director.

Richard O'Sullivan
Chairman

22 July 2009