

NORTHERN TERRITORY LICENSING COMMISSION

Licensee: Buffalo Trading Pty Ltd

Premises: Wurankuwu Aboriginal Corporation

License number: 81415350

Hearing: Complaints pursuant to section 48 of the *Liquor Act*

Member: Brenda Monaghan (presiding)
Jill Huck
Paul Costigan

DECISION ON PRELIMINARY ISSUE

- 1) The background to this matter is as follows. We have before us a number of complaints against the Licensee of the Wurankuwu (Ranku) Club lodged by both the Northern Territory Police and the Director of Licensing. The hearing was listed for three days on 29,30 and 31 August 2005. The complaints lodged by the Director did not proceed and have been adjourned at their request to 3 October 2005 at 9.30 am for hearing. Over the 3-day period, however, we heard detailed evidence from the Northern Territory Police to substantiate their complaints. Whilst the Police have not formally closed their case, we have heard the majority, if not all of their evidence.
- 2) The police evidence took the three days allocated and we have not as yet heard the oral evidence of witnesses to be called by the Ranku Club in response- although we have received some written witness statements.
- 3) At the conclusion of the third day, counsel for the Director of Licensing, Ms Martin and by counsel for Police, Mr Lawrence, made a joint application seeking an immediate, interim suspension of the Club's licence. After some discussion on construction of various provisions of the

Liquor Act, the first submission was made that we have power to grant such a suspension in these circumstances pursuant to s 66 (1)(b) of the *Liquor Act* which states as follows:

Commission's power to suspend licence

(1) *The Commission may, by notice in writing, suspend the licence of a licensee where –*

(a) *the Commission –*

(i) *gives a direction to the licensee under section 49(4)(b) or 65; and*

(ii) *is of the opinion that suspension of the licence is necessary for the protection of the public;*

(b) *the licensee has contravened or failed to comply with his licence, this Act or the Regulations and the Commission is satisfied that the contravention or failure is of sufficient gravity to justify the suspension of the licence; or*

(c) *the licensed premises are not being used for the sale or supply of liquor.*

(2) *The suspension of a licence under subsection (1) shall have effect on and from –*

(a) *the date on which the licensee receives the notice referred to in that subsection; or*

(b) *such other date as the Commission may specify in the notice.*

(3) *A licence which is suspended under subsection (1) shall have no effect until that suspension is revoked by the Commission.*

(4) *Where –*

(a) *the Commission has, under subsection (1), suspended the licence of a licensee to whom a direction has been given under section 49(4)(b) or 65; and*

(b) *the licensee has complied with that direction,*

the Commission may revoke the suspension of the licence.

(5) *The Commission may, if it thinks fit, either before or after the expiration of a period fixed under section 49(4)(b) or 65, extend that period.*

4) Mr Lawrence submits that it is open to the Commission on the evidence presently before it to find that the Club has failed to comply with the licence and to further find that the non-compliance is of sufficient gravity to warrant its suspension until further notice.

5) The Commission has considered this argument but is not persuaded by it. We are fully aware of the gravity of some of the evidence put forward by police, which supports their claim that the Licensee was breaching their licence by serving banned persons for example.

- 6) The Commission's concern is that it seems against the laws of natural justice to conclude that a Licensee had failed to comply with the licence and/or the Act without affording them the opportunity to be heard on the issue.
- 7) Mr Lawrence submits that the Licensee has been heard. Mr Tipungwuti and Mr Drew have made some comments throughout the three days of Police evidence and have had the opportunity to question police witnesses. They have also provided some written responses and statements to the Commission. In our view, this can hardly be seen as granting them a sufficient opportunity to respond to the very detailed evidence of the police witnesses.
- 8) In circumstances where a complaint is upheld, the strongest penalty apart from cancellation of the licence is a long-term suspension. The imposition of such a suspension is carefully considered, as the Commission is very aware of the impact of such a penalty on a commercial enterprise. In the case before us where there is some concern about the financial soundness of the Club, a 6-week suspension might well mean the Club's permanent closure. This in turn is highly likely to affect the viability of the store. Such repercussions might well be the result if complaints of a sufficiently serious nature are ultimately upheld. We simply do not accept, however, that it is appropriate for us to suspend the licence pursuant to s66 when we have not yet accorded the Club the opportunity to be heard.
- 9) It is regrettable that there was insufficient hearing time for the matter to be completed but the three days allocated for this hearing were only allocated following discussion with all parties. Had the complainant advised earlier that they needed three days for their witnesses alone, we would have allowed more time for this hearing. In these circumstances, it would appear to the Commission to be intrinsically unjust and unsafe to suspend the Club's licence before they have had an opportunity to defend themselves. They have advised that they intend to call two witnesses to address the Commission and they should be afforded that opportunity. If an issue arises during the adjournment that requires us to use our emergency suspension powers, then we will do so.
- 10) Ms Martin further submitted that s65(c) afforded the Commission the requisite power to vary the licence in the interim. This section states:

65. Commission's power to give directions

Where a licensee –

- (a) has contravened or failed to comply with a condition of his licence;
- (b) has permitted or suffered the premises in respect of which he holds a licence to be so used as to cause undue disturbance or inconvenience to –
- (i) persons who are lawfully on or at those premises; or

(ii) persons who reside in the neighbourhood of those premises; or

(c) has contravened or failed to comply with a provision of this Act or a law of the Territory which regulates, in any manner, the sale or consumption of liquor or the location, construction or facilities of premises which are used for such a purpose.

the Commission may, from time to time by notice in writing, direct the licensee to take, or to refrain from taking, within such time as the Commission shall in that notice specify, a specified action to rectify or minimize the effects of –

(d) the licensee's contravention or failure to comply, referred to in paragraph (a) or (c); or

(e) the undue disturbance or inconvenience, referred to in paragraph (b),

as the case may be.

11) Ms Martin submits that if we are unwilling to temporarily suspend the licence, then we should consider placing specific restrictions on the Club to prevent them from selling alcohol in-house whilst retaining their power to provide takeaway to permit holders. The Licensee Mr Tipungwuti and Mr Drew expressed their concern about this proposal as they both envisaged that it would cause resentment in non-permit holders and might lead to trouble.

12) Our first response to Ms Martin's application is that a s65 variation assumes a contravention of the licence by the licensee. We are reluctant to take such a step in circumstances where we are part way through a complaints hearing in which the Licensee has not yet been given a reasonable opportunity to be heard. Further, even if we were minded to make an interim variation, we had insufficient time to discuss this matter properly and we would be most reluctant to proceed with the implementation of interim measures unless we were confident that they would be effective and would not exacerbate existing problems.

13) The Licensee should be well aware of our concerns about the Club based on the police evidence. Mr Drew advised us of steps the Licensee is taking to ensure that the Club is properly run in the interim and if that is not the case, then we will reconsider our position.

14) Finally, Ms Martin has sought access to the financial returns of the Club for the past two financial years. We direct the Licensee of Ranku Club to advise the Director of Licensing within 7 days of the date of this decision whether or not the Club is willing to provide these documents. If the answer is no or if no response is received within the time frame, then a directions conference by telephone will be arranged and the Commission will consider the issue more fully at that stage.

Brenda Monaghan
Legal Member
5 September 2005