

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES: **RENNER SPRINGS DESERT HOTEL/MOTEL**
Stuart Highway
Via TENNANT CREEK NT 0860

LICENSEE: Desert Inns International Pty Ltd

LICENCE NUMBER: 81202669

NOMINEE: Mr Alan Revell

PROCEEDING: Complaint Pursuant to Section 48(2) of the
Liquor Act - Breach of Dection 110

HEARD BEFORE: Mr Philip Timney (Presiding Member)
Ms Helen Kilgariff
Mr David Brooker

DATE OF HEARING: 6 July 2011

APPEARANCES: Mr Alan Revell for the Licensee
Inspector Tony O'Donohoe for the Director of
Licensing

BACKGROUND

- 1) By memorandum dated 8 December 2010 Licensing Inspector Andrew Cross lodged a complaint against Desert Inns International Pty Ltd, the Licensee of the Renner Springs Desert Hotel/Motel ("the Premises"), alleging breaches of Section 110 of the *Liquor Act* ("the Act") in that the Licensee failed to comply with the conditions of its licence.
- 2) The substance of the complaints, as set out in the memorandum prepared by Inspector Cross, is as follows. On the afternoon of 26 October 2010 Inspector Cross attended the Premises and identified himself to Mr Jonathan Dixon, an employee of the Licensee. Mr Dixon advised that the owners of the Premises, Mr and Mrs Revell, were currently in Alice Springs. Inspector Cross informed Mr Dixon that he wished to inspect the Sales ID Register. The Register was provided to Inspector Cross by another employee, Chris Wilkinson. The liquor licence for the Premises includes a condition limiting the sale of take away alcohol to residents of Elliott and Marlinja to six cans of beer per person per day. The licence also includes a condition requiring the Licensee to retain a Register of takeaway sales of alcohol to Elliott and Marlinja residents, including a record of date and time of the purchase, the product type purchased, the name of the customer and the details of the identification document provided by the purchaser.

- 3) On inspecting the takeaway sales Register inspector Cross noted that entries had been made recording the sale of takeaway alcohol to residents of the North Camp in Elliott. Two of those entries recorded the sale of restricted alcohol products to those Elliott residents. Namely, the sale of a six pack of 5 Seeds Cider to Mr Adrian Cooper of North Camp Elliott at 10.15 pm on 29 May 2010 and the sale of a 6 pack of Rum and Cola cans to Mr Bill Selwyn of North Camp in Elliott at 6.00 pm on 2 June 2010. Inspector Cross also noted that the sale to Mr Cooper appeared to have taken place outside licensed take away trading hours, namely at 10.15 pm on Sunday 29 May 2010.
- 4) On 27 October 2010 Inspector Cross again visited the Premises and inspected the RSA Register for staff engaged in the sale and service of alcohol. Inspector Cross noted that the RSA Register was incomplete and that the names of staff who had been working at the premises for some time had not been entered into the Register. The licence for the Premises includes conditions that require all staff to complete the RSA course within one month of commencing employment and for a RSA Register to be maintained by the Licensee. Inspector Cross established that Chris Wilkinson had been employed at the Premises as Main Bar Staff for approximately 4 months and Andrew Moran had been employed in the same capacity for 2 months. Neither person was entered on the RSA Register nor were copies of their RSA certificates available for inspection by Inspector Cross.
- 5) By decision dated 3 May 2011 the Licensing Commission determined to conduct a Hearing into alleged breaches by the Licensee of its licence conditions.

THE HEARING

- 6) The Hearing before the Commission was conducted in the Tennant Creek Courthouse on 6 July 2011. Inspector O'Donohoe provided the Commission with a summary of the complaint, as detailed in the Background above. He informed the Commission that it was alleged that the Licensee had committed two breaches of Section 110 of the Act in failing to comply with the Special Licence Condition restricting the sale of alcohol to Elliott and Marlinja residents on two occasions, one of which involved the sale of take away alcohol outside permitted trading hours.
- 7) Inspector O'Donohoe tabled the hearing Brief and referred the Commission to the Statutory Declaration of Mr Selwyn Bill, obtained by Inspector Cross and dated 2 March 2011, in which Mr Bill deposed:

"I have bought a sixpack takeaway Rum Cola from Renner Springs Roadhouse. Drank some out the beer garden and finish the rest on the way going back to Elliott.

The owner of Renner Springs came to see me around Christmas time and ask me did I buy a six pack Rum Cola and I sad yes."
- 8) Inspector O'Donohoe also drew the Commission's attention to the copy of the Take Away Sales Register which included the details of the sales alleged to have been made to Mr Cooper and Mr Bill on 29 May 2010 and 2 June 2010 respectively. He noted that the sale to Mr Cooper was recorded as having taken place at 10.15 pm whilst the conditions attached to the licence restrict the sale of take away alcohol to 10.00 pm daily. Inspector O'Donohoe

advised that a further component of the complaint alleged that the Licensee had failed to comply with the Licence conditions relating to RSA requirements for all staff engaged in the sale of alcohol.

- 9) Inspector Cross was then called to give evidence. He informed the Commission that following notification of the complaint to the Licensee he received copies of two Statutory Declarations of Mr Bill and Mr Cooper, obtained on behalf of the Licensee, stating that they had not purchased the alcohol alleged in the complaint.
- 10) He informed the Commission that Mr Bill and Mr Cooper were known to him and that he had spoken with Mr Bill on 2 March 2011 whilst he was at work on a slashing site. Inspector Cross stated that Mr Bill told him that he had purchased a six pack of Rum and Cola from the Renner Springs Roadhouse and had informed Mrs Revell accordingly when she visited him on 27 December 2010. Inspector Cross stated that Mr Bill did not mention the Statutory Declaration produced by the Licensee.
- 11) Inspector Cross informed the Commission that he had tried unsuccessfully to contact Mr Cooper, who was moving between Tennant Creek and Elliott at the time.
- 12) The Commission was also referred to the Responsible Service of Alcohol Register maintained for the Premises by the Licensee and noted that entries commenced on 26 September 2008 and continued to 1 March 2010. No entries were recorded in respect of staff members Chris Wilkinson or Andrew Moran, who had been employed at the premises for more than one month.
- 13) In his submissions on behalf of the Licensee, Mr Revell advised the Commission that neither he nor Mrs Revell were present at the Premises when Inspector Cross visited the Premises on 26 October 2010 as they were both in Alice Springs at the time whilst Mr Revell underwent medical treatment. He advised that he had conducted various investigations following receipt of the letter of complaint from the Director.
- 14) Mr Revell's defence to the complaint relating to the sale of alcohol to Mr Bill and Mr Cooper, in his letter of 2 January 2011 to the Director and in his submissions to the Commission, was that neither of those persons purchased the alcohol shown in the Take Away Sales Register and that the document in evidence before the Commission was prepared merely as a training exercise for staff of the Premises. In support of that submission Mrs Revell was called to give evidence.
- 15) Mrs Revell stated that on receipt of the complaint letter from the Director, she had travelled to Elliott to speak with Mr Bill and Mr Cooper who both signed Statutory Declarations deposing that they had not purchased the take away alcohol from the Premises as alleged in the complaint. In response to questions from the Commission Mrs Revell stated that the Statutory Declarations had been prepared by her prior to visiting Elliott and the alterations and white out that appeared on the declarations were a result of the discussions with Mr Bill and Mr Cooper.
- 16) Mr Revell noted that the Statutory Declaration obtained from Mr Bill by Inspector Cross on 2 March 2011 was contradicted by the Declaration that was witnessed by Mrs Revell on 27 September 2010. He submitted that the Commission should give greater weight to earlier Statutory Declaration and

accept that Mr Bill did not purchase the Rum and Cola cans as alleged in the complaint.

- 17) Mr Revell noted that the only evidence in the brief obtained directly from Mr Cooper was the Statutory Declaration dated 28 December 2010 that was witnessed by Mrs Revell. He submitted that the Statutory Declaration was sufficient to satisfy the Commission that Take Away Sales Register included in the brief was not what it appeared to be and that Mr Cooper did not purchase take away cider from the Premises on 29 May 2010 as alleged.
- 18) In support of his submission that the Register seized by Inspector Cross was not the Take Away Sales Register for Elliott and Marlinja residents, Mr Revell stated that the folder in which the Register was stored had become a repository for a variety of documents. He stated that the names on the "Register" seized by Inspector Cross were fictitious, except for those relating to Mr Bill and Mr Cooper, and that the prices recorded for the alcohol sales were incorrect. Mr Revell's explanation for the creation of the "Register" was to the effect that it was a training sample sheet of a "doodle sheet" used by staff purely for RSA training purposes and not for any official purpose, such as recording take away sales to Elliott and Marlinja residents.
- 19) In respect of the allegation that the sale of alcohol to Mr Cooper on 29 May 2010 was outside the permitted take away hours, Mr Revell submitted that the time of 10.15 pm was probably the time at which the sale was recorded in the Register and not the time of the actual sale, which would have been prior to 10.00 pm.
- 20) In response to the submission that the "Register" the subject of the complaint was merely a training document, Inspector O'Donohoe asked the Commission to note that Inspector Cross had requested to see the Take Away Sales Register and that a folder was provided to him which included the page from the Register that led to the complaints. He also noted that the licence number recorded against the entries relating to Selwyn Bill was his actual licence number, as confirmed by Police. In addition, Inspector O'Donohoe submitted that the maintenance of a Take Away Sales Register, as prescribed by the licence condition for the Premises, is a relatively unusual condition of licence not a topic included in any RSA training. Inspector O'Donohoe submitted that the page from the Register included in the brief was precisely what it purported to be, namely an extract from the Take Away Sales register that showed sales of alcohol to Mr Bill and Mr Cooper that were not authorised by the licence condition.
- 21) Neither party addressed the Commission specifically at the Hearing in respect of the allegation that staff members of the Premises had not completed their RSA training within one month of the commencement of their employment. The only reference to that element of the complaint is contained within the documents within the Hearing Brief.

CONSIDERATION OF THE ISSUES

- 22) The Licence for the Renner Springs Desert Hotel/Motel includes the following licence conditions, relevant to this complaint:

Takeaway Restrictions (Elliott and Marlinja Residents)

Sale of alcohol shall be restricted to no more than six (6) cans (375ml) of beer per person per day to Elliott and Marlinja residents.

Sales Register

- (a) *The Licensee must retain a register of takeaway sales to Elliott and Marlinja residents in a form approved by the Director. The register shall include the date and time of purchase and the name of the customer to inform the Commission on buying patterns.*
- (b) *Register is to be retained and made available for inspection to Licensing Inspectors and Police on request.*
- (c) *Requirement to maintain a register shall be reviewed once an Alcohol Management Plan for the region has been prepared and is in place.*

Responsible Service of Alcohol Certificate

- (a) *All staff employed prior to 1 May 2009 who are directly involved in the sale, service or supply of alcohol to the public or the supervision of these activities, are required to hold or obtain a Responsible Service of Alcohol (RSA) Certificate by 1 August 2009.*
- (b) *All staff employed on or after 1 May 2009 who are directly involved in the sale, service or supply of alcohol to the public or the supervision of these activities, are required to hold or obtain an RSA Certificate within one (1) month from commencement of that employment.*
- (c) *An RSA Certificate must be obtained from an accredited service provider within Australia.*
- (d) *An RSA register in the form approved by the Director must be maintained on the premises at all times with a copy of each staff member's RSA certificate included. This condition applies from 1 August 2009 onwards.*

Takeaway Hours

Liquor shall be sold only for consumption away from the premises during the following hours:

- (i) *Sunday to Friday inclusive between the hours of 10:00 and 22:00; and*
- (ii) *Saturday and Public Holidays between the hours of 09:00 and 22:00:*

23) In respect of the complaint concerning the allegations of unauthorised take away sales to Mr Selwyn Bill and Mr Adrian Cooper, the Commission is tasked with ascertaining the status of the Take Away Sales Register that alerted Inspector Cross to those sales. The Commission does not accept the submission made on behalf of the Licensee that the document was not part of the Sales Register but rather was prepared for training purposes only.

24) That document speaks for itself. The heading reads "ID PRESENTED" and the form includes eight entries in what appears to be different handwriting. When he visited the Premises, Inspector Cross asked to inspect the Take Away Sales Register and was provided with that document in a folder containing other material. It is also noted that the name "Selwyn Bill" appears on the register twice, once for the sale the subject of this Hearing and once

for the sale of XXXX Gold, a product which may lawfully be sold to Elliott and Marlinja residents. The Commission notes that Mr Bill's actual driver's licence number is correctly recorded against both entries which is inconsistent with Mr Revell's submission that the Register contained fictitious names and details. The obvious conclusion is that the person who sold the alcohol to Mr Bill inspected his driver's licence and recorded the details. The suggestion that an employee came up with the fictitious name of Selwyn Bill and somehow managed to match that with the driver's licence number of the real Selwyn Bill is unsustainable, more so as Selwyn Bill is actually a client of the Premises on occasion.

- 25) The Commission is not persuaded that the Take Away Sales Register the subject of this complaint is anything other than what it purports to be, namely a record of alcohol sales to persons who reside in areas where take away alcohol restrictions apply.
- 26) Of concern to the Commission is the fact that it was presented with two conflicting Statutory Declarations, both purportedly executed by Mr Bill. In her evidence, Mrs Revell acknowledged that she had prepared the wording of the Statutory Declaration executed by Mr Bill in Elliott on 27 December 2010. The Commission notes that the affidavit of Mr Bill was drafted in very similar terms to that which was prepared by Mrs Revell and presented to Mr Cooper. The Commission also notes that both Statutory Declarations were witnessed by Mrs Revell in her capacity as a Justice of the Peace. The Commission notes, with some significant caution, that the wording used in the Statutory Declaration is more likely to reflect the type of language that would be used by Mrs Revell as opposed to Mr Bill or Mr Cooper, both of whom are Aboriginal residents of North Camp in Elliott. In addition, the Statutory Declaration prepared by Mrs Revell for Mr Bill names him as "Bill Selwyn" whereas his name, as evidenced by his signature on both Statutory Declarations is "Selwyn Bill".
- 27) Inspector Cross gave evidence that, after receiving a copy of the Statutory Declaration obtained by Mrs Revell, he visited Mr Bill who executed a further Statutory Declaration in his own handwriting deposing that he did in fact purchase a 6 pack of Rum and Cola from the Premises, some of which he consumed in the beer garden and the rest which he finished going back to Elliott. He also deposed that "*The owner of Renner Springs came (to) see me around Christmas time and ask me did I buy any six pack of Rum Cola and I said yes.*"
- 28) The Commission, in determining what respective weight to give to the competing Statutory Declarations, places significantly more weight on that obtained by Inspector Cross wherein Mr Bill provides a statement in his own words and confirms the evidence contained in the Take Away Sales Register.
- 29) The Statutory Declaration of Mr Cooper, obtained by Mrs Revell, is more problematic in that Inspector Cross was unable to locate Mr Cooper to discuss the substance of the complaint or to seek his comment on the Statutory Declaration he executed. The Commission does however have significant concerns regarding the veracity and evidentiary value of the Statutory Declaration obtained by Mrs Revell from Mr Cooper. Those concerns are highlighted by the fact that the original declaration, as sighted during the Hearing, contains amendments that are not initialled by Mr Cooper, including the application of white out to the document.

30) The body of Mr Cooper's Statutory Declaration, as amended reads:

1. *I have [WORD/S WHITED OUT] purchased from Renner Springs Desert Inn [WORD/S WHITED OUT] 5 seeds Cide [WORD/S WHITED OUT]*
2. *I cannot now recall my movements on 29 May 2010 but I can say with certainty that I have never ~~purchased~~ alcohol from Renner Springs Inn after 10.00 pm at night.*

The word "purchased" in paragraph two was crossed out and "*bought any take away*" was inserted by handwriting. The amendment was not initialled by Mr Cooper. In addition, Mr Cooper's declaration is dated 27 December 2010, the same date on which Mr Bill executed the declaration prepared by Mrs Revell. Mrs Revell, who witnessed Mr Cooper's signature, dated the document as being witnessed on 28/12/10.

- 31) Mr Cooper's Statutory Declaration, as amended, appears to depose that he has purchased 5 Seeds cider from the premises at some time but he has never bought any take away after 10.00 pm. That statement does not go so far as to depose that he has never purchased take away cider prior to 10.00 pm and, as a consequence, is of little probative value in terms of the complaint relating to alleged take away sales to Mr Cooper.
- 32) The Commission, for the reasons outlined immediately above, has serious concerns regarding the veracity of the declaration executed by Mr Cooper and witnessed by Mrs Revell and the manner in which it was obtained. The Commission is not prepared to attribute such weight to the Statutory Declaration so as to traverse the evidence contained in the Take Away Sales Register, namely that Mr Cooper purchased a six pack of Cider from the Premises on 29 May 2010 in breach of the licence condition relating to take away sales to residents of Elliott and Marlinja.
- 33) The Commission finds that that the complaints in respect of the breaches of the licence condition relating to the Takeaway Restrictions for Elliott and Marlinja Residents are proven and that the sales to Mr Bill and Mr Cooper were not authorised by the licence conditions.
- 34) Of concern to the Commission in determining the appropriate penalty for the take way breaches is the Licensee's submissions that its employees had done nothing wrong in this instance, there was no error of judgement made and there is no necessity to change the existing practices in respect of take away sales to Elliott and Marlinja residents.
- 35) The Commission notes that the allegation that the sale to Mr Cooper took place outside the licensed trading hours for take away alcohol was not pressed by Inspector O'Donohoe to any significant extent. In respect of this alleged breach the Commission accepts Mr Revell's submission that the noting of the time of the sale as 10.15 pm may be an indication of the time the sale was recorded in the Take Away Register and not the time the sale actually took place. Allowing for the lack of any persuasive evidence to the contrary the Commission is prepared to accept Mr Revell's submission in that regard.
- 36) The Commission notes however the duplicity in Mr Revell's submissions in that he submitted on the one hand that the Register recording the sales to Mr Bill and Mr Cooper was nothing more than a training or doodling document and yet contended that the staff member who conducted the sale to

Mr Cooper may have filled out the Register some time after the sale took place, resulting in the appearance of a take away sale after trading hours. Those submissions do not sit comfortably together and confirm the view that the document included in the Hearing Brief was in fact the Take Away Sales Register.

- 37) No evidence was lead by Mr Revell at the Hearing in respect the complaint regarding the failure of the Licensee to ensure that all staff engaged in the service of alcohol are accredited and that the RSA Register is maintained. However, the Commission is satisfied that this element of the complaint is proven. The RSA Register included in the Hearing Brief speaks for itself. When Inspector Cross spoke to Mr Wilkinson at the premises he was advised of the names of all employees. Mr Wilkinson and Mr Andrew Moran were identified as "Main Bar Staff". Neither of those names appears in the RSA Register nor were copies of their RSA certificates kept within the Register as required by clause (d) of the RSA Licence Condition set out above. In fact it appears that the Register as inspected by Inspector Cross had not been updated since 1 March 2010. inspector Cross was advised, on 27 September 2010, that Mr Wilkinson had been engaged at the premises for the past four months and Mr Moran for the past two months.
- 38) The Commission is satisfied on the basis of the contents of the RSA Register as presented to Inspector Cross and tendered as evidence during the Hearing, that this element of the complaint is proven.
- 39) In determining the appropriate penalty the Commission is required to take account of a number of factors, including the seriousness of the offending and any history of prior offending on the part of the Licensee. Other factors to be taken into account include an early plea to the substance of the alleged offending, admissions made in evidence during the course of a Hearing, the co-operation of the Licensee in investigations conducted by Licensing Inspectors, remorse or contrition demonstrated by the Licensee and any remedial action taken or proposed by the Licensee intended to prevent or minimise the occurrence of further breaches of a similar nature.
- 40) The Commission considers the breach of the licence condition relating to take away sales to Elliott and Marlinja residents to be of a serious nature. These types of restrictions are routinely included in the licences for remote premises as a means of regulating the supply of alcohol to Aboriginal communities, generally at the request of the community members in the interests of reducing the antisocial behaviour associated with the excessive consumption of alcohol. The success of such licence conditions where remote liquor outlets are concerned is almost entirely dependent on the diligence of Licensees and the implementation of practices to ensure compliance with the licence condition as a supply reduction measure.
- 41) In this instance the Licensee is to be given credit for the remedial steps taken since the breaches and for the fact this is the first time this Licensee has been the subject of a complaint before the Commission since taking over the operation of the Premises in September 2008. In addition, the Commission notes that both Mr and Mrs Revell were absent from the Premises for medical reasons when Inspector Cross visited and that he was dealing with staff who may not have been completely familiar with the operation and record keeping of the Premises.

- 42) However, factors that militate against the imposition of a reprimand or suspended penalty are the Licensee's continued assertions, both in written submissions and in evidence presented at the Hearing, that the offences simply did not occur. Those submissions were made despite the compelling evidence contained in the Licensee's own documentation evidencing the breaches of licence conditions. In the Commission's view the submission that the Take Away Sales Register in question was a training sheet or a "doodle pad" is fanciful in the extreme and demonstrates a complete lack of contrition or remorse on the part of the Licensee.
- 43) In those circumstances the Commission is of the view that a period of actual suspension of licence is the appropriate penalty.

DECISION

- 44) Taking account of the circumstances of this particular breach, the Commission has determined that the appropriate penalty is one day suspension of the take away component of the licence for each breach of the Licence Condition relating to the sale of take away alcohol to Elliott and Marlinja residents. One day of that suspension is to be served on Wednesday 2 November 2011, being a like day to that on which the unauthorised sale to Mr Bill took place. The remaining one day penalty is to be suspended for a period of twelve months and to be taken into account should the Licensee commit any further breach of its licence conditions during that period.
- 45) The Commission is not minded to impose any additional penalty for the breach of the RSA Licence Condition other than the issue a formal reprimand, to be taken into account should the Licensee be found to breach that licence condition in the future.
- 46) The Commission finds that the complaint in respect of the sale of take away alcohol to Mr Cooper outside of the licence trading hours is not proven on the evidence presented to the Commission.

Philip Timney
PRESIDING MEMBER
(Legal Member)

17 October 2011