

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES: **KATHERINE HOTEL**
Katherine Terrace
KATHERINE NT 0850

LICENSEE: Deemat Pty Ltd

LICENCE NUMBER: 80101789

DUAL NOMINEE: Mr Rickie Cullen
Mr Peter Lee

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

HEARD BEFORE: Mr Philip Timney (Presiding Member)
Mrs Jane Large
Ms Kerri Williams

DATE OF HEARING: 24 June 2010

DATE OF DECISION: 12 July 2010

APPEARANCES: Mr Rickie Cullen and Mr Anthony Adams
for Licensee
Mr Mark Wood (Inspector) for Director of
Licensing

BACKGROUND

- 1) On 2 November 2009 the Court of Summary Jurisdiction found Deemat Pty Ltd, the Licensee of the Katherine Hotel, guilty of the offence of selling liquor to an intoxicated person in breach of Section 102 of the *Liquor Act* ("the Act"). The Licensee was fined \$300 plus a \$40 victim's levy, without no conviction recorded.
- 2) The statement of facts presented to the Court alleged that an intoxicated Aboriginal man, identified as Daniel Moore, entered the bottle shop of the Katherine Hotel at approximately 6.20 pm on 7 March 2009 and purchased four cans of VB beer. On exiting the bottle shop the male was spoken to by Police Constables who noticed that his speech was slurred, he was unsteady in his feet, his eyes were glazed and he smelt strongly of alcohol. Due to his level of intoxication Mr Moore was taken into protective custody.

- 3) The officers also spoke to a security guard working at the Katherine Woolworths Bottleshop. The security guard subsequently provided a statutory declaration stating that, at approximately 6.05 pm on the same date he had refused Mr Moore entry to the Woolworths bottleshop due to the state of his intoxication.
- 4) In a statutory declaration obtained by Police, Mr Moore stated that he was normally a resident of Beswick but was staying in the long grass in Katherine at the time of the incident. Mr Moore stated that he had been drinking cask wine decanted into a bottle since around noon on 7 March 2009 and was “full drunk” when he attempted to purchase more alcohol from the Woolworths bottleshop. Mr Moore confirmed that he was refused service by the security guard at Woolworths. He states further that he then walked over to “Kirby’s” bottleshop where he “was allowed to buy the cans of VB” and confirmed that he was “full drunk” at the time of the purchase. Mr Moore stated further that he did not usually get drunk and that he only came in to town to drink when his money comes in every fortnight,
- 5) This matter comes before the Commission for consideration pursuant to Section 124AAA of the *Liquor Act* which states:

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.

THE HEARING

- 6) Mr Cullen, on behalf of the Licensee admitted the breach of Section 102 and confirmed the précis of facts presented by Inspector Mark Wood on behalf of the Director. The outcome of the Court proceeding was confirmed in the Certificate of Proceedings issued by the Clerk of Court of Summary

Jurisdiction in Katherine on 9 November 2009 and contained within the hearing brief.

- 7) Mr Cullen informed the Commission that this was the first breach by the Licensee since taking over the operation of the Katherine Hotel in February 2004. He asked that the Commission note that the Licensee had admitted the breach at the first opportunity, both in the Court proceedings and in response to the notice of complaint under Section 124AAA. Mr Wood confirmed that was the case and advised that the Licensee had co-operated with him since acknowledging the complaint.
- 8) Mr Cullen advised the Commission that, since the breach, the Licensee had introduced a number of remedial measures to minimise the risk of a recurrence of the offence. Namely, four staff were now rostered on in the bottleshop and at least two of those were senior staff. New staff are accompanied by senior staff for at least four hours of each day for training and supervision. All new employees commencing with the hotel are required to obtain their RSA qualification within 14 days.
- 9) In respect of the appropriate penalty, Mr Wood referred the Commission to previous Section 124AAA complaints, including the matters of Katherine 5 Star Supermarket (28 October 2008), Jabiru Golf Club Inc (11 November 2008) and Daly River Roadhouse (17 December 2009).

CONSIDERATION OF THE ISSUES:

- 10) Section 124AAA is prescriptive in terms of the additional penalty able to be applied. Section 124AAA provides that, for a first offence, the Commission may suspend a licence for a maximum of 24 hours. In determining the appropriate additional penalty in the case of the Katherine Hotel the Commission considered that the following factors were persuasive in indicating a penalty at the lower end of the scale:
 - the unblemished record of the Licensee over a period of six years;
 - the steps taken by the Licensee since the breach in respect of training of new staff members, designed to prevent future sales of alcohol to intoxicated persons;
 - the Licensee's admission of the breach at the first opportunity, both before the Court and the Commission; and
 - The Licensee's assurance to the Commission that further breaches were unlikely as a result of the remedial measures now in place.
- 11) There are however factors that militate towards the application of a higher penalty, including suspension of the liquor licence for the prescribed period, namely:

- Mr Moore was significantly intoxicated when he purchased the VB cans. The evidence from Police, which has not been denied, was that Mr Moore was so drunk as to require being taken off the streets and into protective custody. Mr Moore himself conceded that he had been drinking cask wine earlier in the afternoon and that he was “full drunk” when he made the purchase;
 - Of particular concern, Mr Moore was refused service at the Woolworth’s bottleshop just prior to being sold alcohol at the Katherine Hotel. It was clear to security officer from Woolworths bottleshop that Mr Moore was too intoxicated to be sold alcohol and it should have been equally as obvious to the bottleshop attendant at the Katherine Hotel;
 - The offence involved the sale of take away alcohol to a person who was, at the time, residing in the long grass. The Commission views the sale of take away alcohol to intoxicated persons as more serious than on premise sales for the obvious reason that there is no monitoring of the consumption of take away alcohol resulting in a greater risk of self harm or anti-social behaviour;
 - Significant measures have been put in place in Katherine aimed at reducing the harm and anti-social behaviour associated with excessive consumption of alcohol. The effectiveness of many of those measures relies significantly on the diligence of liquor licence holders in ensuring compliance;
- 12) In balancing the factors for and against the Licensee in this instance the Commission reiterates that the sale of alcohol to intoxicated persons, and particularly take away alcohol, is a serious offence and one for which Licensees should expect to receive a substantial penalty. In this instance the Commission has determined that the appropriate penalty is the suspension of the licence for the period prescribed by Section 124AAA(2)(a), that is a one day suspension of licence. Taking account of the mitigating factors set out above, and in particular the good track record of the Licensee over the past six years, the Commission has determined to suspend the period of suspension for a period of twelve months.

DECISION

- 13) The Commission determines, pursuant to Section 124AAA(2)(a) of the Act, to suspend the Liquor Licence of the Katherine Hotel bottle shop area for a period of 24 hours. Taking account of the mitigating factors set out above the Commission directs that the suspension be wholly suspended for a period of twelve months from the date of publication of this decision.
- 14) The Commission reiterates its long held view that the sale of service of alcohol to persons who are intoxicated is a serious offence and one that may result in a suspension of licence.

15) In this instance the Commission warns the Licensee of the Katherine Hotel that a further finding of guilt for a breach of Section 102 of the Act within the next twelve months carries with it a maximum penalty of eight days suspension of licence, being the penalty day suspended under this decision plus the seven day penalty period prescribed by Section 124AAA(2)(b) of the Act for second time offenders. Whilst significant weight has been given to the unblemished record of the Licensee in this case the Licensee should not expect that degree of leniency for any future breach. The Licensee should also be aware that any penalty imposed for subsequent breaches may not be limited to the bottle shop area of the licensed premises and may apply to the liquor licence generally.

Philip Timney
PRESIDING MEMBER
(Legal Member)

12 July 2010