

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES: GOLDFIELDS HOTEL

LICENSEE: Redondo Pty Ltd

LICENCE NUMBER: 80102583

NOMINEE: Mr Steven Minton

PROCEEDING: Pursuant to Section 124AAA of the *Liquor Act*
Further Penalty Subsequent to Finding of Guilt

Complaint Pursuant to Section 48 of the *Liquor Act* – Alleged Intoxicated Person on Premises (s121 *Liquor Act*)

HEARD BEFORE: Mr Richard O’Sullivan (Chairman)
Ms Brenda Monaghan (Legal Member)
Mr Paul Fitzsimons

DATE OF HEARING: 15 December 2009

DATE OF DECISION:

APPEARANCES: Mr Tom Anderson for the Licensee
Senior Licensing Inspector Martin Clive-Griffin
for the Director of Licensing

BACKGROUND

1) On 15 December 2009 two (2) matters came before the Commission for Hearing as follows:

(a) A complaint by the Director of Licensing against the Licensee alleging that on 29 October 2009 an intoxicated person was allowed to remain on premises in breach of Section 121 of the *Liquor Act* (the Act). This complaint is denied; and

(b) Section 124AAA *Liquor Act* referral relating to two (2) convictions for Section 102 offences entered against the Corporate Licensee on 29 October 2009. They relate to two separate occasions on 12 and 20 March 2009 respectively when a six (6) pack of beer was sold as takeaway to an intoxicated person. Fines of \$600.00 and a Victims Levy of \$200.00 were

ordered with respect to each conviction. No further details of relevance were available to the Commission to assist it in its decision making with respect to this matter. It is simply called upon to decide whether the convictions should attract an additional penalty under s124AAA.

HEARING

- 2) The circumstances of the s121 complaint are that on 29 October 2009 at around 5.00pm, Licensing Inspector Cross conducted an inspection at the Goldfields Hotel. Soon after arriving at the Hotel he noticed a female patron who was seated at a table directly in front of the bar consuming beer from a glass. She appeared to be intoxicated. The evidence from Inspector Cross was that the patron at times had her head slumped to her chest and appeared to be gesticulating and talking to herself.
- 3) When the patron attempted to walk to the toilets, her advanced state of intoxication became blatantly obvious to both the Inspector and to the Nominee, Mr Minton and she was immediately removed from the premises by the Nominee. Inspector Cross later made a complaint of a breach of s121 of the *Liquor Act*.
- 4) This complaint is denied on the grounds that it was only when the patron stood and started moving towards the toilets, that it became obvious that she was intoxicated and the Nominee acted promptly to remove her. Prior to that, it is submitted that there were too few visible signs that this patron was intoxicated to alert the bar staff to her condition.
- 5) CCTV footage was available at the Hearing and a portion was played and tendered as an Exhibit. The footage commences a few minutes before Inspector Cross enters the bar at 4.53pm. It shows that four (4) minutes earlier at 4.49pm, the patron in question attempted to stand from a seated position. Although the footage is not the best quality, it shows her trying to maintain her balance on standing, then slumping unsteadily back down in the chair before trying to stand again, this time successfully. It also shows her head slumped to her chest for a short period and another incident where she is seen drinking another patrons beer.
- 6) When Inspector Cross arrives at the Hotel at 4.53pm, CCTV footage shows the female patron gesticulating and drinking whilst seated at the table. The table at which the patron is seated is located directly in front of the bar. A short time later, she walks unsteadily towards the toilets and appears very intoxicated. Few patrons are in the bar at the time.
- 7) Inspector Cross's evidence is that even prior to the patron exiting towards the toilets, his observation of her made him aware that she was exhibiting signs of intoxication. He did not approach her but instead waited for the Nominee Mr Minton to enter the bar.
- 8) The Licensee through Counsel, Mr Tom Anderson, submitted to the Commission that the indicators of intoxication as viewed on the CCTV

footage prior to the patron's exit to the toilets were insufficient for an onlooker (and in particular Hotel staff) to be satisfied that the patron was intoxicated.

- 9) It is not unusual, he submits, for patrons to sing, gesticulate or talk to themselves in the bar in question. Mr Anderson submitted that there may be many reasons for such behaviour apart from intoxication and on this occasion, bar staff were completely unaware of a problem. This patron had not been served alcohol since 2.09pm and had not approached the bar. There was no way bar staff could know that she was stealing drinks and getting others to buy for her.

CONSIDERATIONS OF THE COMMISSION

- 10)The Licensing Commission has considered the totality of the evidence in reaching its decision on a breach of s121 including the following:

- a) The CCTV footage from 4.49pm onwards;
- b) The evidence of Inspector Cross, both documentary and oral;
- c) The evidence of Mr Minton, both documentary and oral; and
- d) Other documents tendered in evidence.

- 11)The picture built up following consideration of all of the evidence is that the patron in question entered the bar at around 12.00noon. Over the next two (2) hours she purchased three (3) drinks from the bar. From 2.09pm until 5.00pm she was not served again, nor did she approach the bar. Instead, she had drinks purchased for her by other patrons or she stole drinks from their tables.

- 12)By 4.49pm, the patron was showing signs of intoxication. She was unable to easily rise from her chair and it took two (2) attempts for her to stand. Her head on occasion while seated was slumped towards her chest. At some time soon after his arrival, Inspector Cross noted this patron and saw signs that made him consider she was intoxicated. She was muttering to herself, gesticulating and at times her head slumped towards her chest.

- 13)Inspector Cross decided to observe the patron for a while and to wait for Mr Minton or another staff member to be free for him to discuss the matter further. No sooner had Mr Minton appeared in the bar when both men saw the female patron stand and move towards the toilets. Both men had no doubt that she was heavily intoxicated and Mr Minton immediately removed her.

- 14)Throughout the period viewed on the CCTV, the patron in question was seated at a table or tables close to the bar. No one approached her or was seen to walk the floor during this period but bar staff appeared to the Commission to have an unobstructed view of those seated in front of them including this particular patron.

- 15)Whilst Inspector Cross may have wanted to observe the patron for a further period before being satisfied that she was intoxicated, it appears likely to the Commission that he would have been satisfied earlier had he arrived a few

minutes earlier in time when she was caught on CCTV footage trying to alight from the chair.

16) Section 121 of the *Liquor Act* 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.

17) The Commission is satisfied on the balance of probabilities that the patron was intoxicated on licensed premises and that she was visibly intoxicated from at least 4.39pm onwards and no doubt for some time before that. At this time she is seen speaking to herself, gesticulating, on occasions drooping her head and she is very unsteady in her actions. A breach of s121 of the *Liquor Act* is upheld.

18) It is incumbent on staff of licensed premises to monitor their patrons for visible signs of intoxication. Had they done so, the Commission is satisfied that staff would have realised earlier that the patron was intoxicated and they could have prevented her from placing herself in danger out on the street when she was evicted.

19) It was a quiet afternoon at the Hotel and there was no reason for the bar staff to miss the obvious signs except a lack of attention by them to their patrons.

DECISION

20) Dealing first with the Section 124AAA referral, the relevant provision of the *Liquor Act* states as follows:

124AAA Additional penalty

(1) Notwithstanding anything in this Act, the Commission may, in relation to the finding of guilt of a licensee for an offence against section 102, 105, 106B, 106C or 121, by notice in writing served on the licensee and for a period specified in the notice, not exceeding that prescribed by subsection (2):

(a) suspend the licensee's licence; or

(b) vary the licence so that the licence applies to and in relation to part only of the premises to which it previously applied,

or, where the offence is a third or subsequent offence, instead of suspending or varying the licence, cancel the licence.

(2) For the purposes of subsection (1), the following are the prescribed periods:

(a) where the offence is the first offence by the licensee against any of the sections referred to in that subsection – 24 hours;

(b) where the offence is a second offence – 7 days; and

(c) where the offence is a third or subsequent offence – 28 days.

(3) For the purposes of subsection (2)(b) or (c), an offence is a second, third or subsequent offence if the previous offence was an offence, or the previous offences were offences, against any of the sections referred to in subsection (1), whether committed before or after the commencement of this section.

21) The matters in question relate to the takeaway sale of six (6) packs of beer to two (2) patrons on 12 March 2009 and 20 March 2009 and the subsequent convictions for breaches of s102 of the Act on 29 October 2009. The Commission accepts that the legal authority in *Reid v Rowbottam (2005)15 NTLR 1* applies to this matter, thus preventing the convictions entered against the licensee on the same date but relating to incidents on two separate dates to be considered as separate offences for the purposes of sections such as s124AAA(2) of the Act. In short, the Commission treats the

convictions entered against the licensee on 29 October 2009 as if they were one offence for the purposes of s124AAA of the Act.

The Commission has no details available to it regarding the circumstances of the breach apart from those already stated i.e. that they relate to two separate occasions on 12 and 20 March 2009 respectively when a six (6) pack of beer was sold as takeaway to an intoxicated person. Fines of \$600.00 and a Victims Levy of \$200.00 were ordered with respect to each conviction.

22) The Commission notes the penalty imposed by the Court. In cases like this, it is the Commission's view that an additional penalty should be imposed in the form of a suspension. The Commission notes the submissions made by Mr Anderson regarding the regret and remorse of the owner about these breaches and the steps the nominee has taken to prevent them happening again. The Commission accepts Counsel's view that the appropriate penalty is a suspension of that part of the liquor licence relating to the sale of takeaway alcohol for one (1) day to be imposed on a Friday in March 2010 on a date to be advised by the Director.

23) The complaint of a breach of Section 121 of the Act which occurred on 29 October 2009 (the same day that convictions were entered against the licensee in the s124AAA matter) has been upheld. The Commission notes that the breach in this case took place on a Thursday night. The Commission takes into account the fact that the patron was sitting quietly and causing no problem and that the main danger of her level of intoxication was to herself and her ability to return safely home.

24) The Commission notes the several reforms the Nominee has implemented over the past three (3) months on the premises including walking the floor and a closer monitoring of patrons by bar staff.

25) Mr Anderson as Counsel for the Licensee submits that an appropriate penalty for this breach is a reprimand or a suspended suspension of one day. The Commission has considered this matter carefully and has reached a conclusion that the imposition of a stronger penalty is more appropriate. The Commission imposes a suspension of the liquor licence (including all bars and takeaway) for one (1) day. The suspension shall be served on a Thursday in March at a date to be advised by the Director.



Richard O'Sullivan
CHAIRMAN

19 February 2010