

NORTHERN TERRITORY LICENSING COMMISSION

Licensee: Casuarina All Sports Club Inc

Premises: CASUARINA ALL SPORTS CLUB (the Club)

Nominee: Steven Kotz

Licence Number: 81415370

Hearing: Complaints Pursuant to Section 48(2) of the *Liquor Act* for alleged sale of takeaway to non-members

Members: Brenda Monaghan (Presiding)
Jane Large
Ian O'Reilly

Hearing Date: 27 February 2006

Appearances: Mr. D Crowe for Licensee
Ms G D'Alessandro for Director Licensing

1. The complaint against the Club is that on 1 November 2005, a Licensing Inspector purchased liquor from the drive-through bottle shop at the Casuarina All Sports Club. The Club's liquor licence allows the sale of liquor "*for removal and consumption away from the licensed premises **only** to financial members of the Club.*" The inspector was not a financial member of the Club and he was not asked for any identification to prove he was a member.
2. The Club has admitted the complaint and accepts that the circumstances of service that evening were as described by Paul Mitchener, Licensing Inspector, in the Hearing Brief. The question for the Commission is therefore one of penalty.
3. This is not the first complaint against the Club for the supply of takeaway liquor to non-members. Two previous breaches of a similar nature occurred in May 2005 and were the subject of a hearing. The complaints were admitted and, following a hearing of the Licensing Commission on 11 August 2005, a penalty was imposed of a 3 day suspension of the takeaway licence with one day served immediately (on a Saturday) and two (2) days suspended for a period of twelve (12) months on the basis that the suspended days would only come into force if the Club further breached its licence within that time.

4. The Club, whilst acknowledging the further breach on 1 November 2005, some ten (10) weeks after the earlier penalty was imposed, raised a number of factors in mitigation of penalty.

5. It was submitted that following the breaches in May 2005, the Board of Management had done everything it could to ensure that the Club did not breach its liquor licence. Between May and October 2005, they took the following steps:
 - a. An upgrade of software at the Club at a cost of around \$12,000 to implement a swipe card identification system whereby each financial member of the Club is issued with a card showing their photo for identification.
 - b. The point of service system was altered to require a membership card to be swiped before the till could finalise the transaction. This system included an over ride system for situations where cards were damaged or otherwise unusable.
 - c. The Board strengthened their information to staff regarding the Club's 'No ID: No sale' policy.
 - d. The two (2) staff members involved in the breaches in May were counselled and given a written warning that future breaches of a similar nature would jeopardize their employment.
 - e. A continuation of the informal audit process whereby from time to time, unknown non-members would be used to check staff compliance with membership rules and the relevant legislation.

6. Following the most recent breach on 1 November 2005, further steps have been taken as follows:
 - a. A photo ID access point at the Bottle Shop was established.
 - b. Induction and training of Bottle Shop employees with respect to service of members only was undertaken.
 - c. Signed acknowledgment by staff that they understood the Club's policy on restricted take away liquor purchases and that any sale(s) not in accordance with this policy would constitute a breach of their employment conditions.
 - d. Pamphlets, outlining the Club's policy on take away purchases were printed and available at the Bottle Shop for staff to give to patrons wishing to purchase alcohol.
 - e. Daily audits by management, of the use of the No – Member - Detail (override) card, were initiated to query any suspicious transactions.

- f. The staff member involved in the breach (who had been involved in one of the earlier breaches) was again given a written warning that future breaches of a similar nature would jeopardize his employment. He has since left.
7. Mr. Cossons, Chairman of the Board, gave evidence of his frustration and disappointment when he heard of the further breach on 1 November. He submitted that any suspension imposed on consecutive days would have very harsh financial implications for the Club and non-consecutive days, particularly Tuesday, would be preferred. Mr. Crowe for the licensee reiterated the attempts by Management to prevent further breaches, the financial ramifications of a licence suspension, and therefore requested leniency.
8. Ms D'Alessandro for the Director submitted that whilst the Club had obviously taken some steps to improve their compliance systems following the May 2005 incidents, those steps were obviously not working and it was not acceptable for the Club to simply blame the staff member involved for the breach. She emphasised that this was the Club's third breach and that a more severe penalty should be imposed.

CONSIDERATION OF THE ISSUES

9. The Commission commends the Board for its responsible attitude and the actions taken to date. However, despite all the policies and improved computer systems, within a very short period, another breach occurred. We consider that there are further steps that the Club could take to ensure that only members are served takeaway.
10. The new computer system has an override process which the staff can use when a member is relying on alternative photo identification where the membership card does not work when swiped or similar incidents.
11. Non members, who accepted the opportunity to purchase club membership at the Bottle Shop point of sale, could be issued with a temporary New Member Card which would immediately allow them to use all the facilities of the Club, including take away purchases. This temporary card would be valid for up to 14 days during which time the new member could attend the Club Reception have their photo taken and their permanent membership card issued.
12. A young man working in the Bottle Shop, who was responsible for one of the previous breaches, was given unsupervised access to override the system. Despite the training and warnings, on 1 November 2005 this young man failed to ask a customer for his membership card or any other details. He did not

- issue a temporary card but used the override access to sell alcohol to a non financial member of the Club. In his statement, which was tendered, he admitted that he “*hit the members screen, selected a name and made a sale*”.
13. There is no evidence of other customers in the Bottle Shop at the time which may have caused a distraction or confusion. In fact, the forgetfulness in querying the membership status of the customer became a deliberate action when he used the override process to make the sale.
 14. It is apparent that the override process is the weak link in the computer system that has been implemented at the Club. The Club management is clearly aware of this fact and they have implemented a formal daily audit of “suspicious” transactions. We suggest a safer option. We note that large supermarkets such as Woolworths only allow a manager to “override” a transaction. This causes a minor delay if a less senior staff member is on the checkout but it ensures that the invoices customers receive correctly itemise the purchases and the supermarket’s stocktake system is properly maintained.
 15. We suggest that the Club management consider implementing a similar process for their takeaway outlet. Evidence was given that only 3% of transactions are ones requiring the use of the override card so the inconvenience of implementing this further safeguard would appear minimal but the benefits would be significant. We note that the Board and management appeared to have acted responsibly following the earlier complaints so we leave this further step for them to consider rather than require it to be done as a licence condition.
 16. The *Liquor Act* allows the Commission a wide discretion with regards to penalties. Options include varying licence conditions, issuing directions to the licensee, suspending the licence, cancelling the licence or deferring consideration of the complaint on specified conditions.
 17. The take away licence suspension previously imposed but suspended will now apply and because this is a third breach in such a short time it is felt that a further suspension of the Take Away licence is warranted.
 18. In arriving at our decision on the quantum and timing of the penalty we have taken into account, by way of mitigation, the efforts made by the Club during the past ten (10) months to prevent breaches of their licence.

THE DECISION

19. After considering all the evidence we have decided that:

- a. Due to the breach on 1 November 2005 the two (2) days suspension of the takeaway component of the Casuarina All Sports Club, imposed on 25 August 2005 but suspended for a period of twelve (12) months, will now be served on Tuesday 14 March 2006 and Tuesday 21 March 2006.

- b. In relation to the breach on 1 November there will be a further five (5) days suspension of the takeaway component of the Casuarina All Sports Club. The first two days of the five day suspension will be served on Tuesday 4 April 2006 and Tuesday 11 April 2006. The remaining three days will be suspended for a period of twelve months from the date of this decision. If there are no further breaches of this particular licence condition in that period this "suspended suspension" will cease to apply. If the same, similar or a more serious breach of the licence condition occurs within this period of twelve months, the three days suspension will apply consecutively at a date determined by the Commission in addition to any other penalty imposed by the Commission at that time.

Brenda Monaghan
Presiding Member

6 March 2006