

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Todd Tavern
Licensee:	M & J Pascoe and Daughters Pty Ltd Pepity Pty Ltd Bonehead Pty Ltd Wrigm Pty Ltd GRJP Pty Ltd Stewie Pty Ltd
Licence Number:	80102200
Dual Nominee:	Ms Leonie Joan Leach Mr Mark George Pascoe
Proceeding:	Complaints Pursuant to Section 48(2) of the <i>Liquor Act</i> –Breach of Section 31A(5a) and Section 110
Heard Before:	Mr Richard O’Sullivan (Chairman) Mr Philip Timney Ms Helen Kilgariff
Date of Hearing:	29 October 2008
Date of Decision:	5 November 2008
Appearances:	Ms Leonie Leach, Dual Nominee Senior Inspector Wayne Sanderson for the Director of Licensing Inspector Murray MacAllister

Background

1. Two (2) complaints have been lodged by a the Deputy Director of Licensing (South) in accordance with Section 48(2) of the *Liquor Act* (“the Act”) against the Licensee of Todd Tavern located on the corner of Wills Terrace and Todd Mall, Alice Springs NT (“the Licensed Premises”), the holder of Licence number 80102200. The Licensees are M & J Pascoe and Daughters Pty Ltd, Pepity Pty Ltd, Bonehead Pty Ltd, Wrigm Pty Ltd, GRJP Pty Ltd and Stewie Pty Ltd. The dual Nominees are Ms Leonie Leach and Mr Mark Pascoe.
2. The complaints allege breaches of Section 31A(5)(a) of the Act by the Licensee on 12 July 2008 and breaches of Sections 31A(5)(a) and 110 on 10 August 2008. The Licensing Commission determined to conduct a hearing in respect of the complaints pursuant to Section 49(2)(c) of the Act.
3. The Deputy Director received a complaint from a Police Officer alleging that on Saturday 12 July 2008 at approximately 1837 hours a person purchased alcohol from the Todd Tavern drive through bottle shop without that person being asked for identification and without identification being scanned. On viewing video surveillance footage of the period 1830 to 1900 hours on the 12 July 2008, Licensing Inspectors Paul Drake and Murray MacAllister observed the transaction where the breach was alleged to have occurred, in that a customer was seen purchasing alcohol and not seen to produce identification to be scanned.

4. On viewing the CCTV footage from 1800 to 1900 hours the Inspectors noted a further four (4) transactions in which similar offences were alleged to have occurred, namely:
 - 1841 hours, a customer purchased two (2) bottles of wine without any scanning of identification by the bottle shop attendant.
 - 1842 hours, female patron purchased what appeared to be cans of XXXX Gold and was not asked by the bottle shop attendant to produce identification for scanning purposes.
 - 1846 hours, a purchase from a vehicle was transacted without any scanning of identification by a bottle shop attendant throughout the process.
 - 1857 hours, the front seat passenger of a taxi purchased a thirty (30) pack of VB cans without any evidence of scanning of identification by bottle shop attendant.
5. The Deputy Director wrote to the Nominee/Licensee of the licensed premises on 8 August 2008 advising them of the substance of the complaints and inviting them to provide comments on the matter.
6. A response to the allegations was received on 28 August 2008 from Ms Leonie Leach who stated she had no reason not to agree with the footage as it showed staff not scanning identification when alcohol was being purchased. Ms Leach advised that one staff member concerned was a casual week-end attendant and the other normally employed as a chef who had requested more hours. Both knew of the regulations requiring the scanning of identification for alcohol purchases however Ms Leach explained their actions as human error.
7. In respect of the breaches alleged to have occurred on Sunday 10 August 2008, a member of the public made a complaint alleging that between 1800 and 1815 hours passengers in a bus were observed purchasing alcohol without being asked to produce identification. This complaint was made to Inspector MacAllister on 11 August 2008.
8. On viewing video surveillance footage of the period 1730 to 1830 hours on 10 August 2008, Licensing Inspector Murray MacAllister observed the transaction where the breach was alleged to have occurred.
9. On viewing the CCTV footage Inspector MacAllister noted a further four (4) transactions in which similar offences were alleged to have occurred, namely:
 - 1804 hours, a female patron purchased two (2) cans of beer and a bottle of wine without any scanning of identification by the bottle shop attendant.
 - 1811 hours, male patron, in company of two (2) other males, purchased what appeared to be a bottle of spirits without any scanning of identification by the bottle shop attendant.
 - 1823 hours, a male patron purchased a bottle of spirits without any scanning of identification by a bottle shop attendant throughout the process.
 - 1824 hours, a male patron purchased a bottle of wine without any evidence of scanning of identification by the bottle shop attendant.

10. Section 31A(5) of the *Liquor Act* provides:

31A Conditions about identification system

(5) *The following requirement is a condition of the licence:*

(a) *the authorised seller must not sell liquor to an individual without scanning an approved identification of the individual with the scanner.*

11. On viewing the same camera footage, that is 1730 hours to 1830 hours Sunday 10 August 2008, Inspector MacAllister observed two (2) instances where a single form of identification was used to purchase more than one restricted product, namely two (2) litre casks of wine.
12. Licence number 80102200 issued in respect of the Todd Tavern contains the following special condition of licence:

Takeaway Sale Restrictions:

On any given day, sale to a person of more than one (1) bottle of fortified wine or one (1) cask of wine is prohibited and Licensees who knowingly or recklessly make such sales will be in breach of this condition.

13. Section 110 of the Act provides that a Licensee shall not contravene, or fail to comply with, a condition of his licence.
14. The video surveillance also revealed further potential breaches of the Act in that some of the sales of cask wine that took place on 12 August 2008 were, according to the time on the surveillance footage, conducted outside the trading hours permitted for that type of sale, that is prior to 1800 hours. Further investigations revealed that the times shown on the till tape for the relevant transactions indicated that the sales were conducted after 1800 hours.
15. The Deputy Director wrote to the Nominee/Licensee of the premises on 18 August 2008 advising them of the substance of the complaints and inviting them to provide comments on the matter.
16. A response to the allegations was received on 28 August 2008 from Ms Leonie Leach who stated she has no reason not to agree with the footage in that it clearly showed staff not scanning identification when alcohol was being purchased. Ms Leach also admitted that the breaches of the condition of licence in respect of the take away restrictions for cask wine.
17. Ms Leach further advised that as a result of the complaints the following steps had been implemented by the Nominee to prevent future breaches.
 - A visit was requested and subsequently completed by Licensing Inspector Murray MacAllister to assist in again explaining to all bottle shop staff the regulations in regards to both Section 31A (5)(a) and the licence condition restricting sales of cask wine .
 - Ms Leach advised she has spoken to each bottle shop staff member individually to explain again the seriousness of failing to adhere to these instructions and that they are required to obtain ID from all persons purchasing alcohol.

Hearing

18. The Chairman commenced the hearing by advising the parties that the Commission had convened to consider a number of complaints against the Licensee of the Todd Tavern in respect of alleged breaches of Section 35A(1)(a) and Section 110 of the Act.
19. The Chairman advised the parties that the hearing related to offences alleged to have been committed on both 12 July 2008 and 10 August 2008 and that the Commission intended to hear evidence on the complaints at the one hearing and, if appropriate, apply a cumulative penalty. The parties agreed to the Chairman's proposal for the conduct of the hearing.
20. Licensing Inspector Wayne Sanderson advised the Commission of the background to the complaints, as set out above. Mr Sanderson informed the Commission that the Deputy Director was not pursuing the matter of alleged sales of cask wine prior to the Todd Tavern's trading hours as investigations had revealed that the time shown on the CCTV footage was incorrect and that the sales of the casks had most probably taken place after 1800 hours, as shown on the till tapes for those sales.

21. Ms Leach, on behalf of the Licensee, formally acknowledged that the breaches, as alleged by Mr Sanderson, were admitted.
22. By way of mitigation, Ms Leach relied on the matters set out in her letter of 28 August 2008, as set out above. Ms Leach submitted that the breaches had occurred as a result of a blasé attitude on the part of the staff members concerned, despite her counselling those staff members following the first incidents on 12 July 2008. She further submitted that the incidents which resulted in the complaints occurred during busy periods in the bottle shop with approximately seventy (70) transactions being completed in the hour on 12 July and approximately ninety (90) transactions for the hour on 10 August. For the majority of those transactions the staff members requested and scanned the customer's identification.
23. Ms Leach submitted that whilst she accepted that the breaches occurred as a result of human error and poor attitude it was sometimes difficult during busy times for staff to recall whether or not they had scanned ID when rushing from vehicles to the fridges and then to the till. Ms Leach reiterated that she had done the best she could to train staff, including organising for the Deputy Director to reinforce the requirements for the scanning of identification.
24. Ms Leach advised the Commission that the staff member who had made sales without identification being provided on the both occasions, and who was involved with both sales of two (2) casks of wine to a single customer, had been dismissed following notification of the second of the complaints.
25. The Commission formally found that all complaints, as alleged in the report from the Deputy Director, had been proven and sought submissions from the parties on penalty.

Submissions on Penalty

26. Mr Sanderson submitted that the requirement to obtain and scan identification for alcohol sales in Alice Springs had been introduced earlier this year with scanning systems being installed in licensed premises between February and June 2008. There had been extensive training for Licensees and staff prior to implementation of the ID scanning requirements on 23 June 2008. The system and the legislation were designed primarily to prevent sales of alcohol to prohibited persons. He informed the Commission that this was the first offence of this nature in Alice Springs to be referred for hearing.
27. Mr Sanderson also advised that the restriction on sales of cask wines was introduced in October 2006 in an attempt to reduce the harm and anti-social behaviour caused by excessive consumption of these products. The scanning of ID for such sales provides an alert to other Licensees that the person has already purchased a cask that day and prevents customers from purchasing multiple casks from different venues.
28. By way of mitigation, Mr Sanderson acknowledged that Ms Leach had been co-operative with Inspectors since notification of the breaches and had admitted the breaches at the first available opportunity. Mr MacAllister confirmed that Ms Leach had been most co-operative in his dealings with her in respect of the breaches and that she had made no attempt to evade or down play the seriousness of the offences. He also advised that Ms Leach had requested additional training for her staff by the Deputy Director of her own volition.
29. Mr Sanderson informed the Commission that the current Licensee had held the licence for four (4) years and during that period had been found to have committed one (1) prior breach. Namely, allowing a minor to remain on the premises on 31 January 2008. For that offence the Commission imposed a two (2) day suspension of licence in respect of the Riverside Bar, with one day of that penalty suspended for a period of twelve (12) months.
30. Mr Sanderson submitted that he had been instructed by the Deputy Director to seek an aggregate penalty for all offences of four (4) days suspension of the take away component of the licence for the Todd Tavern.

31. In response Ms Leach acknowledged the seriousness of the breaches, particularly the multiple sales of cask wine. She accepts that this is the first time that offences relating to the ID scanning provisions have been heard however she would not like to see the Licensee used as a "guinea pig" and severely punished. She submitted that the appropriate penalty would be a one day suspension of the bottle shop licence.
32. In support of that submission Ms Leach relied on the matters set out in her letter to the Deputy Director and emphasised her efforts after notification of the complaints to provide further training for all staff, including requesting training by the Deputy Director. She confirmed that the staff member who was involved with the scanning failures and the sales of the casks had been dismissed immediately following the second complaint due to his poor attitude and work ethic and that the other staff member had been removed from the roster for take away sales.

Consideration of the Issues

33. The Commission notes the policy initiatives in respect of controlling the supply of liquor as an essential part of this government's strategy to combat alcohol abuse and the serious social and health problems that result from such abuse. In introducing the amendments to the Act to provide for the scanning of identification and for limits on take away sales of cask wine the Minister noted that, in Alice Springs particularly, the consumption of liquor and the number of alcohol-related incidents causing harm to the communities is completely unacceptable and one that requires immediate and dramatic counter measures.
34. The effectiveness of the initiatives in bringing about the reduction of alcohol related anti-social behaviour and harm is entirely dependent on the enforcement of these new requirements by Licensees. In reaching its determination in respect of penalty the Commission took account of the fact that this was the first time offences relating to Section 35A(5)(a) of the Act had been referred for hearing. The Commission determined that the penalty should be sufficient to reflect the seriousness of the offences and to act as a general deterrent to other Licensees.
35. The Commission noted the submission of Mr Sanderson that the appropriate penalty was a suspension of the licence in respect of the sale of take away alcohol for a period of four (4) days. Allowing for the number of ID scanning offences, ten (10) in total, plus the two (2) cask sales offences the Commission was of the view that this was not an inappropriate penalty but at the higher range of penalty in the circumstances.
36. The Commission did not accept the submission on behalf of the Licensee that the penalty should be one (1) day suspension of take away sales as being too lenient given the number of offences and the fact the offences on 10 August 2008 occurred after the Licensee was advised of the earlier offences.
37. However, the Commission also took note of the following mitigating factors in determining to apply a discount to the penalty it would have otherwise imposed:
 - The early admission of the breaches, both in the letter from Ms Leach of 18 August 2008 and during the course of the hearing;
 - The steps taken by the Licensee in respect of retraining staff in respect of the ID scanning requirements, the restrictions in respect of the sale of cask wine and adherence to the relevant legislative requirements of the Act, including Ms Leach's request for the Deputy Director to speak to staff members to reinforce their obligations in that regard;
 - The submissions by Inspectors Sanderson and MacAllister in respect of Ms Leach's full co-operation during the course of their investigations and the pro-active measures taken by the Licensee in staff training since the incidents complained of; and

- The genuine contrition on the part of the Licensee as evidenced by Ms Leach's assistance and co-operation with the investigations and her conduct at the hearing.
38. The Commission also took account of the fact the Licensee had recently been found to have committed a breach of the Act in respect of allowing a minor to remain on the premises. Whilst that offence bears no similarity to the offences now before the Commission it did militate against a suspended or partially suspended penalty being applied in this instance.
39. Taking account of the above factors, the Commission determined to apply of discounted penalty of two (2) days suspension of the take away component of the licence.

Decision

40. The Commission determined to impose an aggregate two (2) day suspension of the Licensee's take away licence for the breaches of Section 31A(5)(a) and Section 110 of the Act. The days of the suspension are to be a Saturday and a Sunday, not necessarily consecutive days, with the actual dates of suspension to be determined by the Deputy Director. In determining those dates, the Commission directs that the penalty be served within six (6) weeks following the publication of these written Reasons for Decision.
41. In handing down a penalty of such severity, noting it applies to peak takeaway trading days of a Saturday and Sunday, the Commission is reinforcing the need to adhere to the law, which in this instance is a Government initiative designed to bring about the reduction in alcohol abuse and resultant social harm.
42. In respect of the suspended penalty imposed on the Licensee by the Commission in its decision of 18 July 2008 for a breach of Section 106B(1) of the Act, the Commission determines that that day of suspension be now served. As above, the actual date of the suspension is to be determined by the Deputy Director.

Richard O'Sullivan
Chairman

5 November 2008