

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES:	BOROOLoola HOTEL
LICENCE NUMBER:	80103282
COMPLAINANT:	Director of Licensing
LICENSEE:	Cashcow Holdings Pty Ltd
NOMINEE:	Terina Marie Khan
HEARING:	Complaints laid by the Director of Licensing and Others against the Licensee and Nominee pursuant to Section 48 of the <i>Liquor Act</i>
HEARD BEFORE:	Ms Brenda Monaghan (Acting Chairperson) Mrs Veronica McClintic Mr Ian O'Reilly
DATE OF HEARING:	21 November 2006
DATE OF DECISION:	14 December 2006
APPEARANCES:	Counsel for Director of Licensing and other Complainants – Mr G Bryant No appearance by or on behalf of the Licensee and Nominee

BACKGROUND

1. A complaints hearing was held on 21 November 2006 into the conduct of Licensee Cashcow Holdings Pty Ltd and the Nominee Terina Marie Khan with respect to the licensed premises known as the Borrooloola Hotel (the Hotel) at Borrooloola in the Northern Territory. Ms Khan is the sole director of the Licensee company.
2. The complaints span the period from 1 July 2005 when Cashcow Holdings Pty Ltd took over this licence until 16 October 2006 when the Nominee abandoned the Hotel and licensed trading was suspended indefinitely. Following some months of investigation by the Director of Licensing, a number of complaint files were delivered to the Licensing Commission in mid August 2006. Concerned by the volume and seriousness of the complaints received, the Commission used its powers under Section 48A of the *Liquor Act* to apply interim variations to the licence conditions of the Hotel including a significant reduction in licensed trading

hours and restrictions on the type of liquor sold. These actions were taken in the public interest and were reviewed every seven days from 19 September to 16 October when the premises were abandoned by the Nominee and the licence suspended.

3. On 21 November 2006, the hearing of numerous complaints against the Licensee and the Nominee proceeded at Darwin. The Commission is satisfied that the Licensee, Nominee and their solicitors were served with the substance of all complaints and provided with the opportunity to respond in accordance with their rights under the *Liquor Act*. They were also advised of the hearing dates. At the commencement of the hearing, Mr Bryant, counsel for the Director of Licensing, advised the Commission that the Licensee/Nominee had elected not to attend the final hearing nor to be represented by their solicitors, Maleys. In those circumstances, the Commission was satisfied that the hearing should proceed on 21 November 2006 in their absence.

THE HEARING

4. In order to assist the Commission at the hearing, Mr Bryant provided a written summary of the alleged breaches of the liquor licence and the *Liquor Act*. He advised the Commission that in the absence of any evidence from the Licensee and Nominee, the Complainants intended to rely solely on documentary evidence contained in two (2) tendered Briefs of Evidence. The Briefs include letters of complaint, statutory declarations, reports from Licensing Inspectors and police documents pertaining to specific breaches. They also contain correspondence between solicitors for the Director of Licensing and Ms Khan's solicitors relating more to investigation and procedural issues rather than evidence to be tendered at the hearing.
5. Some of the complaints outlined in the Briefs relate to specific incidents on specific dates. Other complaints relate to the general conduct of the business during the period of licensed trading of the Licensee. One complaint is overarching in nature in that it seeks a finding by the Commission on the totality of the evidence before it that both the Licensee and the Nominee are not "fit and proper persons" to hold the licence. This decision deals with each individual complaint as follows:

Complaint made by Undisclosed Objector regarding alleged breaches on Friday 11 November 2005

6. A written complaint by Undisclosed Objector alleged that on the 11 November 2005 at approximately 10.30 hours, she attended the licensed premises with some friends. Undisclosed Objector admits to being at a level of intoxication such that she and her friends should not have been allowed on the premises. Her letter states that her friends were served alcohol. Undisclosed Objector then proceeds to elaborate on some concerning behaviour of other patrons which, if accepted, would lead to a conclusion that a considerable number of patrons were highly intoxicated and that the staff employed by the Licensee were failing to properly supervise those patrons or to remove them from the premises.

7. The Commission is unwilling to accept the uncorroborated written evidence of Undisclosed Objector principally because of her admission that she herself was intoxicated on the night in question. Further, there was insufficient corroborated evidence to find a breach on 11 November 2005 and this complaint is dismissed.

Complaint made by Undisclosed Objector regarding alleged breach on 15 November 2005

8. The Director alleges a breach of Section 121 in that the Licensee failed to remove from the premises a person who was sleeping at the bar for at least fifteen (15) minutes in the early evening. The evidence is a letter of complaint by Undisclosed Objector advising that while she was at the Hotel on 15 November, she was informed by someone that the sleeping person had been drinking since early afternoon. With respect to this complaint, we consider that there is insufficient detail to support a finding of a breach of Section 121. The complaint is dismissed.

Complaints of Undisclosed Objectors with respect to alleged breaches occurring on 17 February 2006

9. The complainants Undisclosed Objectors allege in their written complaints that on Friday evening, 17 February 2006, both witnessed intoxicated persons approaching the bar at the Hotel and being served. Undisclosed Objector states that Ms Khan's husband, Chris Taylor was serving behind the bar at the time. Her evidence is provided in the form of a statutory declaration and the evidence of both women is sufficiently consistent and detailed to be relied upon. Further, we note that Undisclosed Objector was formerly employed at the Borroloola Hotel by the previous manager and worked there from 2002 to May 2005. Her duties included bar service and she has completed a Responsible Service of Alcohol Course. With this background in mind, we place some weight on her evidence.
10. 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).*
11. In this particular complaint, we are satisfied that the patrons seen by these complainants were sold liquor at the bar. Whilst the identity of these patrons was not provided (and in all likelihood not known), both complainants gave sufficient evidence to support a conclusion that the patrons they saw were intoxicated at the time of sale. In these circumstances, there is a case for the Licensee to answer and the onus shifts to the Licensee to prove that the patrons were not intoxicated when they were served. As the Licensee has elected not to give evidence, then they have failed to prove on the balance of probabilities that the patrons were not intoxicated at the time of sale. As a result, we find that on 17 February 2006, the Licensee breached Section 102 of the *Liquor Act* by serving liquor to intoxicated persons.
12. The second breach contained in the complaints received from Undisclosed Objectors relate to the failure of the Licensee on 17 February 2006 to remove from the premises, persons who were intoxicated, violent, quarrelsome, disorderly or

incapable of controlling their behaviour. It is mandatory for a Licensee to remove patrons and guests who fall within this category unless the patron is also a bona fide resident of the licensed premises. Section 121 states:

121. Power to exclude or remove persons

(1) 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.

(1A) A licensee, an employee of the licensee or an inspector may exclude or remove from the licensee's licensed premises –

(a) a bona fide resident of the premises, if that resident is intoxicated, violent, quarrelsome, disorderly or incapable of controlling his behaviour;

(b) subject to any other law in force in the Territory, any person (including a bona fide resident), if the presence or continued presence of the person on or at the premises would or might –

(i) render the licensee liable to a penalty under this Act or any other law in force in the Territory; or

(ii) in his opinion, disrupt the business of the licensee or unreasonably interfere with the wellbeing of other persons lawfully on the premises; or

(c) for or during a period not exceeding 12 months from the time a person was found guilty of an offence relating to the possession or supply of a drug on licensed premises, that person.

(2) A person to whom subsection (1) or (1A) is applicable shall immediately leave licensed premises on being requested to do so by the licensee, an employee of the licensee, an inspector or a member of the Police Force.

(3) A member of the Police Force shall, on the demand of the licensee, an employee of the licensee or an inspector remove or assist in removing from licensed premises a person who has been requested by the licensee, an employee of the licensee or an inspector in accordance with subsection (2), to leave the premises.

(4) A licensee, employee of a licensee, inspector or a member of the Police Force exercising a power under this Section may use such force as is reasonably necessary for the purpose.

13. Whilst we do not have evidence to conclude that all of the patrons in question on the 17 February were visitors rather than in-house guests, the totality of the evidence in the Briefs makes us satisfied that most of the patrons at the hotel at the time were visitors. It is probable that, on any regular evening during the time that Cashcow Holdings was the Licensee, the majority of the drinkers at the Hotel would be residents of the Borroloola area who came there to drink and socialise but returned to their homes when the Hotel closed each night.

14. Evidence was provided to the Commission that the complainants Undisclosed Objectors were verbally threatened by some intoxicated patron/s whilst other intoxicated patrons were disorderly and quarrelsome. One patron was reportedly unconscious on the floor. Further, the complaint of Undisclosed Objector details evidence of intoxicated patrons entering or re-entering the premises when they should have been refused entry. When Undisclosed Objectors complained to staff about their concerns, these were ignored and they were told to go elsewhere if they did not approve.
15. We consider that there is sufficient corroborated evidence before us to conclude on the balance of probabilities that on 17 February 2006, the Licensee through the actions of its staff breached Section 121 in failing to remove intoxicated, quarrelsome and disorderly patrons from the premises when they were legally required to do. Whilst there appear to be a number of individual breaches that no doubt occurred on 17 February, we intend to consider the evidence in its totality and find a breach of Section 121.
16. Finally, evidence before us from these complainants suggests that security providers were too few and that those who were there were ineffective. There was also evidence provided that patrons were allowed to leave the premises with open liquor containers in breach of the licence conditions. These matters will be taken into account by the Commission when we consider whether or not the Licensee and Nominee are fit and proper persons to hold a licence.

Complaint made by Undisclosed Objector, of the Borroloola Community Health Centre, regarding incidents on 17 March 2006

17. Undisclosed Objector, of the Borroloola Community Health Centre, provided a written complaint about the behaviour of staff and patrons on Tuesday 17 March 2006 when she attended the Hotel at approximately 14:30 hours in search of a patient. Ms Undisclosed Objector describes a verbally abusive argument between six or so people occurring right next to the bouncers within the licensed area of the Hotel. It appears that neither the bouncers nor the other employees of the Licensee took any action to intervene or remove these quarrelsome patrons from the premises. As there is no evidence to rebut the witness evidence of Ms Undisclosed Objector and noting the chaotic scene she paints with numerous intoxicated persons inside and outside the premises, the Commission is satisfied that on 17 March 2006 at approximately 14:30 hours, the Licensee was in breach of Section 121 of the *Liquor Act* when the employees of the Licensee failed to remove intoxicated, quarrelsome and disorderly patrons from the premises.

Complaint made by Police Officer Undisclosed Objector regarding incidents on 17 March 2006

18. The statutory declaration of Undisclosed Objector dated 21 March 2006, describes his attendance at the Hotel between 11:30 hours and 12:30 hours on 17 March 2006 with Constable Undisclosed. Constable Undisclosed Objector noticed through the Hotel's closed circuit security camera system that an intoxicated Aboriginal male known to him as Calvin Kelly had been sold a can of Victorian Bitter at the bar at a time when he was intoxicated. The evidence

contained in the statutory declarations of Officers Undisclosed Objectors support a conclusion that Calvin Kelly was sold alcohol by a staff member of the Licensee at a time when he showed classic signs of intoxication. As there is no evidence before us to negate this finding, a breach of Section 102 of the *Act* is upheld. It is notable that Ms Khan was present at the premises on the night in question.

19. There is further evidence from Constable Undisclosed Objector that an intoxicated Aboriginal male called Joshua Rory was allowed to re-enter the licensed premises after he had been removed by Constable Undisclosed Objector for intoxication half an hour or so beforehand. The Licensee has provided no evidence to rebut this complaint and accordingly we uphold a breach of Section 121 of the *Liquor Act*.

Complaint of Undisclosed Objector, of the Borroloola Community Health Centre, and Police Officers Undisclosed Objectors regarding incidents on 4 August 2006

20. The evidence before us is that on Friday 4 August 2006 at approximately 21:00 hours, several patrons left the Borroloola Hotel in a very intoxicated state. Two (2) persons had to be supported by friends as they could not stand unaided. Those persons advised Ms Undisclosed Objector that they had been drinking at the Hotel all day. Ms Undisclosed Objector attended at the Hotel and spoke to Ms Khan who was on duty as manager. Ms Khan denied that there were any intoxicated persons on premises. Ms Undisclosed Objector was concerned enough by what was happening at the hotel to alert Police and they attended. Police identified four (4) clearly intoxicated patrons exhibiting classic signs of intoxication, including Sebastian Evans and John Henry who both gave voluntary breath test readings of .276% and .270% respectively. The Licensee failed to provide any evidence to rebut the complainant's case and we consider there is sufficient evidence to find two (2) breaches of Section 102 with respect to Evans and Henry.
21. We are also satisfied after considering the evidence put forward by Police Officers Undisclosed Objectors that there is sufficient evidence to uphold a breach of Section 121 of the *Act*, in that the Licensee and Nominee failed on that afternoon to remove intoxicated persons from the premises. In support of this finding, we note that on 8 November 2006, criminal convictions for breaches of Section 121 offences were entered against both the Licensee and the Nominee in the Court of Summary Jurisdiction at Borroloola. The convictions relate to the failure of Ms Khan and those employed by her to exclude and remove intoxicated persons from the premises.

Numerous Complaints made regarding the state of repair of the premises

22. A number of complaints included in the Briefs address concerns about the dramatic deterioration in the standard of repair and general lack of maintenance of the Hotel throughout the period of management of Ms Khan. Complainants include: Undisclosed Objectors. It appears that the level of maintenance and state of cleanliness of the premises both inside and out has at times been deplorable. The Nominee and her staff seem to have remained consistently disinterested in maintaining the property and the descriptions of the green pool, filthy toilets and floors, for example, are very concerning. As a result, there has been a breach of

Licence Condition Number 7 (page 2) requiring the premises to be kept in good repair. This breach will be taken into account when considering whether or not the Licensee and Nominee are fit and proper persons to hold a licence.

Complaint that the Licensee Cashcow Holdings Pty Ltd and the Nominee Terina Khan are not fit and proper persons to hold a licence

23. Despite the fact that there were no witnesses called to give oral evidence, there has been sufficient documentary evidence provided in the tendered Briefs to satisfy the Commission that there have been numerous breaches of licence conditions since Cashcow Holdings became Licensee. The Commission is aware that Terina Khan is the sole Director of Cashcow Holdings. We are convinced of her complete failure as the Nominee to protect the amenity of the Borroloola community, its social harmony and wellbeing. Ms Khan, through her inaction and lack of supervision, allowed her husband Chris Taylor to manage the premises during her long absences from Borroloola. There was evidence presented to us that Chris Taylor had no interest whatsoever in doing anything other than make as much money as he could from the premises irrespective of what damage was caused to the community in the process. Further, even when Ms Khan was present (as she was on 17 March and 4 August), she appeared to ignore bad behaviour and drunkenness by patrons and blatant breaches of the licence by her husband and other staff members, rather than properly manage these issues.
24. The volume of the evidence in the tendered Briefs support a finding that Cashcow Holdings Pty Ltd and Terina Khan have shown a total disregard for their duties as Licensee and Nominee. They have failed to protect the public interest and as a result, they have caused considerable deterioration in community amenity. The total disregard for the welfare and well being of their patrons and the Borroloola Community is deplorable and we accept Mr Bryant's submission that the Licensee deserves no lenience on penalty.
25. Mr Bryant on behalf of the Director of Licensing submitted that the licence should be cancelled. He submitted that it would be difficult to find a more irresponsible Licensee and Nominee and that the only penalty the Commission should consider is cancellation of the licence. The *Liquor Act* states:

72. Cancellation of licence

(1) *The Commission, after conducting a hearing, may, by order, cancel a licence where –*

(a) the licensee is serving a sentence of imprisonment imposed in respect of his conviction for an offence;

(b) the licensee has been found guilty of an offence against this Act;

(c) the licensee has contravened or failed to comply with a direction of the Commission under Section 49(4)(b) or 65; or

(d) the licensee has contravened or failed to comply with a condition of his licence.

- (2) The Commission shall not make an order upon the ground specified in subsection (1)(a) unless –
- (a) the offence for which the licensee is serving a sentence of imprisonment is an offence against this Act; or
 - (b) the Commission is satisfied that the offence is of sufficient gravity to justify the cancellation of the licence.
- (3) The Commission shall not make an order upon the ground specified in subsection (1)(b) or (d) unless it is satisfied that –
- (a) the offence of which the licensee has been found guilty or the contravention or failure to comply with the condition, as the case may be, is of sufficient gravity to justify the cancellation of the licence; and
 - (b) in all the circumstances, the matter is not one in which the giving of directions by the Commission would be likely to be effective to prevent the commission of further offences or further contraventions or failures to comply with the condition, as the case may be, by the licensee.
- (4) The Commission shall not make an order upon the ground specified in subsection (1)(c) or (d) where the licensee satisfies the Commission that –
- (a) the contravention or failure to comply with the direction or condition, as the case may be, arose out of, or was occasioned by, the act or neglect of an employee of the licensee; and
 - (b) the licensee had given such directions to his employees, and had exercised or caused to be exercised such supervision of his employees, as were reasonably necessary to ensure that the licensee did not contravene, or fail to comply with, the direction of the Commission or a condition of his licence, as the case may be.
- (5) In addition to subsection (1), and notwithstanding anything in this Act which may be construed as qualifying or limiting the power of the Commission to cancel a licence, the Commission, after conducting a hearing, may, by order, cancel a licence where it is satisfied that –
- (a) licensed premises in respect of which the licence was granted have not been used for the sale or supply of liquor for a period of 90 days;
 - (b) subject to the payment of compensation, the presence of the licensed premises in respect of which the licence was granted no longer meets the needs or wishes of the community; or
 - (c) a licensee is not a fit and proper person to hold a licence.
- (6) For the purposes of subsection (5), and without limiting the generality of that subsection, a licensee is not a fit and proper person to hold a licence where –
- (a) the licensee is found guilty of an offence relating to the possession or supply of a drug for which offence, on being found guilty, a sentence of imprisonment may be imposed (whether or not a sentence of imprisonment is imposed); or

(b) subject to subsection (7), in a period of 12 months not less than 3 persons are found guilty of offences committed on the licensed premises to which the licence relates relating to the possession or supply of a drug and the licensee fails to satisfy the Commission that all reasonable steps were taken by the licensee to prevent those offences from taking place.

(7) Where, as a result of the assistance of, or the providing of information by, a licensee or an employee of a licensee, a person is found guilty of an offence relating to the possession or supply of a drug which offence was committed on the licensed premises to which the licence relates, that finding of guilt shall not be taken into account for the purposes of subsection (6)(b).

(8) The Commission shall, by order, cancel the licence of a licensee where it has thought fit to do so under Section 124(2A).

(9) The cancellation of a licence under subsection (8) shall have effect on the day specified in the order.

26. Applying Section 72 to the evidence tendered at hearing, we find that the Licensee through the actions of the Nominee, Terina Khan and its employees has contravened or failed to comply with several licence conditions. This noncompliance appears to have continued throughout the fifteen (15) or so months of trading. The Licensee's staff including the Nominee have served intoxicated people, allowed them to remain on premises and to continue to drink and act in a disorderly manner.

27. Even if the Nominee were to return to the premises (a course of action which appears to be highly unlikely), we have no faith whatsoever that further directions by the Commission would be likely to be effective in preventing the commission of further offences or further contraventions of licence conditions. The concerns expressed by many Borroloola residents, and officers from the Health Clinic, the Police and Licensing over many, many months were completely ignored by the Nominee. No attempt appears to have been made by her to properly manage the premises as required by law. The Commission finds that Terina Khan is not a fit and proper person to manage a Liquor Licence, now or in the future. Further, the Commission has grave reservations about the involvement of her husband Chris Taylor in any similar activities.

28. In all these circumstances, we accept the submission of the Director of Licensing that Liquor Licence No 80103282 should be cancelled.

29. In reaching this decision to cancel the liquor licence, we are aware that the owner of the Hotel property has applied for a transfer of this licence. The Commission has received and perused the transfer application but has not fully considered the same. Instead, when considering our options regarding penalty for the proven breaches, we have made the assumption that the owner will be found a fit and proper person and that a licence transfer is a valid option available to us. We also accept the submission of the Director of Licensing, however, that such a deplorable course of conduct as we have witnessed from this Licensee and Nominee should not be tolerated by the Commission and that it deserves the harshest penalty. With this background in mind, the Commission has reached a conclusion that there is only one option available to it and that is to cancel the licence for the Borroloola Hotel.

THE DECISION

- a) Complaint re incidents on 11 November 2005 – dismissed.
- b) Complaint re incidents on 15 November 2005 – dismissed.
- c) Complaint re incidents on 17 February 2006 – Breach of Section 102 – upheld.
- d) Complaint re incidents on 17 February 2006 – Breach of Section 121 – upheld.
- e) Complaint re incident on 17 March 2006 – Breach of Section 121 – upheld.
- f) Complaint re incident on 17 March 2006 – Breaches (2) of Section 102 – upheld.
- g) Complaint re incident on 17 March 2006 – Breach of Section 121 – upheld.
- h) Complaint re incidents on 4 August 2006 – Breaches (2) of Section 102 – upheld.
- i) Complaint re incident on 4 August 2006 – Breach of Section 121 – upheld.
- j) Complaint that the Licensee Cashcow Holdings Pty Ltd is not fit and proper to hold a licence – upheld.
- k) Complaint that the Nominee Terina Marie Khan is not a fit and proper person to hold a licence – upheld.

PENALTY

Licence Number 80103282 is cancelled from the date of this decision.

Brenda Monaghan
ACTING CHAIRPERSON

14 December 2006