

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES:	STUART HOTEL
LICENSEE:	TAD (NT) Pty Ltd
LICENCE NUMBER:	80100963
NOMINEE:	Mr Athol Schmidt
PROCEEDING:	Complaint Pursuant to Section 48(2) of the <i>Liquor Act</i> - Breach of Section 31A(5a)
HEARD BEFORE:	Mr Richard O'Sullivan (Chairman) Mr Philip Timney (Legal Member) Mr Wally Grimshaw
DATE OF HEARING:	2 June 2010
DATE OF DECISION:	June 2010
APPEARANCES:	Mr Athol Schmidt for the Licensee Inspector Mark Wood on behalf of the Director of Licensing

BACKGROUND

- 1) A complaint has been laid against the Licensee TAD (NT) Pty Ltd trading as the Stuart Hotel (formerly known as Crossways Hotel) alleging that the Licensee failed to scan an approved identification of a person purchasing alcohol in contravention to Section 31A of the *Liquor Act* ("the Act").
- 2) On Thursday 22 October 2009 at approximately 17:00 hours Police Officers witnessed two persons departing the bottleshop of the Stuart Hotel who, on questioning by Police, identified themselves as Mr Willy Staines and Ms Ethel Redfelt. They had in their possession a two litre cask of Yalumba white wine and four cans of VB beer.
- 3) As the pair were attempting to conceal the alcohol purchased the Police Officers questioned them over the purchase. It was revealed in questioning that Ms Ethel Redfelt had purchased the alcohol at the bottleshop using a Katherine Regional Aboriginal Legal Aid Service card ("KRALAS Card") of Ms Kathleen Mumbin.

- 4) Police requested the ID card used for the purchase which clearly was not that of Ms Ethel Redfelt standing in front of them. At this point Ms Ethel Redfelt admitted she made purchases on behalf of Ms Kathleen Mumbin who was too intoxicated to purchase alcohol in her own right and had given her card to Ms Redfelt and Mr Staines together with \$50 for the purchase.

THE HEARING

- 5) At Hearing Mr Mark Wood, on behalf of the Director of Licensing, outlined that it was a requirement for takeaway alcohol purchased at the Stuart Hotel that an approved form of ID be presented to and scanned by the Licensee.
- 6) Section 31A of the Act makes it a breach of the licence to fail to scan an authorised identification of a patron purchasing takeaway alcohol. Section 31A of the Act states:

31A Conditions about identification system

- (1) *This section applies to a sale of liquor to an individual under a licence prescribed by regulation.*
- (2) *The Minister may establish an identification system for determining whether the individual is subject to a prohibition covered by any of the following provisions:*
- (a) *a prohibition order or alcohol intervention order under the Alcohol Court Act;*
 - (b) *a bail condition as defined in the Bail Act (otherwise than for a bail granted under Part III of the Act) relating to liquor;*
 - (c) *a condition of a court order under the Domestic Violence Act or the Domestic and Family Violence Act relating to liquor;*
 - (d) *a provision under a law in force in the Territory prescribed by regulation.*
- (3) *For subsection (2), a scanner must be given to the licence holder:*
- (a) *to enable a person who may sell liquor under the licence (the authorised seller) to scan an identification of the individual; and*
 - (b) *to indicate to the seller whether the individual is prohibited from buying liquor or liquor of a particular kind or quantity.*
- (4) *The identification must be one of the following (an approved identification):*
- (a) *the individual's passport;*
 - (b) *the individual's driver licence;*

(c) any other identification approved by the Director.

(5) Each of the following requirements is a condition of the licence:

(a) the authorised seller must not sell liquor to an individual without scanning an approved identification of the individual with the scanner;

(b) the authorised seller must not sell liquor to an individual contrary to a prohibition mentioned in subsection (2) indicated in the scanner;

(c) except for this Act or another law in force in the Territory, the authorised seller must not disclose or use any information indicated in the scanner;

(d) the authorised seller must not damage or tamper with the scanner or any other component of the system;

(e) any requirement about maintaining the system specified by the Director in writing;

(f) any other requirement specified by regulation for the system.

*(6) A person must not contravene a requirement in subsection (5).
Maximum penalty: 20 penalty units.*

(7) It is a defence to a prosecution for the offence if the defendant has a reasonable excuse.

Example

A reasonable excuse for a contravention of the requirement in subsection (5)(a) or (b) may be based on a failure of the system to operate properly for reason other than the defendant's conduct.

(8) The Director may, by Gazette notice, exempt a licence from a requirement in subsection (5) for a specified period.

- 7) Mr Wood advised the Hearing that on Thursday 22 October 2009 the identification used by Ms Redfelt was not her own and was obtained together with a \$50 note from Ms Kathleen Mumbin who was too intoxicated to be able to make a purchase on her own behalf.
- 8) Photographs of both Ms Ethel Redfelt and Ms Kathleen Mumbin were presented at Hearing and clearly illustrated the different appearance of both women.
- 9) At the time of the purchase the bottleshop attendant accepted the KRALAS Card of Ms Mumbin and entered the details into the system, without checking to see if the person before him purchasing alcohol resembled the photograph on the KRALAS Card.

- 10) Mr Athol Schmidt, a Dual Nominee of the Stuart Hotel, presented on behalf of the Licensee who fully admitted the breach and mentioned that this was the first instance of a complaint against the Stuart Hotel since TAD (NT) Pty Ltd had taken over the licence in August 2008.
- 11) Given the admission of the breach by the Licensee the Commission then turned its attention to an appropriate penalty. Mr Wood outlined that the Licensee had been most cooperative throughout the investigation of the use of false ID and in their period as Licensee had provided considerable assistance to the Department of Justice in licence compliance issues generally. He then tendered that an appropriate penalty in the circumstance would be a letter of reprimand.
- 12) Mr Schmidt, on behalf of the Licensee, accepted that a letter of reprimand would be an appropriate penalty. He then addressed the Commission on the issue of the difficulties faced by Licensees who are required to deal with KRALAS Cards as an authorised ID for the purchase of takeaway alcohol in the Katherine region.
- 13) Mr Schmidt stated that the KRALAS Cards themselves were not of high quality with a plastic cover often separating enabling the insertion of false photographs and the tampering of information contained on the card. He stated that many people possessed multiple KRALAS Cards.
- 14) Because of the size and format of the KRALAS Card, the cards are unable to be scanned (inserted in the scanning slot). The Commission is informed that the scanning equipment is designed around accepting hard plastic cards in the size of a Drivers Licence.
- 15) The usual practice for Licensees, given the conditions and design of the KRALAS Card, is to manually enter identification details contained on the card rather than the quicker scanning procedure, enabled with other forms of authorised ID such as Larrakia Card or Drivers Licence. The manual entry of ID details takes between one to two minutes and causes disruption in the orderly sales process at bottleshops.

CONSIDERATION OF THE ISSUES

- 16) Based on the evidence presented and the acknowledgement of the Licensee, the Commission finds the complaint proven as the Licensee failed to scan or attempt to scan an approved identification of Ms Redfelt, who purchased takeaway alcohol.
- 17) The Commission accepts the submission of Mr Wood and that of Mr Schmidt in that an appropriate penalty in this circumstance is a letter of reprimand. From evidence presented during the Hearing, it appears that the circumvention of the ID system is easily achieved through the use of faulty and multiple KRALAS Card holdings by persons accessing takeaway alcohol.

- 18) Further, it appears that the abuse of the ID system is systemic. It therefore appears to the Commission that the KRALAS card in its current form is not an acceptable form of ID in that it is capable of being abused and used to circumvent the purpose behind the creation of an ID system, that is to prevent persons on court orders, prohibition orders, bail conditions or other bans on alcohol purchase from accessing alcohol.
- 19) It is also used to prevent multiple purchases of products such as cask wine and fortified wine which are limited to one item per person per day.
- 20) One difficulty the commission has with the KRALAS Card is that it is not a scannable identification, unlike a Driver's Licence, Larrakia Card, Tangentyre Card or 18+ Card. Therefore in effect the use of the KRALAS Card is not consistent with legislated requirements of a Licensee that *it "must not sell liquor to an individual without scanning an approved identification"*.
- 21) Mr Schmidt advised the Commission that all bottleshop staff of the Stuart Hotel have been instructed to clearly check that the identification of the person making the purchase clearly matches the photograph on the ID presented when presented with a KRALAS Card. Identification numbers or details contained on this card are manually entered into the system to ensure the purchaser is not on any ban or restriction order and has not made prior purchases of cask or fortified wine.

DECISION

- 22) The Commission finds the complaint proven in that the Licensee has breached Section 31A(5a) of the Act relating to scanning of approved ID.
- 23) The Commission has determined to issue a Notice of Reprimand to the Licensee which is to be maintained on the licensing file by the Director as a matter of record and to be taken into evidence if a complaint is laid against the Licensee in the future.
- 24) The Hearing Commissioners were most concerned over evidence presented during the course of the Hearing to the effect that there appeared to be systemic abuse and wide scale circumvention of the proper use of the authorised identification system to limit takeaway alcohol purchases.
- 25) The Commission, in expressing concern over this misuse of what is commonly termed the KRALAS Identification Card, will write to the Director of Licensing outlining its concerns directly.

Richard O'Sullivan
CHAIRMAN

17 June 2010