

# **NORTHERN TERRITORY LICENSING COMMISSION**

## **REASONS FOR DECISION**

---

<b>PREMISES:</b>	<b>UNCLES TAVERN</b>
<b>LICENSEE:</b>	AAPC Properties (Qld) Pty Ltd
<b>LICENCE NUMBER:</b>	80305040
<b>NOMINEE:</b>	Mr Gary Mason
<b>PROCEEDING:</b>	Complaint pursuant to s.48(2) of the <i>Liquor Act</i> , breach of s.121,
<b>COMPLAINANT:</b>	Senior Sergeant Lance Godwin
<b>HEARD BEFORE:</b>	Mr Peter Allen
<b>DATE OF HEARING:</b>	20 August 2003
<b>DATE OF DECISION:</b>	21 August 2003
<b>APPEARANCES:</b>	Mr Rob Burgoyne, for the Complainant Mr John Stirk, for the Licensee

---

A statement of agreed facts tendered by the parties to this matter is as follows:

At about 1:30PM on 16 May 2003, Police attended at Uncles Tavern and observed an intoxicated person on the premises drinking beer, namely a male Aboriginal named Bradley Malbunka. Malbunka was removed from the bar and taken into protective custody by the members due to his level of intoxication. The manager and staff were spoken to at the time and informed of the alleged breach of the *Liquor Act*.

Further to the agreed facts I am informed by the frank admission of the nominee that the liquor consumed by Mr Malbunka was purchased from the premises but not in person by Mr Malbunka.

I find that a breach of s.121, failure to remove or exclude an intoxicated person, occurred as agreed by the parties.

Mr Stirk for the Licensee submits that in the light of the full, frank and early admission of the breach, the measures taken by the nominee to minimise any likelihood of a further breach and in the absence of any previous breaches, the suspension of any proposed penalty would be appropriate. Mr Burgoyne although indicating there may have been earlier matters apparently dealt with without recourse to the Commission concurs with Mr Stirk's submission on penalty in this matter.

Although it is increasingly the practice of the Commission to impose a period of actual and immediate suspension of the licence for a breach of s.121, I am persuaded by Mr Stirk's submission and find, on the basis of the full, frank and immediate admissions of the Nominee and in the absence of previous breaches, that no period of actual suspension need immediately apply.

Nevertheless I believe it to be appropriate, particularly in the light of broad community concern regarding the management of licensed premises, to record the breach on the Commission's records and to impose a penalty by way of suspension of the licence for the period of one day but to defer the imposition of this penalty in the manner described hereunder.

Notification of the date on which the one-day suspension is to take effect will not be given unless and until any further complaint may be upheld which involves a contravention of a licence condition or provision of the *Liquor Act*, and which first comes before the Commission pursuant to s.48(6)(c) of the Act within a period of six months from the date of this decision.

What this means is that if no further complaints in relation to the operation of Uncles Tavern have been forwarded to the Commission by 21 February 2004 this matter will be at an end. If however any complaint comes before the Commission before 21 February 2004 and is subsequently upheld against the licensee or nominee as constituting a breach of the *Liquor Act* or of any licence condition, then in addition to whatever penalty may be imposed in relation to the further complaint, the Commission may also notify a date for the deferred suspension hereby imposed to be served in relation to this present matter.

Peter R. Allen