

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES: **GOVE YACHT CLUB**
Drimmie Head Road
Inverell Bay
NHULUNBUY NT 0880

LICENSEE: GOVE YACHT CLUB INC.

LICENCE NUMBER: 81401564

PROCEEDINGS: To Consider Penalty Submissions relating to Breaches of its Licence Conditions by the Gove Yacht Club, namely:

- (1) selling take away alcohol after 20:00 hours;
- (2) failing to use the approved mechanisms for identifying a holder of an East Arnhem Liquor Permit; and
- (3) failing to properly maintain the quality of the Gove Yacht Club Visitors Book

MEMBERS: Mr Philip Timney (Presiding Member)
Mr David Brooker
Mrs Jane Large

DATE OF HEARING: 11 May 2011

BACKGROUND

- 1) Following a Hearing on 17 March 2011 the Commission found that the Gove Yacht Club, between July and November 2010, had breached three conditions of its liquor licence, namely:
 - (a) selling take away alcohol after the 20:00 hours;

- (b) failing to use the approved mechanisms for identifying a holder of an East Arnhem Liquor Permit; and
 - (c) failing to properly maintain the quality of the Gove Yacht Club Visitors Book.
- 2) Prior to deciding on the penalty for these breaches the Commission requested written submissions on penalty which allowed the Gove Yacht Club the opportunity to contact its legal representative, namely CridlandsMb.
 - 3) Written submissions on penalty were received on 5 May 2011 on behalf of the Licensee and the Director of Licensing. Both submissions outlined the previous history of liquor licence breaches by the Gove Yacht Club in 2006, 2007 and 2009 which incurred penalties varying from a reprimand to a three (3) days suspension of trading. In addition, Licensing Inspector Holehouse, on behalf of the Director of Licensing, provided information on a 'Letter of Warning' sent to the Licensee and the Nominee relating the allegations of extremely intoxicated persons on the premises on 14 May 2008.
 - 4) In the submission on behalf of the Licensee all facts relating to the breaches were admitted and the subsequent action that had been taken to ensure they do not reoccur was outlined. This action included increased emphasis placed on staff training in the correct use of the Permit Identification System and an understanding of the definition of "sale". In addition, the current Nominee is personally ensuring that all people are signed into the premises prior to entry
 - 5) The fact that there had been no other breaches since 2009 when the Arnhem Club Inc took over the management of the Yacht Club and the management had been cooperative and forthright in responding to all enquires relating to the current breaches was highlighted. In conclusion the submission stated:

"Considering the relatively minor nature of the current breaches, change in management of the Licensee and the genuine attempts made to prevent further breaches, the Licensee submits an appropriate penalty would be a reprimand only in relation to all three breaches"
 - 6) The submission on behalf of the Director of Licensing stressed the seriousness of the breaches stating that they totally undermine the East Arnhem Land Permit System and other harm reduction strategies in place. The submission included a verbal comment from the Nhulunbuy Police that sought a seven day suspension of the liquor licence.
 - 7) The submission recommended, as a first option, the cancellation of the liquor licence and as a second option a total of 35 days suspension of the licence. It stated that:

“if considering only a period of suspension, the actual suspension must send a message not only strongly reflecting the seriousness of these breaches, but also it must deliver a very strong deterrent value to the liquor industry as a whole, especially to those Licensees situation in the General Restricted Areas and other remote communities.

CONSIDERATION OF THE ISSUES

- 8) At first glance the three breaches of the conditions of the Gove Yacht Club liquor licence may appear technical and minor in nature. However the Commission cannot overlook the previous breaches by the Licensee and the evidence given at the Hearing which indicate there has been a continual mismanagement of the liquor licence for this club over a period of time. Even though these are the first recorded breaches since the Arnhem Club Inc assumed management of the Yacht Club the Commission does not agree that a further reprimand or Letter of Warning would be appropriate.
- 9) At the Hearing evidence was provided of by Mr Adams, the bar staff member on duty at the time of the current breaches, that the staff had a book with names and permit numbers which were used when club members did not have their permit cards. This book showed a David Yunupingu and a David “Lamabbarri” both held Permit Number 00055 which clearly was not the Liquor Permit Number for David Lalamabbarri Yunupingu, the club member who collected the take away liquor after trading hours. Subsequent to the Hearing it was discovered that 00055 is Mr Lalamabbarri Yunupingu’s Gove Yacht Club membership number.
- 10) In fact it has been proved that Mr Lalambarri Yunupingu was a non permit holder having had his East Arnhem Liquor Permit revoked in February 2010. Added to this was the evidence from Mr Lalambarri Yunupingu, in his interview by Inspector Holehouse, where he admitted that he found it easy to buy takeaway without a permit to such an extent that he stated:

“I can’t be bothered getting a permit again”

- 11) Whilst there is no direct evidence on the point, on the balance of probability the Commission is entitled to conclude from the evidence presented from the interviews with Mr Yunupingu and Mr Adams that this number in the book was used to circumvent the ID system for purchases of take away alcohol by Mr Yunupingu over a period of time. There is no complaint from the Director of Licensing for the breach of sale of takeaway liquor to a non permit holder, presumably because of uncertainty as to when the “sale” was conducted. Therefore, the Commission cannot impose a penalty for this breach but as Mr Yunupingu’s permit holder status was revealed in the evidence at the hearing and the Licensee has accepted both the definition of the sale and the facts presented at the hearing it can be taken into consideration when

considering the seriousness of the breaches and the setting of the overall penalty.

- 12) It is quite clear that there has been a break down in the operations of the Club and that if the bar staff had properly checked the identity of the person prior to passing over the carton of beer then the fact that he was a non permit holder would have been noted, the sale would not have been concluded and no breach would have occurred.
- 13) The Commission heard no evidence as to the reasons for the revocation of Mr Yunupingu's liquor permit. However, the simple fact is that Mr Yunupingu was not a permit holder at the time he was provided with a carton of VB. The Commission agrees with the submission on behalf of the Director that this was a serious breach and one that undermines the purpose and intention of the East Arnhem Liquor permit system. The Commission's view in that regard is confirmed by the evidence of Mr Yunupingu that he found it easy to obtain liquor without a permit and so did not bother to obtain one.
- 14) In regards to the non maintenance of the Visitors' Register, this is the second breach of this licence condition and one that further confirms the Commission's view that the Club has not been managing its operations in accordance with its licence conditions.
- 15) The Commission does view the circumstances of these breaches seriously but after taking in consideration the action that the current Nominee, Ms Lamaitre, has taken to improve the operations of the Yacht Club the Commission does not believe that the cancellation of the licence is warranted at this time.
- 16) However, there is a need to send a strong message to the Licensee and the liquor industry that ongoing mismanagement of the operations of a licensed premises which causes breaches of the conditions of the liquor licence or the *Liquor Act* will result in a substantial suspension of the licence.
- 17) When deciding on the length of the suspension the Commission is mindful of the fact that it is a yacht club which has members who are responsible drinkers and who like to take their boats out over the weekend and end up having a drink and a meal with their families at the Club. In remote areas recreation venues are limited for families and the Commission feels that the suspension recommended by the Director of Licensing of 35 days cumulative will severely affect these "yachties" and the penalty proposed by the Nhulunbuy Police of seven days suspension of licence appears to be a more realistic penalty.

DECISION

- 18)The Commission, having taken into account all the circumstances surrounding the breaches of the Gove Yacht Club liquor licence conditions and considered the submissions made on behalf of the Licensee and the Director of Licensing, has decided to impose one penalty to cover all three breaches, Namely a seven day suspension of the liquor licence being Monday 13 June 2011 through to Sunday 19 June 2011. However, in recognition of the efforts being put into place by the new Nominee and to allow responsible yacht club members to have access to the Club over a weekend for a drink and a meal after a day at sea, the suspension on Sunday 19 June 2011 is suspended.
- 19)The Sunday suspension will remain as a suspended penalty for a further twelve month period from the date of this decision. Should no further breach occur within the twelve month period then this component of the penalty will lapse at the end of that period. However, if within the next twelve months there is a further proven breach of either the *Liquor Act* or the licence conditions then the one day suspension will come into force, together with any other penalty that may be imposed for the subsequent breach.
- 20)The Commission makes the following observation in respect of the evidence presented at the Hearing that whilst the carton of VB was provided to Mr Yunupingu outside the permitted trading hours the payment was made earlier in the day, whilst the Licensee was entitled to sell take away alcohol. The Licensee's evidence in this regard is mis-guided and demonstrates a lack of understanding of the take away conditions. The Licence Condition requires that take away sales are made only during allowable hours and that any take away purchases are removed from the premises prior to the end of take away hours.

Philip Timney
PRESIDING MEMBER

25 May 2011