

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES:	THE CAVENAGH
LICENSEE:	CGT Holdings Pty Ltd
LICENCE NUMBER:	80101040
NOMINEE:	Ms Jati Harburn
PROCEEDING:	Pursuant to Section 124AAA of the <i>Liquor Act</i> Further Penalty Subsequent to Finding of Guilt
HEARD BEFORE:	Mr Richard O'Sullivan (Chairman) Mr Philip Timney (Legal Member) Mr Wally Grimshaw
DATE OF HEARING:	19 October 2010
DATE OF DECISION:	2 November 2009
APPEARANCES:	Mr Mark Gray for the Licensee Licensing Inspector Shane McCorkell for the Director of Licensing

BACKGROUND

- 1) On 5 August 2009 CGT Holdings Pty Ltd, the Licensee of The Cavenagh, pleaded guilty in the Darwin Court of Summary Jurisdiction to a breach of Section 102 of the *Liquor Act* ("the Act"). The breach concerned the sale of alcohol to a patron at The Cavenagh when the patron was intoxicated at the time of the sale. The Licensee was convicted of the offence and a fine of \$300 was imposed.
- 2) The offence was detected by two plain clothed Police officers, who were conducting an inspection of the premises at the time. The officers observed a patron who was unsteady on his feet, yelling at patrons at a near by table and having difficulty placing his drink on a table. Shortly after the officers commenced observing the patron he purchased a XXXX Gold stubby from a bar attendant.
- 3) The officers identified themselves to the patron and removed him from the premises. They noted that the patron was unsteady on his feet and was incoherent when spoken to. The patron participated in a voluntary breath test and returned a reading of 0.255% BAC.

- 4) The matter was referred to the Commission for consideration of additional penalty pursuant to Section 124AAA of the Act which provides:

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 sub-Section(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 sub-Section(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 sub-Section– 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.

HEARING

- 5) At the commencement of the Hearing the Chairman noted the considerable time that had elapsed since the conviction and the referral to the Commission and noted that the delay was not attributable to the Licensee and had occurred for reasons beyond the control of the Commission. The Chairman noted that the procedures for dealing with Section 124AA complaints were under review so as to ensure future complaints were heard in a more timely manner.
- 6) Mr Gray, on behalf of the Licensee, acknowledged the breach of Section 102 and the conviction and fine. He stated that the Duty Manager in question had been demoted and management responsibilities removed as a result of the incident. Mr Gray added that since the breach the policy in respect of intoxicated persons had been reinforced to all staff and management with the instruction to err on the side of caution if in doubt regarding a patron's level of intoxication.
- 7) Mr Gray referred the Commission to pages 9 to 11 of the Hearing Brief, being The Cavenagh's "Intoxicated Patron Agreement" and the "Intoxicated Patrons Protocol". He noted that the latter document had been updated and offered to provide the Commission with the new version after the Hearing.

- 8) Mr Gray emphasised that all staff at the Cavenagh were required to understand and sign the Intoxicated Patron Agreement prior to commencing bar duties. In addition, all incidents of allegations of service to intoxicated patrons were to be reported immediately to the Duty Manager and then to the Nominee. Mr Gray commented that he had noticed an improvement in the vigilance of staff members at The Cavenagh since the introduction of the Intoxicated Patron Agreement and the advice provided to staff before they signed the agreement.
- 9) Mr Gray submitted that the complaint related to an incident that occurred on 1 April 2009 and the fact that no further incidents had been reported against The Cavenagh in the following 18 months was evidence that the new protocols were effective.
- 10) By way of mitigation, Mr Gray submitted that The Cavenagh had not been found to have breached the Act previously and no incidents had been reported to the Commission since his company had taken over the licence. Inspector McCorkell confirmed that was the case.

CONSIDERATION OF THE ISSUES

- 11) Section 124AAA prescribes the penalties the Commission may impose and, for a first offence, provides that the Commission may suspend a licence for a maximum of 24 hours. No other penalty options are available. In determining the appropriate additional penalty in the case of The Cavenagh the Commission takes account of the following matters in determining a penalty at the lower end of the scale:
- the fact the Licensee has not been charged with any previous breach since taking over the licence;
 - the steps taken by the Licensee since the breach in respect of reinforcing to all staff the requirements in respect of not serving intoxicated persons;
 - the introduction of a formal agreement with staff contained in the Intoxicated Patron Agreement;
 - 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 as evidenced by the fact there have been no further breaches over the past 18 months.
- 12) There are however factors that militate towards the application of a higher penalty, including suspension of the liquor licence for the prescribed period, namely:
- The patron was significantly intoxicated when he was served and recorded a BAC of 0.255%. According to the Police evidence, which was not denied, the patron was showing obvious signs of intoxication at the time he was served.
 - Alcohol related anti-social behaviour is a significant community issue at present, particularly in respect of licensed premises in the Darwin CBD;

- Recently the Government has implemented significant measures 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 with the requirement to not serve people who are intoxicated. The Commission is the enforcement body charged with ensuring the effectiveness of legislated changes relating to the sale and consumption of liquor;
- The need to send a message of general deterrence to other Licensees that the service of intoxicated patrons is a serious breach of the Act and one that may very well result in actual suspension of a liquor licence.

13) The Commission reiterates what has been said on several occasions, that the sale of alcohol to intoxicated persons is a serious offence and one that has the capacity to have a detrimental impact on not on the intoxicated person themselves but the wider community. Licensees should expect the Commission to impose a substantial and meaningful penalty for breaches of this nature.

14) In the circumstances of this breach 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 clear record of the Licensee and the measures implemented since the breach, the Commission has determined to suspend the period of suspension for a period of 6 months.

DECISION

- 15) The Commission determines, pursuant to Section 124AAA(2)(a) of the Act, to suspend the Liquor Licence of The Cavenagh for a period of 24 hours. The Commission directs that the suspension be wholly suspended for a period of six months from the date of publication of this decision.
- 16) The Commission reiterates the advice provided to Mr Gray during the Hearing. A second breach under Section 124AAA of the Act attracts a maximum statutory penalty of seven days suspension of licence. Licensees should be aware that, for subsequent breaches where the Licensee has previously been warned of the consequences of serving intoxicated patrons, the Commission is likely to impose a penalty that entails actual suspension of the licence for the period prescribed by the Act.

Richard O'Sullivan
CHAIRMAN

2 November 2010