

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES:	NGUIU CLUB BATHURST ISLAND NT 0822
LICENSEE:	Nguiu Club Association Inc
LICENCE NUMBER:	80303731
NOMINEE:	Leslie Oliver
PROCEEDINGS:	Hearing into Several Complaints Pursuant to Section 48(2) of the <i>Liquor Act</i> – Breaches of Sections 102, 106A, 110, 118 and 121
HEARD BEFORE:	Mr Richard O’Sullivan (Chairman) Ms Brenda Monaghan (Legal Member) Mr Wally Grimshaw
DATE OF HEARING:	21 September 2009
APPEARANCES:	Mr John Bradley for the Licensee Mr Les Oliver, Nominee Mr Richard Bruxner for the Director of Licensing Inspector Doug Bell for the Director of Licensing

BACKGROUND

- 1) On 30 October 2008, five (5) Complaints pursuant to Section 48(2) of the *Liquor Act* (the Act) made against the Nguiu Club Association Incorporated (Nguiu Club) were lodged with the Director
- 2) The complaints allege numerous breaches covering five (5) Sections of the Act over the October / November period 2008. Specifically the complaints allege:
 - On 11 October 2008 when Police attended the Nguiu Club there were two (2) females, one sixteen (16) years of age and one seventeen (17) years of age on the premises (Section 106A) consuming alcohol (Section 118).

- On 17 October 2008 Mr Savio Timaepatua was extremely intoxicated on licensed premises (Section 121) and following Police advice for him to leave, he then purchased and consumed more alcohol on the premises (Section 102).
 - On 31 October 2008 Police observed several intoxicated persons on the premises and in particular observed Mr Mark Babui purchasing beer whilst *“boisterous and displaying all the signs of being heavily intoxicated”* (Section 102).
 - On Saturday 15 November 2008 Licensing Inspectors witnessed only two (2) non-Tiwi Security Officers on duty during opening hours of the Club, whereas the licence condition requires three (3) non-Tiwi Security Officers on duty on Fridays and Saturdays (Section 110). The requirement to use the services of non-Tiwi Security was introduced by the Commission following earlier Hearings where it became apparent that Tiwi Security personnel were sometimes compromised in their duties due to cultural and family ties, impacting on their ability to control or remove inebriated persons or persons not complying with Club or management rules.
- 3) The Club licence allows trading from 4.30pm to 7.30pm on Tuesday, Wednesday, Friday and Saturday with a maximum daily purchase and consumption of six (6) cans per person of light or mid strength beer. At least two (2) non-Tiwi Security are to be present on Tuesday and Wednesday with that number increasing to three (3) on Friday and Saturday. Substantial food, defined as hot food cooked at the premises, is to be available to patrons throughout the trading hours.

THE HEARING INCLUDING SUBMISSIONS ON PENALTY

- 4) Following Commission acceptance of the complaint a Hearing was held on 21 September 2009. Counsel for both the Director, Mr Richard Bruxner and for the Nguiu Club, Mr John Bradley tabled as Exhibit 1 a Statement of *“Agreed Breaches/Facts”* (Agreed Facts). On the basis of the Agreed Facts, Counsel for the Director advised the Commission to exclude sections of the Hearing Brief relating to other matters or alleged breaches.
- 5) The joint Agreed Facts admit to the following breaches:
- 11 October 2008 – Minors Ms B and Ms Y were present on the premises in an area subject to a Declaration under Section 106(1)(a) – contrary to Section 106A.
 - 17 October 2008 – Mr Leonard Tungatalun was served a can of mid strength beer while he was visibly intoxicated – in breach of Section 102.

- Also on 17 October 2008 the presence of an intoxicated person, Mr Savio Timaepatua was brought to the attention of Security and despite a warning, he remained on the premises until near closing time in breach of Section 121. Attempts to breathalyse Mr Timaepatua were unsuccessful with a breath sample unable to be taken due to the extent of intoxication.
 - 31 October 2008 – Mr Mark Babui was served a can of midstrength beer when visibly intoxicated – contrary to Section 102.
 - 15 November 2008 – the required number of non-Tiwi Security were not on duty with only two (2) non-Tiwi Security Officers present when three (3) are stipulated in the licence conditions – contrary to Section 110.
- 6) In summary therefore the Agreed Facts constitute an admission of breaches of Sections 106A, 102 (on two (2) occasions), 121 and 110 over four (4) trading days in October and November 2008.
- 7) The Agreed Facts also outline the card system in place in late 2008 which provided for patrons on entering the licensed premises to be issued with a card marked with six (6) squares and on presentation of the card this ultimately enabled the holder to purchase up to six (6) cans of beer.
- 8) The Agreed Facts goes on to state at paragraph 8
- “Despite the introduction of the six mid strength can limit in November 2007, the nominee/licensee has had the following ongoing problems:*
- i) regular occurrence of patrons intoxicated at the premises*
 - ii) patrons regularly seeking to access more than six cans per session*
 - iii) patrons regularly seeking to have more than one can in possession*
 - iv) patrons regularly attempting to stockpile cans*
 - v) patrons regularly seeking to smuggle cans out of the premises”.*
- 9) During Hearing the Commission was advised that the card system outlined in paragraph seven (7) above has been considerably improved since the time when the breaches occurred. The Nominee, Mr Les Oliver, advised that this card system was initially introduced following the Federal Intervention and changes to the Club licence conditions by the Federal Minister, under powers enabling variations to licensing conditions for premises within Prescribed Areas, under the *Northern Territory Emergency Response Act*.

- 10) Mr Oliver went on to describe the many abuses of the card system and the evolution of a more controlling system to prevent patrons accessing and consuming more than their six (6) can entitlement. The abuses included patrons either getting more cards from friends or relatives or holding over cards for another day.
- 11) He added that Security were now oversighting the card purchases. Colour cards were introduced for different days of the week but even this system was abused with patrons holding over the coloured cards and using them some time after to supplement the allowable six (6) cans sold on the day.
- 12) The Commission was also advised of the impacts of other alcohol control measures including the introduction of servery lanes to create a more orderly sales process at the bar and the display of prominent signs around the premises clearly explaining the need for patrons to abide by the Club rules.
- 13) Mr Oliver advised the Commission that there were currently four hundred and ninety-three (493) persons on a banned list excluding them from the Club (and all other Clubs on the Tiwi Islands. Evidence was tendered verifying this large scale exclusion. Of those banned, most had been involved in a Police reported incident (whether as a victim, perpetrator or even being present or associated with the incident attended by Police). Only a minority were banned due to their behaviour in the Club.
- 14) The Commission was also advised that camera surveillance is in operation at the Club.
- 15) When considering penalty, Mr Bradley, on behalf of the Licensee advised that the Nguu Club was unique and presented unique problems, ie how to police the six (6) can limit or how to improve the card system used to bring into effect the six (6) can limit. He submitted that if the Commission was of a mind to impose a served suspension or a suspended suspension of a licence, it needed to generate awareness by Club members of the seriousness of the breaches and the impact of these breaches on the maintenance of the liquor licence of the Club.
- 16) He submitted that if the Commission was to impose a licence condition to include a card system that such solutions could pose more problems and create a rigid regime not allowing for any modification or improvements, should they be required.
- 17) He submitted that the Club had improved trading conditions since the breaches and the Club deserved some credit for admitting to these breaches at the first opportunity.
- 18) He maintained that a one (1) day suspended suspension or a constructed reprimand would be an appropriate penalty.

- 19) Counsel for the Director, Mr Richard Bruxner submitted that the Commission needed to focus on a penalty that would bring about an outcome of improved conditions at the Club. The best endeavours of the Club to control patron binge drinking had not been successful to date. He added that the non observance of such issues as the card system did not constitute a breach of the Act or the condition of the Club's licence.
- 20) Mr Bruxner referred the Commission to the history of Hearings into the Club which largely relate to considerations and evaluations of licence conditions applying and their change or modification to bring about an improved environment following strong evidence of misbehaviour. There is not a history of proven complaint of breaches, other than a complaint upheld in 2002.
- 21) He drew the Commission's attention to recent relevant decisions applied to other licensed outlets where intoxicated persons had been on the premises and/or served on the premises. These penalties range from suspended suspensions to three (3) day served suspensions. The Commission must turn itself to address the present facts to determine if they align with the circumstances of these precedents.

CONSIDERATION OF THE ISSUES

- 22) The licence issued and held by the Club does not reflect the changes to trading hours brought into effect through the *Northern Territory Emergency Response Act*. The Commission has arranged for the issue of new licences reflecting the changed conditions, pursuant to Section 49(4)(a) of the Act.
- 23) The Commission gave credit to the candid evidence provided by the Nominee, Mr Les Oliver who admitted that the drinking climate and lack of effective controls at the Club were a problem. It is apparent that the patrons of the Club show little respect for the initiatives designed to improve the social atmosphere of the Club during licensed hours and that for many it is viewed as a place to go and get drunk, rather than a place to socialise with friends and family.
- 24) There have been a number of Hearings into the conduct of the Nguiu Club since 2002 and most of these have arisen due to claims or concerns of excessive 'binge' drinking and the presence of intoxicated persons on the premises.
- 25) It is noted that there has been only one (1) upheld complaint with an "Interim Condition by Consent" agreed to in September 2002. Past enquiries by the Commission however have led to various reviews of licence conditions which over time have resulted in a banning of full strength beer, a requirement for non-Tiwi Island Security to be present during opening hours, closure of the Club on funeral days, and the more recent measures brought into effect

through the Federal Intervention. Licensing Inspectors and other Government employees have also encouraged the Club on many occasions in the past to work with them to create a Club environment that emphasises healthy social interaction rather than binge drinking as the priority.

- 26) Whilst the Club Committee have generally been disinterested in trying to improve the culture of binge drinking at the Club, various measures and in particular the full strength beer ban imposed by the Commission did result in a significant improvement in patron conduct at the Club and a decrease in after hours police callouts. More recently however, there appears to have been an increase in binge drinking at the Club despite all of the restrictions imposed in the licence conditions.
- 27) The Commission is now presented with information that the trading conditions at the Club appear to be at best, not conducive to the socialising of alcohol in a community friendly manner, or at worst, a debasing swill by those hardened to over consumption. The Commission is presented with the unedifying spectacle of many drinkers not so much enjoying the occasion as drinking to get drunk.
- 28) The Agreed Statement of Breaches jointly submitted by Counsel, referred to in paragraph eight (8), paints a picture of trading conditions which are not acceptable to the Commission. These current breaches are symptomatic of this reality and a suspension of liquor licence for a period is appropriate in these circumstances.
- 29) During Hearing the matter of how to improve and better regulate the restriction of a daily six (6) can per person limit at the Club was raised. It is evident that the multi variations of the card system employed at the Club have all had their failings and even the current colour card system, with its coding of days for use, is open to exploitation and abuse. The Commission has no doubt that the nominee has tried to create a card system to meet the requirements of the liquor licence and good management practices but has been unable to effectively do so.
- 30) As part of the penalty for the numerous breaches admitted in the Joint Agreed Facts, the Commission intends to impose a requirement for the introduction of an ID system to regulate the sale of alcohol at the Nguui Club. This is not the first time an electronic system has been used in the Territory to assist in liquor supply issues or patron management. An electronic ID system is used to manage the liquor permit system in East Arnhem and another electronic system is used to prevent banned persons purchasing takeaway alcohol in the Katherine region and in Alice Springs. The Commission considers that both systems have been very useful tools to assist in the management of difficult issues. Further, many private clubs are using electronic ID systems when identifying members and guests and pubs and clubs in the Territory are using such systems to minimise under age admission into their premises.

- 31)The Commission is aware that electronic ID systems which scan a patron's photo ID (eg driver's licence or Proof of Age Card) can be tailored to do the following:
- To monitor and enforce the daily sale limit of six (6)cans of mid strength beer;
 - To regularly update the system so as to prevent a person from entering the Club if they are banned;
 - To scan all photo ID on entry to prevent minors from entering the Club; and
 - To warn the bar staff of restrictions on the type of alcohol a person can buy if they are restricted to a certain product such as light beer.
- 32)The Commission is confident that an electronic ID system would be an effective tool to assist the Nguiu Club management. In the same way as the Commission sometimes requires the installation of CCTV systems as part of a penalty, it intends to require the installation of an electronic ID system as part of the penalty for the Nguiu Club.
- 33)To the credit of the Licensee, the breaches have been admitted but the Commission is also mindful that there are a number of breaches over a period of time indicating they were not one off events but rather were symptomatic of systemic failure. The advice of Mr Bruxner was that the Commission should properly consider a suspension for the Sections 102, 106A and 121 breaches and in the instance of the Section 110 breach (required number of Security not in attendance), he considered a reprimand would be appropriate.

DECISION

- 34)In view of the seriousness of the repeated breaches by the Nguiu Club the Commission sees no other alternative than to impose a suspension of the Club's licence.
- 35)The breaches of serving intoxicated persons, intoxicated persons on premises, minors on premises and patrons exceeding the six (6) can consumption as provided for in the Club's liquor licence, combine to warrant a lengthy suspension of the Club's liquor licence.
- 36)The Commission has therefore determined to require the Club introduce a photographic identification (ID) system to the satisfaction of the Director. In this regard the Commission and the Director would need to be assured that the system is introduced effectively and properly maintained and monitored.

- 37) In relation to the ID system the Commission anticipates the Department of Justice and the Northern Territory Police will assist the Licensee in bringing into effect the ID system and the capacity to use the technology necessary to regularly update the status of the card holders, particularly where patrons are on a banned list. The systems in operation in East Arnhemland and Nhulunbuy and the electronic ID system recently introduced on Groote Eylandt provide examples for the Club to follow. While the installation and initial costs the Club is responsible for may well be in the order of \$20,000, the Commission also notes advice of the active assistance likely to be provided by the Department of Justice, which hopefully will include an oversight of its introduction as part of a proposed Alcohol Management Plan for the Nguiu Community.
- 38) The Commission intends to allow a reasonable time for the design and installation of an electronic ID system at the Club. That compliance date is 1 June 2010, when the system must be operational to the satisfaction of the Director. If the system is not operational by that date, then the Commission will have to consider stronger measures which could well include a lengthy closure of the Club.
- 39) In relation to the Commission viewpoint that the licence breaches warrant a severe penalty, the Commission has determined to impose a four (4) day suspension of trading days at the Club. This suspension penalty takes into account the penalty and cost involved with the introduction of an ID system. The suspension period would have been significantly greater in the absence of this requirement. The four (4) day suspension is to be served on Friday 1 January 2010, Saturday 2 January 2010, Tuesday 5 January 2010 and Wednesday 6 January 2010.
- 40) If the ID system results in improved control and regulation over patron behaviour, the Commission will review the level of security, particularly provided through non-Tiwi personnel, at the Club. While the provision of such security has been determined as necessary in pursuit of management control and ongoing conduct at the Club, it has proven burdensome and costly. A lessening of security requirements is an incentive to the Club to bring in an effective ID system and improve the standard of patron behaviour.
- 41) Given the necessity to have Club patrons and the wider Nguiu community realise the importance the Commission attaches to the need to improve conduct at the Club, Commission members intend to visit Nguiu at the earliest opportunity to explain this decision and its ramifications to the Club committee and other stakeholders.

Richard O'Sullivan
CHAIRMAN

8 December 2009