

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

Premises:	The Arnhem Club
Licensee:	The Arnhem Club Inc
Licence Number:	81401120
Proceeding:	Complaint pursuant to Section 48(2) of the <i>Liquor Act</i> – Breach of Licence conditions – sell liquor to non-members
Decision By:	Mr Craig Spencer
Date of Hearing:	8 August 2005
Date of Decision:	29 August 2005
Appearances:	Richard De Waal – Nominee Michael Nolan – Nominee Marc MacKenzie – Director of Licensing

Background

1. This matter was a complaint lodged by the Director of Licensing alleging the sale of liquor to two (2) non-financial members of the Arnhem Club on two (2) separate occasions on consecutive days.
2. The liquor purchased on the first occasion was a carton of beer valued at \$32.95 and a bottle of wine valued at \$13.95 on the second occasion. The sales occurred about 4.25pm on Thursday 19 May 2005 and 3.15pm on Friday 20 May 2005 respectively.
3. The sales were made to staff members of Racing, Gaming and Licensing conducting inspections of licensed premises. Neither of the staff members were members of the Arnhem Club which is located approximately 600 kilometres east of Darwin.
4. The allegation by the Director of Licensing was that the Arnhem Club breached one of its core licence conditions that states in part:

Liquor shall be sold only for consumption away from the licensed premises to financial members only during the following hours:

- (i) *Sunday to Friday inclusive between the hours 14:00 and 20:00.*

5. At the Commission July 2005 Monthly meeting, a number of similar complaints were referred to it by the Director of Licensing. The Commission determined that this matter would be referred to hearing rather than be cautioned which was the recommendation of the Director of Licensing.
6. The Director of Licensing and the Licensee agreed on the facts of this matter. Being satisfied the breaches had been proven, submissions were made as to penalty.
7. The Licensee asserted unchallenged by the Director of Licensing, that it was their first offence in fifteen (15) years of operation, had fully cooperated with Racing, Gaming and Licensing staff, entered an early plea, an inexperienced casual staff person serving, taken a number of steps to counter future instances of this type of breach and had subsequent positive compliance checks by Racing, Gaming and Licensing since these instances.
8. The particular steps taken included:
 - Signage
 - Staff education
 - Installation of a computer linked to the membership database
 - Staff being given instructions to check memberships
9. The Director of Licensing even acknowledged local radio advertisements clearly indicated sales were to financial members only. Nevertheless, their response was to a clear breach of a core licence condition that differentiated hotels from clubs. The Director of Licensing's submission was that a breach be recorded and a warning issued were appropriate penalties.
10. The Commission in determining this matter and penalty has taken into account the unchallenged assertions of the Licensee. Those assertions have been seriously considered and weighed against this being a breach of a core condition of the licence. The condition is central to its existence and is intentionally and deliberately designed to distinguish clubs from other licensed premises such as hotels and taverns. Ignoring the membership limitations, blurs the distinction between these types of licensed premises and others. The Commission is mindful of the necessity to ensure this distinction is clearly understood.
11. A very significant concern to the Commission is that these breaches occurred on consecutive days. This indicates that little or no immediate action was taken by the Club and does raise some concern about the level of desire to adhere to the condition. This is of particular concern when it is considered that the premises is a considerable distance from Darwin and therefore not readily accessible for ad hoc and or regular inspections.

12. The Licensee has impressed upon the Commission that is it very aware of its obligations which it has and will take seriously. They believe they have taken the necessary actions to prevent any further breaches of this condition. The Commission has taken these issues into consideration when determining penalty and seriously expects the Licensee to adhere to the submissions.

DECISION

13. That two (2) breaches of its licence conditions, namely selling liquor to non-members on consecutive days, are proved.
14. That these breaches be recorded as two (2) separate breaches but dealt with for penalty purposes in this matter as being concurrent.
15. That these breaches are of sufficient gravity the penalty be the suspension of all sales of liquor for the consumption of liquor away from the premises (take away sales) for a period of four (4) consecutive days, they being a Thursday, Friday, Saturday and Sunday.
16. That the penalty imposed be suspended for a period of twelve (12) months as of the date of this decision on the basis that during that twelve month period, no further breach of this particular licence condition occurs. This is intended to enable the Licensee to provide tangible evidence of a commitment to their submissions.
17. In the event of a further breach occurring during the twelve (12) month period, on the breach being found proved or accepted by the Licensee, the suspension will apply to a Thursday, Friday, Saturday and Sunday as nominated by the Director of Licensing within a reasonable period of time after the breach being found proven or accepted by the Licensee. The suspension will be in addition to any other penalty that may be imposed by the Commission with regard to the subsequent breach.

Craig Spencer
Presiding Member