

# NORTHERN TERRITORY LICENSING COMMISSION

## REASONS FOR DECISION

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<b>PREMISES:</b>	<b>WALKABOUT TAVERN</b>
<b>LICENSEE:</b>	Gove and Beyond Pty Ltd
<b>LICENCE NUMBER:</b>	80313140
<b>JOINT NOMINEES:</b>	Mr John Tourish Mr Peter Vearncombe
<b>PROCEEDING:</b>	Penalty Hearing following Section 48 Breach of Section 102 of the <i>Liquor Act</i> , namely Supply Liquor to an Intoxicated Person
<b>HEARD BEFORE:</b>	Mr Richard O'Sullivan (Chairman) Mrs Jane Large Mr Ian O'Reilly
<b>DATE OF HEARING:</b>	30 May 2007
<b>APPEARANCES:</b>	Mr D McConnel for Licensee Mr G Lye for Director of Licensing

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1. This hearing related to an event late in the evening of 26 October 2006. Licensing Inspectors observed an unidentified intoxicated person in the Main Bar (Sportsman's Bar) of the Walkabout Tavern in Westal Street, Nhulunbuy. Inspectors witnessed a bar server decline an initial request, then proceed to serve this patron a stubby of beer.
2. The Licensee admitted a breach of Section 102 of the *Liquor Act* in a letter from Morgan Buckley Lawyers dated 12 February 2007. This hearing was to consider submissions regarding penalty for this breach.
3. This was the second hearing in five (5) weeks regarding such a breach by this Licensee. On 24 April 2007 a similar hearing was held regarding an event on 10 May 2006 involving alcohol being sold to an intoxicated person from the Walkabout Tavern Bottle Shop.

4. At 24 April Hearing Mr McConnell, for the Licensee, made a number of submissions regarding the Joint Nominee, Mr John Tourish. These are detailed in the Commission's Reasons for Decision published on 15 May 2007. Mr McConnell referred to them again at the 30 May hearing. In summary:
  - Mr Tourish has thirteen (13) years experience in the industry in Queensland with no complaints. He has been the proprietor of The Walkabout since 2005.
  - Since the breach twelve (12) months ago Mr Tourish had taken action to restrict alcohol availability by ceasing the sale of large casks of wine and restricting sale of particular drinks.
  - He has served on the Harmony Mawaya Mala Committee, which reviews drug and alcohol issues in the region, in a constructive manner.
5. At this hearing Mr McConnell made further submissions on behalf of Mr Tourish, highlighting his proactive stance in the community regarding responsible drinking. Mr McConnell asked the Commission to give the Licensee credit for these initiatives. In the Commission's view some of these submissions were indeed worthy of note.
6. Firstly, Mr Tourish has recently discontinued Thursday night Jam Sessions, which written testimonials indicated has had a very positive effect on community well-being.
7. Secondly, copies of *The Walkabout Tavern and Lodge Liquor Orientation*, including a *Summary of the NT Liquor Act*, were provided to the Commission. This document is provided to new staff at the premises as part of their training for their work. The Commission is impressed with the detail and presentation of relevant matters related to the responsible service of alcohol.
8. Thirdly, the script for a radio advertisement paid for by Mr Tourish and broadcast on local radio was submitted. This spot, spoken by Mr Tourish himself, accepted responsibility for the breach of May 2006 but also encouraged co-operation from the rest of the Nhulunbuy community. This approach is supported by the Commission.
9. Finally, the Commission was also informed that Mr Tourish is developing information broadcasts for radio in a local Indigenous language regarding responsible drinking. Support is being sought from the NT Branch of the Australian Hoteliers Association and the NT Department of Justice. This initiative is applauded by the Commission. We note that in our experience to date this undertaking is unique.

10. Mr McConnel further submitted that this breach was less serious on the scale of possibilities. The Commission is inclined to accept this. In comparison to the previous breach, in which an intoxicated person was sold a carton of wine, allowing them to go out into the community with four (4) more litres of alcohol to consume with a potential to cause major damage to self and/or others; this breach involves serving an intoxicated person one midstrength beer in a more controlled environment.
11. To balance these mitigating factors, Mr Lye, for the Director of Licensing, submitted that Mr Tourish was following the lead of the major retailer in town, Woolworths, regarding restricting the sale of wine casks.
12. He also submitted that the premises are difficult to monitor by Licensing Inspectors due to their remoteness. Inspectors had not visited the premises between the dates of May and October 2006, and had witnessed and prosecuted breaches on both occasions. The premises have not been inspected since.
13. Regarding penalty, the Licensee submitted that it was appropriate to wholly suspend the penalty, or suspend the Licence for one day concurrently with the suspension still being served as penalty for the previous breach. Mr McConnel submitted that the penalty for the previous breach was heavy and that the Licensee was “getting the message” regarding the seriousness of breaching *The Act*. He cited the case of the Gapview Resort Hotel in August 2004 in support of this position. The penalty in that case was one day Licence suspension suspended (deferred) for a second offence. That decision relates to a breach under section 121 of the *Liquor Act*, namely the failure of the Licensee to evict an intoxicated person from a licensed premise. The Commission does not consider it relevant to this case.
14. The Licensee also argued that if Licence suspension was considered, it was possible for the Commission to apply the penalty to specified area(s) of the Tavern, for example the Sportsman’s Bar, or exempt the Bottle Shop.
15. The Director of Licensing argued for a one (1) week suspension of licence. He further argued that if the Commission considered suspending (deferring) this suspension, a minimum of two (2) days should be served.
16. The Commission believes that deferring any part of the penalty for this breach is not desirable as there is already a seven day consecutive deferred suspension in existence for the next twelve (12) months (from 15 May 2007, the date of the previous penalty decision). If any part of this further penalty was deferred, the Commission would have to determine whether it should be concurrent with or cumulative on the previous penalty. In the interests of simplicity the Commission has determined to apply a Licence suspension alone.

17. The Commission is very clear that it takes breaches of the *Liquor Act* very seriously. The industry should be under no illusions in this regard. The Commission's view is as a general rule a second offence should have a harsher penalty than a first offence. Section 124 AAA (2) of the *Liquor Act* shows a prescribed additional penalty jumping from twenty-four (24) hours for a first offence to seven days for a second offence. Whilst this section is not applicable in this instance it provides a basis for considering the weight of second offences.
18. The first breach incurred a penalty of three (3) days suspension of licence, with a further seven (7) days deferred. The Commission therefore believes that a licence suspension of six (6) or seven (7) days is appropriate. However, there are mitigating circumstances in this instance.
- The less serious nature of the scale of the offence including the fact that the beer served was midstrength;
  - The excellent staff training resource developed by the proprietor.
  - The Proprietor's laudable community education initiatives involving use of the media and information provided in local language.

## **DECISION**

19. The penalty for this second breach the *Liquor Act* on 26 October 2006 is that the liquor licence for the Walkabout Tavern will be suspended for a period of three (3) days. This penalty will not be suspended (deferred), as there is already a seven (7) day suspension in place until 15 May 2008 for the previous breach.
20. The licence suspension will be served on three (3) consecutive days as determined by the Director of Licensing after consultation with the Licensee, within six (6) weeks of this decision.

Richard O'Sullivan  
CHAIRMAN

12 June 2007