

NORTHERN TERRITORY LICENSING COMMISSION

Licensee: Buffalo Trading Pty Ltd

Premises: WURANKUWU CLUB
BATHURST ISLAND NT

Licence Number: 81415350

Hearing: Complaints Pursuant to Section 48 of the *Liquor Act*

Member: Brenda Monaghan (Presiding)
Paul Costigan
Jill Huck

Hearing Dates: 29-31 August 2005, 30 September 2005, 28 October 2005,
31 October 2005, 1 - 4 November 2005,
17 - 18 November 2005 and 29 November 2005

SUMMARY

The Commission **UNANIMOUSLY** upholds the following complaints:

5/6 November 2004: Breach of Liquor Licence by Admission of Banned Person
17 November 2004: Breach of Liquor Licence by Admission of Banned Person
20 November 2004: Breach of Liquor Licence by Admission of Banned Person
3 December 2004: Breach of Liquor Licence by Admission of Banned Person
8 January 2005: Breach of Liquor Licence by Admission of Banned Person
8 January 2005: Breach of Liquor Licence by Admission of Banned Person
10 January 2005: Breach of Liquor Licence by Admission of Banned Person
13 January 2005: Breach of Liquor Licence by Admission of Banned Person
14 April 2005: Breach of Liquor Licence by Admission of Banned Person
26 May 2005: Breach of Liquor Licence by Admission of Banned Person
30 June 2005: Breach of Liquor Licence by Admission of Banned Person
Breach of s104 & 105, Breach of s121
8 September 2005: Breach of Liquor Licence by Admission of Banned Person

Reasons for Decision

- 1) This decision relates to a number of complaints lodged by both the Northern Territory Police (the Police) and The Director of Licensing (the Director) regarding the Wurankuwu Club (the Ranku Club/the Club). The complaints are lodged against the Licensee, Buffalo Trading Pty Ltd and the Nominee, Robert Tipungwuti. The substance of the complaints involves a number of specific alleged breaches of both the *Liquor Act* and the licence conditions occurring between mid 2004 to September 2005. There is also an over-arching complaint that the Licensee and Nominee are not fit and proper persons to hold a licence.
- 2) The hearing commenced on 29 August 2005 and took some months to be completed. In all, we heard 13 days of evidence, mainly from the complainants, concerning alleged breaches. More recently, we have received final written submissions from all parties regarding the evidence.
- 3) At the hearing, the whole documentary history of the Club was placed before the Commission in support of a submission that the Nominee and Licensee are not fit and proper persons. Further, evidence was given that from late 2004 onwards, there have been a number of alleged breaches of licence conditions. We will deal with the specific alleged breaches first.
- 4) The written submissions from Police included a chronology of incidents, which we have found most helpful. Where the chronology refers to specific events that happened on a specific day, we intend to consider the complaint alleged using the chronology as a guide. Before we do so however, we make general comment on the following matters:

General Considerations

- a) In considering a specific complaint, we cannot take account of hearsay statements made to Police by unnamed community members - irrespective of any cultural or social restraints that might prevent them from making a formal complaint. For example, the evidence of late closure of the Club on 10 January 2005 is hearsay and relates to a comment made by a Ranku community member to Police. Whilst it might well be true, it might not and is too uncertain to be accepted as substantiating a complaint on the balance of probabilities.
- b) We cannot infer that every alcohol-related health, domestic or social problem at Wurankuwu necessarily links back to the Ranku Club. Community members travel to Milikapiti and Ngiuu regularly visiting friends and family and they drink in the Clubs in those places. Further, the smuggling of alcohol onto the islands is an accepted reality and its presence means that the involvement of the Ranku Club must be proved for each complaint on the balance of probabilities. The above considerations mean that we are reluctant to find the Club breached s102

solely on evidence that two (2) intoxicated men were involved in an altercation at Wurankuwu on 1 December 2004. Those men may have been at the Club or they may have been drinking at another Tiwi Club or from illicit supplies. We simply have no evidence on which to base a breach. Further, there is no evidence upon which a complaint against the Club can be based regarding the incidents of domestic violence on 30 December 2004 or on 18 & 31 August 2005 or the child welfare concern on 21 May 2005. The Commission notes generally however, the relationship between abuse of alcohol, child neglect and domestic violence.

- c) Finally, whilst the Commission has no evidence before it that the attempted suicide on 16 January 2005 was linked to drinking at the Club or elsewhere, we are well aware that the risk of self harm increases when a person is under the influence of alcohol or other drugs. The Commission takes this issue seriously and has included many conditions in Tiwi Island Club licenses to attempt to curtail both binge drinking and the irresponsible service of alcohol. We have also on many occasions closed various clubs (or supported a voluntary closure) when a suicide has occurred to assist in preventing copycat behaviour. What the Commission cannot do is compromise the evidentiary burden of proof by upholding alleged breaches based on inference and hearsay.

5) **Alleged Breaches of s102**

- i) Section 102 of the *Liquor Act* states:

A licensee or a person employed by a licensee shall not sell or supply liquor to a person unless the person to whom it is sold or supplied is not intoxicated at the time (the onus of proof of which lies with the defendant).

In the Milner Road Foodtown decision (19 December 2003), the Commission considered this section and stated as follows:

“The Commission’s role in complaints against licensees by Police was considered by the Supreme Court of the Northern Territory in O’Neill Hotel Management Services P/L v NT Liquor Commission [1999] NTSC 124 in which Thomas J confirmed that the Commission does not make a finding of criminal guilt. However, the Commission can find a section of the Act has been breached in order to consider regulatory action under the Act or in relation to (a condition of the licence.)

The Commission’s approach to complaints of breach of s.102 of the Liquor Act has been documented in several of its earlier decisions in the following manner:

Once there is a case to answer in relation to a breach of Section 102, which is to say, once a sale or supply is demonstrated, together (we would add) with

any reasonable ground to suspect that the recipient may have been other than not intoxicated, an onus of proof shifts to the licensee, who must prove that the customer was not intoxicated, or alternatively must sufficiently undermine the evidence of the sale or supply having occurred. ...the Commission concedes, however, that as a matter of law the reverse onus is able to be discharged on the balance of probabilities.

The charge which is colloquially described as “serving intox” could therefore be referred to more accurately as serving a person who was other than non-intoxicated.”

ii) In Milner Road Foodtown, the Commission further stated:

*“The three main alternative concepts of intoxication would seem to be, in simplified summary:
materially affected by liquor;
inability to act in an unaffected normal fashion; or
visible impairment of faculties*

The need with the first two approaches to still have to determine a contextual meaning for “affected” or “unaffected” would seem to lead inexorably to the third approach as being more immediately practical, and more susceptible to the usual evidentiary case. The Commission has historically equated intoxication to the showing of visible indicators of impairment of bodily faculties as a probable consequence of, or in conjunction with, the consumption of liquor.”

iii) On many occasions of alleged breaches by the licensee of the Ranku Club, there is no direct evidence of the sale or supply to an intoxicated patron. Instead, there are general admissions made by a patron that he or she had earlier been drinking at the Club or the hearsay evidence of others that this was the case. The complainants in this case often attempt to rely on statutory declarations made by patrons which identify the Ranku Club as the location where they were drinking. These declarations, however, were usually made with another charge in mind (eg domestic violence or drink driving offences) and the right questions were simply not asked. Did the patrons in question purchase their own drinks or did someone else buy them on their behalf? If they did purchase their own drinks, what was their demeanour at the time of sale? For the most part, we do not know. In such cases, we cannot find a breach of s102.

6) **Evidence of Takeaway Sales**

The evidence before us of takeaway sales is for the most part circumstantial or based on hearsay. Whilst we are well aware of the reluctance of community members to give evidence against their Club, it is difficult for us to uphold a

complaint without it. Apart from a comment made by Robert Tipungwuti to the effect that “*some of those beer Wurankuwu, some from Garden Point*”, we have no direct statements that the Ranku Club is the outlet for this litter. We are left with strong suspicions but, even if the littered cans are from the Ranku Club, were they smuggled out by patrons without the consent of the Licensee or sold unopened as takeaway or a combination of the two? We do not know.

A good example of our difficulties is the complaint of the sale of takeaway by the Club on 11 January 2005 based on the suspicious presence of numerous littered VB cans around the home of Matthew Tipiloura and on general comments from unnamed community members that the Club was serving takeaway. The presence of so many cans around his house is disturbing but we know that illegal liquor enters the community and that the area is not well Policed because of lack of resources. Without clearer evidence, we cannot find a breach. We do intend, however, to ensure that the Club management tackle this issue if we ultimately allow them to reopen.

7) **The Banned List**

It is quite clear that whilst there is general community support for the Banned List, there is widespread dissatisfaction with the current format of that list as it is difficult to read. We understand that attempts are being made at present by the Clubs and the Police to improve the layout of the list to make it more readable. The Commission hopes that licensees will work with Police to introduce a better clearer document that can hopefully be updated and circulated more regularly than once a week.

8) **Specific Alleged Breaches**

We now look to the incidents where specific breaches are alleged and comment as follows:

a. Incident on 5-6 November 2004 (Entry to Banned Person, s102 Breach and Takeaway Sales)

- i. We accept the evidence before us as sufficient to support a finding that a banned person, Emmanuel Tipungwuti was allowed entry to the Ranku Club whilst he was on the banned list. This amounts to a breach of the liquor licence condition that states:

“...the Licensee shall not admit to the licensed premises persons whom the Licensee has been advised have been prohibited from entry at any other licensed premises in the Tiwi Islands at that time.”

- ii. Whilst it may well be that this man was also served alcohol at Ranku whilst he was other than not-intoxicated, we do not make such a finding on the

evidence before us. The complainant is relying upon Emmanuel Tipungwuti's statutory declaration, which simply states: *"I was drinking VB cans and had about 9 cans of it."* It does not state whether he went to the bar and purchased those cans himself or whether others purchased them for him. We have no evidence of his behaviour or perceived level of intoxication whilst at the Club and specifically whilst any purchases were being made.

- iii. The complaint of a breach of s110 (re sale of liquor not authorised by the licence) is based on "information received" by Police from unnamed sources of an alleged sale of takeaway liquor by the Club. There is insufficient evidence to support this complaint and it is dismissed.

b. Incident on 15 November 2004 (Takeaway Sale/Supply)

- i. The Police submit that the evidence before us supports a finding that Dominic Kantilla obtained takeaway liquor from Ranku Club in breach of its licence conditions and the Act. The evidence before us of the sale of takeaway liquor is a statutory declaration of Julie Kantilla. It states at paragraph 2:

"On Monday night 15 November 2004 I was at home at Ranku Community. There was only me and my daughter at home. Dominic came home about 9 o'clock. He had two VB cans with him. He was full drunk."

- ii. Further, Sgt Wilson spoke to Julie Kantilla and stated in evidence at page 42 of the transcript *"Her husband was Dominic Kantilla. He acts as barman at the Wurankuwu Club. He'd come home that night and stated that he'd brought a couple of beers home with him..."*
- iii. The Commission is asked to assume that the beer Dominic bought home was purchased or supplied by the Club-despite the fact that the statement signed by Julie Kantilla does not specifically make that link. If he did obtain the beer from the Club, it may be that he took the cans without others knowing and hid them on his person as he left. In summary, whilst we may have suspicions and general concerns about the management of the Club at that time, there is insufficient evidence before us to support this specific complaint.

c. Incident on 17 November 2004 (Banned/Serve Intox)

- i. We accept the evidence that Valentine Puatjimi drank at Ranku Club whilst on the banned list in breach of the Club's liquor licence. He admitted this fact to Police when they later breath-tested him. We have insufficient evidence however, to find that his two (2) passengers Timothy Palipamini and Demetrius Kerinauia - who were also banned at the time-were in fact drinking at Ranku. They made no such admissions and apart from being in the same car as Valentine, there is no evidence to support a finding that they were

allowed entry to the Club whilst banned.

- ii. We are also unable on the scant evidence before us, to make a finding that the Club breached s102 and served Valentine liquor whilst he was intoxicated. We have no evidence of the circumstances of the sale of liquor to Valentine and whether he purchased liquor himself or whether others purchased it for him. We have no evidence of his demeanour whilst at the Club. All we have is a Police precis in support of a drink driving offence which simply confirms that Valentine had been drinking at the Ranku Club. The Club licence only allows sale of liquor until 7pm and Police breath-tested Valentine halfway between Ranku and Nguiu at 9pm. We have no evidence as to how and where Valentine spent his time between 7 and 8.30pm and he may have been drinking illicit supplies elsewhere. We simply do not know.

d. 20 November 2004- (Banned)

There is sufficient evidence to support a finding that there was a breach of the terms of the Club's licence when Gilbert Tipungwuti, whose name was on the banned list at the time, was admitted to the premises of the Ranku Club.

e. 3 December 2004-(Banned)

We accept the evidence of Sgt Wilson and Const Shroj that Valentine Puatjimi, Pete Kantilla and Bede Tungatalum, all banned persons at the time, were on the premises at the Ranku Club in breach of a condition of the Club's licence. We cannot find a breach of s102 with respect to Valentine Puatjimi simply because we do not have the evidence of a sale or supply to him by the Club nor of his appearance and demeanour at the time of that sale or supply.

f. 15 December 2004 (Takeaway)

The evidence is that Marcellus Mungatopi arrived back in Nguiu from Ranku with a partly-drunk can of beer in his hand. He admitted to drinking at Ranku (Transcript-p184-Shroj). The question is whether his admission that he was drinking at Ranku can necessarily be inferred by us to be the Ranku Club. The second question is whether he hid the beer to get it out of the Club or whether it was sold to him as takeaway. The evidence is not clear on these issues making it difficult to conclude that the Club had allowed takeaway sales.

g. 8 January 2005 (Banned List)

The evidence of Constable Shroj and Sgt Wilson was that they pulled over a white Subaru Station Wagon NT609245 on the road from Ranku. The driver Robert Cunningham was intoxicated and returned an alcohol reading of .179% BAC. He admitted to drinking at Ranku Club. He was banned at the time.

Once again we face the dilemma that whilst we can uphold a breach of the liquor licence with respect to serving banned people, we cannot make a finding under s102 that Cunningham was served by Ranku Club staff whilst intoxicated. We simply do not know. He might have sat whilst others approached the bar for him. He might have drunk elsewhere also.

h. 8 January 2005 (Banned Person)

We cannot make a finding that Matthew Tipiloura was a banned person on 10 January 2005 because we have no evidence before us that he was banned at the time and no evidence by admission or direct evidence that he was at Ranku Club.

i. 10 January 2005 (Banned Person)

We uphold the complaint that Wayne Tipungwuti was served at the Ranku Club whilst he was on the banned list. He admitted this to Police and we have no evidence before us to dispute this admission. We will not “infer” that the Club was serving intoxicated people on the night in question however. We have no such evidence-apart from Wayne’s admission that he was drinking at the Ranku Club. Did he approach the bar and buy his own drinks? We do not know. What was his appearance and demeanour whilst he was at the club? Did he appear intoxicated? We do not know that either.

j. 13 January 2005 (Banned Persons)

We accept the evidence that Jason Tipungwuti, Henry Tipungwuti and Charlene Tipungwuti (all banned persons at the time) were on the premises at the Ranku Club in breach of the Liquor Licence.

k. 14 April 2005 (Banned Persons)

The Commission upholds the complaint that Colin Kantilla and Pascal Tipungwuti were drinking at the Ranku Club whilst they were on the banned list.

l. 26 May 2005 (Banned Person)

We uphold the complaint that Louis Tipungwuti, being at the time a banned person, was drinking at the Ranku Club.

m. 4-5 June 2005 (Banned Person-disputed)

- i. There is conflicting evidence before us as regards this complaint. Sgt Wilson states that he was advised on Sunday 5 June that there had been an accident on the Kerinauia Highway the previous night and that the occupants had earlier been drinking at Ranku Club. Two of the occupants, Hughie Junior

Kerinauia and Augustine Tipungwuti were banned at the time. Sgt Wilson gave evidence that the young men had been drinking at the Club before the accident (Pg 86 transcript) although he did not elaborate on the basis for his statement. Sgt Shroj attended the accident site on 7 June 2005 and made further enquires. His evidence was as follows (pg 196 Transcript):

MR LAWRENCE: Now, you then proceeded to investigate what happened, who was driving, who was present, etcetera, etcetera?

CONST SRHOJ: Yes.

MR LAWRENCE: What did you come up with?

CONST SRHOJ: I came up with, there were five people in the car, three of which were sent to Royal Darwin Hospital that morning, after they had been picked up. The driver was Darryl Puruntatameri. He had a learners license. None of the other people in the car had a license at all, speaking to the people that were in the car, they were all intoxicated, had all been drinking at the club. There was a sober person in the car. He was a 17 year old. He actually waited in the car while the others were at the club and drinking, he could drive. The driver, Darryl refused to let him drive because the 17 year old didn't have a license either. He was the only sober person there. The driver refused to let him drive. The driver, from witness statements, the driver was heavily intoxicated, had had beers in the car with him.

When I say beers, they didn't have excess beers, they, like the roady, they had one that they were drinking on the way home which I believe they had taken from the club that they had left. The driver was intoxicated. The passengers were intoxicated. The next morning, a few vehicles went past there. These people picked the motor vehicle accident passengers up and put them into Nguiu Clinic. In the witness statements, they say that when they were speaking to them, they could smell liquor on them. They smelt that they had been drinking.

MR LAWRENCE: Is this clinic - - -

CONST SRHOJ: One of them, she works at the Nguiu Clinic and the other one is in charge of the girls school. That's Tracey Parker. She's MCS Girls School. Her exact role, they could smell beer on them, liquor. She said that they had bloodshot eyes and they were dizzy and it looked like they were hung over. That is in her statement. The driver had spoken to all the passengers, had not spoken with the driver, the driver doesn't reside in Nguiu.

- ii. Also tendered in evidence (Ex 34) was a statement by Augustine Tipungwuti about the events of 4 June. He speaks of a number of his friends (Daryl Purantatameri, Huey Kerinauia, Joseph Babui and Jeffery Timaepatua) coming by car (a brown Toyota Landcruiser) to Ranku. He states that all the boys went to the Club at Ranku but he was refused entry by "an old white man with white hair" because he was banned. He thought the man was John Drew. He could see that this man was the only man working at the Club during the period of some 2 hours that he waited outside. At about 6pm the other boys came outside. He states :"*Daryl and Huey were really drunk. Daryl got into the drivers seat, Joseph sat in front, Huey sat in the back with me and Jeffery.About half way to Nguuu Daryl skidded and rolled the car.*"
- iii. Hughie Kerinauia also made a statement that was tendered in evidence (Ex35). The evidence conflicts with the statement made by Augustine Tipungwuti in some respects. Most significantly, Hughie states that only he and Daryl went to the Club while Joseph, "Augusta" and Jeffery stayed by the car. Hughie bought 4 cans and Daryl bought about 8 cans. Then another friend bought them 4 or 5 cans each. He states "*After drinking the beer Darrell and I went back to the car where the others were waiting. Darrell then drove the car heading for Nguuu, taking us all home...*"
- iv. Robert Tipungwuti disputed some aspects of the Police evidence regarding the role the Ranku Club had played in the levels of intoxication of these boys. He stated at page 339-340 of the transcript:

MR TIPUNGWUTI: Yes. I know John (Drew) wasn't even there. Oh, that accident we're talking about.

CONST SRHOJ: Yes.

MR TIPUNGWUTI: That accident. That car - that Toyota came from Garden Point. Whoever gave you a statement, that statement is wrong.

CONST SRHOJ: With regards to those statements - - -

MR TIPUNGWUTI: That's the one with the accident, that Toyota.

CONST SRHOJ: Those are statutory declarations. They're believed to be true. They're signed by the persons making those statements and they were from two passengers in that vehicle.

MR TIPUNGWUTI: Well, I can tell you that statement's wrong. They gave you wrong information. They came from Garden Point. Those people was on that Toyota, they never drink, just the driver.

CONST SRHOJ: *With regards to that allegation, the person - I have to quickly read the statements, but the guys that drove to Ranku that afternoon were in fact dropping Robert's son, Robert Tipungwuti Junior, off at Ranku community.*

MR LAWRENCE: *Do you have the witness statements?*

CONST SRHOJ: *I do.*

MR TIPUNGWUTI: *Have you got that statement?*

CONST SRHOJ: *In the statement from Hughie Kerinaiaua - do you have these statements?*

MR COSTIGAN: *No.*

CONST SRHOJ: *This is the original - I've brought the original statements with me. This is from one of two passengers in the vehicle.*

MR LAWRENCE: *Can you tell us the date for that rollover. It's a Saturday night.*

CONST SRHOJ: *I'll read you the first paragraph because that's relating to what Robert is talking about. This is from Hughie Kerinaiaua.*

MR COSTIGAN: *What was the date, sorry?*

CONST SRHOJ: *The date is 4 June 2005. The statement says:*

On Saturday, 4 June 2005, my friends Daryl Puruntatameri, Augusta Tipungwuti, Joseph Babui, Jeffrey Timaepatua, and I went to Ranku in the afternoon. The reason for driving there was because Daryl said he would drive Robert, John Tipungwuti and his girlfriend to Ranku. They were in the car. The car belonged to Daryl's brother. His name is Freddy. The car is a Toyota Land Cruiser wagon.

So according to the passenger's statement, they went to Ranku to drop Robert's son off.

MR TIPUNGWUTI: *Well, I'm sorry that's the statement, it's not true. He came from Garden Point. We know that. The car came from Garden Point. That's what they agreed to. The driver specially drove it. The other four, they wasn't.*

CONST SRHOJ: *I can only say what's in the statement.*

MR TIPUNGWUTI: I know. I agree what you say, but the statement, they gave you false information. We know when they left Garden Point. People tell us about it, if the driver, he was drinking.

MS MONAGHAN: Well, we've noted what you say.

MR TIPUNGWUTI: Yes.

MS MONAGHAN: It's a matter for you if you want to dispute anything with other evidence. You will have your opportunity, and so we note Constable Srhoj is going by what's on the statutory declarations and what was told to the Police.

MR TIPUNGWUTI: Thank you.

- v. Mr Tipungwuti gave further evidence on 29 November as follows: (see p1000 of transcript):

MS MONAGHAN: When you gave evidence earlier, when you made comments on earlier occasions, you mentioned about a motor vehicle accident that was being discussed, and where, I think the statements made by those in the accident to Police was that they had been drinking at Wurankuwu. I'm just trying to recall which accident it was - - -

MS MARTIN: On 14 June, or 15 June. There's a question mark over when it happened, but it was Saturday or Sunday. But it wasn't - Police didn't actually arrive until the Monday.

MS MONAGHAN: Thank you. I'll just - - -

MS MARTIN: On the Kerinauia Highway.

MS MONAGHAN: Do you need to tell us about that? Why you say they weren't drinking at - - -?---Yes.

- - - Wurankuwu?---Yes. I will tell you about it. How it was started, the bloke that drove the car, a Toyota, he came from Garden Point, this side of Garden Point.

Do you know his name? Which one was he, do you remember? ---To tell you the truth I don't know his name. I know him well but I don't know his name. Most of those people on Bathurst Island today I didn't even know. I know the person, but no name. I'm lost sometimes.

MS HUCK: So you recognised them?---I recognised the bloke. Those people in the car, I recognised everyone of them, but I didn't know their names.

MS MONAGHAN: If you were told their names would you remember or you just don't know their names?---I just don't know their names.

All right, that's fine.

MS HUCK: Do they come from Garden Point? Where do they live?---Most of them live - the driver, he lives at Garden Point. Other three, or four people in that car, in that Toyota, they live at, Bathurst Island.

Where?---Bathurst Island. They were on a trip to Garden Point, right, and then they went across over, and this is the information I got from people who live in Garden Point. I've got a lot of relatives there. I've got a lot of family there. The driver is my family, my father family. He was drinking. I don't know how much he drank. The other four, they weren't even drinking because they were on the banned list. One of them is a young fella, may be 12 or 13. The other three was on the banned list. They come across to Wurankuwu that afternoon. Then, Dan and I, we looked on the list, and the driver - and the three were on the banned list. I was working that night, me and Danny, Johnny wasn't even there. They put somebody's name in there. John wasn't even there, he was in Darwin. Just Dan and I was working that night, that evening, and we serve the driver. One can first and he drank the lot and then he came back to get another one. Twenty minutes after he came back and he got another one; I gave it to him. He bought it.

MR COSTIGAN: Sorry, Mr Tipungwuti, I misunderstood. I thought you said the driver was on the banned list?---No, he it wasn't him, wasn't him.

MS HUCK: The passengers.

MR COSTIGAN: The passengers were on the banned list?---Yes.

MS MONAGHAN: So he drank one can and about twenty minutes later he came back for another can?---He came back. And I gave it to him; he bought it. The other three wasn't, because they were on the banned list. They were outside. That information they gave you, the first bloke that was drinking was false information. It's not true, because I was working that night, that evening.

MS HUCK: So he had two beers or three beers?---Two beers, because I served him.

And did he seem drunk?---No. I wouldn't say he was a person, I said nominees, I would tell you.

MS MONAGHAN: And you're sure that he was the same person who ---?---He was the same person.

--- who was involved in the accident?---He's the same person. He is the same person. And they started to drive away. People told him, the driver, how I said there was family at Wurankuwu, stay there tonight and go tomorrow, right? And he went back to one of my son's house, he stayed there, drive out. And people tell him, where are you going? I'm going back to Weal. It's about 25 or 35ks from my area, from - 35 or 25?

MR DREW: About 35.

THE WITNESS: About 35. That's right, there's two ways.

MS HUCK: And that's where he had the accident?---That's where the accident occurred.

So people - what you're saying is people encouraged him to stay at Wurankuwu that night?---That's right.

But he didn't - - -?---That evening. It wasn't at night. That evening.

Yes?---Still daylight breaking. That evening. Even me, I spoke to him about it.

Yes. Did you think he was too - that he'd had too much to drink?---Well, apparently he was drinking - he didn't look drunk to me. He was a young fella. I don't how he got away, because he was unlicensed too. Did the Police put on the statement?

MS MONAGHAN: I haven't checked?---Did the Police put it on the statement? It seems to me the Police were worried about just the grog. What about the licence?

MS HUCK: I don't know. It might be in the - - -?---He's an unlicensed person. Those four people, they are unlicensed.

Right, so everybody - - -?---I don't know why the Police hasn't put it on the record. I think we'd better start a question.

There might be something in the Police precis?---I don't think so. I never heard when they questioned it. Anyway, they had the accident that night. I'd spoken to those people, those passengers on that Toyota a week after.

They said "Why one of you didn't drive that Toyota?" They said "None of us got no licence. And so he didn't" they said. He's unlicensed. All four of them were unlicensed. And they had an accident that evening, 8 o'clock or 9 o'clock or something like that, and in the evidence the Police said they were found by the Police; they wasn't. I spoke to the people who found them and the Police wasn't there at all. They went there Monday. According to these people from - the ones that found those four people. They wasn't confiscated. They on Sunday. No grog. In the evidence they said they were drunk. They couldn't be drunk because none of them had any grog. It was just the driver who drank that night.

So they didn't have grog with them in the car or anything?--No. We wouldn't serve people like that.....

I think I jump the gun. Let's go back on that accident. Police never found it. Local people found it on Sunday morning. They are my relatives. They weren't even drunk, they were all sober. According to the report there was confiscated, but it's not true. I asked the people. I asked the people about it that day. I said "Did you find them drunk, those people on Monday morning - Sunday morning?" And they said "No. They was lying down. Sores, everything. And we took them back. We took them back into hospital" they said. "Then we reported to the Police."

- vi. There are a number of conflicts in the evidence as regards what happened that Saturday night at Ranku Club and who was permitted by the Club management to enter the premises. Robert Tipungwuti says only the driver was permitted entry. We assume this would be Daryl Purantatameri. Hughie Kerinaua says he was also drinking at the Club but the other passengers were refused entry. Augustine Tipungwuti says all 4 occupants of the vehicle were drinking at the Club whilst he waited outside on his own.
- vii. Robert Tipungwuti was the only witness who gave direct evidence at the hearing on this issue. He was adamant that whilst he did not know the names of the young men in the vehicle, he knew from looking at the banned list with Danny Flinn (not John Drew) that some of the occupants in the vehicle were banned and they were refused entry to the Club.
- viii. Faced with such conflicting evidence, we cannot find that the Club breached its licence by serving banned persons and this complaint is dismissed.

n. 30 June 2005 (Banned/ breaches of 105, 110, 114 &102)

The complaints put forward by the Police with respect to this night are many and varied and include complaints that Ranku Club breached s102 by selling liquor to intoxicated persons, s104 by allowing persons to stay on premises after hours,

s105 by permitting riotous conduct and s110 for many reasons including selling liquor to banned persons.

On the 30th of June, the Nguiu Club was voluntarily closed – as it had been the night before. We accept, however that the managers of the Ranku Club thought that the Nguiu Club was open on 30 June. As a result, they took no preparatory measures to control a potentially larger crowd. In the early evening, Nguiu Police became aware that a number of residents were driving to Ranku presumably to drink at the Club there. They followed and arrived at Ranku at around 7pm. They found the bar closed but a considerable number of patrons (between 30 and 50) were on the licensed premises. A large number appeared intoxicated but were still drinking. Many were rude and belligerent towards the Police. Whilst there is some discrepancy between witnesses called by the Police and the Club on detail, all appear to be agreed that the events of the 30th of June at the Club were unacceptable and regrettable. As a result, a number of complaints are listed below and have been upheld by the Commission.

It is commendable that Supt Dowd in his evidence made a commitment that the Nguiu Police will warn the Ranku Club of any future closures.

Looking now to the specific complaints relating to the 30th of June, we comment as follows:

- i. We uphold the complaint that the Club served banned persons. Nola Tipungwuti was such a person.
- ii. It appears that the licensee had also allowed a number of intoxicated persons to remain on the premises in breach of s104 which states:

104. Persons on licensed premises after hours

(1) Subject to this section, a person shall not enter, or remain on or at, licensed premises in respect of which a licence is in force for the sale of liquor for consumption on or at those premises unless those premises are open for the sale of liquor in accordance with the conditions of the licence.

(2) A person does not commit an offence against subsection (1) by remaining on or at licensed premises for a period not exceeding 30 minutes after those premises cease to be open for the sale of liquor.

(3) Nothing in this section applies to, or in relation to–

(a) the licensee of premises;

(b) a member of the family of the licensee;

(c) a person who enters, or remains on or at, licensed premises in the course of his employment;

(d) a person who enters, or remains on or at, licensed premises at the invitation of, and as a guest of, the licensee or a member of the family of the licensee;

(e) a lodger occupying residential accommodation provided on the licensed premises;

(f) a person who enters licensed premises at the invitation of, and as a guest of, such a lodger; or

(g) a person authorized by the Commission, either on application or on the motion of the Commission, to enter licensed premises.

- iii. The licensed hours end at 7pm and the written statement and oral evidence of Sgt Wilson confirms that at 7.45 pm, there were still a number of patrons on the premises and that the staff made no attempt to move them on. In fact, it appears from the evidence that Danny Flinn was not aware of the requirements of s104. The Commission accepts the evidence of Sgt Wilson and Const Shroj on this issue and finds a breach of s104. It is noted however, that there is no allegation that the licensee continued to serve patrons after licensed hours.
- iv. There is further evidence given by Sgt Wilson and Const Shroj to support a conclusion that there were a number of very intoxicated, quarrelsome persons on the premises. Sgt Wilson states in his declaration at paragraph 17 (Ex 51) *"I then walked over through the Club premises observing the patrons. Most were highly intoxicated and were still drinking from beer cans. Most were being argumentative with us. I tried to find staff members to have the drunker persons removed. No person came up to me and identified themselves as staff."* Further, Sgt Wilson gave clear examples of the quarrelsome behaviour of some of the patrons. It appears clear that the licensee did not attempt to assist the Police in removing these patrons from the Club.
- v. S105 states:
A licensee shall not permit indecent, violent, quarrelsome or riotous conduct to occur on or at his licensed premises."

Both Mr Drew and Mr Flinn disagreed with Police evidence on the level of intoxication and behaviour of some of the patrons but on this issue, the Commission prefers the evidence of the Police and finds a breach of s105.

vi. Further, the *Liquor Act* states at 121:

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.

We find sufficient evidence to support a conclusion that the licensee, in breach of s121, failed to remove intoxicated persons from their premises.

It is no answer that the Police were there so the licensee chose to leave it to the Police to sort out the problems. The obligation is on the licensee to ensure that intoxicated or disorderly patrons are removed from the premises. They cannot choose to leave the task to someone else.

vii. The Commission was concerned by the attitude taken by Mr Drew and Mr Flinn on this night in failing to properly supervise their premises when quite clearly there were a number of intoxicated patrons on the premises. It is regrettable that they were unable to properly prepare themselves for a large crowd from Nguiu as the influx was unexpected. This does not absolve them however from the duty to properly supervise patrons on their premises and to remove any that are intoxicated or unruly.

viii. As regards the complaint that the Club sold liquor to intoxicated persons, we find that whilst there is considerable evidence of a number of intoxicated persons on the premises, there is no direct evidence of any particular sale or supply to an intoxicated person. As stated earlier, it might have been that sober patrons approached the bar to obtain drinks for their friends and whilst the circumstantial evidence is strong, we are reluctant to uphold a breach of s102. We consider it more appropriate in these circumstances to rely on a breach of s121 being the failure of the Club staff to remove intoxicated persons from the premises.

ix. The Police also submit that the Club sold unopened beer by the 6-pack to two persons. If true, this amounts to a breach of the Special Condition in the licence, which states "*Between the hours of 18.30 and 19.00 daily the purchase of heavy beer will be limited to 2 cans at any one time.*"

x. Mr Drew and Mr Flinn deny that an unopened six (6) - pack was sold to anyone. They do admit however that four (4) opened cans were given to two (2) men who had assisted them on the evening in question. The beer was in essence a "payment for services rendered." We accept the evidence of the Club on this issue. This means that they did not breach the aforementioned special condition in their licence, as they did not sell the beer to the men. Further, we do not find that the Club sold the beer unopened as takeaway.

o. 8 September 2005 (Banned Person)

- i. The evidence (including Ex. 33) supports a finding that Gwenda Babui, a banned person at the time, was allowed entry to the Ranku Club on Thursday 8 September 2005 and was served beer there. This amounts to a breach of the Club licence.
- ii. We note the Club's evidence that, unbeknown to them, Gwenda Babui had been banned from the Nguuiu Club sometime after they received their 1st the week before. This meant that they had in fact allowed her entry to the Club on Wednesday 7 September without realising that she had been banned.
- iii. It seems clear from the evidence of ACPO Simon, that the Club received the new list on 8 September but their staff member Simpji failed to note Gwenda's name on the list until ACPO Simon pointed it out to her.

p. 22 September 2005 (ammunition/cask wine issues)

The Commission notes these incidents as background information rather than a complaint. It appears to us that there was some confusion as regards the terms of the licence with respect to the ability of the Club to sell takeaway wine to permit holders. This confusion was only clarified at the hearing resulting in an amendment to the licence. The Club's error was in thinking it could sell wine to a permit holder after transferring it from a cask to a plastic bottle. It is implicit in the licence conditions that the sale of wine to a permit holder shall be provided in sealed glass bottles. There is no evidence of an actual sale, however and we do not find that the licence conditions have been breached.

9) Fit and Proper

The complainants also submit that there is sufficient evidence before the Commission to support a finding that the Licensee and the Nominee are not "fit and proper" persons to hold a licence. Ms Martin, counsel for the Director of Licensing provided us with a detailed analysis of the history of the Club. Mr Lawrence, counsel for the Police also provided evidence on this issue. The evidence covered the following issues:

- a. The origins of the Club and the reasons for its inception;
- b. A licence history showing variations applied for and breaches both alleged and substantiated;
- c. Medical evidence from Tiwi Health on the general standard of health of Ranku minors;

- d. Mental Health evidence regarding the Tiwi People and in particular those from Bathurst Island;
- e. Accounting/financial evidence from Rosemary Campbell, accountant for the Club for many years dealing principally with the issue of the Club continuing to trade whilst insolvent and the management agreement; and
- f. Documentary evidence on the current creditors to whom the Club owes money;
- g. Documentary and other evidence supporting a finding that those managing the Club are not fit and proper persons leading to a submission that the licence should be cancelled.

10) We accept the proposition put forward by the complainants that there have been periods during the club's history when aspects of the management of the liquor licence have been unacceptable. The clear evidence we had at the hearing related to a period in late 2004 when there were numerous breaches of the liquor licence mostly regarding the service of banned people. We fully accept that the Club's performance during this period was unacceptable. Part of the problem seemed to be a lack of guidance and oversight by the nominee, Robert Tipungwuti who was away during much if not all of the period in question. Such lapses are not excusable and nominees are required and expected to ensure that licensed premises are properly managed during their absences.

11) Ms Martin also urges us to look to the financial history of the Licensee as an indication of long term poor financial management. We note the recent serious financial problems but are reluctant to find that the Club has always suffered from poor financial management. To our minds, the evidence is not there to support such a conclusion. We heard from Mr John Byrne that the store has historically been run as a service to the community rather than a moneymaking enterprise. Further, in an attempt to foster Tiwi management and control, a greater indulgence was taken towards day to day losses than would be tolerated in a normal business. In more recent times, it seems that the deterioration in the Club's financial circumstances has several causes. There were serious and ongoing disputes between the Club (and Robert Tipungwuti) and TILG (the body responsible for the development and maintenance of many aspects of Tiwi communities), and Cyclone Ingrid had a major impact on the businesses. Further, the periods of unsupervised Tiwi-based management of the Club and store was not successful- a reality that is fully acknowledged by all. John Byrne admitted that following his retirement some time ago, the management of the store by community members became haphazard leading to considerably higher losses than experienced previously. It is noteworthy that a considerable amount of the current debt relates to the debts of the store rather than the Club.

12) Ms Martin has urged us to take account of the fact that the Club continued to trade whilst insolvent and to reach the conclusion that this shows that the Licensee and

Nominee were not fit and proper persons. The Commission takes a different view on this issue. We understand from the evidence that the Club management kept very tidy books and always completed their annual returns etc on time. Their accountant Rosemary Campbell praised their performance in this regard.

- 13) When the Club found itself in financial difficulties, it sought advice from Ms Campbell who laid out various options to them and warned them of the dangers of trading whilst insolvent. After seeking further advice from Bob Cowling, a specialist insolvency/administration accountant, the Club management contacted all creditors and reached informal agreements with them to buy them some time to pay back the debts. They also stopped buying goods on credit and instead paid cash for all items.
- 14) Evidence was provided to the Commission that before the Club closed for renovations, it had managed to pay back some of the money owed to CUB. Ms Campbell seemed supportive of the Club's decision to continue to trade with the general approval of their creditors. The Commission holds similar views to Ms Campbell on this particular issue.
- 15) Ms Campbell also commented on the Management Agreement entered into between Buffalo Trading Pty Ltd, Danny Flinn and John Drew. The agreement was entered into in late 2004 and set out the arrangements for Messrs Drew and Flinn to take over management of the Club and the store for a percentage of the profits. Ms Campbell explained her view that it was the most sensible arrangement they could hope for in the circumstances. She also confirmed that the profit-share arrangement was fair –much fairer than that offered by the other entity proposed as a likely manager.
- 16) The problem for the Commission is that the Management Agreement states quite clearly that Robert Tipungwuti will play no part in the management of the business. The agreement clearly gives management power to the managers and therefore prevents humbugging. As Robert Tipungwuti is the nominee, this concept is initially disturbing. After thirteen (13) days of listening to evidence and watching the interaction at the bar table between Mr Drew and Mr Tipungwuti, however, we are more tolerant of the arrangement.
- 17) This brings us to the next concern expressed by both the Police and the Director and that is the role Mr Danny Flinn is playing in the future of the Club. Mr Flinn has a relatively recent serious drug-related conviction and the Police and the Director submit that he is not a fit and proper person to be playing a part in the management of the Club. This is especially so in circumstances where the Management Agreement gives him and Mr Drew significant managerial power.
- 18) We understand some of the complainant's concerns and were not completely satisfied with some of the answers Mr Flinn gave to questions regarding the management of licensed premises. If the Club is to continue to trade, we will require Mr Drew to play a far greater role in the management of the liquor licence so as to

ensure that the licensed premises are well run.

- 19) We have considered the whole history of these particular licensed premises, the health concerns expressed about the Ranku children and the more general concerns about the impact of liquor on Tiwi Communities. We have heard the strong submissions put forward by both complainants that the licence breaches and general history of the Club are sufficient reasons to cancel the licence.
- 20) Had there been no change in management following the numerous breaches of licence in late 2004, cancellation of this licence would have been highly likely. Whilst the change of management has not been without its difficulties and with full acknowledgment of the licence breaches on 4 separate occasions in 2005, we have reached the conclusion that the penalty imposed against the Club should not be the ultimate penalty of cancellation of their licence. We reach this conclusion after careful consideration of many significant factors.
- 21) The presence of Mr Drew has been given considerable weight by us in our decision-making regarding the future of the Club. Mr Drew has sound experience as a successful storekeeper at Milikapiti and is known and respected there. He appears committed at this stage to getting the Club and the Store running smoothly. He has shown a willingness to spend a considerable amount of his time at Ranku and appears to be willing to take the steps the Commission might require to ensure that the Club is run properly for the benefit of the community.
- 22) We have noted that both Mr Drew and Mr Tipungwuti bring different strengths to the Club and they have indicated strongly their long friendship and admiration for each other and their ability to work as a team. We accept that, whatever the written agreement says, there will continue to be a good deal of interaction and joint decision-making between these 2 men. In an ideal world, we would not need such compromises but in isolated, indigenous communities, a team of people with different skills and abilities is often the best thing on offer. Whilst in the past, Mr Tipungwuti has been named as the sole nominee, it was clear at the hearing that he has in the past worked closely with John Byrne in making management decisions. Now he will be required to work even more closely with Mr Drew as joint nominee and Mr Flinn. We note that Mr Tipungwuti now spends most of his time at Ranku.
- 23) The building jointly housing the store and the Club have been closed for a number of months now for major repairs due to termite damage. We understand that those repairs are all but complete. We do not blame the Licensee for the deplorable state of the premises prior to these renovations commencing as we heard quite clearly evidence of the difficulties that the Club experienced in trying to find funds. The Health Inspector who visited the premises emphasised Mr Tipungwuti's attempts in this regard.

- 24) Various witnesses have expressed their own views on the impact of the continued closure of the Club on the Ranku community. We understand that very few people have chosen to remain at the community over the past few months while the Club has been closed-despite the fact that the store has remained open. Unless the Club reopens, the store will close as we accept that the Club supports the store in this small community and Mr Drew and Mr Flinn will not remain to simply run the store.
- 25) We also accept the view expressed by some witnesses that without a club and a store, most of Ranku's population will remain in Nguiu-at least in the short term. The Police say this is a good thing as they have a presence in Nguiu and can more easily respond to problems. Others note the negative impact on Nguiu's housing shortages of such a move. In truth, no one knows whether Ranku community would have a long term future without a club and a store.
- 26) We have ultimately decided to penalise the Club for its breaches in ways other than closure. We have done so for several reasons. The Club has a chance of a future if it can get its management problems sorted out. Both Mr Drew and Mr Flinn have shown determination in continuing to support the enterprise throughout the many trials of this year - many of which they caused themselves but most were beyond their control. Mr Drew has a good record as a manager of a Tiwi business and he has shown his ongoing support for the Ranku Club and Store. He has agreed to take a more prominent role with Mr Tipungwuti's blessing and I emphasise that the Commission is placing much weight on the presence of Mr Drew in its decision to allow the Club to continue.
- 27) Whilst there have been periods of unacceptable management in the recent past, we are reluctant to find that the Licensee and Nominee are unfit to act in those positions. We do however intend to require Mr Drew to accept the position as joint nominee with Mr Tipungwuti. We note that in the past, Robert Tipungwuti has relied on trusted colleagues to assist and guide him in his role as nominee. It appears to us that for many years, John Byrne was in fact acting as a de facto co-nominee and that Mr Byrne's retirement saw a deterioration in the management of the licence and the store. We note that Mr Tipungwuti now looks to Mr Drew and to a lesser extent Mr Flinn to assist him with management. The fact that they are residing for a lot of their time at Ranku should assist considerably in ensuring effective co-management.

PENALTY

- 28) Whilst Commission members are unanimous in their decision as to which complaints have been proved, there is both a majority (Huck and Costigan) and a minority (Monaghan) view on penalty. The majority decision on penalty outlined below is of course the decision that applies to the Ranku Club in this matter and the one they must follow.

29) **MAJORITY DECISION OF JILL HUCK AND PAUL COSTIGAN ON PENALTY**

The *Liquor Act* (the Act) provides that, where the Commission conducts a hearing in relation to a complaint and finds that there has been a contravention or failure to comply with the licence or a provision of the Act, the Commission may, among other things, suspend a licence, amend the conditions of a licence or issue a written direction to the licensee directing him or her to take, or refrain from taking, a specified action. In the case of the Ranku Club we have decided that it is appropriate to combine a number of these options. This approach reflects the seriousness with which we have taken this matter; our concern that there needs to be a number of measures put in place to improve the functioning of the Club if it is to continue to trade; and a desire to provide strong incentives to prevent further breaches.

30) There are three separate components to our decision on penalty. These consist of written directions to the licensee pursuant to sections 49 and 65 of the Act, amendments to the licence pursuant to section 49 of the Act and the imposition of a suspension under sections 49 and 66 of the Act. Our decision takes into account the fact that the Ranku Club will have been closed for some three and a half months by the time this decision is ready to be published; the licence having been suspended by the Commission because of repairs being needed to the building. While the suspension of the licence on this ground was treated as a separate matter, there is a degree of overlap with the current proceedings, with arguments about the state of the building being a significant part of the Director's case. As it is anticipated that the repairs to the Club will be completed in the near future, the timing of any penalties becomes a key issue.

31)a. **Direction One under Section 65 of the *Liquor Act*:**

The Licensee is directed to prepare, within three months of the receipt of this written decision, a detailed day-to-day management plan for the licensed premises. The draft plan must be submitted to the Commission for comment and feedback within one month of the receipt of this written decision, with the final plan being submitted for approval by the Commission within three months of the receipt of the decision.

The plan must address all aspects of daily management of the Club including, but not limited to, the following:

- i the training of all regular staff in the responsible service of alcohol;
- ii. the steps the Club management will take to ensure the proper supervision of patrons during licensed hours both to prevent intoxicated, unruly or troublesome persons remaining on the premises and to prevent patrons leaving the premises with open cans of beer;

- iii. the practical steps the Club management will take to ensure that the banned list is complied with;
- iv. the practical steps the Club will take to implement harm minimisation strategies (eg availability of snack food and provision of free water);
- v. the practical steps the Club will take to ensure staff on duty do not drink alcohol during licensed hours. If it is the Nominees' intention to have staff drinks, then consideration needs to be given to such issues as the following:
 - (1) That staff drinks be consumed after premises are cleared of customers and in a private venue such as within the building;
 - (2) That a limit is established on the quantity of liquor each person can consume - e.g. 2 cans per duty staff;
 - (3) That staff drinks be limited to a period of thirty (30) minutes after the premises are cleared.

b. Direction Two under Section 65 of the *Liquor Act*

The Licensee is directed to arrange for the following training to be undertaken as soon as practical:

- (1) John Drew, Robert Tipungwuti and Danny Flinn must complete an approved Responsible Service of Alcohol course;
- (2) John Drew must complete an approved Crowd Controllers Course;

While it would be desirable for such training to occur before the Club reopens, it is acknowledged that there are some availability problems with these courses and requiring the completion of the courses before reopening would effectively be the imposition of a further suspension. Some minor flexibility regarding the timing therefore seems warranted, with the clear understanding that failure to comply with section 65 direction can have its own serious consequences.

32. Amendments to the Licence:

The licence will be immediately amended to reflect the following:

- i) John Drew will be included on the Licence as a co-nominee with Robert Tipungwuti;
- ii) A licence condition will be added requiring the Club to continue to use a Visitors Book and to ensure that the names of all visitors are properly recorded;

- iii) A licence condition will be added requiring the Ranku Club to close upon receipt of advice from Police or the Nguiu Club that Nguiu Club is closed as a result of a suicide, funeral or public unrest. In such circumstances the Ranku Club shall remain closed for the period of closure of the Nguiu Club. (NB This condition shall be reviewable after 12 months of trading.)

33) **Suspension:**

We considered that, in addition to the measures set out above, it was appropriate to impose a period of suspension on the Club. A period of suspension serves as both a punitive measure and a deterrent to future breaches, given that subsequent breaches tend to attract longer periods of suspension. In this case we considered that an appropriate period for suspension would be four (4) weeks. This is quite a long period of suspension for the Commission to impose, with most suspensions of licenses historically being for periods of days rather than weeks or months. For some businesses, a suspension of several days can have a significant impact on the viability of the business. In recent years, the Commission has adopted a carrot and stick approach in suitable situations whereby it has partly or wholly suspended a suspension subject to no further breaches occurring in a set period of time. This approach provides a powerful incentive to licensees to avoid further breaches.

In considering the approach to be adopted in this case, we debated whether the Club should be required to serve the period of suspension, and if so, from what date, or whether the suspension should be suspended. The unique feature of this case is that the licence has already been suspended for some three months for the reasons previously explained, whereas in most cases before the Commission the licences will have been continuing to trade during the process. It is the majority view that, in these circumstances, an immediate suspension for a period was not the preferred option, with the actual impact on the licensee being dependent on the timeliness or otherwise of this decision – for example, the imposition of the suspension now would have a quite different impact on the business than if the decision had been handed down after the end of the hearings in November 2005. Instead, we decided to suspend the Club from trading for four (4) weeks, with the suspension itself being suspended and only being imposed if within the twelve (12) months after the publication of this decision, there is an incident which results in a proven breach of s102 (serving an intoxicated person), s104 (person on licensed premises after hours), s105 (permitting riotous conduct), s121 (failure to exclude or remove people) or s110 of the *Liquor Act* because of a failure to comply with licence conditions by allowing entry to banned person(s). The imposition of the suspended sentence of four (4) weeks will be additional to any penalty imposed for the new breach itself.

Minority View of Brenda Monaghan on Penalty

- 34) The Commission is agreed on the question of which specific complaints have been proved. After hearing from the parties at length and considering all of the evidence, we are also agreed that the Club should be given the opportunity to continue trading,

that certain specific licence conditions should be imposed (see para 32) and that the Club should take specific steps to assist in its proper future management (see paragraph 31). I differ from my fellow Commissioners in some aspects of penalty however, and in reaching my decision, I have taken specific account of the following matters:

- a) Robert Tipungwuti has been the Nominee throughout the life of the Club and should be fully aware of the steps he needs to take to ensure that the licensed premises are properly managed in his absence. It appears however, that he left the Club virtually unsupervised in late 2004 when a number of breaches of licence conditions offences occurred. Mr Tipungwuti still remains nominee and there must be some meaningful penalty imposed for these offences. Further, I find that Robert Tipungwuti is not a fit and proper person to act as nominee on his own but I consider that he is well able to act as joint nominee with Mr Drew.
- b) The new management team has had an inglorious beginning with a number of complaints proven against them. It was evident at the hearing that both Mr Drew and Mr Flinn have placed considerable time, money and energy into trying to assist the Club and the Store over a number of existing hurdles and that they intend to continue to do so. The breaches however must attract an appropriate penalty.
- c) Had there been no change in management, I would definitely be supporting the cancellation of the licence. I accept however that the Club has the chance of a future if it is properly managed and I have formed the view that its closure may well have unwelcome ramifications on both the Ranku and the Nguju communities.
- d) I agree with the proposed changes to licence conditions and consider an appropriate penalty to be as follows:
 - i) A suspension of the liquor licence for a total period of ten (10) weeks with the first four (4) weeks of the suspension period to come into effect immediately and the remaining six (6) weeks to remain suspended for a period of 12 months on the same terms and conditions as referred to in paragraph 33 above.
 - ii) The re-opening of the Club to be conditional upon the approval by the Commission of the day-to-day work plan described in paragraph 31(a) and the completion of a Responsible Service of Alcohol Course by Messrs Drew, Tipungwuti and Flinn.

Dated: 23 January 2006