

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

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| PREMISES: | WALKABOUT TAVERN |
| LICENSEE: | Gove and Beyond Pty Ltd |
| LICENCE NUMBER: | 80313140 |
| NOMINEE: | Mr Peter Vearncombe |
| PROCEEDING: | Penalty Hearing for a Breach of Section 102 of the <i>Liquor Act</i> , namely Serve an Intoxicated Person |
| HEARD BEFORE: | Mrs J M Large Mrs V McClintic Mr J Brears |
| DATE OF HEARING: | 24 April 2007 |
| APPEARANCES: | Mr D McConnel for Licensee Mr G Lye, for Director of Licensing |

1. Following a hearing before the Licensing Commission on 28 and 29 November 2006 the Commission determined that the Walkabout Tavern, Westal Street Nhulunbuy, committed a breach of Section 102 of the *Liquor Act* in that on 10 May 2006 alcohol was sold in the Walkabout Tavern Bottle Shop to an intoxicated person, namely Mr Dhamarrandji. The matter was adjourned for a hearing of submissions on penalty.
2. At the penalty hearing, in a submission by Mr McConnel, on behalf of the Licensee, it was emphasised that the Licensee had managed a licensed premise in Rockhampton for thirteen (13) years and had been the Licensee of the Walkabout since 2005 and had never previously been the subject of a complaint. It was suggested that the breach had occurred within six (6) months of Mr Tourish being the proprietor of the Walkabout and that he had underestimated the amount of excessive drinking in Nhulunbuy. Since then Mr Tourish had taken action in restricting alcohol availability by reducing the trading hours of the nightclub JAM, ceasing the sale of four (4) and five (5) litre casks of wine and restricting service to customers, for example no double serves or straight shots and two (2) litre casks of wine limited to one (1) per day per customer.

Testimonials, from various community organisations, acknowledging and endorsing Mr Tourish's involvement in taking measures to address the anti social behaviour in the community caused by problem drinkers, were tendered.

3. Mr McConnel suggested that the penalty for this breach should be similar to those handed down for the following breaches by other premises, namely:
 - Kitty O'Shea's Irish Bar 25 September 2006 (1 day suspension)
 - selling alcohol to a patron outside trading hours;
 - failure to ensure adequate security; and
 - allowing patrons to remain on premises after hours.
 - Tennant Creek Memorial Club 27 February 2007 (1 and 1/2 day suspended suspension)
 - selling liquor to non members;
 - failing to maintain visitors book.
 - Alice Springs Plaza Hotel 5 March 2007 (1 - 3 days suspended suspension)
 - breach of camera surveillance licence conditions
4. In response Mr Lye, on behalf of the Director of Licensing, pointed out that serving an intoxicated person with take away liquor was a serious matter as there were massive problems associated with alcohol in Nhulunbuy. The Director sought a penalty of four (4) weeks suspension of licence of which two (2) weeks would be a suspended suspension.
5. Two (2) recent decisions by the Licensing Commission, relating to selling liquor to intoxicated persons, were discussed by Mr McConnel and Mr Lye at the hearing, namely the Everley Parap (decision 22 September 2006) and the Corroboree Park Tavern (decision 5 January 2007) with the similarities and the differences between those cases and the one before us being identified and argued by both sides.
6. We have checked both of the above decisions and believe that apart from the previous good records of the both Licensees, there are few similarities between the case before us and the Corroboree Park Tavern incident. In that case, alcohol was served to an intoxicated person in-house and not as take away and involved one, or at the most, two drinks after the person had shown signs of intoxication. In addition the bar staff had spent time and effort in persuading the intoxicated person to stay the night at the Hotel.
7. In contrast the details involving the Everley Parap are substantially the same as those involving the Walkabout Hotel, namely
 - the date of both incidents was within a day of each other;
 - the sale was of take away alcohol to an intoxicated person;

- both Licensees denied the sale and named another person as purchaser of the alcohol;
 - independent witnesses identified the intoxicated person as being in or near the premises at the specific time of sale;
 - till receipts showed the sale; and
 - the intoxicated person was found by Police in possession of the liquor sold.
8. The differences between the two cases is in the antecedents of the Licensees and the fact that an employee of the Walkabout Tavern committed the breach and not the Licensee as was the case in Everley Parap. Also there is a different attitude expressed by the Licensees in their involvement in their community to combat the effects of problem drinking in the area. The Licensee of the Everley Parap had previously been censured by the Commission for a similar breach and evidence was provided that the Licensee had failed to become involved in the Parap Community's efforts to combat anti social behaviour in the area. This is in sharp contrast to the Licensee of the Walkabout Tavern.
 9. The Commission takes very seriously a breach of the *Liquor Act* which involves serving take-away to an intoxicated person as the intoxicated person is being allowed to go into the community with more alcohol to consume with possible detriment to them selves or the community in general.
 10. In the case before us, Mr Dhamarrandji, within a very short time of being served at the Walkabout Tavern Bottle Shop, had a blood alcohol reading of 0.311%. His intoxication level was extremely high and yet he was served with a further cask of wine which had the potential to cause considerable harm or damage to himself and others.
 11. In reaching a decision on the appropriate penalty for this breach of the *Liquor Act* we consider that a meaningful suspension of the liquor licence is the right penalty. We do not accept that the previous penalties identified by Mr McConnel are comparable as none of the breaches relate to serving take away liquor to an intoxicated person. We have considered a much heavier penalty with a longer suspension than handed down in these cases but we are cognizant of the words of Bray C J in *The Queen v Barber*, namely “*if that standard is too low, it can be raised after due warning, but by steps and not by leaps*”. On that basis we believe that the two (2) weeks suspension plus two (2) weeks suspended suspension suggested by Mr Lye is more of a leap not a step and is not appropriate.
 12. Instead, we have taken into account the previous relevant decisions made by the Licensing Commission relating to serving intoxicated persons and feel that the penalty should be along the same lines as the one imposed for the Everley Parap, namely ten (10) days suspension. However, we have also taken into account as mitigating factors, that this is a first offence for this Licensee, the differences in attitude of the Licensees and the good record and community

involvement of the Walkabout Licensee and propose to suspend seven (7) days of the suspension and to make the three (3) days to be served on non consecutive days.

DECISION

13. The liquor licence for the Walkabout Tavern will be suspended for a period of ten (10) days of which seven (7) days will be a suspended suspension for a period of twelve months from the date of this decision. The three (3) days suspension to be on non consecutive days within the next four weeks being three (3) Wednesdays following the date of this decision. If the same, similar or a more serious breach of the licence condition occurs within a period of twelve (12) months from the date of this decision, the seven (7) days suspended suspension of the liquor licence will apply consecutively at a date determined by the Commission and will be in addition to any other penalty imposed by the Commission for the further breach. If no further breaches of the *Liquor Act* occur in the twelve (12) months period this "suspended suspension" will cease to apply.

Jane Large
PRESIDING MEMBER

15 May 2007