

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

LICENSEE: Benregal Pty Ltd

PREMISES: Aileron Roadhouse

LICENCE NUMBER: 81204578

PROCEEDING: Complaint Pursuant to Section 48(2) Breaches of:
Section 110 – Failure of Licensee to Comply with a
Condition of Liquor Licence and Section 116A –
Minors not to sell Liquor

HEARD BEFORE: Mr Richard O’Sullivan (Chairman)
Mr Phil Timney (Legal Member)
Ms Helen Kilgariff

DATE OF HEARING: 30 March 2011

APPEARANCES: Mr Greg Dick and Mr David McCormack for the
Licensee
Senior Inspector Wayne Sanderson & Inspector
Andrew Cross for the Director of Licensing

BACKGROUND

- 1) Complaints have been laid pursuant to Section 48(2) of the *Liquor Act* (“the Act”) against Benregal Pty Ltd, the corporate Licensee of the Aileron Roadhouse, alleging breaches of Section 110 of the Act concerning the Takeaway Licence Conditions applicable to the Licence and Section 116A of the Act in allowing a minor to sell alcohol at the premises.
- 2) The background to the complaints is set out in the report to the Commission dated 20 January 2011 from the A/Deputy Director of Licensing (South). Following receipt of intelligence by the Office of Licensing, Regulation & Alcohol Strategy (“LR&AS”), Inspectors Andrew Cross and Mark Wood attended the Aileron Roadhouse on 2 December 2010 to assess compliance with the take away condition attached to the Liquor Licence. Both Inspectors requested and were sold twelve x 375 ml cans of beer each and, after making further inquiries, learned that the person who sold them the alcohol was sixteen years and five months old at the time of the sale.

- 3) Mr Greg Dick, a Principal of the Licensee Company and joint Nominee, responded to the complaint by letter dated 10 January 2011. Mr Dick accepted responsibility for the minor being involved in the sale of alcohol. He noted that the minor was the stepson of joint Nominee Mr David McCormack and that he had authorised him to work at the licensed premises on the basis his own sons had previously been granted approval to do so. He acknowledged that the sale of twelve cans to each of the Inspectors was in breach of the take away licence condition and submitted that this only occurred as the adults employed at the premises were working elsewhere when the sales occurred. Mr Greg asked that the Commission take account of his good record as a licensee, spanning a period back to 1966, in determining the appropriate penalty.

- 4) Section 110 of the Act states:

110 Licensee to comply with conditions

A licensee shall not contravene, or fail to comply with, a condition of his licence.

- 5) The licence of the Aileron Roadhouse contains the following Special Condition relating to alcohol sales.

“Liquor sold for consumption away from the premises is restricted to beer only, and is limited to a maximum quantity of six (6) 375ml cans of beer per person per day.”

- 6) Section 116A of the Act provides:

116A Minors not to sell, &c., liquor

(1) Except in accordance with a condition of his licence or as permitted under subSection (2) by the Commission, a licensee shall not employ a person who has not attained the age of 18 years to sell, supply or serve liquor on licensed premises.

(2) For the purposes of subSection (1), the Commission may in writing, either generally or, on the application of a licensee, in relation to a particular person, permit a licensee to employ a person who has not attained the age of 18 years to sell, supply or serve liquor on licensed premises where the Commission is satisfied that the person is a genuine employee of the licensee or is undergoing employment training at the licensed premises.

- 7) At no time prior to 2 December 2011 had the Commission issued any written permission for the minor who sold the alcohol to the Inspectors to sell, supply or serve liquor on the licensed premises.

HEARING

- 8) Senior Inspector Sanderson outlined the complaint and referred the Commission to the statutory declarations of Inspectors Cross and Wood. He noted that both Inspectors stated that they were not asked for any form of identification prior to purchasing the alcohol, nor were they requested to fill out any form of register or advised that take away sales were limited to six cans per person per day. The Inspectors later ascertained that the minor who sold them the alcohol was sixteen years and five months old at the time of the sale, his birth date being 7 June 1994.
- 9) Senior Inspector Sanderson also referred the Commission to the transcripts of several interviews conducted by Licensing Inspectors with Mr Dick, Mr Ian McCormack, Mr David McCormack, Ms Shona Marshall (an employee who was working at the premises on 2 December 2010) and the minor in question.
- 10) Senior Inspector Sanderson drew the Commission's attention to the transcript of interview with Mr Dick and particularly his comments regarding the requirement for permission for minors to be involved in the sale of alcohol. He noted that Mr Dick stated that he did not read all the "crap" that he received from LR&AS and was therefore unaware of the requirements concerning minors. Senior Inspector Sanderson stated that Mr Dick should have been aware of the requirements and if he was not that was a result of him not paying proper attention to notices and advices sent to licensees by LR&AS. Senior Inspector Sanderson tendered a number of letters addressed to the Licensee of Aileron Roadhouse and Mr Dick as Nominee, dating back to 2002, advising of the requirements to obtain permission for minors to be involved in the sale of alcohol.
- 11) The Commission noted that the offences were admitted by the Licensee and found formally that the complaints had been made out.

PENALTY SUBMISSIONS

- 12) Senior Inspector Sanderson submitted that the appropriate penalty in respect of the sale of more than a six pack of beer to a single customer was for the Commission to direct that the Licensee install a CCTV system at the premises. In respect of the complaint concerning the minor selling alcohol, he submitted that Mr Dick should have been aware of the requirements under the Act, more so as he had made similar applications in the past. He submitted that the appropriate penalty for the sales of alcohol by a minor was 2 days suspension of the take away component of the licence.
- 13) Mr Dick stated that he thought family members who were minors were allowed to be involved in the sale of alcohol and that his own sons had been involved in that capacity in the past. He admitted the breach of Section 116A and acknowledged that he had not sought permission for the minor the subject of this complaint to be engaged in the sale of alcohol. He added that

the minor was the son of one of the joint Nominees and he had relocated to Aileron Roadhouse to take up employment and training in the hospitality industry. Since the breach the minor has returned to Brisbane where he is undertaking an apprenticeship.

- 14) Mr Dick advised that he voluntarily ceased take away sales when requested by Police and when there was trouble in communities around the premises. He noted that when the take away sales were suspended it was not unusual for break ins and property damage to occur, caused by patrons disgruntled by the lack of take away alcohol. He also stated that Aileron Roadhouse was the target of vandals and thieves whenever Police set up road blocks and confiscated alcohol from grog runners.
- 15) He stated that take away sales were not a big component of the business of the Aileron Roadhouse and that sales ranged from fifty 6 packs on a good day to less than twelve on other days. He added that the premises did not sell UDL premixed spirits or bottled spirits and yet he is required to clear away litter from those products left on the property on a regular basis. Mr Dick noted that the Aileron Roadhouse did not have a regular patronage of Aboriginal people drinking on premises as most tended to travel to Alice Springs.
- 16) Mr Dick asked that, in determining the appropriate penalty, the Commission take into account his unblemished record as a Licensee since 1966. He also noted that a register of take away alcohol sales had been implemented since December 2010 and all purchasers were required to complete the register.
- 17) Mr Dick accepted that a penalty of having to install a CCTV system was appropriate and the system would be beneficial in investigating break ins and criminal damage as well as providing a mechanism for monitoring sales of take away alcohol. He has not installed CCTV equipment to date as there are issues with fluctuating power from the generators used however this should be rectified when a new generator is delivered in the near future. He asked that a significant lead time be granted for installation of the CCTV system given the remoteness of the premises from the nearest major centre and the difficulties in having technicians attend on site.
- 18) Mr Dick also conceded that a two day suspension of the take away licence was an appropriate penalty for the breach of Section 116A of the Act.

CONSIDERATION OF THE ISSUES

- 19) The Commission notes that the Licensee has implemented an alcohol sales register, requiring the production of valid ID to ensure the identity of purchasers and to avoid multiple daily purchases in excess of 6 cans of take away beer per person per day. This system was introduced after the sale of twelve cans of beer to Inspectors Cross and Wood on 2 December 2010. The Commission is also aware that this is a temporary measure that will be

superseded when the legislation in respect of ID systems and the Banned Persons Register is implemented, expected to be in July 2011.

- 20) The Commission considers that installation of Camera Surveillance over the alcohol storage and sales counter would be of great assistance to the Licensee and Licensing Inspectors in monitoring take away alcohol sales and in the investigation of any future breaches, as well as providing additional security for the premises in general.
- 21) The Commission takes account of Mr Dick's long experience in the liquor industry in Central Australia and the fact he has not been found guilty of any prior breaches during a period in excess of forty-five years. The Commission notes that sales of take away alcohol from the Aileron Roadhouse are relatively small and unlikely to be the root cause of alcohol fuelled anti social behaviour occurring on near by Aboriginal communities.
- 22) The Commission notes that the six can per person per day licence condition is intended to ensure that roadhouses, such as Aileron Roadhouse, do not become the major alcohol supply centre for grog runners and persons wishing to defy the alcohol restrictions in place in communities in the area. The Commission expects that Licensees will be vigilant in monitoring take away sales to ensure that the limits on take away alcohol are properly recorded and enforced.
- 23) In respect of the complaint concerning the sale of alcohol by a minor, the Commission takes account of the background facts and particularly the fact that the minor was the step son of one of the joint Nominees and was engaged as a legitimate employee of the company and was undergoing work related training. In those circumstances, and taking particular note of the remote locality of the Aileron Roadhouse, there is the real prospect that the Commission may very well have granted permission for this minor to be involved in the sale of alcohol had Mr Dick made the appropriate application.
- 24) The fact that no permission was sought for the minor to sell alcohol does raise concerns as to whether the minor was properly trained in tasks involving the sale of alcohol by his employers. The fact that he sold twelve cans of beer to each of the Inspectors in the one transaction is a clear indication that he was not properly trained in the specific licence conditions applicable to the Aileron Roadhouse, including the requirements in respect of the limit on take away alcohol sales.
- 25) The Commission notes that the Licensee, through Mr Dick, had no objection to the submission on penalty put forward by Senior Inspector Sanderson, namely suspension of take away sales for a two day period.

DECISION

- 26) The Commission determines to impose a requirement that Camera Surveillance be installed at Aileron Roadhouse to cover the alcohol display area and service counter to the satisfaction of the Deputy Director. A suitable condition is to be included in the licence to reflect that requirement.
- 27) The Commission notes the remoteness of Aileron Roadhouse in respect of major population centres and allows a timeframe of ninety days from the date of this decision for the installation of the CCTV system. Should the Licensee require an extension beyond that period then approval should be sought from the Deputy Director prior to the expiry of the ninety day period.
- 28) The Commission also determines that the Aileron Roadhouse is to maintain the alcohol sales register that was implemented in December 2010. The Register is to be completed by staff of the Licensee and is to include details of the ID provided by the purchaser as well as the quantity of alcohol purchased. The system is to meet the requirements of the Deputy Director and is to be maintained until the Government initiated ID scanning equipment is installed at the premises.
- 29) In respect of the breach of Section 116A of the Act, the Commission imposes a penalty of two days suspension of the take away component of the liquor licence for the Aileron Roadhouse, as submitted on behalf of the Director of Licensing and accepted by Mr Dick on behalf of the Licensee. The offence occurred on Thursday 2 December 2010. The Commission determines that the suspension shall be served for the period Wednesday 18 May 2011 to Thursday 19 May 2011 inclusive.

Richard O'Sullivan
CHAIRMAN

9 May 2011