

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES:	DARWIN PERFORMING ARTS CENTRE
LICENCE NUMBER:	80804541
LICENSEE:	Darwin Performing Arts Centre
NOMINEE:	Mr Jon Hamish McDonald
HEARING:	Application seeking an exemption from the Camera Surveillance Requirements.
HEARD BEFORE:	Mr Craig Spencer
DATE OF HEARING:	29 January 2004
DATE OF DECISION:	29 January 2004
APPEARANCES:	Mr Jon Hamish McDonald for the Licensee

Background

1. At its meeting held in September 2003 the Licensing Commission determined to impose "Camera Surveillance Requirements" on various licensed premises that met certain operational criteria.
2. The means of implementing the Camera Surveillance Requirements was by virtue of Section 33(1) of the *Liquor Act*, which states: "the Commission may, from time to time by notice in writing, vary the conditions of the licence held by a Licensee.
3. The Licensing Commission duly informed, in writing, the identified licensed premises of its intention to impose as a condition on their licence, the Camera Surveillance Requirements.
4. Licensed premises affected by this decision could accept the condition, advise the Licensing Commission that they did not believe they came within the criteria, or seek an exemption from the Camera Surveillance Requirements, by virtue of Requirement 2(d).
5. The Licensee in this matter is seeking an exemption from the Camera Surveillance Requirements by virtue of Requirement 2(d).

Legal considerations

6. Requirements 2(a) and (c) of the Camera Surveillance Requirements state:

2(a) *These requirements apply to:*

- (i) *Late night trading venues (those parts of premises licensed to trade after 2.00am); and*
- (ii) *Venues that are licensed to trade to 2am, have live entertainment and are located in a late night entertainment district*

unless the venue has been granted an exemption by the Commission or 2(c) applies.

2(c) *Unless specified in the conditions of a premises' liquor licence, these requirements do not apply to the following venues or parts of venues:*

- (i) *Casinos;*
- (ii) *Wayside Inns;*
- (iii) *Licensed Restaurants*

7. Requirement 2(d) states:

Licensees may apply to the Commission to be exempted from the camera surveillance requirements through a variation to their licence conditions. In order to gain such an exemption the licensee would need to demonstrate that there are special circumstances and that the public interest will not be adversely affected.

Licensee Submission

8. The Licensee (the Nominee acting on behalf of the Licensee) acknowledged that:

- their licensed premises did fall within the criteria outlined in Requirement 2(a) of the Camera Surveillance Requirements.
- The Licensing Commission did duly advise them in writing of its intention to impose the Camera Surveillance Requirements as a condition of their licence.
- They were now seeking an exemption under Requirement 2(d).

9. As part of the submission, the Licensee confirmed the details previously provided in a letter dated 13 January 2004 from the Nominee to the Licensing Commission. In summary the points made in that letter included:

- Trading is only in conjunction with functions, performances or events specifically arranged by management of the Centre
 - While the Centre is licensed to trade until 0230 every day, it is rare for the premises to be open after midnight.
 - Trading only occurs on one or two nights per week.
 - Only small amounts of liquor are consumed as trading is limited in the main to before a show and at interval.
 - Cabaret style performances do mean that liquor is available during a performance but these performances are usually less than 10 per year.
 - The nature of the Centre and the patrons who attend there, are generally not the persons who are likely to present or be a problem to other members of the public.
10. In order to further satisfy Requirement 2(d) to gain the exemption, the Licensee sought to distinguish the operation of their licensed premises from other licensed premises in the area by stating:
- It is an entertainment venue, not a liquor venue.
 - Liquor is consumed ancillary to the provision of entertainment.
 - The sale of liquor is not a significant aspect of its business operations as income from bar trade for the financial year 2002/2003 was \$64,000 compared to a gross turnover of \$1,140,000 – approximately 5.6% of turnover.
 - Based on approximately 30,000 patrons attending events at the premises during 2002/2003, patrons spend approximately \$2 per head on liquor.

Decision

11. The Commission is satisfied that the Licensee demonstrated special circumstances exist and that the public interest will not be adversely affected by an exemption to the Camera Surveillance Requirements, as provided by Requirement 2(d).
12. Accordingly, the Commission grants the Licensee an exemption to the Camera Surveillance Requirements. The exemption only exists while the current Licensee remains the Licensee for the premises and the premises continues to operate in its current format. The Commission reserves the right to rescind the exemption if it believes it is necessary to impose the Requirements pursuant to Requirement 2(b).

Craig Spencer
Presiding Member